

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 ~~49~~-50

To the REGISTER of the CIRCUIT Court,  
BALDWIN County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court In Equity  
of said county, in a certain cause lately pending in said Court between

Virginia L. Robinson, Appellant,  
and  
Bacon-McMillan Veneer Company, a Corporation, Appellee

wherein by said Court, at the Term, 19 , it was considered  
adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant  
to law, on behalf of said appellant:

ordered, adjudged, and decreed  
NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered by our Supreme Court, on  
the 9th day of February, 19 50, that said D E C R E E

of said Circuit Court be in all things  
ordered, adjudged, and decreed,  
affirmed, and that it was further considered that the appellant, ~~and~~ Virginia L. Robinson,  
and William D. Laws, Clark Smith and Ig F. Morse, sureties on the  
supersedeas bond, pay the amount of the monied decree of the Circuit  
Court, and ten per centum damages thereon, and interest, and that the  
costs of appeal of this Court and of the Circuit Court be taxed against  
the appellant, Virginia L. Robinson, and H. M. Hall, sureties on the  
appeal bond, for all of which let execution issue accordingly.

~~the costs accruing on said appeal in this Court and in the Court below~~

Witness, J. Render Thomas, Clerk of the Supreme  
Court of Alabama, ~~at the Court~~, this the

9th day of February, 19 50  
*J. Render Thomas*

Clerk of the Supreme Court of Alabama.

The State of Alabama }  
Baldwin County

IN THE CHANCERY COURT OF BALDWIN COUNTY

To BACON-McMILLAN VENEER COMPANY a Corporation

Or To J. B. BLACKBURN, Solicitors of record.

Whereas, on the 13th day of July, 1946,

PERCY A. BRYANT, DOUGLAS O. BRYANT AND GEORGE R. BRYANT

took an appeal from the decree rendered on the 18th day of June.

1946, by the Circuit Court of said county, in the cause of

BACON-McMILLAN VENEER COMPANY a Corp,

versus

PERCY A. BRYANT, DOUGLAS O. BRYANT, AND GEORGE R. BRYANT and

VIRGINIA L. ROBINSON

Now, therefore, you are cited to appear as required by law, before the Supreme Court of Alabama. to defend on said appeal, if you think proper so to do.

Witness my hand this 13th day of July 1946

*R. DeLoach*

Register in Chancery.

JUN 19 1947

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1946-47.

1 Div. 271.

Percy A. Bryant, et al.

v.

Bacon-McMillan Veneer Co., et al.

Appeal from Baldwin Circuit Court, in Equity.

WILSON, Justice.

This is a bill of interpleader, or a bill in the nature of a bill of interpleader, filed by the Bacon-McMillan Veneer Company, requesting the court to determine conflicting claims to the sum of \$1842.25 in its hands as the purchase price of certain timber. The bill was accompanied by a payment of said sum to the register of the court.

It is alleged in the bill that the veneer company had purchased certain timber growing on a part of Section 13, Township 1 North, Range 1 East in Baldwin County, Alabama, from Percy A. Bryant,

2.

Douglas C. Bryant and George R. Bryant; that after the timber had been cut and removed, Virginia L. Robinson claimed to be the owner thereof and demanded payment to her of the proceeds of said sale.

Without protest or objection of any sort, the Bryants and Virginia L. Robinson filed answers to the bill of complaint. In the answer of Virginia L. Robinson, she admits that the amount due for said timber is the sum of \$1842.25, and that the same has been paid to the register of the court. She further insists that the timber was cut and removed from the SE 1/4 of SE 1/4 of Section 13, Township 1 North, Range 1 East, in Baldwin County, Alabama, and that she is the owner of said lands, and was the owner of said lands and timber at the time the timber was cut and removed, and is therefore entitled to the proceeds from the sale thereof. The Bryants in their answer admit the correctness of the amount due and that it had been paid to the register of the court; but rest their claim to the money due for the timber cut and removed on the following facts: They allege in substance that they own the forty acres of land lying adjacent to and immediately north of the SE 1/4 of SE 1/4 of Section 13, Township 1 North, Range 1 East, and also that part of the forty acres of land lying adjacent to and immediately south of the SE 1/4 of SE 1/4 of Section 13, Township 1 North, Range 1 East, which lies north of an old, marked, recognized and accepted dividing line between the properties of the Bryants and Robinsons. That there is about twenty acres in said forty north of said dividing line; that about July 17, 1943, Virginia L. Robinson sold the timber on the SE 1/4 of SE 1/4 of Section 13, Township 1 North, Range 1 East, to one Archie McMillan for the sum of \$4200.00;

3.

that before McMillan cut and removed said timber, he (McMillan) together with Percy A. Bryant, as the legal representative of the Bryants, and George E. Robinson, the son and legal representative of Virginia L. Robinson, went upon the lands, and not knowing exactly where the boundary lines of the SE 1/4 of the SE 1/4 of Section 13, Township 1 North, Range 1 East were, agreed between themselves that the old dividing line between the properties of the Bryants and Robinsons should be and constitute the southern boundary line of the said SE 1/4 of SE 1/4 of Section 13, Township 1 North, Range 1 East; that said old dividing line was either the actual southern boundary line of the said SE 1/4 of SE 1/4 of Section 13, Township 1 North, Range 1 East, or that the interested parties agreed that it should be so considered; that in any event, Virginia L. Robinson sold, and collected for, timber on forty acres of land lying adjacent to and immediately north of the old boundary line between the properties of the Bryants and Robinsons; that if the old dividing line was the true southern boundary line of the SE 1/4 of SE 1/4 of Section 13, Township 1 North, Range 1 East, then the timber sold by the Bryants to the veneer company was not on the SE 1/4 of SE 1/4 of Section 13, Township 1 North, Range 1 East, but was on the north forty of the Bryants; that if the old dividing line was not the true southern boundary line of said SE 1/4 of SE 1/4 of Section 13, Township 1 North, Range 1 East, then Virginia L. Robinson had sold and collected for timber belonging to the Bryants.

The trial court awarded the money in the hands of the register to Virginia L. Robinson. Although the trial court awarded the money in the hands of the register to Virginia L. Robinson, it also held



4.

that "the allegations of the bill do not entitle the complainant to the benefit of the bill of interpleader" because "complainant does not allege that there is doubt as to whom the money belongs, so that it could not safely pay the same to either of the claimants."

The trial court further decreed that "the Bryants cannot obtain relief against Mrs. Robinson in this proceeding, however meritorious their claim against her may be."

We are unable to follow the reasoning underlying the trial court's ruling that complainant was not entitled to the benefit of the bill of interpleader, and at the same time awarded the money held by the register to one of the claimants. If complainant was not entitled to interplead the parties, the bill should have been dismissed, and which, we think, would have carried the entire proceeding with it.

But in our opinion, the bill was sufficient in the absence of objections from either claimant to the fund.

The most serious question presented is in the holding of the trial court, in effect, that the Bryants could not obtain relief against Mrs. Robinson in this proceeding, "however meritorious their claim against her may be". The court relied on the case of Gatts v. Sipsey Coal Mining Co., 212 Ala. 421, 102 So. 895, and 33 Corpus Juris 459. The trial judge quoted from the Gatts case as follows: "The only thing to be litigated between the opposing claimants is the ownership of the debt, money, or other property brought within the decretal jurisdiction of the court by the original bill of complaint." And from 33 Corpus Juris 459: "counterclaim or cross bill upon a claim other than that relating to the fund or right held by the stakeholder cannot be maintained by one of the claimants against another."

5.

In our opinion the Gatts case, supra, supports a contrary view, where, in addition to the above, the Court speaking through the late Justice Semerville said:

"It is undoubtedly true, as demonstrated by the brief of counsel for appellant, that when a proper case is made by a bill for interpleader, the equity of the bill lies in the right of the complainant to be protected against conflicting claims to money owed, or property held, by him, the superiority of either of which he cannot safely determine; and that, in such a case, the court will adjudicate the rights of the interpleading claimants, whether their respective claims be legal or equitable in their nature. - Gibson v. Goldthwaite, 7 Ala. 281, 42 Am. Dec. 592; 33 Corp. Jur. 430, §§ 14 and 15, and cases cited in note 55; Id 462, § 52 l."

We also quote further from 33 Corpus Juris page 430, section 15:

"It is generally held that it is no objection to a bill of interpleader that the claim of one defendant is legal and that of the other equitable."

In support of the above text is cited the case of Gibson v. Goldthwaite, 7 Ala. 281, 42 Am. Dec. 592, which is also cited in the Gatts case, supra.

In the instant case both claimants submitted their claim to the court without objection as to the legal sufficiency of the other's answer. Under the facts, the Bryants' claim was an equitable one based upon the conduct of Mrs. Robinson, as hereinbefore outlined, which created an estoppel against her, and should be considered by the trial court in that light.

From the decree, we take it that the trial court failed to consider the Bryants' claim to the fund in the hands of the register, and under the facts and circumstances, it should have been done.

Reversed and remanded.

Gardner, C.J., Brown and Simpson, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 271,

Percy A. Bryant, et al, Appellant,S

vs.

Bacon-McMillan Veneer Company, et al, Appellee,S

From Baldwin Circuit Court.  
in Equity

The State of Alabama, }  
City and County of Montgomery. }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to 5 inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme  
Court of Alabama, this the 19th day of

June, 1927  
*J. Render Thomas*  
Clerk of the Supreme Court of Alabama.



IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA-

IN EQUITY

NO. 1094

-----  
BACON-MC MILLAN VENEER COMPANY,  
a corporation,

Complainant,

Vs.

PERCY A BRYANT, DOUGLAS O. BRYANT  
GEORGE R. BRYANT,

Respondents.  
-----

BILL OF INTERPLEADER

BRIEF OF

HYBART & CHASON

ATTORNEYS FOR-

PERCY A. BRYANT, DOUGLAS O. BRYANT  
AND GEORGE R. BRYANT

BAY MINETTE, ALABAMA

#### STATEMENT OF CASE

The Bill of Complaint alleges that Bacon-Mc Millan Veneer Company bought certain timber growing on a part of Section 13, Township 1 North, Range 1 East, in Baldwin County, Alabama, from Percy A. Bryant individually and as Agent for Douglas O. Bryant and George R. Bryant, and that after the timber had been cut, Virginia L. Robinson claimed the proceeds in the sum of \$1842.25, her claim being that she was the owner of the timber that was cut by the Complainant.

On May 30, 1837, a patent was issued to Joshua Kennedy for section 38, Township 1 North, Range 1 East, containing 1243.78 acres. There is attached to this Brief a certified copy of a plat showing all of Township 1 North, Range 1 East. The Heirs of Joshua Kennedy conveyed said Section 38 to George W. Robinson and A. W. Bryant. On March 7, 1883, George W. Robinson and A. W. Bryant divided Section 38 and other lands that they owned jointly. A copy of the deed from G. W. Robinson and wife to V. M. Bryant, who was the wife of A. W. Bryant, has been introduced in evidence, and in this deed the property is described as being bounded on the North by Stiggins Lake, on the East by the East line of Range 1, on the West by Tensaw River and on the South by a line beginning at a slough on the East bank of Tensaw River about 300 yards above the Northern Boundary of Section 23, Township 1 North, Range 1 East, meandering said slough to the second fork, thence East to the Range line, containing 1000 acres, more or less. We have marked this Southern boundary line on the plat attached hereto. The boundary line being shown by red ink. On this plat we have also designated in red ink the Southeast quarter of the Southeast quarter of Section 13 and the Northeast quarter of the Northeast quarter of Section 24, Township 1 North, Range 1 East.

AUTHORITIES.

Adverse possession, Title 7, Section 828, 1940 Code of Alabama.

COLOR OF TITLE.

Color of title is the writing which in appearance purports to transmit title or the right of possession but which, in reality, does not.

Bowles vs. Lowery,

181 Alabama 603.

Color of title is that which in appearance is title but which in reality is no title.

Black vs. Tenn. R. Co.,

93 Alabama 113.

A claim or color of title may be shown by any paper purporting to convey the land or the right to its possession into the party asserting adverse possession.

Goodson vs. Brothers,

111 Alabama 596.

Henry vs. Brown,

143 Alabama 454.

The original tax deed, though void as a muniment of title, would have been admissable as color of title in connection with the evidence of actual possession - not as evidence of possession in itself but as explanitory of the bona fides of claim of ownership and the extent of the possession.

