

RUTH W. COIL AND ROBERT
F. DIEHL,

Complainants,

VS.

C. G. GODARD,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. No. 2275.

DECREE

This cause coming on to be heard is submitted on respondent's Demurrer to complainant's Bill of Complaint, and the same being considered and understood by the Court, the Court is of the opinion that said Demurrer should be overruled. It is therefore

ORDERED, ADJUDGED AND DECREED that respondent's Demurrer to complainant's Bill of Complaint be and the same is hereby overruled.

Done this 6th day of February, 1950.

Jelfair J. Mashburn, Jr.
Judge

RUTH W. COIL, ROBERT F. DIEHL,
and JIM KILBANE,

Complainants,

-VS-

C. G. GODARD,

Respondent.

This cause coming on to be heard is submitted upon the original bill of complaint filed in this Court on April 22, 1949, answer of the Respondent filed February 6, 1950, petition for intervention on the part of Jim Kilbane, filed October 20, 1953, amended answer of the Respondent filed May 17, 1954, agreement and stipulation made in open Court by the Solicitors of the respective parties as to testimony, submission and agreement that the Respondent was entitled to relief, and the testimony of Joe Pose; and the Court, after considering all of the pleadings and testimony ascertains, determines and finds:

That the Complainants and Respondent are co-terminous owners of tracts of land, and that the boundary line between the said adjacent tracts of land is disputed; that the true and correct boundary line between the properties of said parties, is the southern boundary line of the lands owned by the Respondent, C. G. Godard.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the true and correct boundary line between the properties of the Complainants and the Respondent, is the southern line of the following described tract of land, owned by the Respondent, to-wit:

From the Southeast corner of Fractional Section 7, Township 7 South of Range 2 East, in Baldwin County, Alabama, run west 792 feet, thence North 660 feet, thence West 1848 feet, thence South 441.5 feet, thence West 291 feet to a point on the West margin of the highway at a point marked by a concrete monument for a point of beginning. Thence Run West 315 feet more or less to a concrete monument on the East margin of Mobile Bay; thence South 15 degrees East 225 feet down the East margin of Mobile Bay to a point in the center of the road ditch marked by a concrete monument, thence North 89 degrees East 286

feet up the road ditch to a point on the west margin of the highway, marked by a concrete monument, thence north 5 degrees West 216.5 feet along the west margin of said highway to the point of beginning. Said property lying and being in sub-division 10 of Section 7, and Sub-division 2 of Section 18, all in Township 7 South, Range 2 East, Baldwin County, Alabama.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Register of this Court file a certified copy of this decree for record in the office of the Probate Judge of Baldwin County, Alabama, and the cost thereof to be taxed as the other cost in this cause.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Complainants be and they are hereby taxed with the cost herein accrued, for which execution may issue.

Dated at Bay Minette, Baldwin County, Alabama, this 21st day of April, 1955.

J. Hubert M. Hance

Judge of the 28th Judicial Circuit
of Alabama.

center of ditch
Moberly Bay

Highway

315
515°E
225
N 89°E
291.5
214.5

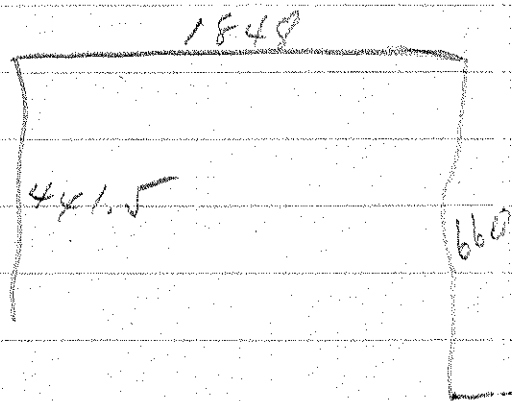
441.5

1848

660

792

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71



792

see Col from
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RUTH W. COIL, AND

ROBERT F. DIEHL,

Complainants,

Vs.

C. G. GODARD,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

NO. 2275M O T I O N.

Comes now, JIM KILBANE, by his Solicitor, TELFAIR J. MASHBURN, JR., and shows unto this Honorable Court that he is now a party in interest in the subject matter of the above cause, having purchased the land, or a part thereof, involved in said suit from the Complainants above shown, on, to-wit: the 27th day of June, 1952.

WHEREFORE, THE PREMISES CONSIDERED, Petitioner prays permission of this Honorable Court to join himself as a party Complainant along with the said RUTH W. COIL AND ROBERT F. DIEHL.

