

C. WILLIAM MCGEE
Complainant

CIRCUIT COURT
BALDWIN COUNTY, ALABAMA

Vs.

IN EQUITY.

No. _____

LOT 2 ACCORDING TO MAP AND PLAT OF
ROSALIE BOUDAN ESTATE AS SURVEYED AND MADE BY
DAN WILLIAMS SITUATED ON THE NORTH SIDE OF
THE EAST PRONG OF FISH RIVER IN SECTION 31,
TOWNSHIP 7 SOUTH, RANGE 3 EAST and SMALLMAN
MACQUEEN CONSTRUCTION CO, G. E. MACQUEEN ,
ANALEE MACQUEEN, G.C. MACQUEEN, et al.

Respondents

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

Humbly complaining comes C. William McGee and respectfully
represents and shows unto your Honor as follows:

ONE

That the complainant is over the age of twenty one years
of age and is a resident of Baldwin County, Alabama.

TWO

That the land in controversy is situated on the East prong
of Fish River in Baldwin County, Alabama, and is more particularly
described as follows:

Lot 2 according to map and plat of Rosalie Boudan
Estate as surveyed and made by Dan Williams, sit-
uated on the East prong of Fish River in Section
31, Township 7 South, Range 3 East,

and the complainant in his own right claims to own all of the rights,
title and interest to said land in it's entirety. The complainant
averts that he is in actual peaceful possession of said land and has
been in such possession of said land since, to-wit, the 10 th day of
November, 1942.

THREE

Complainant further alleges that on the 10 th day of April,

1939, a decree was rendered by the Probate Court of Baldwin County for the sale of said lands for the State and County taxes then due from Smallman, MacQueen Construction Co., a corporation. That the State of Alabama became the purchaser at a due and regular Tax Sale for said land and that the time for redemption by Smallman, MacQueen Construction Co. or others having an interest therein elapsed without redemption. That D. Z. Grove became the purchaser from the State of Alabama and received all right, title and interest of Smallman, MacQueen Construction Co.. That D. Z. Grove on the Tenth day of November, 1942 conveyed all of his right, title and interest to said property to the complainant by virtue of which complainant claims all right, title and interest to said property and that on that date complainant entered into peaceful possession and has since been continuously in peaceful possession of said land. That each year since taking possession of said land the complainant has assessed the land in the office of the Tax Assessor and regularly paid the taxes thereon.

FOUR

The title to said land stands on the records of the Judge of Probate of Baldwin County, Alabama in the name of the Complainant by virtue of the conveyance from D.Z. Grove.

FIVE

No one but the complainant and D. Z. Grove has paid taxes on said land within ten years next preceding the filing of this bill.

SIX

Complainant avers that he has exercised diligence in trying to ascertain the names of any persons or corporations who claim said land or any interest in said land but has failed to obtain such information. The records have been searched and the only possible claimants accordingly are G. E. MacQueen, Analee MacQueen, G. C. MacQueen and Smallman, MacQueen Construction Co., all made respondents to this bill and unknown heirs of the heretofore named parties. That

he has diligently tried to ascertain the names of any heirs, their addresses or the addresses of the parties named in this bill but has been unable to obtain such information.

SEVEN

Complainant further avers that there is no suit pending to test their interest in or title to or possession of said land.

The premises considered, complainant files this his verified bill of complaint against Smallman, MacQueen Construction Co. a Corporation, G. E. MacQueen, Analee MacQueen, G.C. MacQueen and their heirs and against the land and against any and all persons claiming any title thereto, interest in, lien or encumbrance upon said land or (any part thereof and to establish the right or title to said land) and to clear up all doubts or disputes concerning the same and that the parties hereinabove named shall be made respondents to this bill of complaint and that publication be made requiring them to plead, answer or demur to the same within the time required by law or decree pro confesso may be entered against them, and pray that this court will make and enter all orders, judgments and decrees that may be meet and proper in the premises and that upon final hearing of this cause will decree that complainant is the owner of said land and has a fee simple title thereto, free from all encumbrances and liens, and will grant to complainant such other, further or different relief as may be meet and proper in the premises, and in duty bound he will ever pray.

Arthur C. Epperson
A ttorney for Complainant

STATE OF ALABAMA

BALDWIN COUNTY

Before me, Pearl L. Duncan, a Notary Public, personally appeared Arthur C. Epperson who upon oath disposes and says, that he is the agent and attorney of and for the complainant in the above styled cause and is therefore duly authorized to make this oath, that he is informed and believes and upon such information and belief says that the allegations and averments contained in the foregoing bill of complaint are true.

Pearl L. Duncan

Sworn to and subscribed before me this 10 day of May 1949

Pearl L. Duncan

Amended Answer

Answer to this Answer

C. WILLIAM MC GEE,

Complainant,

VS.

