

2707

WILLARD W. ALLEN,
Complainant,

vs.

ALSTON F. DE VAN,
Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO: _____

D E C R E E

This cause coming on to be heard and it appearing to the Court that at the August 18th, 1953, term hereof that the demurrer of the Respondent to the Bill of Complaint as last amended was sustained and the Complainant was given thirty (30) days in which to amend said Complaint further, and it further appearing to the Court that no amendment has been filed. And now come Chason & Stone, the Solicitors of Record for the Respondent and move the Court to dismiss this cause, on this the 20th day of October, 1953, in open Court, and the Court having considered the same is of the opinion that said motion should be granted, it is, therefore

ORDERED, ADJUDGED and DECREED by the Court that the above styled cause be, and the same hereby is, dismissed.

It is further ORDERED, ADJUDGED and DECREED by the Court that the Complainant be, and he hereby is, taxed with the costs of this proceeding, for which let execution issue.

Done this 20th day of October, 1953.



Hubert M. Hall, Judge
Circuit Court of Baldwin County,
Alabama, In Equity.

LAW OFFICES

RICKARBY & RICKARBY

ELLIOTT G. RICKARBY

FAIRHOPE, ALABAMA

E. G. RICKARBY, JR.

25 February 1952

Mrs. Alice J. Duck
Register
Bay Minette, Alabama

Re: Allen -vs- DeVan

Dear Mrs. Duck:

With this we are handing you amended Bill of Complaint in the above mentioned cause.

Please file same—a copy has been sent to Messrs. Chason & Stone.

Yours very truly,

RICKARBY & RICKARBY

By: 

EGRjr/fc
Enc: 1

WILLARD W. ALLEN,

Complainant,

vs.

ALSTON F. DE VAN,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO: _____

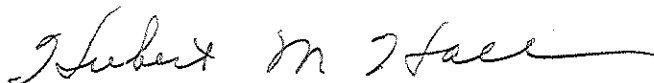
DECREE SUSTAINING DEMURRER
TO AMENDED BILL OF COMPLAINT

This cause coming on to be heard is submitted on the Bill of Complainant as last amended and the demurrer of the Respondent thereto and the Court having considered the same is of the opinion that the demurrer should be sustained, it is, therefore

ORDERED, ADJUDGED, and DECREED by the Court that the demurrer of the Respondent to the Bill of Complaint as last amended be, and the same hereby is, sustained.

It is further ORDERED, ADJUDGED and DECREED by the Court that the Complainant shall have, and he is hereby given, thirty (30) days in which to amend his Bill of Complaint.

Done this 18th day of August, 1953.


Hubert M. Hall, Judge
Circuit Court of Baldwin County,
Alabama, In Equity.

WILLARD W. ALLEN, individually,
and in behalf of Sallie E.
Dana and other heirs of the
late William P. Mahler, and
other residents of Point Clear,
Alabama,

Complainants

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY

NO. 2707

-VS-

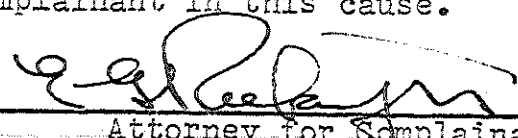
ALSTON F. DeVAN,

Respondent

MOTION FOR JUDGMENT NILDICET

Comes WILLARD W. ALLEN by his Attorney, and shows that
amended bill was filed on February 27, 1952 and same has not
been answered by either plea, answer or demurrer.

WHEREFORE, Complainant moves that the Court enter
a judgment nildicet for the Complainant in this cause.



Attorney for Complainant

WILLARD W. ALLEN,

Complainant

-vs-

ALSTON F. DeVAN,

Respondent

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

EQUITY No. 2707

AMENDED BILL OF COMPLAINT

Comes WILLARD W. ALLEN, and by this his Bill of Complaint presented against ALSTON F. DeVAN, respectfully shows:

FIRST: That Complainant is now and has been for many years a resident of the Point Clear community, Baldwin County, Alabama; that the Respondent is a resident of Mobile County, owning and occupying a summer home in Point Clear and claiming the land involved in this case.

SECOND: That one WILLIAM P. MAHLER died in the year 1884 and for many years before his death was the owner and in possession of Lot No. Six of the Caleb Dana Subdivision as per plat recorded in Deed Book "X", pages 703-4 of the Probate Records of Baldwin County, Alabama, and fronting on Mobile Bay, said lot running easterly from the Bay and across what is now known as Eastern Shore Boulevard and on a portion of which he lived up until the time of his death.