C. W. Zimmerman Co. vs. Dunn,

163 Alabama 275.

Where tax deed is void for want of acknowledgment as provided by law, its operation to give color of title to the land described in it and to draw to the party to whom has made possession of the whole open is taking possession of a part.

Reddick vs. Long,

124 Alabama 260.

A deed void for matters dehors the instrument will constitute color of title provided it purports to convey the land in controversy.

2nd CJ 176.

Redfield vs. Parks,

132 U.S. 239, 10 S Ct. 83

33L ed 327.

See also Boone vs. Gulf F and A Railway Company, 201 Alabama, 560.

Boone vs. Byrd, 201 Alabama 562.

After a period of thirty years of adverse possession on the part of the holder, the law will presume a grant or intermediate conveyance or anything else that might give repose to the title.

2nd C. J. 290.

U. S. vs. Chavez, 175 U. S. 509, 20 S Ct. 159, 44 L ed 255.

Not only a grant but everything else as is necessary to complete the title will be presumed in favor of long possession.

Baker vs. Mc Donald,  
47 N. C. 244.

In other words, not a deed but also all acts necessary to give the deed effect will be presumed.

Bradley Square Church vs. Bullard,  
2 (Mass.) 363.

To give effect to the deed executed by George W. Robinson on his division to A. M. Bryant, which was more than 62 years ago, in law will presume that George W. Robinson had purchased the lands involved prior to that time, had made a cash entry, had paid the necessary money to the Government and that there was nothing left for the Government to do but issue the patent, that he had in equity what he conveyed at that time, to give repose to the title of the Bryants in this cause.

See Boone vs. the J. S. and A railroad Co.

22nd CJ 126.

#### ESTOPPAL

The complainant is estopped from claiming the proceeds upon the Southeast quarter of the Southeast quarter if in truth and fact she sold Bryants timber on Northeast quarter of the Northeast quarter and collected therefrom \$3000.00 or more that she applied to her own use.

"Where a person has asserted a particular claim, title or right, he cannot afterward assume a position inconsistent with such act, claim or conduct to the prejudice of another, who has

Bryant, a portion of said lands were subject to cultivation and were cultivated by the Bryants for more than twenty years. It is an elementary proposition of law that an actual possession of a portion of the lands contained in the calls of the grantees deed such possession will spread over the entire acreage contained therein unless it meets an adverse possession of another. There is no evidence of any adverse possession of Mrs. Robinson as to any lands in the calls of any deed executed by anyone to her. There is no evidence of Mrs. Robinson's adverse possession of any of the lands involved in this suit or the timber thereon, nor is there any evidence of any actual adverse possession of Mrs. Robinson as to the Northeast quarter of the Northeast quarter of Section 24, from which she cut and sold the Bryants' timber to Mr. Mc Millan. We say further, that under the circumstances in this case, it would be highly inequitable for Mrs. Robinson to receive the benefit of this money in the hands of the stakeholder when in truth and fact she has received considerable more money under the impression that she was obtaining the proceeds of the timber on the Southeast quarter of the Southeast quarter of Section 13. If perchance we ~~were~~ mistaken as to the survey made by Mr. Joe Smith and that he in truth and fact surveyed as he thought the Southeast quarter of the Southeast quarter of Section 13 and Mr. Mc Millan went into possession of these lands in thirteen and cut the timber therefrom and paid Mrs. Robinson the proceeds of the same then Mrs. Robinson has received the benefit of the timber on the lands that the Bryants sold her and she has no claim against the money in the hands of the stakeholder for then it would necessarily follow for the timber cut by the stakeholder off of the lands in the Northeast quarter of the Northeast quarter, Section 24, North of the agreed line. It seems to us that the equities in the case are with the Bryants and that a decree should be so entered.

Respectfully submitted,

HYBART & CHASON

I hereby certify that we have this day mailed, postage prepaid, a copy of the within Brief to J. B. Blackburn, Bay Minette, Alabama, Solicitor for the Complainant and a copy to H. E. Smith, Bay Minette, Alabama, Solicitor for the Respondent, Virginia L. Robinson.

Dated this 26th day of January, 1946.

HYBART & CHASON

BY John R. Chason

BY

John R. Chason  
Attorneys for the Bryants.

acted in reliance on such conduct or representation."

Watson vs. Whatley  
75 Southern 147.  
21 CJ 1202

#### ADVERSE POSSESSION UNDER COLOR OF TITLE

Actual possession of part of tract of land with claim of title to the whole under a written instrument is sufficient to constitute adverse possession of the whole tract.

Baucum vs. George  
65 Alabama 259

Adverse possession of the whole of a tract, within the boundaries described by the color of title, by actual occupancy of a part thereof is, in legal contemplation, actual, and not constructive, possession, and may be restricted, as to the part not actually occupied, by the actual occupancy of another.

Marietta Fertilizer Co. vs. Blair,  
56 So. 131,  
173 Alabama 524

Except as limited by other adverse possession, the possession of one who holds under a bona fide color of title will be extended to the limits described in his color, and such possession as so extended is actual, and not constructive, possession.

Mc Millan vs. Aikin  
182 Alabama 303

One in possession of land claiming under a deed held in actual possession of the entire land to the extent that the same is not in the actual possession of another.

Buck vs. Louisville & Nashville R. Co.  
159 Alabama 305

Swindall vs. Ford  
184 Alabama 137



#### ARGUMENT.

The controversy existing between the parties is as to timber cut from the Southeast quarter of the Southeast quarter of Section 13 and the Northeast quarter of the Northeast quarter of Section 24, Township 1 North, Range 1 East, Baldwin County, Alabama. It appears beyond question that in 1883 G. W. Robinson and Mrs. V. M. Bryant divided certain property that evidently they were claiming to own jointly, and G. W. Robinson and his wife, on March 7, 1883, conveyed all the lands conveyed by the heirs of Kennedy bounded on the North by Stiggins Lake, on the East by the East line of Range 1, on the West by Tensaw River and on the South by a line beginning at a slough on the East bank of the Tensaw River about 300 yards above the Northern boundary of Section 24, Township 1 North, Range 1 East, meandering said slough to the second fork, thence East to Range line, containing 1000 acres, more or less. Attached to this Brief as an exhibit thereto is a plat of the lands as well as the first slough mentioned herein which has been marked by us in red ink, and South line of the property so divided has been marked in red ink by us from said slough to said range line and which clearly shows that the lands herein involved, that is the Southeast quarter of the Southeast quarter of Section 13 and the Northeast quarter of the Northeast quarter of Section 24, by said deed was conveyed by G. W. Robinson and his wife to V. M. Bryant. On August 15, 1903, the heirs of the said V. M. Bryant sold and conveyed the property so acquired by V. M. Bryant from Robinson to Percy A. Bryant, George R. Bryant, and Douglas O. Bryant. The same description is conveying the property was used as in the deed from Robinson to Mrs. V. M. Bryant. There is a well settled principle of law where a particular description is used together with a general description in a deed that the particular description is to be followed or prevailed.

The record further discloses that Percy A. Bryant, George R. Bryant, and Douglas O. Bryant went into possession of the lands so conveyed to them and have remained in possession of the same ever since and have been assessing and paying the taxes on the same. That year after year they have cut the timber from the lands so conveyed to them and especially as to the timber on the Southeast quarter of the Southeast quarter of Section 13 and the Northeast quarter of the Northeast quarter of Section 24.

The record further discloses that in 1943 Virginia L. Robinson evidently recognizing the Bryants' title to the same purchased the Southeast quarter of the Southeast quarter, Section 13, from the Bryants and soon thereafter bargained and sold the timber on the lands so purchased, or at least she thought she was selling the timber on the Southeast quarter of the Southeast quarter of Section 13 when probably in fact, she was selling the Bryants' timber on the Northeast quarter of the Northeast quarter, Section 24. She sold this timber through her agent, George E. Robinson to Archie Mc Millan. That at the time, or about the time, the timber was sold to Archie Mc Millan, he wanted the line located, and George Emmons Robinson, Percy A. Bryant, Archie Mc Millan and Joe Smith were on the lands for this purpose and Joe Smith located, as he thought, the Southeast quarter of the Southeast quarter of Section 13. Mr. Mc Millan cut the timber off of the lands so located and states that he cut at least 200,000 feet, which he paid Mrs. Robinson for at the rate of \$15.00 per thousand, which money she collected and has retained.

It appears from the evidence, without dispute, that there was an agreed line between Mrs. V. M. Bryant and George W. Robinson which was hacked out and surveyed by one Durant more than

four or five years ago, did likewise. That neither of the Robinsons cut timber North of said agreed line evidently recognizing said agreed line. That all during this time and up to the death of George A. Robinson, the coterminous owners recognized said agreed line. We have marked the Southeast quarter of the Southeast quarter of Section 13 and the Northeast quarter of the Northeast quarter of Section 24 in red ink on the plat hereto attached, and it appears that if the starting point of the survey that was made by Mr. Joe Smith, was at the Southeast corner where the lands involved intersect the agreed line and on the range line, that the lands that he surveyed were in the Northeast quarter of the Northeast quarter of Section 24, from which Mr. Mc Millan cut the timber and that an error was made by 17 chains or more in making this survey, As the plat shows it, around three chains of the Northeast quarter of the Northeast quarter was south of said agreed line. However, the parties agreed that this was the Southeast quarter of the Southeast quarter and Mrs. Robinson, having received at least \$3000.00 from timber which is considerable more than the proceeds of the timber now in the hands of the stakeholder, in equity and in good conscience she should be required to satisfy herself with this, because she has secured from the Bryants' property considerable more money than is now in the hands of the stakeholder. We say that the evidence is overwhelming, that under color of title we have been in the possession of the lands known as the Southeast quarter of the Southeast quarter of Section 13 and Northeast quarter of the Northeast quarter of Section 24 for more than thirty years, and was in possession of the Southeast quarter of the Southeast quarter, Section 13, more than thirty years from the time that the Bryants sold and conveyed the same to Mrs. Robinson. That as an evidence of such possession, the Bryants have continuously cut the timber from said lands, claiming to own them and used them adversely in every way as they were susceptible of all during this time. But aside from this, the evidence shows that a part of the lands contained in the Bryants' deed from the heirs of Mrs. V. M.

#### STATEMENT OF CASE

The Bill of Complaint alleges that Bacon-Mc Millan Veneer Company bought certain timber growing on a part of Section 13, Township 1 North, Range 1 East, in Baldwin County, Alabama, from Percy A. Bryant individually and as Agent for Douglas O. Bryant and George R. Bryant, and that after the timber had been cut, Virginia L. Robinson claimed the proceeds in the sum of \$1842.25, her claim being that she was the owner of the timber that was cut by the Complainant.

On May 30, 1837, a patent was issued to Joshua Kennedy for section 38, Township 1 North, Range 1 East, containing 1243.78 acres. There is attached to this Brief a certified copy of a plat showing all of Township 1 North, Range 1 East. The Heirs of Joshua Kennedy conveyed said Section 38 to George W. Robinson and A. W. Bryant. On March 7, 1883, George W. Robinson and A. W. Bryant divided Section 38 and other lands that they owned jointly. A copy of the deed from G. W. Robinson and wife to V. M. Bryant, who was the wife of A. W. Bryant, has been introduced in evidence, and in this deed the property is described as being bounded on the North by Stiggins Lake, on the East by the East line of Range 1, on the West by Tensaw River and on the South by a line beginning at a slough on the East bank of Tensaw River about 300 yards above the Northern Boundary of Section 23, Township 1 North, Range 1 East, meandering said slough to the second fork, thence East to the Range line, containing 1000 acres, more or less. We have marked this Southern boundary line on the plat attached hereto. The boundary line being shown by red ink. On this plat we have also designated in red ink the Southeast quarter of the Southeast quarter of Section 13 and the Northeast quarter of the Northeast quarter of Section 24, Township 1 North, Range 1 East.