LOT 2 ACCORDING TO MAP AND
PLAT OF ROSALIE BOUDAN ESTATE
AS SURVEYED AND MADE BY DAN
WILLIAMS SITUATED ON THE NORTH
SIDE OF THE EAST PRONG OF
FISH RIVER IN SECTION 31, TOWN-
SHIP 7 SOUTH, RANGE 3 EAST and
SMALLMAN MACQUEEN CON-
STRUCTION CO., G. E. MACQUEEN,
ANALEE MACQUEEN, G. C.
MACQUEEN, et al

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY

NO. 2289

TO THE HONORABLE ELLIOTT G. RICKARBY, JR., ACTING JUDGE OF
THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, SITTING IN

EQUITY:

Now comes your Respondent, G. E. MacQueen, Jr., also sometimes known as G. E. MacQueen, one of the Respondents named in the above entitled complaint, and after having first received permission of this Honorable Court, amends his answer heretofore filed in said cause, to read as hereafter set out:

FIRST

That he, not knowing the Complainant, does not have knowledge as to the Complainant's age or his residence and therefore denies Part 1 of the complaint.

That Respondent admits that the property involved is situated on the east prong of Fish River in Baldwin County, Alabama, but denies that the Complainant owns the right, title and interest of said property and denies Part 2 of the complaint that the Complainant is in actual peaceful possession of said land or has been since the 10th day of November, 1942.

That he denies that a decree was rendered by the Probate Court of Baldwin County for the sale of said lands for the State and County taxes due from Smallman, MacQueen Construction Company, a corporation, or that the State of Alabama became the purchaser at the sale; respondent further denies that the time for redemption has expired for either Smallman, MacQueen Construction Company or your Respondent, G. E. MacQueen, Jr. Respondent further denies that D. Z. Grove became the purchaser from the State of Alabama or received or acquired all of the right, title or interest of Smallman, MacQueen Construction Company, or that D. Z. Grove conveyed

said property to the Complainant. Respondent, G. E. MacQueen, Jr., further denies that on that date, the 10th day of November, 1942, Complainant entered into peaceful possession of said land or that the Complainant has assessed the land and paid the taxes thereon.

Respondent, G. E. MacQueen, Jr., further denies Part 4 of said complaint that title to the land stands in the name of the Complainant by virtue of a conveyance from D. Z. Grove.

That he denies Part 5 of said complaint that the Complainant has paid taxes on said land within ten years next preceding filing of this bill.

That he denies Part 6 of the said complaint that the Complainant has exercised diligence in trying to ascertain names of all persons claiming an interest in this land or that the only possible claimants are G. E. MacQueen, Analee MacQueen, G. C. MacQueen and Smallman, MacQueen Construction Company.

That he emphatically denies as to Part 7 of the complaint that there is no other suit pending to test the interest or title to said land at the time the complaint was filed.

The respondent, G. E. MacQueen, Jr., further says in answer to the bill of complaint and each part thereof, separately and severally, that -^d he is the owner of said property involved; ^Athat your Respondent's father and grandfather owned, occupied and possessed said property for many years; ^{A.A.}that the purported tax sale to the State of Alabama and the purported sale from the State of Alabama to D. Z. Grove, if any there be, was not in compliance with the laws and prerequisites of the State of Alabama with reference to and pertaining to tax sales; that said tax sale, if any there be, was defective and voidable or void and not in strict compliance with the laws of the State of Alabama; that said tax sale was for the purpose of selling the interest of Smallman, MacQueen Construction Company, who did not own or possess said lands involved, and that your Respondent, G. E. MacQueen, Jr., had no notice or knowledge of such tax sale and was not advised of same; ¹that the alleged conveyance by D. Z. Grove on the 10th day of November, 1942, to the Complainant was void or voidable and defective and without legal authority, and conveyed no interest to the Complainant. ¹

²Your Respondent, G. E. MacQueen, Jr., in further answer to said complaint says that your Respondent enlisted in the United States Service

as a member of the Armed Forces during the month of April, 1942, and remained in said service until the latter part of 1945 or the first part of 1946, and that during said period he was on active duty for the United States Government, and was not able or in a position to prosecute his suit for the purpose of protecting his interest in said lands or clearing title to said lands or recovering possession from the Complainant or others claiming an interest thereto and that due and proper and legal notice was not given to your Respondent of any alleged tax sale.