THIRD: That many years before his death, William P. Mahler allowed the public to use a lane twenty-five feet wide along the north line of said Lot Six from the Bay Shore bank to the public road and that said road was used by the public in getting access to Mobile Bay.

FOURTH: That the dedication of said lane to the public use was not only shown by its continued and unopposed use by the public as a passageway, from the now paved highway to the Bay, but was confirmed by the will of said W. P. Mahler under which Complainant's title to the land stands, which will was probated on the 26th day of August, 1884 and recorded in Probate Book "B" of wills on pages 10-11 of the Probate Records of Baldwin County, Alabama. Said will contained the following provisions, "I want the

land to be divided into four building lots from the beach back to the road. The first lot North with the house on it is to be EB's; the rest for Anna, Eva, and John, twenty-five feet left as a neutral piece for a road, if it is necessary back to the road. I want it to run back east the same distance as the lots are in front and divide that in four parts also which is for Robert Cook and his three little children."

FIFTH: That pursuant to the instructions of the will and decedent's openly expressed intention in his lifetime, said 25 foot road or passageway from the highway to the Bay continued open and used by the public uninterruptedly from long prior to the death of said William P. Mahler to within the past year and said public user had never been contested or interfered with by the heirs of said Mahler until less than ten years past.

SIXTH: That on or about the 24th of April, 1948, Respondent negotiated with and purchased from Mrs. Ellen Mahler Morton, a daughter of the late W. P. Mahler, a lot fronting on Mobile Bay and described as:

Beginning at the Northwest corner of Lot Six of the Dana tract running thence east to the paved highway; thence South 10 feet for a point of beginning; thence west 125 feet more or less to Mobile Bay; thence south along the Bay 75.2 feet more or less; thence east 325 feet more or less to the highway, thence north 75.2 feet to the point of beginning.

The description of this land includes 15 feet of the south side of the lane and up to a fence which one Dr. Ormand Annan had previously fenced in enclosing the north ten feet of said lane. Of the land so sold, Mrs. Morton had within less than ten years prior to that time, fenced in the south ten feet of the lane and included this in the deed, but had left a five foot passageway in the center which the public continued to use and which Complainants are reliably informed she had not intended to sell. Complainants are also reliably informed and believe that at the time of his purchase, Defendant had been informed both orally and in writing that Mrs. Morton, in seeking to convey a part of the lane, had no title thereto to convey.

SEVENTH: That Complainants, though aware that both Annan and DeVan had within the past ten years sought to take poss-

ession of ten feet on each side of said passageway to which the heirs of Mahler had no title nor any right to convey but having access to the Bay by the five foot passageway remaining open, raised no aggressive opposition and would not have done so had not Respondent, within the past year, taken down the wire fence which marked the north boundary of the lot he was then occupying, thereby including the five foot passageway into his holding and obstructing the use of the passageway hitherto undisputed by erecting a barrier on the west side of the Eastern Shore Highway across the five foot passageway thereby obstructing passage of his neighbors to Mobile Bay and depriving them and their children of their previous and very valuable right of access to tidewater and bathing and fishing privileges so long enjoyed by them and their parents and grandparents.

Complainant further shows that shortly after said passageway was stopped up, he and other residents cut the wires which Respondent had erected to debar them of the right of access to the bay enjoyed without dispute for the past seventy years or more. These wires, however, were promptly replaced by Defendant with boards and said passageway has since then been willfully obstructed by the action of Defendant in replacing said boards in violation of Complainant's and other residents' right of access through said lane to Mobile Bay.

EIGHTH: That the action of the Defendant in obstructing the passageway aforesaid materially interferes with egress and ingress by Complainant and other residents of Point Clear to the Eastern Shore of Mobile Bay, a public and navigable water of the State of Alabama and constitutes an injury, not only to Complainant, but to the general public, who are hereby prohibited from access to said Bay for the purpose of bathing, fishing, and navigation to all of which they, as citizens, and residents of the community, are legally entitled.

