

The State of Alabama, }
Baldwin County

CIRCUIT COURT
No. 7723

September 1967

To Any Sheriff of the State of Alabama—Greetings:

You Are Hereby Commanded to Summon Martin Tuberville

to appear within thirty days from the service of this writ, in the Circuit Court to be held for said County
at the place of holding the same, then and there to answer the complaint of Arthur Harville, Jr.

Witness my hand this 5th day of September 1967

Alice J. Duck, Clerk

COMPLAINT

Arthur Harville, Jr. Martin Tuberville

Plaintiff Versus Defendant

The plaintiff claims of the defendant the following personal property, to-wit:

One black butt-headed cow, with white on each flank, and one bull calf.

with the value of the hire or use thereof during the detention, to-wit:

from 23 January 1967, to 31 August 1967

FILED

SEP 5 1967

Kenneth Cooper

Plaintiff's Attorney.

No. 7723 Page _____

State of Alabama

Baldwin County

CIRCUIT COURT

Arthur Herwiller, Jr.

Plaintiff

VS.

Martin Tuberville

Defendant

Detinue Summons and Complaint

Filed _____, 19____

FILED

SEP 5 1967

Clerk

ALICE J. DUCK
CLERK
REGISTR.

H. Cooper
Plaintiff's Attorney

Defendant's Attorney

To the Sheriff of said County:

Whereas, the Plaintiff in the within stated cause has made affidavit and given bond as required by law you are hereby required to take the property mentioned in Complaint into your possession unless the Defendant gives bond payable to the Plaintiff with sufficient surety in double the amount of the value of the property, with condition that if the Defendant is cast in the suit he will within thirty days thereafter, deliver the property to the Plaintiff, and pay all damages and costs which may accrue from the detention thereof.

Alice J. Duck Clerk

Defendant lives at

RECEIVED
Received in office

SEP 5 1967, 19____

TAYLOR WILKINS, Sheriff

I have executed this summons

this Sept 6, 1967

by leaving a copy with

Martin Tuberville
and Attached
one Black butt
headed cow one
bull calf. Dist.
made bond 9/8/67
By Martin Tuberville
Sprie Lee Jones, W. & C.
Dean, Jr. Property
returned to Dist.

Taylor Wilkins Sheriff
W A Tolbert Deputy Sheriff

Lattie

Printed by Moore Printing Co.

Sheriff claims 40 miles at
Ten Cents per mile Total 4.00
TAYLOR WILKINS, Sheriff
BY W A Tolbert
DEPUTY SHERIFF

STATE OF ALABAMA

BALDWIN COUNTY

IN THE CIRCUIT COURT OF

BALDWIN COUNTY

#7723

Before me, _____, a Notary Public in and for said County,
personally appeared Arthur Harville, Jr. who being by me
duly sworn deposes and says that the property sued for in the complaint of Arthur Harville, Jr.
vs Martin Tuberville filed in said Court, to-wit:
Circuit Court, Baldwin County, Alabama

belongs to Arthur Harville, Jr., the plaintiff.

Sworn to and subscribed before me this 31st
day of August, 1967

Kenneth Cooper
Attorney For Plaintiff

Kenneth Cooper
Notary Public
State of Alabama

STATE OF ALABAMA

BALDWIN COUNTY

IN THE CIRCUIT COURT OF

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, That we, Arthur Harville, Jr., Clyde Perkins and Arthur Harville, Sr., Principal, and

_____, Sureties, are held and
firmly bound unto Martin Tuberville, his heirs, executors and admin-
istrators in the sum of ~~XXXXXX~~ Fifty (\$50.00) Dollars,
for the payment of which we jointly and severally bind ourselves, our heirs, executors and adminis-
trators.

Sealed with our seals and dated the 31st day of August, 1967.

The condition of the above obligation is such that whereas, the above bound Arthur Harville, Jr.

has on the 31st day of
August, 1967 sued out a writ of detinue in the Circuit Court of Baldwin
County, returnable to the said Circuit Court against the said

Martin Tuberville for the recovery of the following
described property, to-wit:

One black butt-headed cow with white on each flank, and one bull calf.

Now, if the said Arthur Harville, Jr. shall fail in said suit
and shall pay to the said Martin Tuberville, the defendant in
said suit, all such costs and damages as he may sustain by the wrongful complaint, then this obligation to
be void, otherwise, to remain in full force and effect.

Taken and approved this 5th day of

Arthur Harville Jr (SEAL)
Clyde Perkins (SEAL)
Arthur Harville Sr (SEAL)

SEP 5 1967

David J. Duck
Clerk, Circuit Court

No. 7723

THE STATE OF ALABAMA

BALDWIN COUNTY

CIRCUIT COURT

ARTHUR HARVILLE, JR.
Plaintiff

vs.

MARTIN TUBERVILLE
Defendant

Detinue — Affidavit and Bond

Filed this 5 day of SEP, 1967.

SEP 5 1967

ALICE J. SPOON

CLERK
REGISTERED

Clerk

THE STATE OF ALABAMA,

Circuit

COURT.

Baldwin COUNTY.

September

Term, 1967

KNOW ALL MEN BY THESE PRESENTS:

That we, Martin Tuberville
are held and firmly bound unto Arthur Harville, Jr.
in the sum of Two hundred-fifty----- Dollars,
for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators,
jointly and severally, firmly by these presents.

Sealed with our seals and dated, this _____ day of _____ 19____

The Condition of the above Obligation is Such, That whereas the said _____

Arthur Harville, Jr. did on the 5th day
of September 1967, sue out of the Circuit

Court of said County a writ in detinue, directed to any Sheriff of the State of Alabama, and commanding
him to take into his possession the following property, sued for in action of detinue, to wit:

One black butt-headed cow, with white on each flank, and one bull calf

which said writ was placed in the hands of Taylor Wilkins
Sheriff of the County of Bay Minette, on the 5th day
of September 1967, and executed by him on the 6th day of
September 1967, by taking into his possession _____
same as above

and whereas the above bound Martin Tuberville

has within five days from the execution of said writ entered into this bond as required by law, and here-
by obtain possession of said property.