Telfair J. Mashburn, Jr.
Solicitor for Petitioner.

RUTH W. COIL, AND

ROBERT F. DIEHL,

Complainants,

Vs.

C. G. GODARD,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

NO. 2275

PETITION FOR INTERVENER.

FILED

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ABBE L. DECK, Register

Ruth W. Coil
Robert F. Diehl
Jim Kilbom

STATE OF ALABAMA }
BALDWIN COUNTY }

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon C. G. Godard to appear within thirty days from the service of this writ in the Circuit Court to be held for said County, Equity Side, then and there to answer the Bill of Complaint filed against him by Ruth W. Coil and Robert F. Diehl.

Dated this 22nd day of April, 1949.

Alvin J. Busch
Register.

TO THE HONORABLE TELFAIR J. MASHBURN, JR., JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Your Orators, Ruth W. Coil and Robert F. Diehl, present this Bill of Complaint against C. G. Godard and, thereupon, your Orators complain and show unto the Court and your Honor as follows:

1. Your Orators are each over twenty-one years of age and reside in the City of Mobile, Mobile County, Alabama. The Respondent is over twenty-one years of age and resides at Fairhope, Baldwin County, Alabama.

2. Your Orators, the Complainants, own the following described property situated in Baldwin County, Alabama, to-wit:

Beginning at a point on the West line of Eastern Shore Boulevard, which point is 112 feet Southwardly from the intersection of said West line of said Eastern Shore Boulevard and the North line of Section 18, Township 7 South, Range 2 East, thence running Westwardly and parallel with the North line of said Section 18, 275 feet, more or less, to the East margin of Mobile Bay, thence running Northwardly along the East margin of Mobile Bay, with its meanderings, to a point where the said East margin of Mobile Bay intersects the North line of said Section 18, thence running Eastwardly along said North line of said Section 18, 290 feet, more or less, to the West line of Eastern Shore Boulevard, thence Southwardly along said West line of Eastern Shore Boulevard, 112 feet to the place of beginning; said property having a frontage of 112 feet on Mobile Bay, with equal width in rear as in front, and being a portion of the property conveyed to Melissa C. Parham by F. L. Giblin by deed dated May 16, 1944 and recorded in the office of the Judge of Probate of Baldwin County, Alabama, and being in the North Half of Lot 2 of said Section 18.

3. The Respondent, C. G. Godard, owns the following described property situated in Baldwin County, Alabama, to-wit:

From the Southeast Corner of Fractional Section 7, Township 7 South, Range 2 East, run West 792 feet, North 660 feet, West 1848 feet, South 441.5 feet, West 291.5 feet to a point on West margin of the Highway for a point of beginning; thence run West 315 feet, more or less, to the East margin of Mobile Bay; thence South 15 degrees East 225 feet down the East margin of the Bay to a point in the center of the road ditch; thence North 89 degrees East 286 feet up the road ditch to the West margin of the Highway; thence North 5 degrees West 216.5 feet to the point of beginning. Lot lies in subdivision 10, Section 7 and subdivision 2, Section 18, Township 7 South, Range 2 East, with all the riparian rights herewith.

4. The above tract of land, which is owned by the Complainants, and the above described tract of land, which is owned by the Respondent, adjoin. The Complainants and the Respondent are

co-terminous owners of the two said tracts of land and the boundary line between the two said tracts is disputed.


PRAYER FOR PROCESS

Complainants pray that the usual process of this Honorable Court forthwith issue to the Respondent, requiring him to appear and plead, answer or demur to the Bill of Complaint filed against him in this cause within the time and under the pains and penalties prescribed by law and the rules of this Court.

PRAYER FOR RELIEF

The Complainants pray for the following separate and several relief:

1. That the boundary line between the tract of land owned by the Complainants and the tract of land owned by the Respondent be established.
2. That the order or decree of this Court locate and define the boundary line between the property of the Complainants and that of the Respondent and direct a competent surveyor to establish permanent stone or iron land markers in accordance with the decree of this Court from which future surveys of the land embraced in the said judgment shall be made in the manner provided by Title 47, Section 4 of the 1940 Code of Alabama.
3. Complainants further pray for such other, further and general relief as they may be equitably entitled to, the premises considered.


Solicitor for Complainants.

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ALICE I. DICK, Register

RUTH W. COIL & ROBERT P. DIEHL,

COMPLAINANTS,

VS.