A. W. Bryant and V. M. Bryant, his wife, went into the actual, quiet, peaceable and adverse possession of all of the land described in their deed lying North of the agreed division line, including the Southeast quarter of the Southeast quarter of Section 13 and the North 17 chains of the Northeast quarter of the Northeast quarter of Section 24, Township 1 North, Range 1 East. They cut the timber from said lands at continuous intervals from that time up until August 5, 1903, when A. W. Bryant, a widower, and the heirs of V. M. Bryant conveyed all of this land to Percy A. Bryant, George R. Bryant and Douglas O. Bryant. A copy of this deed has been introduced in evidence. At this time a patent had not been issued to the Southeast quarter of the Southeast quarter of Section 13 and the Northeast quarter of the Northeast quarter of Section 24, Township 1 North, Range 1 East. A patent was issued to these two tracts to George A. Robinson in 1908. At the time such patent was issued, the three Bryants, who are respondents in this suit, were in the actual possession of all of the Southeast quarter of the Southeast quarter of Section 13 and all that part of the Northeast quarter of the Northeast quarter of Section 24, Township 1 North, Range 1 East, which lies North of the agreed line as shown upon the plat. They remained in possession of such land and cut the timber continuously from this land up to and including a very short time before the filing of this suit. In 1926 a large part of the timber on both of these tracts was blown down by a storm. The Bryants cut and removed the timber from the Kennedy lands and the Southeast quarter of the Southeast quarter of Section 13 and the Northeast quarter of the Northeast quarter of Section 24, Township 1 North, Range 1 East, down to the agreed line. George A. Robinson had been cutting his timber as far North as the agreed line but had not attempted to remove any timber North of the agreed division line.

In 1943, Virginia Robinson bought the Southeast quarter of the Southeast of Section 13, Township 1 North, Range 1 East,

from the Bryants, who are respondents in this suit. Percy Bryant, representing himself and his brothers, went with George Emmons Robinson, who represented his mother, out to have this land surveyed. Joe Smith was the Surveyor. Archie Mc Millan was also present. The blazes and other marks showing the agreed division line were found easy to recognize. The surveyor was unable to locate the true corner of the Southeast quarter of the Southeast quarter of Section 13. After a discussion, it was agreed by all parties present that they would take as the Southeast corner of the Southeast quarter of the Southeast quarter of Section 13, that point where the agreed division line intersects the range line on the East. A 40 acre tract was surveyed, and Percy Bryant and his brothers put Virginia Robinson in possession of this 40 acres with the understanding that this was the Southeast quarter of the Southeast quarter of Section 13. She sold the timber on this 40 acre tract to Archie Mc Millan, and he cut more than 200000 feet of timber from said tract and paid her \$15 a thousand, which would amount to at least \$3000.00. After she had sold all of the timber off of this tract, Percy Bryant made the contract with the Complainants to sell them the timber off of about 33 acres, which lay immediately North of the land where Archie Mc Millan had cut the timber for Mrs. Robinson. Mrs. Robinson then laid claim to the money derived from this sale of timber. Mr. Percy A. Bryant, Douglas O. Bryant and George R. Bryant take the position in this suit that if the survey made by Joe Smith was correct, then Mrs. Robinson has cut the timber from the Southeast quarter of the Southeast quarter of Section 13, and she has received the money therefor. If the survey was not correct and the true Southern line of the Southeast quarter of the Southeast quarter should be 17 chains North of where it was placed in



THE STATE OF ALABAMA,

Baldwin

County.

CIRCUIT COURT, IN EQUITY.

To Hybart & Chason, Solicitors for Respondents

GREETING:

WHEREAS, Virginia L. Robinson

has taken an appeal from the decree rendered by the Circuit Court of said County, in Equity, in the cause of

BACON-McMILLAN VENTER COMPANY, A CORPORATION

against PERCY A. BRYANT, DOUGLAS O. BRYANT, GEORGE R. BRYANT and VIRGINIA L. ROBINSON

Now, you are therefore cited to appear at the Next Term, 1949, of the Supreme Court of Alabama, to defend on said appeal, if you shall think proper so to do.

Witness, this 17th day of September 1949

*Alice J. Duck*

Register.

10. 1094

THE STATE OF ALABAMA,

Baldwin County.

CIRCUIT COURT, IN EQUITY.

BACON-McMILLAN VENEER COMPANY,

A CORPORATION

Complainant.....

vs.

PERCY A. BRYANT, DOUGLAS O. BRYANT

GEORGE R. BRYANT and VIRGINIA J.

ROBINSON

Defendants....

CITATION OF APPEAL.

SERVE THIS NOTICE UPON

HYBART & CHASON

Solicitors of Record.

Received in office this.....

day of Sept. 1949

Hybart Wilkerson  
Sheriff.

Executed by serving a copy of the within

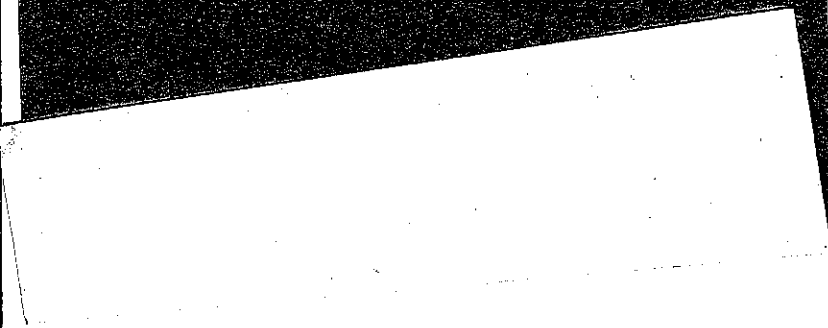
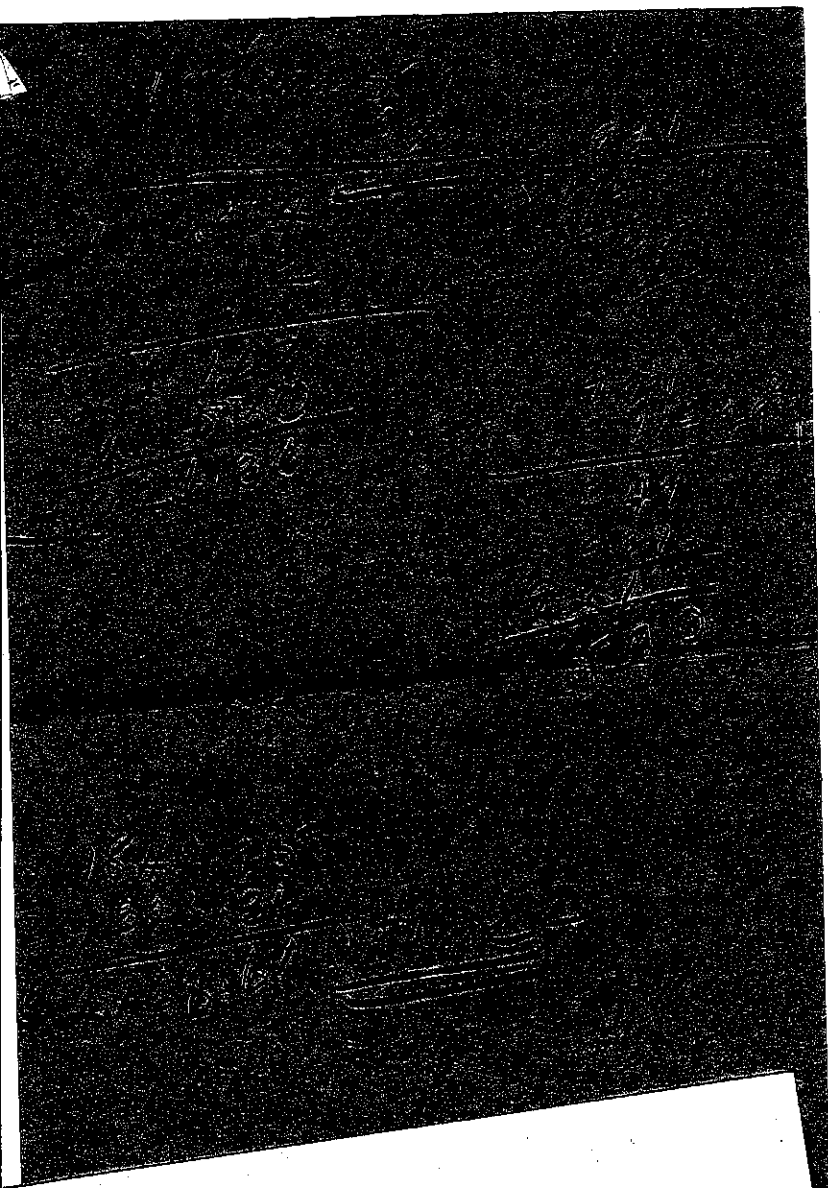
notice upon John Chason

on this 17 day of

Sept. 1949

Taylor Wilkerson  
Sheriff.

W. F. Hall  
P.S.



here. There is only about 33 acres involved in this suit. There is no evidence that George W. Robinson, George A. Robinson or Virginia Robinson have had any possession of any part of the land lying North of the agreed division line since the division in 1883, except as to the 40 acres described as the Southeast quarter of the Southeast quarter of Section 13, which was sold to Mrs. Robinson in 1943.

MR. BLACKBURN: If the Court Please. This is a bill of interpleader filed under Chancery rule 36 against Mrs. Virginia L. Robinson, Percy A. Bryant, Douglas O. Bryant, and George A. Bryant.

The allegations of the bill is that the complainant purchased certain timber from P. A. Bryant, agent, and cut the timber, and after they cut it a dispute arose as to the ownership of the money. Subsequent to that dispute, the complainant employed me, and the amount of money was paid into Court, and to simplify the matter, the parties have agreed partially and with your permission, I will dictate the agreement.

A G R E E M E N T:

It is agreed by and between all parties to this cause that all of the allegations contained in the bill of complaint filed in this cause by McMillan Veneer Company are true. It is further agreed that J. B. Blackburn, as Solicitor for Complainant, waives all claim that he has to an Attorney's fee for filing the bill of complaint, because of the fact that the complainant does not want to subject the respondent, or any of them to any liability or expense because of an Attorney's fee for complainant's Solicitor in this cause.

STATEMENT OF CASE BY MR. SMITH:

May it Please the Court. We have admitted the allegations of the bill of complaint, as Mr. Blackburn Stated, and we state in our answer that we do not know whether the complainant purchased the timber from Percy A. Bryant, as Agent, that is alleged in the bill certain timber on part of Section 13, Township 1 Range 1 to be cut and removed by the complainant and alleges that the said Percy A. Bryant did not have any right, power or authority from her to sell for her account any timber growing on any part of the land, nor did any agent of hers sell complainant the timber in the bill of complaint. And she alleges that the cutting of the timber was an act of trespass so far as she is concerned. We admit the stumpage value and that it was paid over to Mr. Duck, as Register.

Now our contention, briefly concerns Fractional Section - that is Section 13 - it is composed only of



The forty that is in most serious conflict, that is, the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, Township 1 North, Range 1 E. we set up and expect to prove that it is owned in fee simple by Mrs. Robinson, one of the Respondents---

THE COURT: Who are the other Respondents?

MR. SMITH: Mrs. Robinson is one---

We expect the evidence to show that this forty is owned by her through a quitclaim deed from the other Respondents in the cause. We expect to produce a quitclaim deed from Percy A. Bryant, G. R. Bryant, and D. O. Bryant conveying to Mrs. Virginia Robinson the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  Section 13, Township 1 North, Range 1 E.

THE COURT: That is the only 40 acres in question?

MR. SMITH: Mr. Chason has brought in something about an accounting as to the NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24, Township 1 North, Range 1 East, which lies immediately south of the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13.

In other words the three forties that I have mentioned;

and of said NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24, and SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section

MR. SMITH: Yes.

THE COURT: This is the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , (indicating)

MR. SMITH: Yes.---NE $\frac{1}{4}$  of SE $\frac{1}{4}$ .

THE COURT: Is there any timber cut off the  
NE $\frac{1}{4}$  of SE $\frac{1}{4}$ ?

MR. SMITH: No. I was just mentioning the  
ownership -

As we see the matter, if it is not in the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ ,  
why then a separate set off owners would be involved, but  
we expect to prove that it was located in the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ ,  
Section 13, Township 1 N. Range 1 E.

THE COURT: I understand that it is your  
contention that the timber was  
cut from the NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section  
24?

MR. SMITH. NO - John was claiming that some  
was cut before this. I was just  
mentioning the source of title to

it would not be necessary for me to go back of that.

STATEMENT BY MR. CHASON:

May it please the Court - We expect the evidence to show that Mr. George W. Robinson and Mrs. Virginia M. Bryant, who was the mother of these three respondents that we represent, purchased jointly from Joshua Kennedy, a large tract of land, containing about 2000 acres, which they held together for several years; that in 1883 Mr. George W. Robinson who owned a half interest and Mr. Bryant, the husband of Mrs. Virginia M. Bryant owned the other half interest; in deeding the half interest that Mr. George W. Robinson owned, instead of conveying it to the husband, he conveyed to Virginia M. Bryant, so that Mrs. Virginia M. Bryant and her husband would jointly own the lands on the North side of the Bayou.