Now, if the said Arthur Harville Jr. shall well and truly, within
thirty days after the determination of said suit, if the said Martin Tuberville
be cast in said suit, deliver the property replevied, and also pay all the costs and such damages for de-
tention as may accrue from said detention, then this obligation to be void, otherwise to remain in full
force and effect.

And we, and each of us, hereby waive all rights of claim of exemption we or either of us have
now, or may hereafter have, under the Constitution and Laws of Alabama, and I hereby
severally certify that they have property free from all encumbrance to the full amount of the
above bond.

Witness our hands and seals, this _____ day of _____ 19____

Taken and approved,

Sept 8 1967
Taylor Welby
W. A. Talbot Sheriff.

Martin Tuberville (L.S.)
Normie Lee Jones (L.S.)
D. E. Weathers Jr. (L.S.)
_____ (L.S.)

No. _____
The State of Alabama,
COUNTY _____
COURT _____
SHERIFF'S OFFICE

Plaintiff.

vs.

Defendant.

DETINUE REPLEVIN BOND, DEFENDANT.

Filed _____ 19____

Sheriff.

Sheriff's Execution Docket, page _____

ARTHUR HARVILLE, JR.,)
)
 Plaintiff,) IN THE CIRCUIT COURT OF
)
 vs.)
) BALDWIN COUNTY, ALABAMA
 MARTIN TUBERVILLE,)
)
 Defendant.) LAW SIDE. NO. 7723

ANSWER:

Now comes the Defendant in the above styled cause and for answer to the complaint heretofore filed, says as follows:

1. Not guilty.

OWENS AND PATTON

By: Walter J. Patten
Attorneys for Defendant.

I, the undersigned, one of the attorneys of record for the Defendant in the foregoing cause, do hereby certify that I have this day forwarded a copy of the foregoing answer to Kenneth Cooper, the attorney of record for the plaintiff in said cause, by United States Mail, postage prepaid, this 25th day of September, 1967.

Walter Fallon

FILED

SEP 26 1967

ALICE J. DUCK CLERK
REGISTER

| | | |
|-----------------------|---|-------------------------|
| ARTHUR HARVILLE, JR., |) | |
| Plaintiff, |) | IN THE CIRCUIT COURT OF |
| vs. |) | |
| MARTIN TUBERVILLE, |) | BALDWIN COUNTY, ALABAMA |
| Defendant. |) | LAW SIDE. NO. 7723 |

Now comes the Defendant in the above styled cause and for further answer to the complaint heretofore filed, says as follows:

2. PLEA OF ESTOPPEL:

That the Plaintiff is estopped from asserting his demand in this case for that in March of 1966, the Plaintiff became aware that the cow, which is the subject of this suit, had been sold to the Defendant by a third party; that the Plaintiff instructed the Defendant to keep the cow while the Plaintiff sought to institute a criminal proceeding against the third party and that the Plaintiff further told the Defendant that he, the Plaintiff, would see that the Defendant did not lose anything on the cow; that the Defendant relied on the said representations of the Plaintiff to his detriment by incurring expenses valued at \$400.00 for the maintenance and care of said cow.

PLEA OF SET-OFF

3. Comes the Defendant and, without in any way confessing the Plaintiff's claim or demand, as a defense to the action of the Plaintiff says: That at the time said action was commenced, the Plaintiff was indebted to the Defendant in the sum of \$400.00, as a result of the instructions of the Plaintiff to the Defendant, to keep and care for the cow, while he, the Plaintiff, instituted criminal proceedings against a third party who had sold the cow to the Defendant, further telling the Defendant that he would not lose anything on the cow, and as a result of said instructions of the Plaintiff to the Defendant, the Defendant expended said amount in and about the maintenance and care of the cow, for all of which the Plaintiff is indebted to the Defendant in the sum of \$400.00 which the Defendant hereby offers to set off against the demand of the Plaintiff, and he claims judgment for the excess.

OWENS AND PATTON

I, the undersigned, one of the attorneys of record for the Defendant in the foregoing cause, do hereby certify that I have this day forwarded a copy of the foregoing answer and set-off to Kenneth Cooper, the attorney of record for the plaintiff in said cause by United States Mail, postage prepaid, this 13th day of February, 1968.

Walter S. Patton

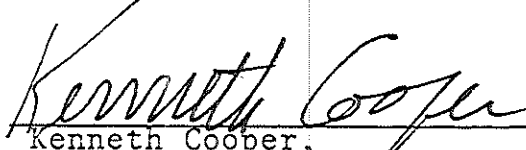
FILED

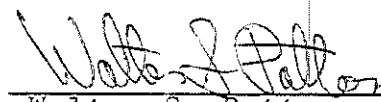
FEB 13 1968

ALICE J. DUCK CLERK
REGISTER

| | | |
|-----------------------|---|-------------------------|
| ARTHUR HARVILLE, JR., |) | IN THE CIRCUIT COURT OF |
| Plaintiff, |) | |
| vs. |) | BALDWIN COUNTY, ALABAMA |
| MARTIN TUBERVILLE, |) | |
| Defendant. |) | LAW SIDE. NO. 7723. |

Come now the parties in the above styled cause, by and through their attorneys, having been informed that the Defendant in this cause is related to the Honorable Telfair J. Mashburn, by affinity within the fourth degree, and hereby consent to the said Honorable Telfair J. Mashburn hearing this cause.


 Kenneth Cooper,
 Attorney for Plaintiff.


 Walter S. Patton,
 Attorney for Defendant.