DOCTOR G. C. GODARD,

RESPONDENT.

TESTIMONY OF CAPTAIN JOE POSE, TAKEN
BEFORE HON. HUBERT M. HALL, JUDGE OF THE 28TH JUDICIAL
CIRCUIT OF ALABAMA.

ON JULY 7, 1954.

A P P E A R A N C E:

FOR THE COMPLAINANT: HON. TELFAIR J. MASHBURN, JR.,
Bay Minette, Alabama.

FOR THE RESPONDENT: MESSRS. CHASON & STONE,
Bay Minette, Alabama.

LOUISE DUSENBURY, REPORTER

CASE NO. 2275.

MR. CHASON: We would like for the record to show that it is agreed between the Complainants and the Respondent in this cause, acting through their respective Solicitors of Record, that the testimony of Joe Pose may be taken today without the necessity of any of the required notices for the purpose of perpetuating testimony, and that all of the requirements and technicalities for the purpose of perpetuating such testimony is waived by the Complainants.

It is further agreed that when the testimony is taken for the Complainants and the other testimony for the Respondent in this cause that if Captain Joe Pose is able to attend Court that he may be recalled at that time, either for further direct testimony or for cross examination by the Complainants, but if he is unable to be in Court at that time, the fact that he is not here shall in no wise prejudice the Respondent because of the testimony taken today.

It is further agreed if Captain Joe Pose can not be present in Court when the other testimony is taken, but his testimony may be taken by depositions, then it is agreed that both parties may be allowed to take additional testimony by depositions.

There having been no official order for the taking of testimony on this day, it is agreed in open Court by the parties that this testimony may be taken today without any official setting of the case, and any notices that might be required are hereby waived by both parties.

CAPTAIN JOE POSE, A WITNESS FOR THE RESPONDENT, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

Examination by Mr. Chason.

Q. What is your name?

A. Joe Pose.

Q. Where do you live?

A. I live down in Fairhope.

Q. How long have you lived in Baldwin County, Alabama?

A. I was born and raised within four miles of where I am now living.

Q. How old are you, Captain?

A. 72.

Q. So you were born in what year?

A. 1882.

Q. What was your father's name?

A. They called him Walkin, but Joachim was his name.

Q. Was that Walkin spelled at times W A R K E A N and at

other times W A L K A N E?

A. Yes, sir.

Q. Was it spelled both ways at different times?

a. Yes, sir.

Q. Now are you familiar with a tract of land located in Sub-division 10 of Section 7, Township 7 South, Range 2 East in Baldwin County, Alabama, that is now owned by C. G. Goddard - - Doctor C. G. Godard, and involved in this suit?

A. Yes, sir.

Q. Are you also familiar with a tract of land located in Lot 2 of Section 18, Township 7 South, Range 2 East, which is involved in this suit, and which is now claimed by a Mr. Jim Kilbane?

A. Yes, sir.

Q. How long have you known those two tracts of land?

A. Well I have known them since I was old enough to know anything; when I was a little boy my father bought this tract from Mr. Darling.

Q. Your father bought the land now owned by Doctor Godard from Thomas Darling?

A. Yes, sir.

Q. Who was the owner of the land south of the ditch?

A. Thomas B. Darling.

Q. Thomas B. Darling had a house on the land claimed by the Complainants and he sold the land to your father which is now owned by Doctor Godard?