Your Respondent, G. E. MacQueen, Jr., in further answer says that there is now pending in this Honorable Court a suit on the Equity side of said court, being case No. 2005, in the name of G. E. MacQueen, Jr., Complainant vs. C. F. Baker and one Julia Baker; that this suit was filed on or about the 9th day of November, 1947, which is more than a year and one-half prior to the present litigation and that, therefore, a suit was pending to test title to this land before institution of this suit; that said suit which was pending at the time this suit was instituted is a suit to try title to the following described property:

Lot 2 according to Map and Plat of Rosalie Boudan Estate as surveyed and made by Dan Williams, situated on the north side of east prong of Fish River in Section 31, T 7 S - R 3 E. Beginning on the south margin of east prong of Fish River at a large Bay Tree now fallen and being the north corner of Nettie Collins lot, running thence up the river 8.2 chs to a stake for a beginning point, thence south 10 deg 30 min west 4.51 chs to bank of Fish River, thence down river, regardless of meanders 4.1 chs to place of beginning, being lot 8 in division of Louis Collins lot Alex Baudin claim, a Spanish Grant, all in Section 42 - T 7 S - R 3 E

That the land upon which this suit is involved is a part of the land and property described in said original suit and should a decree be rendered favorable to the Complainant, G. E. MacQueen, Jr., in the original suit, it would result in a cloud on title of said land as against C. William McGee, the Complainant in this case.

(B) Your Respondent, G. E. MacQueen, Jr., further says that C. William McGee claims title to and an interest in the land described in this complaint by virtue of a tax deed which was allegedly conveyed to one D. Z. Grove by the State of Alabama, in the year 1942, through the Probate Judge of Baldwin County, Alabama, and that the said D. Z. Grove allegedly conveyed said land to C. William McGee on or about November 10, 1942, both of which

said conveyances your Respondent avers to be invalid and of no force and effect because the proceedings of the tax sale to ^{D. Z. Grove and later} ~~G. William McGee~~ by the State of Alabama was defective and insufficient or contrary to law.

6 The Respondent, G. E. MacQueen, Jr., further says that in addition to said tax sale being void and defective, which said tax sale is the common source from which both C. F. Baker, the Complainant in the original suit, and the Complainant in this case, C. William McGee, claim title; that your Respondent also claims that due to his military service he was not in a position to prosecute and defend his interest in this matter until he was discharged from the service and that he did thereafter proceed to institute a suit against C. F. Baker and his wife, who were the only adverse claimants that he knew of to said property at the time and that he proceeded to do so as expeditiously as the facts could be ascertained.

Your Respondent further avers that he claims title to said property involved in this suit in and by virtue of conveyances heretofore made as follows: Your Respondent says that in the year 1931, Smallman MacQueen Construction Company Incorporated conveyed a trust deed to one J. S. Mead, as trustee, which said deed is recorded in Volume 54, Page 29, 30 and 31, of the Probate Records of Baldwin County, Alabama; that thereafter default was made in the payment of the indebtedness secured by said trust deed and in and by virtue of the provisions of said instrument, said property was foreclosed to satisfy and pay the indebtedness due; that the Trustee Investment Corporation, a corporation legally incorporated under the laws of the State of Alabama, purchased said property at public auction held to satisfy the mortgage indebtedness on the 31st day of October, 1935, which said foreclosure deed from Smallman, MacQueen Construction Company, by said trustee, to the Trustee Investment Corporation was recorded in Deed Book 58 N.S. Page 168-9 of the Probate Records of Baldwin County, Alabama; that the Trustee Investment Corporation paid the sum of \$3,283.34 for said property and that the Trustee Investment Corporation was the legal owner of said property from the year 1935 until the year 1944, at which time the Trustee Investment Corporation, an Alabama corporation was legally dissolved. Your Respondent further avers that on dissolution of said corporation, the Respondent, G. E. MacQueen, Jr., also known as Edward G. MacQueen, Jr., being the owner of all of the capital stock of the Trustee Investment Corporation, acquired all of the

assets of said corporation, which included the land involved; that a record of the dissolution of said corporation was recorded in the Probate Court of Jefferson County, Alabama, on the 24th day of August, 1944; your Respondent further avers that at the time the State of Alabama acquired the land involved by sale for non-payment of taxes, the Trustee Investment Corporation, an Alabama Corporation, was the legal owner of said property, though the tax sale was, according to the Probate Records of Baldwin County, Alabama, perfected against Smallman, MacQueen Construction Company, Incorporated, which corporation was not the legal title holder thereof. Your Respondent further avers that Smallman, MacQueen Construction Company, Incorporated, was not the owner of said land at the time said property was sold for the non-payment of taxes and that Trustee Investment Corporation received no notice of said tax sale in the year 1939 when the property was purchased by the State of Alabama for 1938 taxes allegedly due; that neither your Respondent nor the Trustee Investment Corporation were notified of said tax sale.

AND NOW, having fully answered the Respondent, G. E. MacQueen, Jr., prays that this Honorable Court may decree that he is the legal title holder to said lands and order same placed in his possession and moves this Honorable Court that said costs be taxed against the Complainant.

REYNOLDS AND DOWNING

BY

J. Terry Reynolds, Jr.
J. Terry Reynolds, Jr.
Solicitors for Respondent, G. E. MacQueen, Jr.

RECORDED

stands on the record of the Probate Court of Baldwin County in his name. No one is known to have paid taxes on said property, or to have been in possession of said lands, or any part of said lands within ten years next prior to the filing of the bill of complaint in said cause, except the said D. Z. Grove, up to the time of his conveyance to the Complainant, and the Complainant since that time.