THE COURT: All three forties?

MR. CHASON: We expect the evidence to show that they thought they owned these

patented, and they will show that Mr. George A. Robinson, in 1908, secured a patent to those forties, which was many years after the deed. However, Mr. George Robinson and Mr. Bryant thought they owned these forties, and when they divided the lands, they divided by general description. Mr. George W. Robinson, in 1883, joined by his wife, deeded to Mrs. V. M. Bryant all lands owned by them bounded on the North by Stiggins Lake, on the west by Tensaw River - of the lands acquired by Joshua Kennedy. On East by Range line and on the South by a line beginning 300 yards north of the North line of Section 23, on the bank of the Tensaw River, thence following southwardly a slough to the ~~South~~ forks, which is not marked on this map, but we contend runs to the end of the Slough, thence East to the Range line, which would include almost all of the NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24, and all of the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13.

In other words, that agreed line would run directly east and take in all most all of that forty. As I say, at that time those were public lands. Mrs. Virginia A. Bryant, in turn conveyed to George W. Robinson all of the land they had acquired from Kennedy lying south of the line and they described just as in the other deed, as beginning here (indicating on map) and running to the ~~South~~ forks and to the range line (indicating on map).

We expect the evidence to show that immediate-

ly after Mrs. Virginia M. Bryant acquired title she went into actual possession of everything lying North of the agreed line, including practically all of the NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24, and all of the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, and began cutting timber and using it. That Mr. George W. Robinson cut his timber up to the agreed line, which ran from the ~~second~~ forks, but never did he go north of that agreed line. This condition continued and title remained that way until 1903 when Virginia Bryant died leaving a number of heirs, and Virginia M. Bryant gave a deed to the three respondents that we represent - the three Bryant brothers here, and her husband, who was still living, all joined in the deed conveying the one-half interest that he had owned. The deed from Kennedy was to Mr. Bryant and Mr. Robinson, and the deed from Robinson was to Mrs. Bryant. At her death her heirs conveyed to these three respondents and that deed also used the same general description.

Now as to possession. To go back just a minute - at the time George W. Robinson conveyed to Virginia M. Bryant, Mr. George W. Robinson and Mr. Bryant went in there and attempted to run out this line with a compass. The water was high and they wanted to go ahead and run their line, so immediately after the water went down they hired a surveyor who went in there

and blazed out this line that we referred to as the agreed line and that has been the agreed line since 1883. Now after 1903 when these heirs all deeded to these respondents, at that time the three respondents went in the actual possession of everything North of the agreed line, including these two forties that were public land. As I stated, they expect to show their patent which was issued in 1908, at which time we were in the actual possession and the patent has been out since 1908- a period of 37 years.

We expect to show that in 1926 we had a storm that blew down a good bit of the timber; there had been lot of Selective timber cut by us on the North side and George W. Robinson on the south side all during the period of ownership. But in 1926 when the storm came we go in down there to the agreed line - we cut all timber which had been blown down, and considerable more timber, that we were getting as selective cutting, to the agreed line. Mr. Robinson cut up to that agreed line on the south side. Mr. George Robinson, who in the meantime had secured a patent, but he stood by and saw us cut clear across the forty that he had secured the patent for, but he only cut up to the agreed line, recognized by George W. Robinson, his father.



which would be, in truth SE $\frac{1}{4}$  of SE $\frac{1}{4}$ . If the survey was correct, then it would be in the NE $\frac{1}{4}$  of SE $\frac{1}{4}$ . As to the ~~st~~ title to that, Mr. Smith stated that it was a different ownership. It is owned by Mr. Percy A. Bryant's two brothers, but Mr. Percy Bryant owning 1/2 interest in a forty immediately north and Mr. Smith correctly stated that this timber was cut from lands that he owned a 1/2 interest rather than 1/3 interest.

We expect the evidence to show, if they did not actually cut SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, and get paid for it, then they did cut some of our timber in the NE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 24, which we had acquired by peaceable possession of 60 years or more, or some 37 years since the patent was issued, and this had been agreed as a dividing line through those many, many years, and after this long period of time they would be stopped from denying our ownership of NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24, and if we have acquired title by adverse possession as to the NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24, then that timber was-- that they cut about a ~~years~~ year and a half ago was in truth and fact our timber, and out of this money they should be forced to account to us out of this money for the timber of ours that they cut. In otherwords, we have a double barrel proposition. If they correctly described the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , and they- she has what she bought, they

cut timber where Mr. Percy Bryant was half owner. It is not disputed that the timber was immediately north of the timber she cut. On the other hand, if it was not correctly described, then they - she cut our timber and she should be forced to account to us.

STATEMENT BY MR. HYBART:

As it understand it from this map here is the land right here (indicating on map). This is in Section 24. There had been an agreed line in between these parties here for some thirty odd years. I won't go beyond the patent, because there is no such thing as possession before, but since the issuance there has been an agreed line between this 40 acres in Section 24 and the 40 acres in 13. As to all south of the line and all north --

THE COURT: As I understand it, he expects to prove there was an agreed line coming from the west to this range line here (indicating on mpa) which established between the parties a northern boundary of Robinson's holdings and that you are claiming by adverse possession everything north of that line?

MR. HYBART: Yes, sir.

As I understand further in the year - two or three years ago, that Mr. Smith, the surveyor, attempted to locate the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, and that if his survey was correct, that they have their timber

because they sold that to McMillan in the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, but if his survey was not correct, and the timber was cut by McMillan was on the forty north of that, and the right forty - SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , then in equity and right Mrs. Robinson should account to us for this timber that she sold to McMillan - some 300,000 feet at \$15.00 a thousand. The Court will adjust all equities - in otherwords, when she sold to Mr. McMillan and received they thought they were selling the timber on the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ . If this is correct, then of course, she has her timber, if that survey was correct, but there seems to be some dispute about the survey locating the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , and locating the forty acres immediately south of the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , and cut the timber off that. Now she says that the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  is up here and the McMillan People have cut the timber off this. The point I am making is; If she got our timber then she ought to account to us for the timber that she got that belonged to us. The whole controversy grows out of a dispute of the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ . ---

STATEMENT BY MR. SMITH:

I would like to make a short statement -

Our contention is that this agreed line that they are talking about runs straight across here (indicating on map) and the east corner of it is on this west line

of the section instead of on the range line.

THE COURT: Your contention is that this agreed line does not traverse the land in question, but goes to the west boundary. There is no agreement to the southern boundary line of the land in question?

MR. SMITH: Yes, we expect to prove that this was <sup>not</sup> actually surveyed and was merely for the purpose of establishing what Mr. McMillan was to cut and ~~no~~ attempt was made to tie it into any recognized government corner, but Mr. Percy Bryant pointed out to them that stake about where I showed you it was and the line runs from that corner so there would be no dispute between Mr. Bryant and Mr. McMillan.

MR. SMITH: I would like to introduce in evidence this township plat and get the stenographer to identify it as Exhibit "1".

Mr. SMITH: I offer to introduce in evidence quitclaim deed, dated July 17, 1943, signed by George R. Bryant and Sue F. Bryant, his wife, D. O. Bryant and Eva Bryant, his wife, and P. A Bryant, a widower, to Virginia L. Robinson, for a consideration of \$200.00, conveying to her the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, Township 1 North, Range 1 East, and ask that it be marked Exhibit 2.

MR. SMITH: I offer in evidence patent from United States Government to George A. Robinson, dated October 26, 1908, conveying to George A. Robinson the NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24, Township 1 N. Range 1 E., containing 40.35 acres more or less, and ask that it be marked Exhibit 3.

MR. SMITH: I now offer in evidence quitclaim deed dated March 27, 1940, by George A. Robinson and Virginia L. Robinson to Virginia L. Robinson conveying among other lands the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , east of Tensaw River, Section 13, Township 1 N. Range 1 E. and ask that it be marked Exhibit 4.

RESPONDENT, VIRGINIA L. ROBINSON, INTRODUCED:

GEORGE EDWARD CATRETT, BEING FIRST DULY SWORN, TESTIFIED:

QUE: What is your name?

ANS: George Everett Catrett.

QUE: Are you familiar with the lands in Section 13 and 24, Township 1 North, Range 1 E.?

ANS: Partially. I know where one corner is supposed to be.

QUE: You do know where the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, Township 1 North, Range 1 E. is located, do you not?

ANS: I could show it to you on the map. (gets map and indicates) Here is supposed to be the agreed line from this slough (indicating). This is a big slough up to the river, and it comes in down here (indicating). In otherwords, it crosses a bar here. That is the old original agreed line between the Bryants. Then this corner is out here on the lower side of the Bayou and that is the only thing I know.

QUE: On the robinson side?

ANS: Yes.

QUE: In otherwords, to refresh your memory, is this the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, and this the NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Sec. 24 about where that corner south of the Bayou is located --Is it some place on this line?

MR. HYBART: Don't lead the witness.

ANS: I imagine -- I never surveyed it out.

QUE: Do you know that it is on the Robinson land--

THE COURT: That is the corner of what?

ANS: Supposed to be the corner of this 40.

THE COURT: 24 or 13?

MR. SMITH: This one.

THE COURT: That is 24?

MR. SMITH: Yes --

ANS: I don't know a thing about the survey. I know  
where we struck the corner on the agreed line.

QUE: You are familiar with that cutting by Payton-McMillan  
and involved in this proceeding?

ANS: I saw some of it --

QUE: Would you state on what particular forty this cutting  
was on?

ANS: I would not, because I did not know the land and  
lines.

QUE: Do you know the south line of the 40 that belongs  
to P. A. Bryant, Maggie Smith and Mrs. Bryant?

ANS: No, sir.

QUE: Did you ever survey that?

ANS: Went through there and made an estimate. They  
claimed it was not official survey and if that was  
true it would be on the lower forty.

QUE: It ought to be on the lower forty in Section 13?

ANS: Yes, sir.

QUE: How long have you known that land?

MR. HYBART: He didn't say the lower forty--

ANS: There are two forties.

QUE: How long have you known this land?

ANS: I have been knowing Mrs. Robinson owned it since '25 or '26.

QUE: You have trapped on it?

ANS: Yes, some.

QUE: Are you familiar with this fourth forty in Section 24?

ANS: No more than I am with the two other.

QUE: You could not say positively where the timber was cut by Mr. McMillan?

ANS: Yes, sir. Approximately - I have not surveyed it and don't know exactly, but this 40 here (indicating on map) -- They were supposed to have surveyed from this corner and surveyed a forty out and drew a line across there. There is no original line that I could ever find. They just had an agreed cutting line.

THE COURT: The cutting when--?

ANS: Mr. Archie McMillan - I wasn't present at the time.

QUE: You have been for the past two or three years, Mrs. Robinson's agent in looking after these lands?



ANS: For the last two years.

QUE: Has timber been cut or other acts of ownership over these lands been exercised, besides Payton-McMillan and Archie McMillan cutting the timber?

ANS: No, sir.

QUE: So far as you know has there been any other acts of ownership?

ANS: No, sir, not that I know of until this came up.

THE COURT: That is just for the last two years?

ANS: Yes, sir.

QUE: You trapped on this land for several years before that?

ANS: Yes, sir.

QUE: How long would you say you had trapped on this land?

ANS: Around 10 or 12 years.

QUE: That was through an arrangement with whom?

ANS: Mr. George Robinson and Mrs. Robinson.

QUE: Mr. Robinson first and then after his death with Mrs. Robinson?

ANS: Yes, sir.

CROSS EXAMINATION BY MR. CHASON:

QUE: When did Mr. George Robinson die?

ANS: I couldn't tell you.

QUE: About how many years ago --

ANS: I just couldn't tell you.

QUE: Has he been dead for several years?

ANS: Yes.

QUE: Now you say that you trapped on this land - I believe you also testified that you knew where this agreed line was that extends between these two ownerships?

ANS: Yes, sir, I know that.

QUE: Will you take this pencil and mark about how that agreed line runs or extends?

ANS: This slough has got two forks. It comes to the ~~Second~~ forks. We will call this the ~~second~~ forks (indicating)---

MR. CHASON: Take your pencil and mark a line?

ANS: You are supposed to make a line east and west--

QUE: Take this pencil and mark where you consider the agreed line?

ANS: That comes straight out here. This slough does not come quite far enough. It should come out here (indicating)

QUE: This line that you have designated on the map - you would say that is the south line of the land claimed to be owned by the Bryants that are Respondents in the case?

ANS: That is the old agreed line between Robinson and Bryant.

QUE: The Robinsons are supposed to own south?