NINTH: That the twenty-five foot passageway opened by the said W. P. Mahler in his lifetime and continuously used by the public as a means of access from the highway through Point Clear to the shore of Mobile Bay, constituted a dedication by said Mahler and an

acceptance by the public and the closing of said passageway is an injury not only to Complainants but to the general public which Respondent has no legal or moral right to inflict.

THE PREMISES CONSIDERED: Complainant prays that Alston F. DeVan be made a party to this cause and by proper process required to plead, answer or demur to this bill within the time prescribed by law.

Complainants further pray that upon a hearing of this cause a decree be rendered forever enjoining Respondent from obstructing the South fifteen feet of the roadway above described, or in any manner interfering with the free and unrestricted use of said road by Complainant and the public generally and granting Complainant and the public such other, further, or different relief as to Equity may seem meet.

RICKARBY & RICKARBY

By:


Solicitors for Complainant

LAW OFFICES

RICKARBY & RICKARBY

ELLIOTT G. RICKARBY

FAIRHOPE, ALABAMA

E. G. RICKARBY, JR.

4 April 1952

Mrs. Alice J. Duck
Register
Bay Minette, Ala.


Dear Mrs. Duck:

Re: W. W. Allen
Vs: A. F. DeVan

Enclosed find motion for judgement ~~n~~idicet.

Please file and am obliged.

Yours very truly,


E. G. Rickarby, Jr.

EGRjr/fc
Enc.

WILLARD W. ALLEN, ET AL.,
Complainants,

vs.

ALSTON F. DE VAN,
Respondent.

§ IN THE CIRCUIT COURT OF
§ BALDWIN COUNTY, ALABAMA
§ IN EQUITY
§ NO. 2707
§

DECREE SUSTAINING DEMURRER TO BILL OF
COMPLAINT

This cause coming on to be heard is submitted upon the Bill of Complaint and the demurrer thereto filed by the Respondent and the Court having considered the same and having heard the argument of the Solicitors, is of the opinion that the demurrer should be sustained. It is, therefore,

ORDERED, ADJUDGED AND DECREED that the demurrer heretofore filed to the Bill of Complaint in this cause be, and the same is hereby sustained.

It is further ORDERED, ADJUDGED AND DECREED that the Complainants shall have twenty (20) days from the date hereof, in which to file an amended Bill of Complaint.

Done this 5th day of February, 1952.

Julian P. Madhebury, Jr.
Circuit Judge.

WILLARD W. ALLEN, ET AL.,
Complainants,
vs.
ALSTON F. DE VAN,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.

Comes now the Respondent in the above styled cause and objects to Interrogatories numbered "One" through "Twelve", inclusive, and to each of said Interrogatories separately and severally, and assigns the following separate and several grounds in support of his objections:

1. Interrogatories numbered "One", "Two", "Ten" and "Twelve" call for conclusions of law.
2. That said Interrogatories and each of them are incompetent, irrelevant and immaterial.
3. That said Interrogatories, and each of them, seek to elicit information which is incompetent, irrelevant and immaterial.
4. That said Interrogatories and each of them, are impertinent.
5. That said Interrogatories do not call for legal and competent evidence.
6. That said Interrogatories are a mere fishing expedition.
7. That the said Interrogatories are not pertinent to the issues or matters in dispute between the parties.
8. That Interrogatories numbered "Four" and "Five" seek to elicit information which is confidential in nature in that it would be a privilege communication between the Respondent and his Lawyer.
9. That Interrogatory numbered "Six" calls for hearsay testimony.

Without waiving the foregoing objections, comes now the Respondent, and for answer to the Interrogatories heretofore propounded to him by the Complainants says as follows:

1. In answer to Interrogatory numbered "One", the Respondent sayeth no.
2. In answer to Interrogatory numbered "Two", the Respondent sayeth no.

3. In answer to Interrogatory numbered "Three", the Respondent sayeth. I traded with Mrs. Morton. She insisted that she owned the entire 75 feet which she sold me and any use by anyone of any part of the 75 feet sold to me was permissive.

4. In answer to Interrogatory numbered "Four", the Respondent sayeth no.

5. In answer to Interrogatory numbered "Five", the Respondent sayeth no.

6. In answer to Interrogatory numbered "Six", the Respondent sayeth no.

7. In answer to Interrogatory numbered "Seven", the Respondent sayeth no. I employed Mr. Claude Arnold, Surveyor, as a surveyor to survey my property and not to "advise" or to give legal advice.