Complainant further alleges in said bill of complaint that after making diligent search and inquiry is unable to ascertain the present location or residence of said respondents. Complainant has also been unable to ascertain whether the said respondents or any of them are deceased or living, and if deceased, whether ~~there is a child or children of said~~ complainant has been unable to ascertain who the next of kin of the said respondents are.

It is, therefore, ordered by the undersigned Register that publication of this notice be made in the Onlooker, a newspaper published and having a general circulation in Baldwin County, Alabama, once a week for four consecutive weeks, and that all those to whom this notice is addressed and any and all persons claiming any title to, interest in, or lien or encumbrance upon, the above described real estate, or any part thereof, or any interest therein, be, and they are hereby required to plead,

time required by law.

It is further ordered that a copy of this notice certified by the undersigned Register, as being correct, shall also be recorded as a lis pendens in the Office of the Judge of Probate of Baldwin County, Alabama.

Done at office this the 18th day of May, 1949.

Register Alice J. Duck

STATE OF ALABAMA,
BALDWIN COUNTY.

I, the undersigned, Alice J. Duck Register of the Circuit Court of Baldwin County, Alabama, in Equity, do hereby certify that the above and foregoing is a true and correct copy of the notice to be published to the respondents in the above and foregoing cause.

Witness my hand and seal of office, this the 18th day of

May, 1949.

Register Alice J. Duck

C. WILLIAM McGEE,

Complainant,

VS.

CERTAIN LANDS, et al

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. 2289.

The undersigned, the presiding judge, being incompetent to try, hear, or render judgment in this cause because of his having been of counsel to one of the parties hereto at one time in reference to the matters now in dispute, does hereby declare such incompetency and recuses himself from presiding upon the hearing of said cause.

Witness my hand this 15th day of January, 1951.

Jeffrey J. Maslowsky, Jr.
Circuit Judge

stands on the record of the Probate Court of Baldwin County in his name. No one is known to have paid taxes on said property, or to have been in possession of said lands, or any part of said lands within ten years next prior to the filing of the bill of complaint in said cause, except the said B. Z. Grove, up to the time of his conveyance to the Complainant, and the Complainant since that time.

Complainant farther alleges in said bill of complaint that after making diligent search and inquiry is unable to ascertain the present location or residence of said respondents. Complainant has also been unable to ascertain whether the said respondents or any of them are deceased or living, and if deceased, whether they left surviving them a child or children of them, and that complainant has been unable to ascertain who the next of kin of the said respondents are,

It is, therefore, ordered by the undersigned Register that publication of this notice be made in the Onlooker, a newspaper published and having a general circulation in Baldwin County, Alabama, once a week for four consecutive weeks, and that all those to whom this notice is addressed and any and all persons claiming any title to, interest in, or lien or encumbrance upon, the above described real estate, or any part thereof, or any interest therein, be, and they are hereby required to plead, answer or demur to the bill of complaint in this cause within the time required by law.

It is further ordered that a copy of this notice certified by the undersigned Register, as being correct, shall also be recorded as a lis pendens in the Office of the Judge of Probate of Baldwin County, Alabama.

Done at office this the 11th day of May 1949.

Register

Alice J. Buck

STATE OF ALABAMA,
BALDWIN COUNTY.

I, the undersigned, Alice J. Buck Register of the Circuit Court of Baldwin County, Alabama, in Equity, do hereby certify that the above and foregoing is a true and correct copy of the notice to be published to the respondents in the above and foregoing cause.

Witness my hand and seal of office, this the 11th day of May, 1949.

Register

Alice J. Buck

C. WILLIAM MCGEE
Complainant

Vs.

CIRCUIT COURT

BALDWIN COUNTY, ALABAMA

IN EQUITY.

No. _____

LOT 2 ACCORDING TO MAP AND PLAT OF
ROSALIE BOUDAN ESTATE AS SURVEYED AND MADE BY
DAN WILLIAMS SITUATED ON THE NORTH SIDE OF
THE EAST PRONG OF FISH RIVER IN SECTION 31,
TOWNSHIP 7 SOUTH, RANGE 3 EAST and SMALLMAN
MACQUEEN CONSTRUCTION CO, G. E. MACQUEEN ,
ANALEE MACQUEEN, G.C. MACQUEEN, et al.

Respondents

TO THE HONORABLE TELFAIR J. MASBURN, Jr., JUDGE OF THE CIRCUIT
COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY.

Humbly complaining comes C. William McGee and respectfully
represents and shows unto your Honor as follows:

ONE

That the complainant is over the age of twenty one years
of age and is a resident of Baldwin County, Alabama.