FILED

FEB 14 1968

ALICE J. BUCK CLERK
 REGISTER

ARTHUR HARVILLE, JR.,
Plaintiff,
VS
MARTIN TUBERVILLE,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE
CASE NO. 7723

DECREE

This cause coming on to be heard is submitted upon complaint by plaintiff, filed 5 September, 1967; answer thereto, filed 26 September, 1967, by defendant, pleas of estoppel and set off, filed 13 January, 1968; agreement by attorneys of record for both parties hereto, consenting to Hon. Telfair J. Mashburn to hear this cause; recuse by Hon. Telfair J. Mashburn, because of his relationship to one of the parties involved in this litigation; answer of the defendant dated 25 September, 1968, and testimony ora Tenus taken on 3 February, 1970; and the Court having considered the same, finds that the defendant was in possession of the property sued for, to-wit, a cow, at the commencement of this suit, and still has the said cow at the time of the hearing on 3 February, 1970. Upon consideration of the pleadings, and the evidence taken in this cause, it is

ORDERED, ADJUDGED and DECREED by the Court:

1. That judgment be and the same is hereby rendered in favor of the plaintiff and against the Defendant for the property sued for and described in the complaint, viz, one black butt-headed cow with white on each flank, marked with a crop and two splits in the right ear and a crop in the left ear, and branded with A.H. on the right hip.

2. That said property being in the possession of the defendant, the alternate value of the said property be and the same is hereby fixed at \$150.00.

3. That defendant shall not recover any value for keeping the said cow because he shall keep any calves born to said cow during the period the cow has been in his possession in lieu thereof.

4. That plaintiff have and recover of the defendant the said property sued for, if the same can be had and if not, the plaintiff have and recover of the defendant the said sum of \$150.00.

5. That the court costs of this proceeding be assessed against, Martin Tuberville, the defendant, for which let execution issue.

FILED

MAR 20 1970

ALICE J. DUCK CLERK
REGISTER

W. Angus Helt
CIRCUIT JUDGE

20⁰⁰
ARTHUR HARVILLE, JR.,

VS.

MARTIN TURBERVILLE.

IN THE

CIRCUIT COURT OF BALDWIN COUNTY,

ALABAMA. CASE NO. 7723

HON. DOUGLAS WEBB, JUDGE OF THE
21ST JUDICIAL CIRCUIT OF ALABAMA, PRESIDING.

A P P E A R A N C E

For the PLAINTIFF:

Hon. Kenneth Cooper,
Bay Minette, Alabama

For the DEFENDANT:

Hon. J. Connor Owens,
Bay Minette, Alabama.

ARTHUR HARVILLE, JR., THE PLAINTIFF, BEING FIRST DULY SWORN,
TESTIFIED AS FOLLOWS:

Examination by Mr. Cooper.

Q. State your name?

A. Arthur Harville, Jr.

Q. Are you the Complainant in this case?

A. Yes sir.

Q. - - wherein Martin Turberville is the Defendant?

A. Yes sir.

Q. Where do you live?

A. Bay Minette, Alabama.

Q. Mr. Harville, in the spring of 1966 or 1967, did you lose one
black butt-headed cow with white on each flank and one calf?

A. I lost the cow; she had not had the calf at the time.

Q. Do you remember approximately the date that you lost the cow?

A. It was the last of February or the first of March of 1966.

Q. When did you first have knowledge, Mr. Harville, that this
particular cow of yours was in the possession of Mr.
Martin Turberville?

A. About the middle of March or some where in March of 1966.

Q. Was there a criminal prosecution involving this cow - not
that Mr. Turberville was involved in, but was there a

criminal case involving this cow?

A. Yes.

Q. Did you ask Mr. Turberville for your cow?

A. Well before the trial.

Q. Did he refuse to let you have the cow?

A. He did say neither way.

Q. Has he, up to this date, refused to let you have the cow?

A. Yes sir.

Q. Would you please describe the cow - the age of the cow, the approximate size of the cow and any markings, if she had any marks on her, at the time she was lost from you?

A. She was around two years old and weighed around 350 pounds - some where around there and marked with a crop and two splits in the right ear and a crop in the left ear and branded with A. H. on the right hip and she was a black butt-headed cow with white on each flank.

Q. Now was the cow with calf at the time she disappeared or do you know?

A. I don't know.

Q. Now do you know where the cow is today, or where it was when you last saw it?

A. In Mr. Turberville's pasture the last time I saw her.

Q. At that ^{time now} many calves did you find she had had since she disappeared in March of 1966?

MR. OWENS: Object to that.

Q. I will ask you: Did you see a bull calf at that time?

A. No sir.

Q. Did Mr. Turberville tell you that she had had a bull calf, or did you have a conversation with him at that time about getting the bull calf and the cow back?

MR. OWENS: I object - It hasn't been established there was a bull calf.

THE COURT: Sustain the objection.

Q. Did you see the cow in his pasture?

A. Yes sir.

Q. Did you see a calf with her?

A. No sir.

Q. Did you have a conversation with Mr. Turberville about a calf?

MR. OWENS:: He has not identified the time of the conversation.

MR. COOPER: I asked did you have a conversation?

A. Seems like I did after the trial and he said she had a bull calf then.

Q. That is what Mr. Martin Turberville told you?

A. I believe so.

Q. Do you remember if he gave you any particular marking or color of the bull calf that she had?

A. No sir.

Q. Do you have any personal knowledge whether or not this particular cow has had another heifer calf since the bull calf was born?

A. I heard she had but that is all.

MR. OWENS: I object to that and move to exclude it.

THE COURT: Sustain the objection.

Q. How far does Mr. Turberville live from you?

A. Well he lives, I guess, about 25 miles from where I live.

Q. Have you see this particular cow that you have described here in his pasture how many times since this law suit was filed?