8. In answer to Interrogatory numbered "Eight", the Respondent sayeth no. On or about August, 1950, I moved a fence on my property to the South side thereof on the line between myself and Mr. A. A. Annan, Sr.

9. In answer to Interrogatory numbered "Nine", the Respondent sayeth no.

10. In answer to Interrogatory numbered "Ten", the Respondent sayeth no.


11. In answer to Interrogatory numbered "Eleven", the Respondent sayeth no.

12. In answer to Interrogatory numbered "Twelve", the Respondent sayeth no.


Alston F. De Van

STATE OF ALABAMA

MOBILE COUNTY

Before me, , a Notary Public, in and for said County in said State, personally appeared Alston F. De Van, who is known to me and who, after being by me first duly and legally sworn, did depose and say under oath as follows:

That his name is Alston F. De Van and that he has read the foregoing Interrogatories and the answers thereto and that the said answers are true and correct.

Alston F. De Van

Sworn to and subscribed
before me this 1st
day of November,
1951.

George F. Moore
Notary Public, Mobile County,
Alabama.

2707

Willard W. Allen et al,

Compliments

RECORDED

Alston F. DeVon, Respondent

ANSWERS TO INTERROGA-
TORIES AND OBJECTIONS
THERE TO

FILED

NOV 8 1951

ALICE J. DUCK, Register

2707

Willard W. Allen et al,

Complainants

RECORDED

Alston T. DeVen,

Respondent

ANSWERS TO INTERROGA-
TORIES AND OBJECTIONS
THERETO

FILED

NOV 8 1951

ALICE J. DUCK, Register

WILLARD W. ALLEN, individually,
and in behalf of Sallie E. Dana
and other heirs of the late
William P. Mahler, and other
residents of Point, Clear,
Alabama,

Complainant,

vs.

ALSTON F. DE VAN,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY.

NO. 2707.

Comes the Respondent, Alston F. De Van, by his Solicitors, and demurs to the Bill of Complaint heretofore filed against him in this cause and to each and every aspect thereof, separately and severally and assigns the following separate and several grounds of demurrer:

1. There is no equity in the bill.
2. There is a misjoinder of parties complainant.
3. There is a misjoinder of parties complainant in that it affirmatively appears from said bill of complaint that Willard W. Allen as a resident of Point Clear, Alabama, is not entitled to the relief prayed for in said Bill of Complaint.
4. There is a misjoinder of parties complainant in that it affirmatively appears from the Bill of Complaint that Willard W. Allen, individeally, is not entitled to the relief prayed for.
5. There is a misjoinder of parties complainant in that it affirmatively appears from the Bill of Complaint that Willard W. Allen, who sues in behalf of Sallie E. Dana is not entitled to the relief prayed for in the Bill of Complaint.
6. There is a misjoinder of parties complainant in that it affirmatively appears from the Bill of Complaint that Willard W. Allen, who sues in behalf of other heirs of the late William P. Mahler, is not entitled to the relief prayed for in the Bill of Complaint.
7. There is a misjoinder of parties complainant in that it affirmatively appears from the Bill of Complaint that Willard W. Allen, who sues in behalf of "other residents of Point Clear, Alabama", is not entitled to the relief prayed for in the Bill of Complaint.

8. The allegations of the Bill of Complaint are vague, indefinite and uncertain.

9. The Bill of Complaint is vague, indefinite and uncertain in that the complainant fails or refuses to describe by metes and bounds, the lane sought to be established.

10. The Bill of Complaint fails to allege sufficient facts to support the relief prayed for.

11. The allegations of the Bill of Complaint that "said William P. Mahler opened and dedicated to public use, a lane 25 feet wide along the North line of said Lot 6.....for the use of his relatives and neighbors in getting access of Mobile Bay", is but a conclusion of the pleader.

12. It affirmatively appears from the Bill of Complaint that there was no dedication of a lane or road across the land of the Respondent for use by the public.

13. For aught that appears from the Bill of Complaint Willard W. Allen has never crossed the land of the Respondent described therein.

14. For aught that appears from the Bill of Complaint Sallie E. Dana is not an heir of William P. Mahler.

15. For aught that appears from the Bill of Complaint all of the heirs of William P. Mahler have conveyed all of their right, title and interest in and to the land described in said Bill of Complaint to the Respondent's predecessors in title.