A. Yes, sir

Q. At that time was there a ditch on the line near this property?

A. Yes, sir.

Q. What was that ditch known as?

A. As the dividing line. There was an iron stob by the ditch and another iron stob up at the water line.

Q. You say there was an iron stake in the ditch near the water line?

A. Yes, sir.

Q. What waters are those?

A. That is Mobile Bay.

Q. East of that, out near where the present highway is, was there another stake?

A. Yes, sir.

Q. That was an iron stake?

A. Yes, sir.

Q. Did your father show you those two stakes?

A. Yes, sir.

Q. About what year was it that your father showed you those stakes?

A. Well it was sometime - I guess I was about eight or nine years old.

Q. And you were born in 1882?

A. Yes, sir.

Q. That would have been in 1890 or 1891?

A. Yes, sir.

Q. Did your father own the land on the north?

- A. Yes, sir, and he said this is the line between my property and Mr. Darling's property.
- Q. Did he tell you anything about an agreed line?
- A. No, sir - - He mentioned that this was the line. He said:
- "This is the line between my property and Mr. Darling's land"
- Q. Did he state anything to you about having discussed this line with Thomas B. Darling and it being an agreed line?
- A. I didn't go into that.
- Q. He told you that that was the line?
- A. Yes sir.
- Q. Did he tell you how far north Thomas B. Darling claimed?
- A. I presume it was to the ditch; the ditch was the north line of the Darling tract.
- Q. Your father told you that the ditch was the north line of Thomas B. Darlings land?
- A. Yes, sir, and the south line of his land.
- Q. Your father sold that land a few years later?
- A. Yes, sir, back to Mr. Darling.
- Q. He sold it back to Mr. Darling?
- A. Yes, sir.
- Q. Was this property that was owned by your father, and which is now owned by Doctor Godard, was it later sold to Mr. Walthall?
- A. Yes, sir.
- Q. Do you remember about the year that Mr. Walthall bought that?
- A. I don't remember the year, but I remember people talking about Walthall buying it.

Q. Was there a fence erected there?

A. Yes, sir.

Q. Can you give the Court your best judgment about the year the fence was put there?

A. Well I went picnicing and fishing - fish frying - in there and I had to go through the fence to get on the land.

Q. Was that more than - - how many years ago was that?

A. I would say it was 25 years ago.

Q. 25 years ago?

A. Yes, sir, I would say so.

Q. You would say that that fence was there at least as far back as '29?

A. 1929 or '30.

Q. Now Captain Joe, how long did that fence remain there in that ditch

A. Well I was around there every summer three or four times on fish fries. There was a nice spring of water on the property and they would pick that out as the place to go and we would drive down the road and go through the fence - it was there at least 20 years. The wire rusted out.

Q. How did the fence run in regard to the ditch--on the north or south side, or in the ditch?

A. On the north side, right in the ditch.

Q. Is that ditch still there?

A. Yes, sir.

Q. Visible to anybody?

A. Yes, sir, it is visible; it has filled up, but you can walk

down it.

Q. Now have you continued to pass by this land, and are you still familiar with it?

A. Yes, sir.

Q. Are there any evidences in that ditch at the present time of an old fence?

A. Well there may be one or two of the old post left.

Q. Is there another fence erected along or near the ditch?

A. I don't think so.

Q. You don't know whether Doctor Godard has a fence there?

A. I have not been there recently.

Q. Captain, did you act for many years as a real estate agent, selling lands?

A. Yes, sir.

Q. Did you ever act as a real estate agent in selling the land now claimed by the ~~Rex~~ Complainant's down in Section 18? - - The lands just south of that ditch?

A. Yes, sir.

Q. Do you remember the first parties in the transaction that bought it while you were acting as real estate agent for it?

A. Yes. I sold it to Doctor Martin's wife; I don't remember her name.

Q. Louise C. Martin?

A. Yes, sir. I sold it to Mrs. Martin and maybe a year or two later I sold it to James Coil and his wife.

Q/ Were you involved in the deed from Mr. Giblin to Melissa C. Parham?

- A. No, I was not involved in that.
- Q. In the deed from Mr. Giblin to Louise C. Martin - that was dated or made in 1947?
- A. Yes, sir.
- Q. At the time Mrs. Martin bought it was there any mention made about the land north of the ditch?
- A. At the time I made the sale to Mr. and Mrs. Martin - the deed was in her name - I went and showed them the line. I said: "This is the line here". "This ditch is the line. We will give you title insurance to there; there is some dispute about the title over here, but we can't give you a warranty deed to that".
- Q. Did Mrs. Martin and Doctor Martin, as you call him, buy that land knowing that the true line was supposed to run down the ditch?
- A. Yes, sir.
- Q. Now you say you were also involved as a real estate agent when the Martins sold this land to Mr. Diehl and Ruth W. Coil?
- A. Yes, sir.
- Q. Was that deed made about July 10, 1948?
- A. Yes, sir.
- Q. Did you show the true north line of the land which they purchased to them?
- A. Yes, sir.
- Q. Were they attempting to purchase the land that you referred to as being in Lot 2, Section 18, Township 7 South, Range 2 East, and the land where the house of Thomas B. Darling was located?

located?

A. Yes, sir.

Q. That is what they were buying?

A. Yes, sir.

Q. When you showed them the true north line of that tract of land what did you tell them the true line was?

A. I said: "This ditch here is as far as we can give you a title to; this is the dividing line". Pretty near the same words I told the Martins.