A. Twice I think.

Q. And the last time was approximately how long ago?

A. About three years ago.

Q. Now at the time you last saw the cow what kind of pasture was she on?

A. Bahai Grass pasture.

Q. Do you know whether it was Pensacola or Argentinia Bahai?

A. I really don't know. (page 3)

Q. Have you bought and sold cows during your life time, Mr. Harville?

A. No sir, I have sold a few.

Q. Have you raised cows and sold them?

A. Yes sir, I raised them.

Q. How long have you been raising cows and selling them?

A. About 25 years.

Q. Now based on your experience of raising cows and selling them, taking into consideration the type of pasture that you last saw this cow on, in Mr. Turberville's possession, what in your opinion would be a reasonable charge, if this court should see fit to grant some form of set off in this case? - - what, in your opinion would be a fair charge against this cow for Mr. Turberville having furnished it pasture and everything since he took it? -a- How much per month or how much per year?

A. About \$1.75 to \$2.00 a month.

Q. You put that on an annual basis?

A. Yes sir.

Q. If he had had the cow four years he should be entitled to roughly \$24.00 a year or roughly \$100.00?

A. Right.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Owens.

Q. Mr. Harville, you stated first that you found this cow missing in March of 1966, is that correct?

A. Yes sir.

Q. And you contacted or located the cow in the possession of Mr. Turberville, is that correct?

A. That is right.

Q. At the time that you located the cow did you have any discussion with him concerning the cow?

A. Yes, I told him, you know, that it was my cow.

Q. Did you have any other discussion with him?

A. At the time I told him that I would give him what he paid the man for the cow to keep him from losing anything on her.

Q. Did he tell you how much he paid for the cow?

A. He didn't tell me exactly what he paid for that one; he told me what he paid for four.

Q. Did he show you a check for what he paid for the four cows?

A. He didn't pay it all by check.

Q. He paid part cash?

A. Yes sir

Q. How much did he pay in cash?

A. I have forgot.

Q. Would it be correct to say that he paid some where in the neighborhood of \$135.00 for the cows - the four cows, or approximately \$35.00 for the cow in question?

A. Yes sir.

MR. COOPER: What was your answer?

WITNESS: Yes sir.

Q. Did you ask him who he bought these cows from?

A. Yes sir; he told me when I got there.

Q. Did you not then discuss with him the fact that you were going to have the individual prosecuted and asked his help in the matter?

A. Yes, I told him I was going to have him prosecuted.

Q. Did you not at that time tell him to keep the cow until you saw how the case came out?

A. We didn't discuss that.

Q. What did you do, leave the cow?

A. When we had the trial Mr. Hendrix said I will have your cow back in a couple of weeks and that just kept going on.

Q. You discovered your cow there in 1966 and just left her there - - The time stated in your complaint is 23rd day of January 1967. Why is that particular date used?

A. We had a detinue attachment - -

Q. No sir, - You filed a detinue suit I believe in August of 1967, is that correct? This Complaint was filed in August of 1967 and I asked you about the significance of the 23rd day of January, 1967, which was some eight months prior thereto?

- A. I don't remember what that was.
- Q. You don't remember what that was?
- A. No sir.
- Q. You testified a little bit ago that you made a demand on him for the cow on a date; when was that date?
- A. It was after the trial - - I believe - - I don't know just when.
- Q. This is the criminal trial that you're talking about where the fellow was acquitted?
- A. Right.
- Q. This gentleman testified as one of the witnesses for the State, is that correct?
- A. Correct.
- Q. When was that trial, Mr. Harville?
- A. 1967 or '68 - -
- Q. And you have the date that you are claiming that he unlawfully kept this cow as January 23, 1967 and you can't place any light on that particular date, is that correct?
- A. No.
- Q. All right, sir - let me ask you this: You have sued for a bull calf. Can you describe a bull calf as being the spouse of this butt-headed cow?
- A. Well I believe he told me - - I ran up with him here in town; he was selling watermelons and he said he had a black ball-faced bull.
- Q. ^{You} Could ~~name~~ not identify it?
- A. No.
- Q. You could not identify any other calf this cow might have had either?
- A. No sir.
- Q. What, in your opinion, was the alternative value of the black cow on the date that you say he unlawfully converted it to his own use? - - You said January 23, 1967?
- A. About \$35.00 or \$40.00; they were cheap back then.
- Q. Now it might be that the first notice Mr. Turberville got of

your claiming the cow is when the suit was filed, is that correct?

A. Which suit?

A. This suit?

A. No, he knew it was my cow before then.

Q. I asked you when was the first time he knew that you wanted the cow back?

A. I presume so.

Q. So that is March 1966 to August of 1967 that you left the cow there?

A. Yes.

Q. You have no idea how many acres he has in his pasture?

A. No.

Q. You have no idea the amount of fertilizer he uses to keep the pasture, do you?

A. No sir.

Q. You have no idea whether or not he incurred any Veterinarian bills do you?

A. No sir.

Q. You have no idea whether or not he incurred any Veterinarian's bills or not, do you?

A. No sir.

Q. You have no idea whether he bought any feed supplement during the winter, do you?

A. No sir.

Q. You have no idea how many head of cows he has all together on this pasture, do you?

A. No sir.

Q. What did you base your figure of \$1.75 on?

A. Some that I have kept records on in a pasture.

Q. That might not be his case, is that correct?

A. Might no.

ON RE-DIRECT EXAMINATION OF THIS WITNESS, HE TESTIFIED

Examination by Mr. Cooper.

Q. Now Mr. Harville, just one or two questions: In speaking of pasture valuation of \$1.75 to \$2.00 a month for keeping a cow, you said that was based on your experience from records you had kept. Was the pasture you had reference to in fixing that valuation similar to the pasture Mr. Turberville had this cow on?

A. I would say a better pasture; I have Dallas Grass and Clover.

Q. You say your pasture is a better pasture than his?

A. Yes sir.

Q. As to the date Mr. Owens has questioned you about, you said on direct examination that the cow disappeared along in February or March of 1966. Now the complaint, which the original is signed, says the value of the cow beginning the 23rd day of January 1967; that is the date that was on this paper - that is the firm date that you are asking in this case, is that right?

A. Yes sir.

MR. TOM DEAN, A WITNESS FOR THE COMPLAINANT, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

Examination by Mr. Cooper.