ANS: Yes, sir.

QUE: How long have you know of this agreed line?

ANS: 12 or 15 years.

QUE: During the time that you have known it, has it or has it not been generally regarded in the community that the lands north of that line belonged to the Bryants?

ANS: Yes, sir. The Kennedy tract, but there was 80 acres above the mark --

QUE: Have you ever seen the marking on the trees that extend to the range line?

ANS: No, sir, to the Bayou.

QUE: Would you say that your line should extend to the Bayou?

ANS: All but this corner here (indicating) That is the only one that I know of at all.

QUE: I believe you testified that the agreed line extended to the Bayou?

ANS: Yes, sir.

QUE: Would you say that it comes to here (indicating)?

ANS: Some where -

QUE: In otherwords, would you say that that line was to be extended due east until it touched that Bayou?

ANS: Yes, sir.

QUE: In the community the lands south was known as the Robinson landand the lands North as the Bryant lands?

ANS: NO--

Q: What lands are known as the Bryant lands?

A: These two forties (indicating) are separate. The do not come in the Kennedy tract.

Q: You stated that you trapped the Robinson land - did you trap these two forties?

A: Yes, sir.

Q: Under whose permission?

A: Several years ago. I have not trapped them for the last five years.

Q: Are you certain that you have ever trapped up there?

A: Yes, sir, but I didn't know exactly whose land it was.

Q: You trapped but you are not certain whether you had authority to trap there or not?

A: Yes, sir.

ON RE-DIRECT EXAMINATION WITNESS TESTIFIED:

Q: You knew that she had some land, and you knew that Mr. George Robinson had some land up there?

A: Yes, sir.

B. F. HASTY, A WITNESS FOR RESPONDENT, VIRGINIA ROBINSON,  
BEING FIRST DULY SWORN, TESTIFIED: Y

QUE: What is your name?

ANS: Ben F. Hasty.

QUE: What is your occupation?

ANS: General logging superintendent for McMillan Land  
Company.

QUE: Are you familiar with the lands in Township 1 N. Range  
1 E/?

ANS: Yes, sir, I am as here run.

QUE: Did you see any cutting on the lands in Section 13 --  
were you in charge of that?

ANS: I was in charge of the cutting that we did that was on  
the disputed part.

QUE: Where was that timber located --- definitely, can you  
locate it on this map?

ANS: Yes, sir.

QUE: Now this as I understand it - this is Section 13 - it  
was run off by Joe Smith was from the dividing line North  
and our cutting was north of the piece of land that  
Joe Smith run off for Archie McMillan, and ran approxi-  
mately a half quarter north, and we own --- Payton -  
McMillan Veneer Company owns the quarter that is  
exactly north east of the SE $\frac{1}{4}$  of Section 13. I am

familiar with that corner. If that corner is correct, all the timber we cut was on the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, Township 1 Range 1.

QUE: Is that an established corner?

ANS: Yes, sir, of Section 18, which is east of Section 13.

QUE: Are you familiar with this agreed line or not?

ANS: Yes, sir, I cut on both sides of the agreed line from the big slough - I cut for Bryant and Robinson.

QUE: Did you every cut any on this particular land?

ANS: Not until this last timber.

QUE: Prior to this?

ANS: Not on the forty directly west of the Range line.

QUE: Does that also apply to the cutting -- lately have you cut any on the NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24?

ANS: Yes, sir, we cut part that at the <sup>same</sup> time we cut the timber for Robinson south of the agreed line. We cut up to the Bayou by Talapoos.

QUE: Who did you buy the timber from at that time?

ANS: Mrs. Virginia L. Robinson.

QUE: Was any question raised as to the ownership of it?

ANS: At that time we bought all of the timber on the Robinson land and cut this timber south of this dividing line and west of these forties - first 7 and when we came to these forties, the question of ownership

the field notes we measured up to the Bayou until we hit the corner measured off by Joe Smith, and as the swamp was full of water we took his measurements for the forty and came on north until we hit the north corner on the range line, which should have been according to his survey a quarter of a mile north. We check out to this corner (indicating) NE $\frac{1}{4}$  of SE $\frac{1}{4}$ , slightly north of our old corner and measured south down the range line to lay off this NE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, to see if that timber was on it. According to our survey the timber was south of the south boundary of NE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13 -- We check to see what land this timber was on - There was one quarter of a mile that we did not survey at all.

THE COURT: According to the check you made, you cut nothing on the NE $\frac{1}{4}$  of SE $\frac{1}{4}$ ?

ANS: That is the piece we did - We measured South a quarter of a mile from this corner and ran a line from the range line west a quarter of a mile; according to the line we run all of the timber we cut was south of that, which would put it on the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13.

THE COURT: You say you are familiar with that line -- the dividing line?

ANS: Yes, sir.

was brought up and it was admittedly in dispute and we did not cut on these forties for that reason, and that had not been settled at the time I went in the Army.

QUE: Did you say that you cut up to the Bayou?

ANS: Yes, sir.

QUE: That is on the Northeast Quarter of Northeast Quarter, Section 24?

ANS: Yes, sir.

QUE: Would you mind marking where your forty is---

ANS: Which forty do you want?

QUE: -----

ANS: With reference to the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  --

QUE: You say the one in 18 is due east of that?

ANS. Yes, that is Township 2 East which also divides us from the Bryants.

QUE: What forty is due west of you?

ANS: Should be this NE $\frac{1}{4}$  of SE $\frac{1}{4}$ , of Section 13. This corner should be the corner (indicating on map)

QUE: Do you know who owns that?



Q: Where does that run?

A: It runs from the second fork, which - I would judge from this slough here (indicating) from this map. As this has not been settled I could not tell where it would hit. According to the map Mr. Robinson gave me when I first logged this it hit about half way up this forty there (indicating on map).

Q: Does it go across the forty?

A: I have never been to - from the range line across this forty on that line at all. There is an old corner---cypress stake - at the intersection of this agreed line with the west boundary of these forties; that's as far as I ever went.

X  
Q: What kind of marker was that ?

A: Cypress stake. I don't remember if there was any witness trees or not. I 'm not even sure who showed it to me. It might have been George Catrett. I don't believe it was Mr. Percy Bryant.

Q: Let me ask you this. Is there any survey or marks - old surveyor's marks on this particular line?

A: I have not seen any old surveyors marks on these lines.

Q: You would place this stake --make a mark there?

A: I only have to go by this --- I would Judge it would come about there (indicating on map) about the center

of that line.

QUE: You have had experience in making surveys and surveying?

ANS: I have done some surveying on our own Company lines is all.

ON CROSS EXAMINATION WITNESS TESTIFIED:

QUE: Mr. Hasty, you say that you have cut or helped to cut the timber south of the agreed line for Mr. Robinson?

ANS: Yes, sir.

QUE: When was that first cutting done by you?

ANS: The first that I did which was south, but not up to the line was about 1930.

QUE: When was the first time you ever cut up to the agreed line?

ANS: I would judge around 1939 or 1940.

QUE: Mr. George A. Robinson was still living?

ANS: No, he was dead.

QUE: You cut up there for Mrs. Robinson?

ANS: Yes, sir.

QUE: You cut up to this dividing line and quit?

ANS: Yes, sir.

QUE: You didn't come above that dividing line extended up in these forties---I mtherwords, I believe you state

that you did not state whether this dividing line has been surveyed out to the range line?

ANS: It has, but I have not gone over it. That was in recent years. I have seen his corner on the range line.

QUE: On the range line where the line ended?

ANS: Yes, sir.

QUE: Did you cut for Mrs. Robinson anything north of this line up in these forties (indicating on map)

ANS: No, sir, except possibly a few trees in the corner between the Bayou and the swamp.

QUE: You say that you knew the ownership was disputed?

ANS: Yes, sir.

QUE: Do you know of the cutting by the Bryants of the timber down to the range line?

ANS: Yes, sir, I had the timber deed on this same year - we cut this timber in dispute here (indicating) That was South of the Bayou. I guess according to this map, west to the Bayou across to the river.

QUE: What year was that?

ANS: 1943.

QUE: That's the first cutting you did for the Bryant's?

ANS: NO, sir.

QUE: In the neighborhood of this agreed line?

ANS: Yes, sir.

QUE: You state that according to this forty over here that this cutting that you did -- recently was in the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13 -- The timber that is now in dispute came off the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13?

ANS: Yes, sir.

QUE: You were familiar with the discussion between the Bryants and Mrs. Robinson at the time they gave her a quitclaim deed?

ANS: I have heard about it. I was in the Army at the time.

QUE: But you did know that they had deeded her the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13?

ANS: Yes, sir.

QUE: You are also the one representing Payton-McMillan that bought this timber from Mr. Bryant?

ANS: We thought we were cutting on the NE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Sec. 13. That is the piece we started to cut on. That was before any dispute came up .

QUE: Mr. Percy pointed it out to you - I believe you testified on direct examination that you did not cut anything on the NE $\frac{1}{4}$  of SE $\frac{1}{4}$ ?

ANS: My opinion is that all we cut was in the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ .

QUE: In regard to what timber was cut that was pointed out by Mr. Bryant and Mr. Jewell, you all deadened that?

ANS: I was the one that did that. Mr. Jewell Smith and Mr. Percy and I all went over that.

QUE: You saw where there had been a forty acres cut immediately south of this?

ANS: Yes, sir.

QUE: Who cut that?

ANS: Mr. Archie McMillan.

QUE: About how long ago?

ANS: I think about 1943.

QUE: Do you know who he cut it for?

ANS: I understand that he cut it for Mrs. Robinson.

QUE: Where did that timber come from that Mr. McMillan cut for Mrs. Robinson - show us on the map ?

ANS: In my opinion I would say that that timber was cut over about the north half of this NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24, and the S $\frac{1}{2}$  of SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13. Approximately like that (indicating.

✓  
Q: Your cutting was about the other half of SE $\frac{1}{4}$  of SE $\frac{1}{4}$  Section 13 and NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24?

A: That's right.

Q: That timber cut by McMillan lay immediately North of the agreed line we have extended across there?

A: It would include also a part of this 40 that was south of the agreed line.

Q: How much would have been cut south of the agreed line?

A: I just couldn't tell you. I don't know how the lines run. I would judge it is three or four chains up this way until you hit the corner of the agreed line there. (indicating on map)

Q: If Mr; McMillan cut 300,000 feet off of the 40 acres tract could you give us your best judgment as to how much of that 300,000 feet was south of the agreed line?

A: I would not be in position to say that.

Q: Were you present at any time when Mr. Joe Smith went there to surevey the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13?

A: Yes, sir. I got Joe Smith to go with me one time to surevey this.

ANS:--Yes, -sir

QUE: Did you run all the way around it?

ANS: Approximately a quarter north of this agreed  
line and <sup>decided</sup> ~~decided~~ that we were not correct  
on it and came back, and because it was between  
the Bryants and them we got Doctor Brayant and  
Mr. George Bryant to go with us . We started  
back to go over and finish this survey and that  
is the time that I found it was in dispute and that  
the Bryants claimed these forties, so we dropped  
it at the time I went in the army. That was in  
1942. There had not been any more surveying on  
it.

ON RE-DIRECT EXAMINATION WITNESS TESTIFIED:

QUE: Mr. Hasty, will you explain the general nature  
of this land and the surrounding land - was it --  
what is it fit for or suitable for?

ANS: It is timber land. I don't know as I know what  
you want.

QUE: Swamp land?

ANS: Yew, sir and part ridge.

QUE: Follows the general run of swamp land so far as  
raising timber is concerned?

ANS: Yes, sir.

QUE: Any buildings on this land?

ANS: None that I know of.

QUE: No fields on it either is there?

ANS: No, sir, no fields on this forty. I am pretty sure about that.

QUE: In otherwords, it is wild, vacant land?

ANS: Swamp land.

THE COURT: Mr. Hasty, tell me - As I understand it you say the timber in question was cut from the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, ?

ANS: That's my opinion.

QUE: No part off this lower forty? (indicating on map)

ANS: I am sure not inthe timber we cut.

RESPONDENT VIRGINIA ROBINSON RESTS:



MR. ARCHIE McMILLAN, a witness for the Respondent, BRYANTS,  
BEING FIRST DULY SWORN, TESTIFIED:

QUE: What is your name, please?

ANS: Archie McMillan.

QUE: Where do you live?

ANS: STOCKTON.

QUE: Mr. McMillan, did you -- are you familiar with the lands known as the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, Township 1 North, Range 1 E., and NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24, Township 1 North, Range 1 East?