16. It affirmatively appears from paragraph "Third" that there was no dedication of a roadway or lane for the use of the public across the land of the Respondent.

17. For aught that appears from the Bill of Complaint any use of the land described in said Bill of Complaint was permissive.

18. It affirmatively appears from the Bill of Complaint that there was no dedication by William P. Mahler to the public of any land at Point Clear, Alabama, for use by the public as a lane or road across lands owned by him.

19. The allegations of paragraph "Fifth" of the Bill of Complaint are but a conclusion of the pleader.

20. For aught that appears from the Bill of Complaint the heirs of William P. Mahler had conveyed all of their right, title and interest in and to the property described therein, more than twenty years before the filing of the said Bill of Complaint.

21. The allegations of paragraph "Sixth" of the Bill of Complaint are but a conclusion of the pleader.

22. The allegations of paragraph "Seventh" of the Bill of Complaint are but a conclusion of the pleader.

23. The allegations of the Bill of Complaint fail to allege any right in the complainant Willard W. Allen, individually or in the several capacities in which he sues, to cross the land of the Respondent described in said Bill of Complaint.

24. That the allegations of paragraph "Eighth" of the Bill of Complaint are but a conclusion of the pleader.

25. The Bill of Complaint fails to allege any facts showing a right in the general public to cross the land of the Respondent for the purpose of bathing, fishing and navigation.

26. The allegation that the complainant as a citizen and resident of Point Clear, Alabama, is legally entitled to cross the land of the Respondent for the purpose of reaching Mobile Bay, is but a conclusion of the pleader and there are no facts alleged to support such conclusion.

27. The allegations of paragraph "Ninth" of the Bill of Complaint are but a conclusion of the pleader.

CHASON & STONE

By: 

Solicitors for Respondent.

RECORDED

WILLARD W. ALLEN, etc.,

Complainant

vs.

ALSTON F. DEVAN

Respondent

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY #2707

DEMURRER TO BILL OF COM*
PLAINT

FILED
SEP 26 1951

ALICE J. DUCK, Register

ELLIOTT G. RICKARBY

LAW OFFICES

RICKARBY & RICKARBY
FAIRHOPE, ALABAMA

E. G. RICKARBY, JR.

25 August 1951

Mrs. Alice J. Duck
Register
Bay Minette, Alabama

Dear Mrs. Duck:

ALLEN VS DeVAN: With this find Bill of Complaint
and Interrogatories with copies.

Defendant lives at Point Clear almost to Bailey's
Creek and has an office in Mobile but is home after
five o'clock. 4:30 a

Sincerely,

Elliott G. Rickarby
for
RICKARBY & RICKARBY

EGR:fc
3011

NO 2707

Willard W. Allen

vs.

Alston F. DeVan

Injunction

Filed 8-27-51

Hickarbyz.

WILLARD W. ALLEN, et al,

L A W

Complainant

CIRCUIT COURT OF

vs

BALDWIN COUNTY, ALABAMA

ALSTON F. DeVAN,

Defendant

Comes ELLIOTT G. RICKARBY, who, being sworn, says that he is for Complainants of counsel/in the above styled cause and that the answers to the Interrogatories hereinafter set out, if true, will be material testimony for Complainants in this cause.

Elliott G. Rickarby

Subscribed and sworn to before me on this the 24th day of August, 1951.

E. Crumley

Notary Public, Baldwin County, Alabama.

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

You are hereby commanded to notify ALSTON F. DeVAN, the Defendant in the above styled cause that Interrogatories to him have this day been filed by the Complainants in the office of the Register of said Court, a copy of which is hereto attached.

You are required to execute this notice and due return thereof made according to law.

WITNESS my hand this the day of August, 1951.

Register

INTERROGATORIES PROPOUNDED BY COMPLAINANTS
TO DEFENDANT

ONE: When you purchased from Mrs. Ellen Mahler Morton the seventy-five foot frontage lot now occupied by you at Point Clear, did you not know that the twenty-five foot lane on the north side that was opened by the late W. P. Mahler had been used as a public road for more than fifty years prior to that date?

TWO: Did you not know when you bought that the north ten feet inside of Mrs. Morton's fence was a part of this lane as well as the five-foot walkway between her lot and that of Doctor Annan and that Mrs. Morton had no title to this fifteen feet to convey?

THREE: Was not the existence of this lane discussed with you by Mrs. Morton's son or whoever handled the trade for her?