Q. State your name, sir?

A. Tom Dean.

Q. Mr. Dean, do you live out in the Rabon Community near Bay Minette?

A. Yes sir, born and raised there.

Q. Do you know Arthur Harville, Jr. setting on my left?

A. Yes sir.

Q. And you know Mr. Martin Turberville setting on my right?

A. Yes sir.

Q. You are related to Arthur Harville, Jr.?

A. Yes sir.

Q. What is the relationship?

A. My sister's grand-son.

Q. I will ask you if you have ever branded or cut any crops in the ears of cows owned, or heifers owned by Mr. Arthur

Harville, Jr?

A. Yes sir, I do all of the marking and branding.

Q. Directing your attention to a butt-headed cow that disappeared from him some where in the early part of 1967, do you recall the cow that is involved in this law suit here today?

A. Yes sir.

Q. Did you brand that cow?

A. Yes sir, I marked and branded it when it was a calf.

Q. What kind of mark did the cow have?

A. Crop and two splits in the right ear and a split in the left ear and A. H. Brand.

Q. What was the size of the cow when you branded it?

A. Small calf.

Q. What would you say was its worth at that time?

A. I ain't much on that.

Q. You don't know?

A. No sir.

Q. Could you say about how much the calf weighed?

A. I would not say that, Mr. Cooper, because it has been so long; I don't know whether it was a big or small calf.

Q. Are you familiar with the fact that the calf that you just described disappeared from his herd?

A. Yes sir; he told me to look out for it.

Q. Have you seen it since it disappeared?

A. Yes sir, I have.

Q. Did you see it in the pasture of Mr. Martin Turberville?

A. Yes sir.

Q. When did you first see it in Mr. Turberville's pasture?

A. Well, I will tell you just how it worked: Mr. Turberville told me Arthur had one in his pasture and he was in the bed and he asked me would I go with the boys - - I told him Mr. Caughlin - it is Mr. Caughlins - both have the same mark, but I have seen it around there and we went to Mr. Turberville's pasture and it was off up in the corner of

(page 9)

the pasture and I walked off up there; I saw it was Caughlins and they walked on down the road; well Junior's wife and Arthur's wife went with us up there and coming on back she stopped - and Willie Lou said: "Bud, did you see that yearling of Junior's up there"?

Q. Who is Bud?

A. That's what they call me.

Q. We can't have any conversation or what the ladies said to you when you were not in the presence of Mr. Turberville here. Did they go with you when you saw the calf in Mr. Turberville's pasture?

A. Yes sir; I went back and told Mr. Turberville.

Q. What did you tell him?

A. I told him that it belonged to Junior Harville.

Q. What did he say?

A. That is the one I bought from Daniel Harville.

Q. Daniel is the one later prosecuted criminally in Court here?

A. Yes sir.

Q. Do you know about what the age of that heifer was at the time you were with Mr. Turberville?

A. About two years old.

Q. That was along about the time of the criminal case up here, is that right?

A. No, that was before they ever started any law suits.

Q. Now have you seen the cow, sir, since that date?

A. Well, I have seen her one time at a distance.

Q. How long ago was that?

A. Well, it was about two years ago.

Q. Was she at that time the cow in Mr. Turberville's pasture?

A. Yes sir, she was in his pasture.

Q. Do you know if she had had a calf?

A. No, I do not know.

Q. Did you talk to Mr. Turberville himself about the cow?

A. No, I didn't.

Q. Then you have not had any conversation with Mr. Turberville about the cow since you saw it in the pasture?

A. No sir; I go there and take orders and everything and never bring up subjects like that.

Q. Was the cow in the pasture or in the woods?

A. Pasture.

Q. What kind of pasture?

A. Bahia.

Q. Pensacola or Argentina?

A. You can't tell much about that; it looks alike.

NO CROSS EXAMINATION OF THIS WITNESS:

Examination by the Court.

Q. What was the month and day and year when you went and looked at that cow?

A. I don't know, Judge; I couldn't say, because he was sick and Mr. Turberville told me he had a cow in his pasture and he asked me to go up there and look at her.

Q. You don't remember the year, day or month?

A. No I don't; it has been so long ago.

WOODROW BRYANT, A WITNESS FOR THE COMPLAINANT, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

Examination by Mr. Cooper.

Q. State your name, please?

A. Woodrow Bryant.

Q. Mr. Bryant, how old are you?

A. 57.

Q. Where do you live?

A. Stockton.

Q. Are you familiar with the community of Rabon and out around where Arthur Marville Jr. and his father and Mr. Dean live?

A. Yes sir.

Q. Do you work in the stock pens?

A. Yes.

Q. What pens do you work?

A. Robertsdale on Monday, Atmore Tuesday and Frisco City on Wednesday.

Q. Do you raise cattle?

A. Yes sir.

Q. Do you buy cattle?

A. Yes sir.

Q. Do you sell cattle?

A. Yes sir.

Q. How long have you been in that kind of business?

A. All of my life.

Q. Close to 50 years?

A. I started out when I was big enough.

Q. Now I will ask you if you are familiar with a butt-headed cow involved in this law suit today claimed by Mr. Arthur Harville, Jr., which Mr. Turberville allegedly has?

A. Yes sir.

Q. Do you know who marked and branded that cow?

A. Uncle Tom Dean.

Q. The man just in here?

A. Yes sir.

Q. Did you assist in that in any way?

A. Yes sir.

Q. What part did you play in the branding of that cow?

A. Well I have cattle there with those and I helped hold the yearling while Uncle Tom marked it.

Q. What was the markings?

A. Crop and two splits in one ear and crop on the other ear.

Q. What kind of brand did he put on it?

A. AH

Q. At the time that particular cow or calf was branded, about what size was it?

A. About a 150 pound calf.

Q. Now have you seen that cow since then?

A. Yes sir.

Q. When did you next see that cow?

A. Well I saw it off and on up until -- well the last time I saw it, it was in Mr. Turberville's pasture.

Q. About how long ago was tga(page 12)

A. Three or four years ago now.

Q. You don't have any personal knowledge of how he came in possession of that cow, do you?

A. No sir.

Q. But the cow you saw in his pasture at that time, that is the Cow you all had marked when it was a calf for Mr. Arthur Harville, Jr.?