ANS: No more than I moved the timber off the south 40--- supposed to have been the south 40.

QUE: Were you familiar with the swamp before you went in there?

ANS: No, sir.

QUE: When was the first time that you went on this tract of land for the purpose of trying to locate the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13?

ANS: I carried JOE Smith and George Emmons Robinson up to survey it off the morning they surveyed it.

QUE: Do you know whether at that time Mr. Percy Bray Bryant and his two ~~brothers~~ brothers, Douglas and George, made a deed to Mrs. Robinson for the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13?

ANS: I was told they had.

QUE: Who did you buy the timber from?

ANS: George Emmons Robinson and his mother.

QUE: Mrs. Virginia Robinson?

ANS: Yes, sir.

QUE: What timber had she sold you at that time?

ANS: Supposed to have been the  $SE\frac{1}{4}$  of  $SE\frac{1}{4}$ , Section 13,  
Township 1 N. Range 1 E.

QUE: Did you go in there and also carry Mr. Joe  
Smith with you?

ANS: Yes, sir, and George Emmons.

QUE: Did Mr. Joe Smith survey out the  $SE\frac{1}{4}$  of  $SE\frac{1}{4}$ , Section  
13 while you were present?

ANS: Yes, sir.

QUE: Where did he put his SE corner of that 40?

ANS: On the range line.

QUE: Where did he put his SW corner?

ANS: He started at the SW corner here (indicating).--

QUE: Did you see an old line blazed that they referred to as  
the agreed line?

ANS: I saw one or two blazes, but I don't think they were con-  
firmed---I joined them after they crossed the Bayou,  
but I didn't go to the SW corner when they run around.

Q: Did you start at the stake you referred to?

A: They told me they did. William Bryant and myself stayed on the east side.

Q: YOU DID NOT GO AROUND THE ENTIRE 40?

A: No, sir.

Q: Did Mr. Joe Smith mark off a 40 acres of land that they told you was the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13?

A: Yes, sir, they run out a 40 acres--

Q: Did you go and cut the timber off that 40 acres?

A: I did.

Q: How much timber did you cut off that 40 acres?

A: Right at 300,000 feet, but I came on<sup>to</sup>/the Bayou south of that forty. I don't know how much timber I got south of that line they put through there. I would say something like, I imagine 10, 12 or maybe fifteen acres--

Q: Could you give us a general estimate of how much of the 300,000 feet came off this 40 acres?

A: No, sir, I could not; at the time I had no occasion to keep up with it.

Q: Would you say as much as 200,000 feet came off that SE $\frac{1}{4}$  of SE $\frac{1}{4}$ ?

A: I would think a little more than ~~that~~ that.

Q: How much did you pay Mrs. Robinson for that per thousand?

ANS: They were trying to lay out the SE $\frac{1}{4}$  of the SE $\frac{1}{4}$ .

QUE: That was what you were trying to do, and you were trying to go by that?

ANS: Yes, sir. That was what I understand.

ON CROSS EXAMINATION WITNESS TESTIFIED:

QUE: Will you mark on this map as near as you can where that corner that you started - you said started from was?

ANS: This is Section 13 here. They started here (indicating) That is the corner at the Bayou where I caught up with them. ((~~and~~ Indicating on map.)

QUE: The COURT: You joined them on the east side of the Bayou?

ANS: Yes, sir. William Bryant and myself stayed over here and they went and after they came across the Bayou and I crossed the Bayou and came back to the point of beginning.

QUE: You did come back to this point of beginning?

ANS: Yes, sir.

QUE: Was there a post there?

ANS: Yes, sir, there has been a stop there. I don't know whether it is the same stop. It was in the same place as it was when I was pulling the Robinson timber in 1912 or 1913 south of the Bayou.

QUE: Did you start at the stake you referred to?

ANS: They told me they did. William Bryant and myself stayed on the east side.

QUE: YOU DID NOT GO AROUND THE ENTIRE 40?

ANS: No, sir.

QUE: Did Mr. Joe Smith mark off a 40 acres of land that they told you was the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13?

ANS: Yes, sir, they run out a 40 acres--

QUE: Did you go and cut the timber off that 40 acres?

ANS: I did.

QUE: How much timber did you cut off that 40 acres?

ANS: Right at 300,000 feet, but I came on<sup>to</sup>/the Bayou south of that forty. I don't know how much timber I got south of that line they put through there. I would say something like, I imagine 10, 12 or maybe fifteen acres--

QUE: Could you give us a general estimate of how much of the 300,000 feet came off this 40 acres?

ANS: No, sir, I could not; at the time I had no occasion to keep up with it.

QUE: Would you say as much as 200,000 feet came off that SE $\frac{1}{4}$  of SE $\frac{1}{4}$ ?

ANS: I would think a little more than ~~that~~ that.

QUE: How much did you pay Mrs. Robinson for that per thousand?

ANS: \$15.00.

QUE: About when was that cutting done?

ANS: I think I started in July 1943. I left in September.

QUE: That was done within a year and a half?

ANS: Yes, sir.

QUE: Have you ever cut the timber just south of the agreed line for the Robinsons?

ANS: Before?

QUE: Yes, ?

ANS: South of the Bayou.

QUE: Never came up above the agreed line?

ANS: No, sir, I followee the stream until I came to the dividing line running east and west.

QUE: I believe you testified that you paid Mrs. Robinson for the 300000 feet you cut and you would say at least 200,000 feet of that came off what you thought was the  $SE\frac{1}{4}$  of  $SE\frac{1}{4}$ , Section 13, Township 1, N. Range 1 E.?

ANS: Yes, sir.

QUE: This Mr. George Emmons Robinson that you referred to is that the son of Mrs. Virginia Robinson?

ANS: Yes, sir.

QUE: Was he acting as agent for his mother, Mrs. Virginia Robinson?

ANS: Yes, sir.

QUE: Did he see the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  run off there and point/<sup>ed</sup>out to you ?

ANS: He was with us.

QUE: Was Mr. Percy Bryant there at the time?

ANS: Yes, sir.

QUE: Were the lines that were run out thereby Mr. Joe Smith was that agreed upon as being the correct SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, Township 1 N. Range 1 E.?  
by Mr. Percy Bryant and Mr. George Emmons Robinson, representing his mother, Mrs. Virginia Robinson?

ANS: I don't know that it was to be a permanent survey. My understanding was that it was laid out for me to work by.

QUE: You did, soon after the survey, cut the timber and pay Mrs. Robinson for it?

ANS: Yes, sir. I think I started around a week later.

QUE \* THE COURT: Was it understood by the Bryants and this Robinson boy that you were to cut that 40 as the lands of Mrs. Robinsons?

ANS: Yes, sir.

THE COURT: When they surveyed that, it was all right for you to go in and cut it?

ANS: Yes, sir.

QUE: It was agreed as being the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13?

QUE: That stob had been there that long?

ANS: Yes, sir.

QUE: Let me ask you this. Wasn't the real purpose of this survey in order to give you a cutting line?

ANS: I imagine so.

QUE: Outside of that particular corner what ---was any effort made to locate any other corners?

ANS: No, sir.

QUE: In otherwords, do you know who mentioned that stob out there first?

ANS: No, I do not, but I imagine it was ~~Mer~~Mr. Percy.

QUE: You mean the morning they made the survey?

ANS: I think Mr. Percy carried them there.

QUE: How far in the swamp is that from the Bayou?

ANS: I imagine it is right at 300 feet - I started right at the corner line. I imagine that corner is 300 or 350 feet from the Bayou.

QUE: In your cutting were there any survey marks on this line west of these forties?

ANS: Yes I saw several old blazes there when I was doing the work. I didn't notice them the day we went around, but being there every day I did see marks. The whole swamp is blazed. Each surveyor used different marks,--



I didn't see the marks, but there was some old blazes that I believe were put there for a line.

QUE: In otherwords, you say that this particular corner was pointed out by Mr. Percy Bryant to your best recollection?

ANS: Yes, sir, he carried Joe Smith to it.

QUE: Wasn't the purpose of this survey for your protection instead of an effort to establish the true corner?

ANS: The survey I understood was intended for me to work by so I would not spread out any further than the piece they laid off for me.

QUE: Didn't you suggest that this be done in the first place --- did you suggest having an understanding about where to cut?

ANS: Yes, sir, I told them I would not fool with it until it was laid off.

QUE: What you were cutting was satisfactory to both Mrs. Robinson and Mr. Bryant at the time?

ANS: Yes, sir.

THE COURT: Can you point out to me what they called the agreed line in a general way on this map?

ANS: THIS (indicating) is the agreed line.

THE COURT: Beginning back at the river?

ANS: You mean the piece in controversy?

THE COURT: I understand there is a tract of land

the Joshua Kennedy land - I understood there was an agreed line?

ANS: It comes up here - it comes on out and runs east there (indicating on map)

THE COURT: Do you know whether it goes across those forties in Section 24?

ANS: No, sir, I do not, but if it does, it is not kept up because you can readily follow this line, but after you pass the corner the signs are not near like they are here (indicating).

MR. SMITH CONTINUES:

QUE: Isn't that on the agreed line?

ANS: Yes, sir, on the dividing line -- Old dividing line.

ON RE-DIRECT EXAMINATION WITNESS TESTIFIED:

QUE: You can say you can readily follow the line across the Kennedy line?

ANS: Yes, sir.

QUE: You worked up to that line?

ANS: Yes, sir.

QUE: You could tell it when you got to it?

ANS: Yes, sir.

THE COURT: Where is that dividing line?

ANS: That's a question --- It could be in here (indicating) or it could be just above in here (indicating). The only way you could get that would be to come to the

half section line or proven section corner.

THE COURT: I understood you to say that you could see it over on the east side. -- That is what you just said.

ANS: I think he asked me if when I was pulling that in 1912 or 1913 if I could find that line - this dividing line was crossed by Tallapoos---

MR. CHASON: When you were coming up to this agreed line to the South, could you tell where that line crossed the Joshua Kennedy Tract?

ANS: No, sir.

QUE: You never have seen the agreed line - you say you could recognized the line, but you don't know where to put it on the map?

ANS: No I do not. I don't know just exactly where that would cross the Joshua Kennedy grant. You would have to measure.

THE COURT: You said something a while ago about this corner where you started the survey being on the agreed line; is that a fact?

ANS: Yes, sir.

QUE: How do you know if you could not trace it back?

ANS: You can trace it.

QUE: You told him you could not?

ANS: Sure you can trace it. You can over to the river, but from this corner running East south of this corner - that was what I was supposed to pull. It was not fresh like it was over here (indicating)

QUESTIONS BY MR. HYDART:

QUE: Not blazed fresh - what do you mean?

ANS: You take a land line for it to be fresh you have to blaze it every two or three years.

QUE: You saw blazes in there?

ANS: On the west side.

QUE: You say it wasn't blazed fresh - what did you mean?

ANS: Wasn't blazed at all through there until they made signs when they were surveying it that morning.

MR. JOE SMITH, A WITNESS FOR THE RESPONDENTS, BRYANTS,  
BEING FIRST DULY SWORN, TESTIFIED:

QUE: What is your name?

ANS: Joe Smith.

QUE: Where did you live?

ANS: Tensaw

QUE: Are you a licensed surveyor?

ANS: Yes, -- not right now -

QUE: Have been?

ANS: Yes, sir.

QUE: You have done a lot of surveying in Baldwin County?

ANS: Yes, sir.

QUE: Are you familiar with the land in Section 13 and 24, Township 1 North, Range 1 East, as shown there on that map?

ANS: I have been on it twice.

QUE: When was the first time you went there?

ANS: It was along about two years ago.

QUE: Who was with you when you went there the first time?

ANS: Mr. Archie McMillan and Mr. George Emmons Robinson.

QUE: Mr. Percy Bryant was not with you?

ANS: No, sir, not on the first trip.

QUE: Did you find what was known or discussed within the parties as being the agreed line between the Robinsons and Bryants?

ANS: Yes, sir, but it run west ~~fer~~ from the corner we started.

QUE: Have you ever walked this line from the ~~corner~~ fork ~~p~~ running east to the range line?

ANS: No, sir.

QUE: Ever been on a part of it?

ANS: No, sir, at this corner.

QUE: Did you follow from this corner over to the Range line?

ANS: Yes, sir.

QUE: Can you see some blazes where a survey has been run across there?

ANS: Yes, sir.

QUE: How far would you say those blazes are from the SW corner of the NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24?

ANS: I don't know. I didn't measure it.

QUE: You did come then and find a stake some where?

ANS: Yes, sir.