TWO

That the land in controversy is situated on the East prong
of Fish River in Baldwin County, Alabama, and is more particularly
described as follows:

Lot 2 according to map and plat of Rosalie Boudan
Estate as surveyed and made by Dan Williams, sit-
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and the complainant in his own right claims to own all of the rights,
title and interest to said land in it's entirety. The complainant
averts that he is in actual peaceful possession of said land and has
been in such possession of said land since, to-wit, the 10 th day of
November, 1942.

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Complainant further alleges that on the 10 th day of April,

1939, a decree was rendered by the Probate Court of Baldwin County for the sale of said lands for the State and County taxes then due from Smallman, MacQueen Construction Co., a corporation. That the State of Alabama became the purchaser at a due and regular Tax Sale for said land and that the time for redemption by Smallman, MacQueen Construction Co. or others having an interest therein elapsed without redemption. That D. Z. Grove became the purchaser from the State of Alabama and received all right, title and interest of Smallman, MacQueen Construction Co.. That D. Z. Grove on the Tenth day of November, 1942 conveyed all of his right, title and interest to said property to the complainant by virtue of which complainant claims all right, title and interest to said property and that on that date complainant entered into peaceful possession and has since been continuously in peaceful possession of said land. That each year since taking possession of said land the complainant has assessed the land in the office of the Tax Assessor and regularly paid the taxes thereon.

FOUR

The title to said land stands on the records of the Judge of Probate of Baldwin County, Alabama in the name of the Complainant by virtue of the conveyance from D.Z. Grove.

FIVE

No one but the complainant and D. Z. Grove has paid taxes on said land within ten years next preceding the filing of this bill.

SIX

Complainant avers that he has exercised diligence in trying to ascertain the names of any persons or corporations who claim said land or any interest in said land but has failed to obtain such information. The records have been searched and the only possible claimants accordingly are G. E. MacQueen, Analee MacQueen, G. C. MacQueen and Smallman, MacQueen Construction Co.. all made respondents to this bill and unknown heirs of the heretofore named parties. That

he has diligently tried to ascertain the names of any heirs, their addressees or the addressees of the parties named in this bill but has been unable to obtain such information.

SEVEN

Complainant further avers that there is no suit pending to test their interest in or title to or possession of said land.

The premises considered, complainant files this his verified bill of complaint against Smallman, MacQueen Construction Co. a Corporation, G. E. MacQueen, Analee MacQueen, G.C. MacQueen and their heirs and against the land and against any and all persons claiming any title thereto; interest in, lien or encumbrance upon said land or any part thereof and to establish the right of title to said land and to clear up all doubts or disputes concerning the same and that the parties hereinabove named shall be made respondents to this bill of complaint and that publication be made requiring them to plead, answer or demur to the same within the time required by law or decree pro confesso may be entered against them, and pray that this court will make and enter all orders, judgments and decrees that may be meet and proper in the premises and that upon final hearing of this cause will decree that complainant is the owner of said land and has a fee simple title thereto, free from all encumbrances and liens, and will grant to complainant such other, further or different relief as may be meet and proper in the premises, and in duty bound he will ever pray.

Arthur C. Epperson
Attorney for Complainant

STATE OF ALABAMA

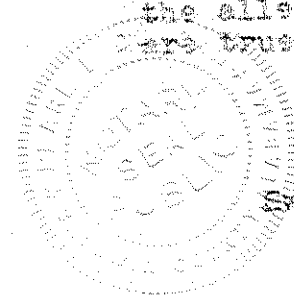
BALDWIN COUNTY

Before me, Reard L. Duncanson, a Notary Public, personally appeared Arthur C. Epperson who upon oath disposes and says, that he is the agent and attorney of and for the complainant in the above styled cause and is therefore duly authorized to make this oath, that he is informed and believes and upon such information and belief says that the allegations and averments contained in the foregoing bill of complaint are true.

Reard L. Duncanson

Sworn to and subscribed before me this 10 day of May 1949.

Reard L. Duncanson



C. WILLIAM MCGHE

VS

CERTAIN LANDS

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

Whereas, it is has been made known to me that Hon. Telfair J. Mashburn, Jr. Judge of the Circuit Court has declared himself incompetent to try, hear or render judgment in the above styled cause because of his having been counsel to one of the parties hereto at one time in matters now in dispute and does hereby recuse himself from presiding upon the hearing of said cause and,

Whereas, Hon. E. G. Rickarby was appointed as special Judge, but is now physically enable to act as such at this time and,

Whereas, Hon. E. G. Rickarby Jr. possesses the qualifications of a Circuit Judge as provided by law, and is a proper person to be appointed as Judge to hear said cause;

I therefore appoint Hon. E. G. Rickarby Jr. to preside as Judge in the above stated cause.

Witness my hand this 25th day of January, 1952.