A. Yes sir.

Q. About what was the size of the cow when you saw it in Arthur - - in Mr. Turberville's pasture?

A. Well I would say she was about a 400 pound heifer.

Q. Do you know whether or not at that time the heifer had a calf?

A. No sir, she had not had a calf at that time.

Q. Was Mr. Turberville with you at the time you saw it in the pasture?

A. Yes sir, he walked out there with us.

Q. Did he have a conversation with you about who owned the cow?

A. Well, the best I remember it has been so long, I went up there - - I don't remember whether it was Junior or Arthur - we went to look at the heifer and in the conversation I understood he had bought it from Daniel Harville.

Q. Was the cow on a pasture at that time?

A. Yes sir.

Q. What kind of pasture was it?

A. Bahala.

Q. Now in your buying and selling of cows, Mr. Bryant, have you had pastures of your own similar to the type this cow was on when you saw it?

A. Yes sir.

Q. Do you have an opinion as to what you think would be a reasonable valuation if this court sees fit to award Mr. Turberville some form of compensation for keeping the

cow, what in your opinion would be a fair valuation that this court should place for reimbursement or compensation to Mr. Turberville for having kept that cow in his pasture on a yearly or monthly basis?

A. Well, I could not say -

Q. Based on your personal experience - - Do you have a opinion?
- - Just answer yes or no?

A. No.

Q. You don't have an opinion?

A. No sir.

Q. You have not seen the cow since you saw it in his pasture?

A. Not at that time, no sir.

Q. Going back to the pasture, the pasture that you keep your cows on, is that similar to Mr. Turberville's pasture?

A. Approximately the same.

Q. Cows the same size as the one Mr. Turberville had allegedly belonging to Mr. Harville, what is the average compensation per month or year to keep your cows?

A. The hay and pellets and land rent runs around \$2.00 a month per head.

Q. \$200. a month per head?

A. Yes sir.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Owens.

Q. Let me ask you about the branding. I gather since you were there and had some cows there, this must have been a woods-cow?

A. Yes sir.

Q. That was the occasion for marking and branding it?

A. Yes sir.

Q. It ran loose in the woods and weighed you say about 150 pounds?

A. I would say that, yes sir.

Q. When did this branding take place?

A. In the spring I would say; we usually try to mark and brand along about June or July.

Q. Do you remember what year that was?

A. No sir.

Q. Could it have been in 1965?

A. It could have been; I wouldn't say definitely; it was several years back.

Q. What was the occasion for you seeing the cow in Mr. Turberville's pasture, Mr. Bryant?

A. Arthur, Jr. asked me to go see the heifer and see if I knew the heifer.

Q. When was that?

A. Well I just could not say.

Q. Do you have any idea - - Did you testify in the criminal trial they had here?

A. No sir.

Q. You didn't identify the cow as being his?

A. No sir.

Q. This is the first time you have testified in any Court proceeding?

A. Yes sir.

Q. Did you talk to Mr. Turberville when you made the trip there?

A. Yes sir. I

Q. Did he walk down and show you the cow?

A. Yes sir.

Q. Was it grown?

A. It was a little bigger than when I last saw it.

Q. A difference between 150 and 400 pounds - that was quite a bit?

A. We had marked it a year or so before Mr. Turberville got hold of it, or when I saw it in Mr. Turberville's field.

Q. All right, you mentioned about cost of feed - feeding cows - could that vary?

A. Yes sir.

Q. Vary not only with the amount of fertilizer used and the land rent or perhaps if you owned the land, how much capital you have tied up in it, is that correct?

A. No sir - - could but you could not consider capital against an average.

Q. You have land costs that are fixed, is that right?

A. I would base mine on the other persons.

Q. Suppose you have 40 acres in a pasture. How many cows are you going to run in there, 40?

A. No sir.

Q. How many would you run in it?

A. It takes around two acres per cow.

Q. Your experience of growing hay and everything like that are about fixed - the fewer the cows the more expense you would have?

A. Yes sir.

Q. In fact, you could go as high as three or four or Five Dollars a year - - a month I mean, is that right?

A. If you let it run that.

Q. But that could happen, couldn't it?

A. Yes sir.

Q. Sometimes when you have a cow you don't need or want and are keeping for somebody else, you have to take particular care of it where you could sell your other stuff that is not too good?

A. I don't - -

Q. This was originally a woods cow?

A. The woods were fenced up.

ON RE-DIRECT EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Cooper.

Q. He asked you if this was a woods-cow. Would you classify this as a breed of hereford, black angus, Jersey or what particular breed would you say this cow was mostly of?

A. I couldn't say.

Q. Kinder a cross breed of all?

A. It is a cross breed. (page 16)

Q. One further question in fixing the time when you saw this cow in Mr. Turberville's pasture, was that before or after the prosecution in this court on the criminal case?

A. It was before.

Q. A few weeks before that, you would say?

A. Well it was more than that - - a month or two.

ARTHUR HARVILLE, SR., A WITNESS FOR THE PLAINTIFF, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

Examination by Mr. Cooper.

Q. State your name, please?

A. Arthur Harville, Sr.

Q. Are you the father of Arthur Harville, Jr. who is sitting here on my left?

A. Yes sir.

Q. Do you know Mr. Turberville here on my right?

A. Yes sir.

Q. How long have you known Mr. Turberville?

A. Ever since he has had my son's yearling.

Q. Are you familiar with the butt-headed cow involved in the law suit?

A. Absolutely; she was raised - -

Q. - - Just listen to the questions and answer the questions as short as we can. Did the cow disappear - -

MR. OWEN: I don't want to mess in Mr. Cooper's case, but we will stipulate that Mr. Harville owned one butt-headed cow with white on each flank and to the degree that he has any testimony - -

MR. COOPER: Then I'll just limit my questions to what it cost to keep the cow.