QUE: Can you show us on this map about where you found that stake?

ANS: Some where along in this neighborhood (indicating)

THE COURT: About the middle?

ANS: Yes, sir.

QUE: Which way did you run your line at that time?

ANS: The first time - well one of those deeds said about 100 feet south of this corner - was about 100 feet south of that line and we were trying to run it from that. That was the only evidence we had.

QUE: There was some evidence there from Mr. McMillan that he thought Mr. Percy carried you there, did he?

ANS: No. I knew where it was.

QUE: You found that corner on your first trip?

ANS: Yes, sir.

QUE: He wasn't in your party, and you didn't see him

on your first trip?

ANS: No, sir.

QUE: How far north did you run on that survey?

ANS: A quarter and 100 feet back. That deed said about 100 feet. That is the only evidence we had as to where the line was.

QUE: Did you then run east to the range line on that first trip?

ANS: Yes, sir.

QUE: You didn't run the range line?

ANS: No, sir, we went there - we didn't measure anything.

QUE: Do you know about the deed that was given by the Bryants to Virginia L. Robinson - have you see this deed?

ANS: No, sir.

QUE: Do you know whether the first survey was made before or after this deed?

ANS: No, sir.

QUE: Do you remember the date you went there?

ANS: No -

QUE: The first time?

ANS: No, sir. It was in the ~~late~~ late spring.

QUE: What year?

ANS: I would say '43.

QUE: If this deed is dated July 17, 1943, you would say your first survey was made before this deed?

QUE: When did you go out there again, Mr. Smith?

ANS: It was, I imagine nearly a year later.

QUE: What subdivision did you go out there to survey?

ANS: SE $\frac{1}{4}$  OF SE $\frac{1}{4}$ , Section 13, Township 1 N. Range 1 E.

QUE: When you went the second time who was with you?

ANS: Well two or three of the Bryants.

QUE: Mr. Percy Bryant was one?

ANS: Yes, sir.

QUE: Mr. George Emmons Robinson there?

ANS: **Yes**, sir.

QUE: Mr. Archie McMillan?

ANS: Yes, sir.

QUE: Did you run out that forty acres that you were attempting to trace - the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, Township 1 North, Range 1 East?

ANS: Yes, sir, but we started at that corner (indicating)

QUE: Which corner on the second trip?

ANS: The subdivision between the Bryants and Robinsons.

QUE: Did you see the agreed line?

ANS: Yes, sir.

QUE: Did you follow the agreed line over to the Range Line?

ANS: Yes, sir. I only saw Durant's marks about twice.

QUE: You say - you say the survey you made would have -  
you say the marks you saw were Durant's marks?



ANS: Yes, sir, Norman Durant.

QUE: Do you have any idea when he surveyed that?

ANS: I would say 30 or 40 years ago.

THE COURT: Across the middle of the lower forty?

ANS: I didn't have any way of knowing - It was below that line.

QUE: On that occasion did you survey off a forty acre tract to be designated as the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13?

ANS: Yes, sir.

QUE: Did you hear a discussinn between Mr. George Emmons Robinson and Mr. Percy Bryant for himself and representing his brothers, that they agreed that that was the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, and was taken as such?

ANS: That was the impression that I had. They thought that was the right corner.

QUE: That was the correct subdivision?

ANS: Yes, sir.

QUE: Have you been back there any more since?

ANS: No, sir.

QUE: You don't know whether Mr. McMillan cut the timber off that or not?

ANS: No, sir.

ON CROSS EXAMINATION WITNESS TESTIFIED:  
(BY THE COURT)

QUE: I understand you say you started ~~that~~ a post  
-- a cypress marker across on the west side of the Bayou?

ANS: Yes, sir.

QUE: On the established line?

ANS: Yes, sir, running west.

QUE: And that you run east to the range line?

ANS: Yes, sir, continuation of the same line.

QUE: The north a forty, west a forty and south a forty and  
back?

ANS: Yes, sir.

QUE: And you say you thought that was the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ ,  
Section 13?

ANS: Yes, sir.

ON CROSS EXAMINATION BY MR. SMITH:

QUE: Did you attempt to tie that in?

ANS: No, sir, to have done so we would have had to go three  
miles; there were no corners that we knew about.

QUE: What about the one Mr. Hasty mentioned this morning--

ANS: It is just - it is not a proven point - I am talking  
about a government corner. We would have had to go  
up Stiggins Like. Anything down there would have been  
just like - about like taking the one we did.

MR. PERCY BRYANT, A WITNESS FOR THE RESPONDENT, BRYANTS,  
BEING FIRST DULY SWORN, TESTIFIED:

MR. CHASON: We want to introduce in evidence a warranty deed from G. W. Robinson and M. A. Robinson, his wife, to V. M. Bryant, dated March 7, 1883, conveying all of the land conveyed by the heirs of Kennedy, bounded on the north by Stiggins Lake, on the east by east line of Range 1, Township 1 N., on the west by Tensaw River and on the South by a line beginning at a Slough on the east bank of the Tensaw River about 300 yards above the Northern Boundary of Section 24, Township 1 N. Range 1 East, meandering said Slough to the <sup>second</sup> ~~two~~ forks, thence East to range line, to contain 1,000 acres, more or less, and ask that it be marked Exhibit A. to Mr. Bryant's testimony.

THE COURT: That would exclude the land in Sections 13 and 24?

ANS: Part in 24 -  $N\frac{1}{2}$  of 24, and some of 13.

MR. SMITH: I would like to object to its introduction - It is not color of title insofar as it touches Section 13 or 24, Township 1 N. Range 1 E. and on the further ground that it only purports to cover lands that were owned and conveyed by the heirs of Kennedy, and does not purport to convey anything in Sections 13 or 24.

of Section 24, Township 1 North, Range 1 East, meandering said slough to the second fork, thence east to the range line, to contain 1,000 acres, more or less. This deed also contains other lands not included.

MR. SMITH: I interpose the same objection.

THE COURT: Reserve the ruling.

QUE: What is your name?

ANS: Percy A. Bryant.

QUE: You are one of the respondents in this suit brought by Payton McMillan against George R Bryant and Virginia L. Robinson, et al?

ANS: Yes, sir.

QUE: Douglas and George Bryant are your brothers, are they not?

ANS: Yes, sir.

QUE: How old are you, Mr. Percy?

ANS: 72.

QUE: What year were you born?

ANS: 1873.

QUE: Do you remember the occasion when Mr. George W. Robinson and his wife, gave Mrs. V. M. Bryant a deed that we have just introduced in evidence ?

ANS: I remember it.

QUE: You were about 10 years old?

ANS: Nearly 11.

QUE: V. M. Bryant - who was she?

ANS: My mother.

QUE: At the time that this deed was delivered, do you know whether this land was surveyed along this south boundary line or the line we refer to as the Agreed line?

ANS: It wasn't surveyed at the time the deed was given. It was soon afterwards.

QUE: Do you know who surveyed it?

ANS: Well the first time it was attempted to be surveyed was G. W. Robinson and my father.

QUE: How did they attempt to survey it?

ANS: Mr. Robinson had a compass --- he wanted to cut to the line but not above and he attempted to survey across there in this double ender and couldn't and soon as the water

QUE: You say they made that survey from a double ender  
in high water and it wasn't accurate?

ANS: Yes, sir.

QUE: Do you remember who surveyed it?

ANS: I don't remember.

QUE: Was Mr. Durant surveying about that time?

ANS: Yes, sir, he was County Surveyor.

QUE: That was in 1883, is that right?

ANS: Yes, sir.

QUE: The line was surveyed by this surveyor at that  
time-- did it run all the way from the second fork  
to the range line?

ANS: Yes, sir.

QUE: Soon afterwards Mr. George Robinson executed this<sup>deed</sup>/~~did~~  
your father start cutting any timber north of that  
surveyed line?

ANS: Yes, sir.

QUE: Could you point out to us on this map about where that  
agreed line as we call it, would run across this map -  
this is the NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24 (indicating)  
and this is SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13 (indicating)  
and this is supposed to be the slough running  
towards the ~~two~~ second fork - (indicating)

Could you show us about where the agreed line runs?

ANS: Nearly 11.

QUE: V. M. Bryant - who was she?

ANS: My mother.

QUE: At the time that this deed was delivered, do you know whether this land was surveyed along this south boundary line or the line we refer to as the Agreed line?

ANS: It wasn't surveyed at the time the deed was given. It was soon afterwards.

QUE: Do you know who surveyed it?

ANS: Well the first time it was attempted to be surveyed was G. W. Robinson and my father.

QUE: How did they attempt to survey it?

ANS: Mr. Robinson had a compass --- he wanted to cut to the line but not above and he attempted to survey across there in this double ender and couldn't and soon as the water got down they had it surveyed.

QUE: Did he attempt to survey from the second fork across to the range Line?

ANS: That is what they did.

QUE: You say they made that survey from a double ender  
in high water and it wasn't accurate?

ANS: Yes, sir.

QUE: Do you remember who surveyed it?

ANS: I don't remember.

QUE: Was Mr. Durant surveying about that time?

ANS: Yes, sir, he was County Surveyor.

QUE: That was in 1883, is that right?

ANS: Yes, sir.

QUE: The line was surveyed by this surveyor at that  
time-- did it run all the way from the second fork  
to the range line?

ANS: Yes, sir.

QUE: Soon afterwards Mr. George Robinson executed this <sup>deed</sup> / did  
your father start cutting any timber north of that  
surveyed line?

ANS: Yes, sir.

QUE: Could you point out to us on this map about where that  
agreed line as we call it, would run across this map -



ANS: No.

QUE: I believe you said that when you and your two brothers got this deed, you all went in possession of that land?

ANS: Yes, sir.

QUE: Have you and your two brothers been cutting that timber North of the agreed line since 1903?

ANS: Yes, sir.

QUE: How many times do you say that you have cut - in the neighborhood or up to that agreed line?

ANS: I don't know. I know in '26 when the storm blew the timber down.

QUE: There as a pretty heavy wind storm?

ANS: Yes, sir.

QUE: Blowed a lot of the timber down along this agreed line?

ANS: Yes, sir.

QUE: Did you and your two brothers go and remove your timber down the agreed line?

ANS: Yes, sir.

QUE: Cut across the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, and most of the NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24?

ANS: Yes, sir.

QUE: Cut any timber besides the down timber?

ANS: Yes, sir, a little. Some of the standing timber to finish out a load - gun boat.

Q: You say immediately following this conveyance in 1903, you all began cutting on both of these forties, and all North of the surveyed line?

A: Yes, sir.

Q: Have you continued cutting at pretty regular intervals since then?

A: Have not cut but very little since.

Q: Before it blew down?

A: Below it blew down we got the cypress trees off.

Q: Pretty regularly?

A: Yes, sir.

Q: About how often?

A: We would get some I guess every year. There was no sale for any of the other timber much but the cypress.

Q: In 1926 it blew down a good portion which you removed all that was blown down?

A: Yes, sir.

Q: About - along about 1908 when you cut the timber then just north of this agreed line--

A: I don't know -- Yes I got some since then.

Q: From then to 1926 you cut it practically every year?

A: Yes, sir.

Q: Mr. Percy, did Mr. George W. Robinson ever dispute your title and that of your father and mother north of that agreed line they run off extending clear to

the range line?

ANS: No.

QUE: Did Mr. George Robinson, after he was supposed to have acquired a patent in 1908, did he ever dispute your ownership to the lands north of that agreed line?

ANS: No.

QUE: Did he cut up to that agreed line - George Robinson?

ANS: Yes, sir.

QUE: Cutting that down timber in 1926 did Mr. George Robinson cut his down timber?

ANS: He was there at the time.

QUE: Removing his timber south of the agreed line at the same time you were removing your timber north of the agreed line?

ANS: Yes.

QUE: Did he make any claim or dispute your claim?

ANS: No -

QUE: Since Mr. George Robinson died - do you know when he died?

ANS: No, I don't.

QUE: About how many years ago?

ANS: Some four or five years ago.

QUE: Would you say it was in the neighborhood of 1940 or

1941?

THE COURT: He said he didn't know - don't crowd him.

MR. HYBART: We just wanted to get that?

THE COURT: He said three times he didn't know - Let it go at that.

MR. HYBART: All right.

QUE: Up until about 3 years ago - until you had a dispute with Mrs. Virginia L. Robinson, did you know that they had any claim~~s~~ to the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, or to SE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 24, Township 1 N. Range 1 E. North of that line?

ANS: No.

QUE: Were you in Washington about two years ago?