Q. Did you see the deed that was executed and delivered at the time the Martins bought it, and at the time they sold it to Diehl and Coile?

A. Yes, sir.

Q. Did the deed say that the title -- or recite that the title was not warranted to any land north of the ditch?

A. Yes, sir, there was a quitclaim deed to that.

Q. Restricted the warranty?

A. Yes, sir.

Q. You didn't have anything to do with the conveyance when Mr. Kilbane bought it?

A. No, sir.

Q. You were not involved in his transaction?

A. No, sir. I do remember another thing in connection with both of those sales. The persons each time - Martin, Coile & Diehl - didn't pay for any footage north of the ditch. We sold the land by the foot and measured it to the ditch and didn't

collect any money for lands north of the ditch.

Q. You say in the sale to Martin from Parham, and in the sale from Parham to Coile and Diehl that the consideration they paid was measured from the south side of their property up to the ditch by the foot?

A. Yes, sir.

Q. And that they paid no consideration for the land north of the ditch?

A. Correct.

Q. Now you say that your father bought this while you were a small boy?

A. Yes, sir.

Q. Have you ever seen his deed, or do you know the approximate date he bought it?

A. No, sir.

Q. Would you say that a deed in 1886 was approximately the time he was supposed to have bought it?

A. I wouldn't like to say that under oath, Mr. Chason.

Q. Do you know about when he sold it?

a. Yes, I was a good big boy; seems to me like it must have been around - -

Q. Would 1896 be about right?

A. Yes, sir; I was big enough to go there with him.

Q. You said something about going there on picnics?

A. Yes, sir.

Q. Who owned it at the time you went there on picnics?

A. Walthall owned it for a time and I don't remember who the

other owners were.

Q. Did you know a Mr. J. W. Johnson down there?

A. Yes, sir.

Q. Do you know anything about a lease Mr. Walthall gave to Mr. J. W. Johnson on June 2, 1934, whereby Mr. Johnson was given the right to use the land now owned by Doctor Godard for picnicing and fishing purposes?

A. I heard about it and I used the property about that time for those purposes.

Q. The Bank of Fairhope owned this tract of land at one time?

A. Prior to Walthall.

Q. Prior or subsequent to Walthall?

A. The Bank probably got it from Walthall.

Q. Do you know anything about the possession that Doctor Godard has had since he has owned it?

A. Yes, sir, I know about it.

Q. Has he had possession of this land down to the ditch since he acquired title from the Bank of Fairhope?

A. Yes, sir.

Q. Did the Bank of Fairhope, during the period of time they owned it, have exclusive possession of this land, open, notorious, and hostile possession, south to the ditch?

A. Yes, sir. Doctor Godard had a sign up there just north of the ditch - "NO TRESPASSING, C. G. GODARD, OWNER". He had it there for years.

Q. Captain, that is about all that you know about this?

A. The Doctor's possession - I was in the real estate business
(page 11)

and I had more people coming to me to buy it.

Q. Was this land generally known in the community - the land that lies just north of the ditch, in Section 7, and which is now involved in this suit, was that land generally known in the community as being the lands of Doctor C. G. Godard?

A. Yes, sir.

Q. Was it generally regarded in the community, and has it been such for the last 50 or 60 years, that the ditch was the true dividing line between the two properties?

A. Mr. Chason, I never heard any question about the dividing line; everybody seemed to think that was the dividing line; I never heard anything about it until recently.

Q. Have you been involved in sales of land north of the ditch and any survey made and starting point was used as north of the ditch?

A. No, sir. I have been involved in sales, but I don't know how it was surveyed.

ON CROSS EXAMINATION OF THIS WITNESS BY MR. MASHBURN, HE TESTIFIED:

Q. You say in this deed from Melissa C. Parham to Louise Martin that they didn't sell the land north of the ditch?

A. No, sir.

Q. Who drew up the deed, Captain Joe?

A. The deed - let's see - - from Parham--

Q. I will ask you this, didn't the deed call for the north line of Section 18 to be the north line of the land sold?

A. I didn't read the deed.

Q. Didn't that deed recite that you were not giving a warranty

a warranty deed to the part north of the ditch, but a statutory warranty deed to the land north of the ditch?

A. I don't know.

Q. If you say it was in -- wasn't in the deed--

A. We well that water front land by the foot and it was sold by the foot from the south line to the ditch to Doctor Martin.

Q. Then why didn't you describe it to the ditch. I would like to read you the description and ask you if that wasn't the description in the deed?