Alice J. Duck
Register in Equity

LAW OFFICES

ELLIOTT G. RICKARBY
DECEASED

RICKARBY & RICKARBY
FAIRHOPE, ALABAMA

E. G. RICKARBY, JR.

28 October 1952

Mr. Tolbert M. Brantley
Attorney at Law
Bay Minette, Alabama

Dear Mr. Brantley:

Re: McGee
Vs: Certain Lands

As you requested over the phone yesterday afternoon we herewith hand you the Circuit Court packet of papers which we had on file here in this office.

Yours very truly,



E. G. Rickarby, Jr.

R/i
Enc: papers
Circuit Court No. 2289

ELLIOTT G. RICKARBY
DECEASED

RICKARBY & RICKARBY
FAIRHOPE, ALABAMA

E. G. RICKARBY, JR.

19 March 1953

Mrs. Alice J. Duck
Clerk Circuit Court
Bay Minette, Ala.

Equity No. 2289
Re: McGee
Vs: MacQueen

Dear Mrs. Duck:

Please mark the amended order for re-hearing filed.
This date has been changed from 20 March to April
10, 1953.

Thanks.

Yours very truly,


E. G. Rickarby, Jr.

R/i
3039

cc: Mr. J. Terry Reynolds
cc: Mr. Tolbert M. Brantley

LAW OFFICES

RICKARBY & RICKARBY

ELLIOTT G. RICKARBY

FAIRHOPE, ALABAMA

E. G. RICKARBY, JR.

25 January 1952

Mrs. Alice J. Duck
Register
Bay Minette, Alabama

Dear Mrs. Duck:

RE: McQueen -vs- Baker and McGee -vs- Certain Lands:

Request you place copies of the enclosed in the respective files in your Court and advise if the files are not in your Court.

Yours very truly,

RICKARBY & RICKARBY

By: 

EGRjr/fc

REYNOLDS AND DOWNING
ATTORNEYS AT LAW
605 FIRST NATIONAL BANK BLDG.
MOBILE 13, ALABAMA

J. TERRY REYNOLDS, JR.
MAURICE A. DOWNING

June 1, 1953

TELEPHONE 3-3661

Miss Alice J. Duck
Register, Chancery Court
Courthouse
Bay Minette, Alabama

Re: C. William McGee
Vs. Certain Lands

Dear Miss Duck:

I enclose herewith bond executed by G. E. MacQueen, as principal and by U. S. Fidelity and Guaranty Company, as surety for the appeal in this case, No. 2289 in Equity. It will be appreciated if you will acknowledge receipt of this bond and advise whether or not you approve it. I will also thank you very kindly to advise Mrs. Ora S. Nelson, who was the Court Reporter in this case of the time in which she has to prepare and furnish the transcript in this matter and I would most sincerely appreciate a copy of your letter to her as to this time. I will also thank you to advise me the date that your records show the notice of appeal to have been entered in this case and I want to thank you most kindly for your letter of May 25, 1953.

Very truly yours,


J. Terry Reynolds, Jr.

JTR/mmc

LAW OFFICES

ELLIOTT G. RICKARBY
DECEASED

RICKARBY & RICKARBY
FAIRHOPE, ALABAMA

E. G. RICKARBY, JR.

10 March 1953

Mrs. Alice J. Duck
Clerk Circuit Court
Bay Minette, Ala.

Dear Mrs. Duck:

Re: McGee No.
Vs: MacQueen (2289)

Please mark the enclosed order filed and also the agreement of counsel as to fees for special judge both of which we are herewith enclosing.

Yours very truly,


E. G. Rickarby, Jr.,
Special Judge

R/i
3039

cc: Mr. J. Terry Reynolds
cc: Mr. Tolbert M. Brantley

C. WILLIAM MC GEE,

Complainant,

VS.

LOT 2 ACCORDING TO MAP AND PLAT
OF ROSALIE BOUDAN ESTATE AS
SURVEYED AND MADE BY DAN WILLIAMS
SITUATED ON THE NORTH SIDE OF THE
EAST PRONG OF FISH RIVER IN SECTION
31, TOWNSHIP 7 SOUTH, RANGE 3 EAST
and SMALLMAN MACQUEEN CONSTRUCTION)
CO, G. E. MACQUEEN, ANALEE MACQUEEN,
G. C. MACQUEEN, et al.

Respondents:

We hereby acknowledge ourselves as sureties for the costs of the appeal
taken by G. E. MacQueen, Jr., also sometimes known as G. E. MacQueen,
from the decree rendered by the Circuit Court of Baldwin County, Alabama,
sitting in Equity in the above entitled cause at the April Term, A. D. 1953
thereof, on to-wit: the 11th day of February A.D. 1953, which appeal is made
returnable to the Supreme Court of Alabama on the _____ Monday of
_____, A.D. 1953.

Witness our hands this the _____ day of
_____, A.D. 1953.

Taken and approved this the _____ day of May, 1953.