ANS: Yes, sir.

QUE: When you came back did you find that she was attempting to sell timber there?

ANS: Yes.

QUE: What land was that on?

ANS: SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13.

QUE: Did you go in there with Mr. Joe Smith - The County Surveyor - Mr. George Emmons Robinson here, who is the son of Mrs. Virginia L. Robinson, and Mr. Archie McMillan?

ANS: Yes, sir.

QUE: Had Mr. Joe Smith been there once doing surveying?

ANS: Yes, sir.

QUE: Did he show you the corner or go to the corner that he had located while you were away?

ANS: Yes, sir.

QUE: Was that corner on the agreed line?

ANS: Yes, sir.

QUE: On the range line or on the 40 a quarter of a mile west?

ANS: A quarter of a mile west of the range line forty.

QUE: At that time who did the surveying of the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ ?

ANS: Joe Smith.

QUE: Did he survey out a forty acres to be known as the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ ?

ANS: Yes, sir.

QUE: Did you locate any proven corners that day to know whether that was a correct survey or not?

ANS: No.

QUE: After that survey was made was an agreement reached here between Mr. George Emmons Robinson on behalf of his mother, and you on behalf of yourself and your brothers, that that would be accepted as the true SE $\frac{1}{4}$  of SE $\frac{1}{4}$  Section 13?

ANS: When we got through he was - he asked me if I was satisfied and I told him yes, and he said well

"I am satisfied - Will it be all right for him to

go ahead and cut the timber" and I told him "yes".

QUE: Who were you talking to?

ANS: George Emmons Robinson.

QUE: You - when you - were you speaking of them going ahead and cut the timber, who were you thinking about?

ANS: Mr. Archie McMillan.

QUE: At that time had you and your two brothers sold the ~~SE<sub>1</sub>~~ of ~~SE<sub>1</sub>~~ to Mrs. ~~Rb<sub>1</sub>~~ Robinson?

ANS: Yes, sir.

QUE: She had already paid you a consideration for the deed and the deed had been delivered?

ANS: Yes, sir.

THE COURT: I understand that you went over there with Mr. McMillan and Mr. Robinson and you started at a certain stake on the agreed line?

ANS: Yes, sir.

QUE: And went west to the range line and forty acres up and forty acres west and then back to the original point of starting?

ANS: Yes, sir.

QUE: Agreed that that was the ~~SE<sub>1</sub>~~ of ~~SE<sub>1</sub>~~?

ANS: yes.

QUE: Section 13?

ANS: Yes. He went in there to survey that forty.

QUE: Was it - it was your - it was understood that that

was the correct survey of that land?

ANS: Yes, sir.

QUE: He was to cut that ~~ge~~ for Mrs. Robinson?

ANS: Yes, sir.

QUE: That <sup>was</sup> what Mr. Archie McMillan cut?

ANS: Yes.

QUE: Is that the same man that Mr. Ben Hasty cut for?

ANS: No, sir.

QUE: After Mr. Archie McMillan cut this timber-

ANS: After Mr. Archie McMillan cut this timber I went to Mr. Smith and I said: "Emory, Archie was supposed to cut the timber on the forty that we deeded Mrs. Robinson" and I said, "now I am going to cut the timber North of this forty - Will it be all right for me to cut the timber North of this forty" and he said, "yes".

THE COURT: This is what I am trying to get. You went to the agreed line and surveyed a forty as the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  that you had already conveyed to her?

ANS: Yes, sir.

QUE: You and Mr. McMillan were together.

ANS: Yes, sir.

QUE: That was pointed out to him?

ANS: Yes.

QUE: What I am trying to get at:is that the same forty Hasty cut off? ---

(No answer)

DIRECT EXAMINATION CONTINUED BY MR. CHASON:

Q: Now Mr. Bryant, you say that this forty was surveyed out immediately north of the agreed line - when you sold this timber recently to Payton-McMillan Company where did you cut that time from?

A: Just north of the line that Smith ran out for this forty.

Q: North of the forty cut by Archie McMillan?

A: Yes.

Q: About how big an area did that cover?

A: About twenty acres.

Q: Immediately north of the cutting McMillan did?

A: Yes.

MR. HYBART:

Q: As I get it, this was taken as the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, when in truth and fact it was in Section 24 that was sold to Mr. McMillan by Mrs. Robinson - It was agreed by Mrs. Robinson's agent and Mr. Bryant that this was the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  and after Mrs. Robinson sells that timber he comes up and sells the timber on this forty and the money flowing from that is the money in dispute here.

THE COURT: Why could it not be agreed what land was sold by the Bryants to Payton-McMillan Company?



MR. HYBART: If it happened to be this 40 up here (indicating)

then she has procured the fruits from this forty here (indicating). It is a matter of equities -

THE COURT: It looks to me like it could be settled by appointing 3 surveyors and agree upon as to where the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  is and if Payton-McMillan have net cut anything but what is on that, they are entitled to that, and if they have---

MR. HYBART: That's true, your Honor, if this - if they agree on this line (indicating) as being the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13 - if Mrs. Robinson got the money for the timber on this 40 (indicating) then in justice and right she should not have this money and that money too?

THE COURT: I think it would be best to settle that by surveyors, but if they have not cut anything but the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  that belongs to Mrs. Robinson -

MR. HYBART: But if she agreed that this was the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, then she got her money -

THE COURT: Here is the difference - he puts the corner here and Mr. McMillan here (indicating on map)

MR. CHASON: Mr. McMillan testified that he could not definitely locate it.

ON CROSS EXAMINATION BY MR. SMITH, WITNESS TESTIFIED:

QUE: Mr. Percy, do you own this 40 - NE<sup>1</sup>/<sub>4</sub> of SE<sup>1</sup>/<sub>4</sub>, Section 13?

ANS: Yes.

QUE: Did you acquire that under this division deed also?

ANS: Yes, in a way I did. If I have to do it, I'll tell you how I got that.

QUE: Yes, tell us?

ANS: I bought <sup>it from</sup> the estate of Willis Catrett -- he had some kind of a deed to it to this 40 up here. Mr. John Kilcrease entered that forty from the Government but Mr. Vaughn - there is no way of telling how Mr. Vaughn got hold of it - he deeded Mr. Catrett this forty and when I bought the land in I told Mr. Hall you add this into this deed at the administrator's sale, so they did. I knew I was getting it back any way and it would eliminate all the heirs.

QUE: That was under separate ownership - that is owned by whom now?

ANS: Me.

QUE: Who else?

ANS: Well I will tell you that. After I bought this land in ~~in~~ my brother Willie, wanted a half interest in it with me, and, of course, I let him have a half interest. When he died he willed two of his children

his interest in that 40. I own half and they own the other half.

QUE: That was patented along about the time this other piece was?

ANS: No, sir. Old man John Kilcrease patented that years ago.

QUE: Mr. Percy, this cutting you are talking about in 1908, what particular portion of this land did you cut - you didn't cut it all at one time - you cut in this part one time and down here at another - when was the last time you cut timber on the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13?

ANS: I could not say. It - I know I have cut some since 1926 - it was in 1926 when it ~~bel~~ blew down and I bought a tractor and went in there and got all of that blown down stuff.

QUE: Wasn't the purpose of this survey just to assure Mr. Archie McMillan that he would not get over anybody's line - the last survey after you gave the deed - to assure Mr. McMillan that he would not get over the Line?

ANS: What I went up there for - they told me they were going to survey out this 40 and wanted me along and I went and when I got up there Mr. Smith asked me if I knew where the corner was out there that he and Ben Hasty had run the

year before and I said "Yes, I know where it is" and he said, "I want to get around that" and we all went out there together

ON RE-DIRECT EXAMINATION BY MR. HYBART:

QUE: Mr. Percy, this land here, starting as described in the deed - what sort of land is that - the whole body of it?

ANS: Swamp land.

QUE: Been any cultivation on any part of it?

ANS: Yes.

QUE: Any houses on any part of it?

ANS: Yes.

QUE: YOU have been cultivating part of it?

ANS: My father did.

QUE: Have you cultivated any of it?

ANS: Several years back.

QUE: As long as 10 years?

ANS: Longer than that.

QUE: 20 years?

ANS: Yes, sir.

QUE: Occupying and cultivating a part of it?

ANS: Yes.

ON RE-CROSS EXAMINATION BY MR. SMITH, WITNESS TESTIFIED:

QUE: Was that the Kennedy Land?

ANS: I understand the Kennedy claim is more than this Section that he deeded here. Kennedy was Representative of the Mariana-Dupont and \_\_\_\_\_; that includes all of it.

QUE: This cultivation you talk about - what particular part was that on?

ANS: Mariana-Dupont-----

QUE: On the river away from these forty acres?

ANS: Yes.

QUE: It was also separated mostly from these forties by Tallapoos?

ANS: -----

ON RE-RE DIRECT EXAMINATION WITNESS TESTIFIED:

QUE: But included in the deeds?

ANS: Yes.

MR. CHASON: With the permission of the Court, we would like to substitute copies for both his and my exhibits, if it would meet with the approval of the Court

THE COURT: It's all right with me.

MR. GEORGE EMMONS ROBINSON BEING INTRODUCED BY RESPONDENT,  
VIRGINIA ROBINSON, AFTER BEING FIRST DULY SWORN, TESTIFIED:

QUE: What is your name?

ANS: George Robinson

QUE: When did your father die?

ANS: 1940.

QUE: What was the circumstances of that survey -- this last survey on this SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, Township 1 N. Range 1 E.

ANS: It was purely a cutting line. I have no authority whatsoever to establish a line. My mother does not know----I had an understanding with my father before his death that I could cut anything off the land that I wanted to---this was purely a cutting line.

QUE: That was done at the request of Mr. Archie McMillan?

ANS: It was.

QUE: How long, to your knowledge, has your father and mother assessed and paid tax on these two forties?

ANS: As long as I have known anything about it, he has paid the tax on them.

QUE: You know that it has been regularly assessed and the tax paid by Mr. George A. Robinson during his life time and Mrs. Robinson has paid the tax since his death

THE COURT: I suggest that you get a statement from the Tax Assessor ---

MR. CHASON: I think it is agreed between the parties that both Mrs. Virginia L. Robinson, since the death of George A. Robinson, and George A. Robinson during his life time, after the date he acquired his patent on the one part and Percy A. Bryant, George R. Bryant and Douglas O. Bryant have all assessed and paid tax on the lands involved in this suit since they acquired title to the same. In other words, we have assessed it by our general description as in our deed, and they have assessed by specific description---

MR. SMITH: Since 1920 it has been assessed as SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 13, Township 1 N. Range 1 E.

MR. SMITH: I would agree that you have paid tax under the description in your deed----

ON CROSS EXAMINATION OF GEORGE EMMONS ROBINSON.

QUE: Mr. Robinson, you say that you had no authority from your mother to re-survey the lands-you negotiated this

QUE: She was the owner of the land and timber?

ANS: Yes, sir.

QUE: She directed you to sell it?

ANS: She told me I could if I saw fit.


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STATE OF ALABAMA

MONROE COUNTY.

I hereby certify that the foregoing pages 1 to 74 both inclusive, correctly sets forth a true and correct transcript of the testimony as taken by me in the case of Hayton-McMillan Company vs. Percy A. Bryant, et al., before Hon. F. W. Hare, Judge, in Bay Minette, Alabama, on April 28, 1945.

This 8th day of May, 1945.

  
\_\_\_\_\_  
Court Reporter



TWENTY-FIRST JUDICIAL CIRCUIT  
OF ALABAMA

F. W. HARE, JUDGE

A. H. ELLIOTT, CIRCUIT SOLICITOR

LOUISE J. DUSENBURY, COURT REPORTER

MONROEVILLE, ALABAMA

McMillan Veneer Company, a corp.,

VS.

Percy A. Bryant, et al.

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Te testimony April 18, 1945-

1 days attendance in Court	\$1.50
Original Copy of testimony filed in Court	18.50
Copy of testimony furnished J. B. Blackburn	9.25
Copy of testimony furnished Hybart & Chason	9.25
Copy of testimony furnished Mr. Smith	9.25
Total	<u>47.75</u>

LOUISE DUSENBURY

McMILLAN VENEER COMPANY, a Corp.,

VS:

PERCY A. BRYANT, ET AL.

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IN THE CIRCUIT COURT OF BALDWIN

COUNTY, ALABAMA.

APRIL 28, 1945.

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HEARING BEFORE JUDGE F. W. HARE,  
IN BAY MINETTE, ALABAMA, ON APRIL  
18, 1945.