A. I don't remember seeing and reading the deed.

Q. Does the deed say or recite that the grantors' purpose in excepting the portion of the property from the warranty is to make the deed a general warranty deed to all of the property in the deed, except said lands north of the ditch, and make this a statutory warranty deed to the lands north of the ditch?

A. Yes, sir.

Q. They would not have put that in there if they did not intend to convey it?

A. Didn't convey it by warranty deed.

Q. When you said they didn't intend to give title to you, you mean that they didn't warranty it?

A. I don't know about the deed.

Q. Doctor Godard didn't attempt to establish possession of that land before he bought it, did he?

A. Doctor Godard had control over it to the ditch.

Q. Do you know when he bought it?

A. No, sir.

Q. Wasn't it April '39?

A. I expect it was.

Q. Do you know when this suit was filed?

A. No, sir.

Q. If this suit was filed before April - - prior to April 22, 1949 - and Doctor Godard didn't buy it until April 22, 1939, that would be less than 10 years?

A. That figures right.

Q. I believe you testified that after your father had owned this land that it was sold back to the Darlings and that Darling at the time he bought it from your father, also owned the land that Mr. Kilbane is claiming today?

A. Yes, sir.

Q. All through the years, and up to the time the Bank sold to Doctor Godard, wasn't the north line of Section 18 always used as the description of the north line claimed by Kilbane?

A. I never saw the deed; all I saw was the actual property.

Q. Until the Bank made the deed to Doctor Godard, wasn't the south line of Section 7 always used as the description of the lot of land he bought?

A. I couldn't tell you. All I know is we saw the tract of land and discussed the boundary; I don't know what was put on paper.

ON RE-DIRECT EXAMINATION OF THIS WITNESS BY MR. CHASON, HE
TESTIFIED AS FOLLOWS:

Q. He asked you about the deed to Coile and Diehl having in there something about a warranty. Do you remember seeing this recital: "It being grantors' intention to convey only such title north of said ditch as was acquired by Louise C. Martin from Parham?"

A. No, sir.

C E R T I F I C A T E:

I hereby certify that the foregoing, consisting of pages 1 to 15, both inclusive, correctly sets forth a true and correct transcript of the testimony of Deptain Joe Pose, taken in open Court, before Hon. Hubert M. Hall, Judge of said Court, on July 7, 1954.

This 3rd day of September, 1954.

Louise Duenburg
Official Court Reporter.

RUTH W. COIL and ROBERT F.
DIEHL,

Complainants

vs

C. G. GODARD,
Respondent

CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA:

IN EQUITY.

Comes C. G. GODARD, Respondent in the above mentioned cause,
and for answer to the Complainants' Bill, says:

FIRST: He admits the allegations in Paragraph One.

SECOND: He denies the allegations in Paragraph Two.


THIRD: He admits the allegations in Paragraph Three.

FOURTH: He denies the allegations in Paragraph Four of the
Bill and avers that the southern boundary line of the Respondent's
property described in this Bill is the true and correct boundary
line of the lands owned by the Respondent and has been regarded and
accepted as such for a period of more than twenty years prior to the
filing of this suit, and the Respondent and his predecessors in title
have been in possession of said property up to said boundary line,
which is marked by a road ditch and fence, both of which are clearly
visible.

Now having fully answered Bill of Complaint, this Respondent
prays that he may go hence with his costs in this behalf expended.

RICKARBY & RICKARBY

By:


Solicitors for Respondent

RUTH W. COIL and ROBERT F.
DIEHL,

Complainants

vs

C. G. GODARD,

Respondent

CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA:

IN EQUITY

Comes the Respondent in the above mentioned cause and offers
the following separate and several grounds of demurrer:

FIRST: The Bill is without equity.

SECOND: Because the Bill does not show that the boundary
line of the two tracts depend upon a common point, line or land-
mark.

THIRD: Because the Bill affirmatively shows that the Res-
pondent owns the land up to the road ditch which is a definite
and visible landmark.

RICKARBY & RICKARBY

By:

Solicitors for Respondent

IN EQUITY

RUTH W. COIL, et al
Complainants

- VS -

C. G. GODARD,
Respondent

DEMURRERS TO BILL

FILED

FEB 3 1950

ALICE J. DUCK, Register

RICKARBY & RICKARBY
Solicitors for Respondent

RUTH W. COIL, ROBERT F. DIEHL,
and JIM KILBANE,

Complainants,

-VS-

C. G. GODARD,

Respondent.