Register

CIRCUIT COURT OF BALDWIN COUNTY

IN EQUITY

NO. 2289

C. William McGee,

Complainant,

VS

Lot 2 according to map and plat of Rosalie Boudan Estate as surveyed and made by Dan Williams situated on the north side of the east prong of Fish River in Section 31, Township 7 South, Range 3 East and Smallman MacQueen Construction Co, G. E. MacQueen, Analee MacQueen, G. C. MacQueen, et al,

Respondents

SECURITY FOR COSTS OF APPEAL

Taken, approved and filed this
day of _____ A.D. 1953.

Register

G. C. M. CO. L. R. an on F 7 M M M
 CO. C. E. M. CO. L. R. an on F 7 M M M
 31' LONG AND 1 SOUTH RIVER ROAD 3' EAST
 EAST FRONT OF RIVER ROAD IN SECTION
 BEING BOUND ON THE NORTH SIDE OF THE
 BEING BOUND AND MADE BY D. A. WILLIAMS
 OF KOSATIE BOUND ESTATE AS
 LOT 3 ACCORDING TO MAP AND PLAT

CELLULOSE

to yak out and no sentiment

Introduction

222

SECRET

LAW OFFICES
RICKARBY & RICKARBY
FAIRHOPE, ALABAMA

24 January 1952

Mrs. Alice J. Duck
Register Circuit Court
Bay Minette, Alabama

RE: C. William McGee, Complainant -vs- Certain Lands,
et al, Equity No. 2289 and G. C. McQueen, Complainant,
et al, -vs- C. F. Baker, et al, Respondent, Equity No.
2005.

Dear Mrs. Duck:

On the 19th and 29th of January my father, Elliott G.
Rickarby was appointed to act as special judge in these
two cases which I understand are related.

My father is quite sick at the present time and it is
impossible for me to say when and if he will be able to
resume his duties.

I therefore request that he be relieved of his duties
in this case.

Yours very truly,

RICKARBY & RICKARBY

By: *E. C. Rickarby, Jr.*

EGRjr/fc

cc: M. Terry Reynolds, Jr. Esquire
W. C. Beebe, Esquire
Arthur C. Epperson, Esquire.

LAW OFFICES
RICKARBY & RICKARBY
FAIRHOPE, ALABAMA

25 January 1952

Mr. W. C. Beebe
Attorney at Law
Bay Minette, Ala.

Mr. Arthur Epperson
Attorney at Law
Foley, Alabama

Mr. J. Terry Reynolds
Attorney at Law
Mobile, Alabama

Gentlemen:

RE: McQueen -vs- Baker, et al, Equity No. 2005
McFee -vs- Certain Lands, et al, Equity 2289:

In the above mentioned matter Mrs. Duck has informed me that I have been appointed as Special Judge and that everybody is anxious to have the cases disposed of.

I therefore am setting these cases for a hearing on the pleading on 8 February 1952 at 2 p.m. in Bay Minette unless the counsel can agree on an earlier submission.

Yours very truly,

E. G. Rickarby, Jr.
E. G. Rickarby, Jr.
Special Judge

ECRjr/fc

REYNOLDS AND DOWNING
ATTORNEYS AT LAW
605 FIRST NATIONAL BANK BLDG.
MOBILE 13, ALABAMA

J. TERRY REYNOLDS, JR.
MAURICE A. DOWNING

February 26, 1953

TELEPHONE 3-3661

Miss Alice J. Duck
Register Circuit Court
Bay Minette, Alabama

Re: C. William McGee
Vs. Lot 2 according to the map and plat of Rosalie
Boudan Estate as surveyed and made by Dan
Williams situated on the north side of the east
prong of Fish River in section 31, township 7
south, range 3 east and Smallman MacQueen
Construction Co., G. E. MacQueen, Analee MacQueen,
et al,

Dear Miss Duck:

I enclose herewith a motion for a rehearing in the above styled cause, filed on behalf of my client, G. E. MacQueen, Jr., also sometimes known as G. E. MacQueen, one of the Respondents in this matter. I am also enclosing herewith four copies and it will be appreciated if you will forward one copy to Judge Rickarby and a copy to each one of the Solicitors for the Complainant, promptly. Judge Rickarby advised me that he will let us know when he will hear this matter at a later date.

It will be appreciated if you will acknowledge receipt of this motion promptly. Judge Rickarby told me that he was going to enter a decree in this matter on the 10th day of February, 1953. If the decree bears any other date, please inform me of this fact. Your usual prompt attention will be most sincerely appreciated.

Very truly yours,


J. TERRY REYNOLDS, JR.

JTR/mmc

LEGAL NOTICE

C. William McGee, Complainant,
vs. Lt 2 According to Map and
Plat of Rosalie Boudan Estate as
Surveyed and Made by Dan Wil-
iams Situated on the North Side
of the East Prong of Fish River in
Section 31, Township 7 South,
Range 3 East and Smallman Mac-
queen Construction Co., C. E. Mac-
queen, et al.

MacQueen, Court, Baldwin County,
Circuit in Equity. No.