FOUR: Did not whoever examined your title put ^{you} on notice that Mrs. Morton, who sold to you, had no title to this fifteen feet even though the south ten feet of it had been fenced in by her?

FIVE: Did not your lawyer tell you of this in giving you his opinion on the title?

SIX: Did you not know that Mr. Arnold, the surveyor, had written Mrs. Morton's lawyer about the existence of this public roadway in a letter dated April 24, 1948?

SEVEN: Did not Mr. Arnold, the surveyor advise that the fence on the south side of the then passageway of five feet in this lane had been built, in his opinion, within the past five or seven years and that there was a clearly defined roadway twenty-five feet in width leading from the highway to the Bay to the north of the property you bought from Mrs. Morton?

EIGHT: On or about August 1950 did you not take down the north fence of the Morton lot thereby removing the line of demarcation between the five foot passageway left and your property?

NINE: Was not the value of the Bay frontage at this time that you sought to include in your holding between seventy-five and one hundred dollars per foot and was not this your motive for removing this lane and not your statement that people passing through to the bay disturbed you by noise and loud talking?

TEN: Since you purchased from Mrs. Morton have you not sought to sell your holding in the year 1950 and have a solvent and desirable purchaser for the land who refused to buy after he found out that you were seeking to sell him ten or fifteen feet of this south line of this old lane that you did not own?

ELEVEN: At the time you bought from Mrs. Morton did she not tell you or write you to this effect: "As to the five foot lane now open, it was not to be sbld or be closed. If it was closed my friends would have no entry to the beach and the Bay."?

TWELVE: When you bought from Mrs. Morton did you not know that the five foot passageway was there and used by the public without interference by you till you stopp'd it up?

Reisley & Reisley

Solicitors for Complainants

NO 2707

WILLARD W. ALLEN,
et al
Complainant
vs
ALSTON F. DeVAN,
Defendant

INTERROGATORIES

FILED
AUG 27 1951
ALICE J. DUCK, Register

Executed 9-3-51
By serving a copy
of the Within
Interrogatories on
Alston F. DeVan
Taylor Wilkins Sheriff
By H. F. Hall D.S.

SUMMONS AND COMPLAINT

Moore Printing Co.

THE STATE OF ALABAMA,
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY
IN EQUITY

No. _____

_____ TERM, 19____

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon _____

ALISTON F. DEVAN

to appear and plead, answer or demur, within thirty days from the service hereof, to the ^{bill of} complaint filed in
the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against _____

ALISTON F. DEVAN

_____, Defendant_____

by _____

WILLARD W. ALLEN, et al,

Complainants
_____, Plaintiff_____

Witness my hand this _____

27th

day of

August

19-51..

Alfred. L. Lusk

Register
Clerk

TO THE

HONORABLE TELFAIR J. MASHBURN, JR.,
JUDGE OF THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA,
In Equity

Comes WILLARD W. ALLEN, who sues in his own behalf and in behalf of SALLIE E. DANA and other heirs of the late WILLIAM P. MAHLER and of other residents of Point Clear, Alabama and by this bill presented against ALSTON F. DeVAN, respectfully shows:

FIRST: That Complainants are now and have been for many years residents of the Point Clear Community in Baldwin County, that Defendant is a resident of Mobile County owning and occupying a summer home at Point Clear and claiming the land involved in this cause.

SECOND: That one WILLIAM P. MAHLER, who died in the year 1884, for many years before his death was the owner and in possession of Lot No. Six of the Gled Dana Subdivision as per plat recorded in Deed Book X, pages 703-4 of the Probate records of Baldwin County, Alabama and fronting on Mobile Bay, said lot running easterly from said Bay and across what is now known as Eastern Shore Boulevard and ^{on} a portion of which he lived up to the time of his death.

THIRD: That many years before his death, said W. P. Mahler opened and dedicated to public use a lane twenty-five feet wide along the north line of said lot Six from the Bay shore bank to the public road, now Eastern Shore Boulevard for the use of his relatives and neighbors in getting access to Mobile Bay.