This cause coming on to be heard is submitted upon the original bill of complaint filed in this Court on April 22, 1949, answer of the Respondent filed February 6, 1950, petition for intervention on the part of Jim Kilbane, filed October 20, 1953, amended answer of the Respondent filed May 17, 1954, agreement and stipulation made in open Court by the Solicitors of the respective parties as to testimony, submission and agreement that the Respondent was entitled to relief, and the testimony of Joe Pose; and the Court, after considering all of the pleadings and testimony ascertains, determines and finds:

That the Complainants and Respondent are co-terminous owners of tracts of land, and that the boundary line between the said adjacent tracts of land is disputed; that the true and correct boundary line between the properties of said parties, is the southern boundary line of the lands owned by the Respondent, C. G. Godard.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the true and correct boundary line between the properties of the Complainants and the Respondent, is the southern line of the following described tract of land, owned by the Respondent, to-wit:

From the Southeast corner of Fractional Section 7, Township 7 South of Range 2 East, in Baldwin County, Alabama, run west 792 feet, thence North 660 feet, thence West 1848 feet, thence South 441.5 feet, thence West 291 feet to a point on the West margin of the highway at a point marked by a concrete monument for a point of beginning. Thence Run West 315 feet more or less to a concrete monument on the East margin of Mobile Bay; thence South 15 degrees East 225 feet down the East margin of Mobile Bay to a point in the center of the road ditch marked by a concrete monument, thence North 89 degrees East 286

STATE OF ALABAMA, BALDWIN COUNTY

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Judge of Probate

feet up the road ditch to a point on the west margin of the highway, marked by a concrete monument, thence north 5 degrees West 216.5 feet along the west margin of said highway to the point of beginning. Said property lying and being in sub-division 10 of Section 7, and Sub-division 2 of Section 18, all in Township 7 South, Range 2 East, Baldwin County, Alabama.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Register of this Court file a certified copy of this decree for record in the office of the Probate Judge of Baldwin County, Alabama, and the cost thereof to be taxed as the other cost in this cause.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Complainants be and they are hereby taxed with the cost herein accrued, for which execution may issue.

Dated at Bay Minette, Baldwin County, Alabama, this 21st day of April, 1955.

Hubert M. Hall
Judge of the 26th Judicial Circuit
of Alabama.

I, Alice J. Duck, Register of the Circuit Court of Baldwin County, Alabama, do hereby certify that the foregoing is a correct copy of the original decrees rendered by the Judge of the Circuit Court in above stated cause, which said decrees are filed and enrolled in my office.

WITNESS MY HAND AND SEAL THIS 21 day of April, 1955

Alice J. Duck
Register of Circuit Court, in Equity

RUTH W. COIL, ROBERT F.
DIEHL, and JIM KILBANE,

Complainants,

vs.

C. G. GODARD,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY NO. 2275

Comes the Respondent in the above styled cause and amends his Answer in said cause so that the same shall read as follows:

1. The Respondent admits the allegations of Paragraph One of the Bill of Complaint.

2. The Respondent denies the allegations of Paragraph Two of the Bill of Complaint and demands strict proof thereof.

3. The Respondent admits the allegations of Paragraph Three of the Bill of Complaint.

4. The Respondent denies the allegations of Paragraph Four of the Bill of Complaint and demands strict proof thereof.

5. For further answer to the Bill of Complaint the Respondent says that the true dividing line between the Respondent and the Complainant, Jim Kilbane, is a ditch which has been in existence for more than 60 years last past and which is known in the community as a road ditch and that such road ditch has been considered as the true line dividing the properties involved in this suit for more than 60 years last past. That in 1890 or in 1891 the property now owned by the Respondent was then owned by Walkene Pose and the property now owned by Jim Kilbane was owned by Thomas P. Darling and Lillias May Darling, his wife. That the said Walkene Pose was in the actual, quiet, peaceable, adverse and exclusive possession of the land now owned by the Respondent extending South to said ditch and the said Thomas P. Darling and Lillias May Darling, his wife, were in such possession of the land now owned by the said Jim Kilbane and involved in this suit, extending North to said ditch. That the said Thomas P. Darling and Lillias May Darling, his wife, lived on the land involved in this suit now owned by the said Jim