Q. Mr. Harville, have you raised cows on pastures down at your place?

A. Raised them at my house and up in the black-belt too.

Q. How long have you been raising cattle?

A. Well - -

Q. Just how many years?

A. Well I'm 55 and my grandmother raised me up in a cow pen and I've been raising cows all of my life.

Q. Raising and selling cows?

A. Yes sir.

Q. Let me ask you this - Directing your testimony to what it cost to raise a cow now, you are familiar with the cow involved in this case and that disappeared from the pasture where Junior had it, is that right?

A. Right.

Q. Do you know what kind of pasture that cow was kept on after Mr. Turberville got the cow? - - Did you ever see the pasture where the cow was?

A. Yes sir.

Q. Based on your experience in what it cost to raise calves and cows like this one, what, in your opinion, if this Court should see fit to give him compensation for having kept the cow, would you think would be a fair valuation for this Court to consider that Mr. Turberville is entitled to for having kept this cow for Junior on a monthly basis? - - Based on your experience, tell the Court how many dollars a month or a year?

A. Not over a couple of dollars a month no how.

Q. That is based on what you have experienced?

A. My experience.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Owens.

Q. You say \$2.00 a cow a year?

A. It would not be over that; a young one went cost that much.

Q. What are you using as a basis for that?

A. Cost items.

Q. You say it costs so much to keep a cow a month or a year and you say a \$2.00 a month charge would be reasonable.

What are the cost items that you include in arriving

at that \$2.00 a month?

A. I don't understand just how you mean it.

MR. OWEN: Never mind - that's all.

MR. COOPER: Judge, the Plaintiff in this case is ready to rest, but I would like for permission to ask Mr. Dunn to go bring the criminal case that reference has been made to to establish for the Court the date there was a criminal prosecution in order that we might clarify the time - - I think it was March of 1967, but I'm not qualified to say. Since some of the witnesses said it was before the criminal case and some after - Mr Bryant said he looked at the cow a couple of months before the criminal case.

MR. OWENS: I have no objections to the criminal records being introduced, but insofar as any time they speak for themselves in the prosecution of the State of Alabama against Danny Harville - I scarcely see the relevancy in this case; the time can be fixed from the testimony from the stand.

MR. COOPER: These witnesses couldn't fix the time but they fixed it relative to the trial of a case.

MR. OWENS: I don't think that is accurate enough; they said some time before.

THE COURT: Do you object?

MR. OWENS: For that purpose I have no objections to the introduction for what they say in and of themselves, but I don't see how they can use that to bolster testimony that vague.

THE COURT: I sustain the objection - - They said sometime before; of course, I want to look at this testimony before I rule in this case, but I sustain the objection to bringing the criminal case in.

MR. ARTHUR HARVILLE, THE PLAINTIFF, BEING RE-CALLED. TESTIFIED:
Examination by Mr. Cooper.

Q Mr. Harville, since you testified on main direct examination in this case, have you had a chance to firmly affirm your recollection of when this cow was taken from you?

A. Yes sir.

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Q. What was the date that she disappeared from your possession?

A. The last part of February.

Q. Of 1966?

A. Of 1966.

Q. Now the complaint in this case charges you claim in your complaint hire since the 23rd day of January, 1967, which is roughly 12 months after the cow disappeared?

A. Yes sir.

Q. It is from that date that you are claiming the value of the detention, since that, right?

A. Right.

Q. How have you been able to refresh your recollection that this cow disappeared at the end of February or early March of 1966?

MR. OWENS: We object.

MR. COOPER: I withdraw the question.

THE PLAINTIFF REST.

MARTIN TURBERVILLE, A DEFENDANT, BEING FIRST DULY SWORN,
TESTIFIED AS FOLLOWS:

Examination by Mr. Owens.

Q. State your name, please?

A. Martin Turberville.

Q. Where do you live?

A. I live at Lottie.

Q. Near the defendant in this case?

A. Yes sir.

Q. Now directing your attention to February of 1966, did you purchase from a person named Harville some cows?

A. Yes sir

Q. How many did you buy?

A. I bought four.

Q. You purchased these cows for a lump sum, did you not?

A. Yes sir.

Q. Was there included in your purchase one black butt-head cow with white on each flank?

A. Yes sir.

Q. All right, Mr. Turberville, did you subsequently meet and discuss this cow with Arthur Harville, Jr.?

A. Yes sir.

Q. What was the substance of the conversation that you had with him?

A. Well they located this cow and I was trying to help him recover the cow and the man told me it was his cow.

Q. Told you that it was Arthur Harville's cow?

A. Yes sir.

Q. When was that? - - Was that in March of 1966?

A. Right, that is about right; I was trying to help him locate a cow and it was a different cow that he found that I was trying to help him locate; the one I was trying to help him locate, he didn't claim that cow but he claimed the cow I had bought from another fellow.

Q. Did you argue with him about that?

A. No sir.

Q. What did he ask you to do in connection with the cow?

A. To keep the cow and he would see that I didn't lose my money - that I didn't lose anything.

Q. Did you subsequently discuss this cow with him and his Attorney?

A. Yes sir.

Q. What was the occasion for that, Mr. Turberville?

A. Well, I was trying to help him get it straight if I could.

Q. In other words, you came down and testified in various suits or criminal prosecutions?

A. Yes.

Q. In the meantime did he ever ask you to return this cow to him?

A. No sir.

Q. When was the first time that you ever received or the first information that you ever received that he wanted you to give him this black-butt headed cow with with white on each flank?