FOURTH: That the dedication of said lane to public use was not only shown by its continued and unopposed use by the public as a passageway from the now paved highway to the Bay, but was confirmed by the will of said Mahler, admitted to Probate on August 26, 1884 and recorded in Probate Book B of wills on Pages 10-11. Said will, among other provisions, contained the following: "I want the land to be divided into four building lots from the beach back to the road. The first lot north with the house on it is to be Ebb's, the rest for Anna, Eva, and John, 25 feet left as a neutral piece for a road, if it is necessary, back of the road I want it run back east the same distance as the lots are in front and divide that in four parts also, which is for Robert Cook and the 3 little children."

FIFTH: That pursuant to the instructions of the will and decedent's openly expressed intention in his lifetime, said 25 foot road or passageway from the highway to the Bay continued open and used by the public uninterruptedly from long prior to the death of said William P. Mahler to within the past year and said public user had never been contested or interfered with by the heirs of said Mahler until less than ten years past.

SIXTH: That on or about the 24th of April, 1948, Defendant negotiated with and purchased from Mrs. Ellen Mahler Morton, a daughter of the late W. P. Mahler, a lot fronting on Mobile Bay and described as:

Beginning at the Northwest corner of Lot Six of the Dana tract running thence east to the paved highway; thence south 10 feet for a point of beginning; thence west 125 feet more or less to Mobile Bay; thence south along the Bay 75.2 feet more or less; thence east 325 feet more or less to the highway; thence north 75.2 feet to the point of beginning.

The description of this land includes 15 feet of the south side of the lane and up to a fence which one Dr. Ormand Annan had previously fenced in enclosing the north ten feet of said lane. Of the land so sold, Mrs. Morton had within less than ten years prior to that time, fenced in the south 10 feet of the lane and included this in the deed, but had left a five foot passageway in the center which the public continued to use and which Complainants are reliably informed she had not intended to sell. Complainants are also reliably informed and believe that at the time of his purchase, Defendant had been informed both orally and in writing that Mrs. Morton, in seeking to convey a part of the lane, had no title thereto to convey.

SEVENTH: That Complainants, though aware that both Annan and DeVan had within the past ten years sought to take possession of 10 feet on each side of said passageway to which the heirs of Mahler had no title nor any right to convey but having access to the Bay by the five foot passageway remaining open, raised no aggressive opposition and would not have done so had not Defendant, within the past year, taken down the wire fence which marked the north boundary of the lot he was then occupying, thereby including the five foot passageway into his holding and obstructing the use of the passageway hitherto undisputed by erecting a barrier on the west side of the Eastern Shore Highway across the five foot passageway thereby obstructing passage of his neighbors to Mobile Bay and depriving them and their children of their previous and very valuable right

of access to tidewater and bathing and fishing privileges so long enjoyed by them and their parents and grandparents.

Complainant further shows that shortly after said passageway was stopped up, he and other residents cut the wires which Defendant had erected to debar them of the right of access to the bay enjoyed without dispute for the past seventy years or more. These wires, however, were promptly replaced by Defendant with boards and said passageway has since then been wilfully obstructed by the action of Defendant in replacing said boards in violation of Complainant's and other resident's right of access through said lane to Mobile Bay.

EIGHTH: That the action of the Defendant in obstructing the passageway aforesaid materially interferes with egress and ingress by Complainants and other residents of Point Clear to the Eastern Shore of Mobile Bay, a public and navigable water of the State of Alabama and constitutes an injury, not only to Complainants, but to the general public, who are thereby prohibited from access to said Bay for the purpose of bathing, fishing, and navigation to all of which they, as citizens, and residents of the community, are legally entitled.

NINTH: That the twenty-five foot passageway opened by the said W. P. Mahler in his lifetime and continuously used by the public as a means of access from the highway through Point Clear to the shore of Mobile Bay, constituted a dedication by said Mahler and an acceptance by the public and the closing of said passageway is an injury not only to Complainants but to the general public which Defendant has no legal or moral right or inflict.

THE PREMISES CONSIDERED: Complainants pray that Alston F. DeVan be made a party to this cause and by proper process required to plead, answer or demur to this bill within the time prescribed by law.

Complainants further pray that upon the hearing of this cause a decree be rendered forever enjoining Defendant from obstructing the south fifteen feet of the roadway above described or in any manner interfering with the free and unrestricted use of said road by Complainants, residents and property holders residing on the Eastern Shore Boulevard and the public generally and granting Complainants and the public such other, further or different relief as to Equity may seem meet.

R. S. Early & R. S. Early
Solicitors for Complainants