Kilbane and their yard extended North only to such ditch. That they had no possession of any land lying North of such ditch and the said Walkene Pose had no possession of any land lying South of such ditch. That in 1891 there was an iron stake located in such ditch near the edge of Mobile Bay and another iron stake located in such ditch about where the West margin of the present highway now runs. That such ditch was the agreed line between the said Walkene Pose and Thomas P. Darling and Lillias May Darling, his wife, at that time, whether it was the true line or not, and remained as the agreed line between such properties until the land now owned by the Respondent was sold and conveyed by Walkene Pose and wife several years later. That E. W. Walthall purchased the land now owned by such Respondent and involved in this suit on May 28, 1926, from the Darling heirs and he was placed by them in the actual, open, notorious, exclusive and adverse possession of all land now owned by the Respondent and involved in this suit, down to the ditch herein mentioned and about the year 1926 a fence was erected down such ditch, along the South boundary line of the property now owned by the Respondent and there still remains evidence of such fence in such ditch. That such fence remained in good condition as the dividing line between such properties and as the agreed line between such properties for more than 10 years prior to the filing of the suit in this matter. That later in 1926 the said E. W. Walthall sold and conveyed the land now owned by the Respondents and involved in this suit to A. M. Troyer who went into such possession of said land and the said A. M. Troyer sold and conveyed such land to the Bank of Fairhope on January 23, 1936; that the Bank of Fairhope went into the actual, open, notorious, exclusive peaceable and adverse possession of said land South to such ditch and that the fence herein referred to was still standing in such ditch as the dividing line between such properties at the time such Bank purchased said land. That the Bank of Fairhope remained in such possession of said land South to such ditch until it sold and conveyed the same to the Respondent on April 24, 1939, when the Respondent went into the actual, quiet, peaceable, adverse and exclusive possession of the land described in his deed, which possession extended to the ditch herein referred to on the South side

of such property. That no claim of ownership by any owner of the land now owned by Jim Kilbane to any land lying North of the ditch was ever made known to the Respondent, until in a deed dated May 16, 1944, from F. L. Giblin to Melissa C. Parham, which said deed is recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 85, pages 102-3, there was a conveyance of the North half of Lot Two, Section Eighteen, Township Seven South, Range Two East, by warranty deed, in which deed it is recited that the Seller does not warrant the title to a strip of land North of a ditch having a frontage of 28 1/2 feet on Mobile Bay and 24 1/2 feet on the rear. That the said Melissa C. Parham upon acquiring title to the North half of said Lot Two in Section Eighteen went into the actual possession of said Lot, but did not go into possession of any land lying North of said ditch as such land was then in the actual possession of the Respondent. That the said Melissa C. Parham sold and conveyed the North half of said Lot Two in Section Eighteen to Louise C. Martin on May 16, 1947, which deed is recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 120, pages 179-80, which deed was also a warranty deed, but excepted from such warranty all land lying North of such ditch and at the time of such purchase the said Louise C. Martin was informed by Joe Pose, who was the real estate agent involved in such sale, that the title was not good in the Seller to any land lying North of such ditch and the said Respondent at that time was in possession of all land lying North of such ditch. That the said Louise C. Martin sold and conveyed the land involved in this suit which lies in the North half of Lot Two of Section Eighteen to Robert F. Diehl and Ruth W. Coil on July 10, 1948, the deed being recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 133, pages 279-80, and Joe Pose was the real estate agent involved in such transaction and he informed such purchaser that the Seller had no title to the land lying North of such ditch and the purchaser in that sale did not go into possession of any land lying North of such ditch as the Respondent was in the actual possession of such land at that time. That while this suit was pending the said Complainants, Ruth W. Coil and Robert F. Diehl

attempted to sell and convey the land involved in this suit and located in the North half of Lot Two of said Section Eighteen to the Complainant, Jim Kilbane, who has now been made a party complainant in said cause. That no part of the land involved in this suit lying North of such ditch has been in the possession of the Complainants or anyone under whom they claim in the last 40 years or more, but the land now owned by the Respondent extending South to such ditch has been in the actual, quiet, exclusive, adverse, peaceable and continuous possession of the Respondent and those under whom he claims for more than 60 years last past and the Respondent and those under whom he claims have held such possession of said land to such ditch on the South as the dividing line between such properties regardless of whether such ditch is the true South line of Section Seven and the true North line of Section Eighteen.

Having fully answered the Bill of Complaint this Respondent prays that he may go hence with his costs in this matter.

Robert P. Peckham Jr.

CHASON & STONE

By: John Chason