A. When he filed the suit against me - - When the Sheriff came and told me they had started this cow s tuff up again.

Q. That was about a year and six months after you had first discussed the cow with him?

A. Yes sir.

Q. Mr. Turberville, what is your business?

A. Farming.

Q. Are you a stock raiser?

A. Raising cattle.

Q. There has been testimony about a pasture. How big is this pasture that you have?

A. 12 to 15 acres.

Q. Do you keep cows pastured there during the time you have kept this cow there?

A. Yes sir.

Q. How many head do you ordinarily keep on that pasture?

A. Around 20 to 25.

Q. Is this pasture fenced - - It is fenced, of course and has sheds?

A. Yes sir.

Q. And running that many head of cows on it do you incur expense for ;supplement feed in connection with keeping that many cows on that small pasture?

A. Yes sir.

Q. What are the nature of those expense?

A. Feed - I feed them corn and hay and supplement and sometimes range pellets.

Q. All right, is this cow sorter different from the usual stock you keep and run up there?

A. Yes sir.

Q. What is the difference?

A. Well she is not a good blooded cow as the other cows I have; she is not built like the most of my other cows I keep.

Q. What breed predominates in your cows?

A. Hereford and Black cows.

Q. Do you have a bull?

A. Yes sir.

Q. What kind of bull do you have?

A. White faced.

Q. How much did he cost you?

A. \$250.00.

Q. How much is he worth now?

A. About \$400.00; I bought him when he was a calf.

Q. Let me ask you this: This cow that you had that we have been talking about here, about how much did it weigh when you first got it?

A. About 150 or 175 pounds.

Q. How much does it weigh now?

A. About 500 to 550 pounds.

Q. Do you have an opinion as to the cost of keeping this cow for Harville per year?

A. Yes sir.

Q. In your opinion, what is that cost?

A. About \$75.00 a year.

Q. Is this the average cost of your keeping the other cows?

A. Yes sir; I'm basing that on the average.

Q. With the limited facilities you have, you need to keep a good cow, do you not, sir?

A. Yes sir.

Q. Do - - Now could you have disposed of this cow?

A. Yes sir.

Q. I mean after Mr. Harville told you that it was his cow could you have sold this cow?

A. No sir, I didn't sell the cow.

Q. I didn't ask you that. You could not sell the cow; it belonged to Mr. Harville?

A. Right.

Q. This cow could have been taking the place of another cow that could have been there?

A. Yes sir.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Cooper.

Q. Mr. Turberville, do you recall the approximate date that you first had knowledge and from whom that this particular cow was owned by Arthur Harville, Jr.?

A. It was about March of 1966; it was about then; about March of 1966.

Q. Now when did you first have a conversation concerning this cow with Arthur Harville, Jr. or his daddy?

A. It was about March of 1966.

Q. Do you remember if it was with Arthur Harville, Jr. or Sr.

A. It was Arthur, Jr.

Q. What did Arthur, Jr. tell you when he had this conversation with you?

A. Well, he told me that this yearling belonged to him.

Q. And at that time was the cow carrying a calf?

A. No sir.

Q. How many calves have been born to this cow since you have had her?

A. Two.

Q. Was one of them a bull, the first one?

A. I think it was, Mr. Cooper; I would not swear.

Q. When was the other one born? - - How long ago was the other calf born?

A. I don't know.

Q. Do you still have the bull calf?

A. Yes sir.

Q. About what size is it, sir?

A. Oh it is about a 500 pound calf.

Q. Is he still a bull?

A. Yes sir.

Q. The second calf this cow had, about what age and size is it?

A. It is a small calf, I would say - -

A. 150 to 200 pounds?

A. Yes sir.

Q. What is the general markings and color of the calf?

A. Black with a bald-face.

Q. Was the cow bred with your bull?

A. Yes sir.

Q. Was the first bull, sir, born from having been bred to your bull?

A. Yes sir.

Q. Is the cow with calf now?

A. I think so, Yes sir.

Q. Approximately how far is the cow along now?

A. She is pretty far along.

Q. The calf should be born within the next month or so?

A. Something like that.

Q. You heard Mr. Dean say that he went out there and looked at the cow in the pasture and said that you had Bahaia grass?

A. In the summer time - -

Q. What kind of winter pasture do you have?

A. I have part Bahaia grass and part bermuda grass.

Q. In the winter?

A. Rye, oats and wh eat.

Q. How many acres of oats and wheat?

A. Oh I have got approximately 18 to 20 acres.

Q. That is not the same pasture land that you have you Bahaia on?

A. No sir.

Q. You stated to Mr. Owens that it cost you approximately \$75.00 a head to keep your cows, is that right?

A. Right.

Q. You say that you have any where from 20 to 25 head at the time on the pasture, is that right?

A. That is right.

Q. In otherwords, it costs you about \$1500.00 a year for pasture, is that correct?

A. That is right.

Q. \$1500 to \$1750?

A. Right.

Q. How recently have you added up your cost bill for planting pasture this last fall?

A. Oh I don't know just how recently I run it up, but it cost me a lot to plant it.

Q. Let me get down to how you arrive at the figure of \$75.00 a year - -

A. My fertilizer mostly and seed and establishing a pasture and keeping it and keeping up the fences and feeding the cows.

Q. Mowing it in the summer time?

A. Yes sir., and the feed that goes with all of the cattle I feed, process and sell.

Q. You are telling the court it is costing you about \$6.00 a month to keep the cows?

A. Something like that, but I have no definite figures.

Q. You are just making a good calculated guess?

A. That is right; a good calculated guess.

THE DEFENDANT REST

THE PLAINTIFF REST.

MR. COOPER: I would like permission to amend to show a cow and two calves - One bull and I don't believe he stated the sex of the other one - - I believe he said a heifer, but I'm not sure, but any way I would like to amend and show there has been two calves born from this cow since he has had her and I am sure your Honor will want to weigh that in with the adjustment.

C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript of the testimony as taken by me, in open Court, before Hon. Douglas S. Webb, Judge presiding, in the captioned case, on February 3, 1970.

This the 20th day of February, 1970.

Louise Dusenberry
Official Court Reporter