Smallman MacQueen Con-
struction Co., C. E. MacQueen, An-
drew G. C. MacQueen or

his devisees and distrib-

utors, Plaintiffs, vs. D. Z. Grove
conveyance of D. Z. Grove
heir and assigns, Title to said lands

to be established stands on

Record of the Probate Court of

Baldwin County in his name. No

known to have paid taxes

on said lands, or any

part thereof, within ten years

of the date of the bill

of

of

of

of

of

of

of

AFFIDAVIT OF PUBLICATION

I, Ms. Marjorie Howell Rankin

Publisher

of The Onlooker, published at
Foley, Ala., do solemnly swear that a copy of the above notice,
as per clipping attached, was published once each week in the
regular and entire edition of said newspaper, and not in any
supplement thereof, for Four consecutive weeks, com-

mencing with the issue dated May 26, 1949, and
ending with the issue dated June 16, 1949.

Ms. Marjorie Howell Rankin

Subscribed and sworn to before me this 16 day

1949

Notary Public.

AUGUST 14, 1951

THE STATE OF ALABAMA
Baldwin County.

Circuit Court of Baldwin County, Alabama
(In Equity)

C. WILLIAM MCGEE

Complainant

VS.

CERTAIN LANDS et al.

Respondent

I, Catherine Mason

as Register and Commissioner

have called and caused to come before me C. WILLIAM MCGEE

witness named in the Requirement for Oral Examination, on the 29 day of July
1949, at the office of Catherine Mason
in Foley, Alabama, and having first sworn said Witness to speak the
truth, the whole truth, and nothing but the truth, the said C. WILLIAM MCGEE
doth depose and say as follows:

I took possession in the fall of 1942. Since then I have rented the property to Paul Eslava who, I think, nearly every year since has raised beans on majority of the property, that is he planted them between pecan trees and part of the lease agreement was to take care of the pecan trees on the place which he has done. Also he keeps the fence up. I have also sold the pine trees that were on the property about a year or so ago. There isn't any house or building on the property. Everyone in that neighborhood knows, as I have told any number of them, that the property was mine and in my possession.

ORAL EXAMINATION.

I, Catherine Mason, as Register and Commissioner hereby certify that the foregoing deposition on Oral Examination was taken down by me in writing in the words of the witness ~~and read over to XXXXXXXX and XXXXXXXX signed the same in the presence of~~ and is true and correct as given by the witness ~~XXXX~~ myself.

at the time and place herein mentioned; that I have personal knowledge of personal identity of said witness or had proom made before me of the identity of said witness; that I am not of counsel or of kin to any of the parties to said cause, or any manner interested in the result thereof

I enclose the said Oral Examination in an envelope to the Register of said Court.

Given under my hand and seal, this 29 day of July, 194 9.

(L. S.)

NO. _____ PAGE _____

THE STATE OF ALABAMA
BALDWIN COUNTY

IN CIRCUIT COURT, IN EQUITY.

C. WILLIAM MCGEE

vs. Complainant

CERTAIN LANDS et al.
Respondent.

Oral Deposition

Filed July 29, 194 9

Catherine Mason Register.

Recorded in

Record

Vol. _____ Page _____

Register.

C. WILLIAM MCGEE
Complainant

Vs.

CIRCUIT COURT

BALDWIN COUNTY, ALABAMA

IN EQUITY.

No. _____

LOT 2 ACCORDING TO MAP AND PLAT OF
ROSALIE BOUDAN ESTATE AS SURVEYED AND MADE BY
DAN WILLIAMS SITUATED ON THE NORTH SIDE OF
THE EAST PRONG OF FISH RIVER IN SECTION 31,
TOWNSHIP 7 SOUTH, RANGE 3 EAST and SMALLMAN
MACC UREN CONSTRUCTION CO, G. E. MACQUEEN ,
ANALBE MACQUEEN, G.C. MACQUEEN, et al.

Respondents

TO THE HONORABLE TELFAIR J. WASHBURN, Jr., JUDGE OF THE CIRCUIT
COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY.

Humbly complaining comes C. William McGee and respectfully
represents and shows unto your Honor as follows:

ONE

That the complainant is over the age of twenty one years
of age and is a resident of Baldwin County, Alabama.

TWO

That the land in controversy is situated on the East prong
of Fish River in Baldwin County, Alabama, and is more particularly
described as follows:

Lot 2 according to map and plat of Rosalie Boudan
Estate as surveyed and made by Dan Williams, sit-
uated on the East prong of Fish River in Section
31, Township 7 South, Range 3 East,

and the complainant in his own right claims to own all of the rights,
title and interest to said land in it's entirety. The complainant
avers that he is in actual peaceful possession of said land and has
been in such possession of said land since, to-wit, the 10 th day of
November, 1942.

THREE

Complainant further alleges that on the 10 th day of April,

1939, a decree was rendered by the Probate Court of Baldwin County for the sale of said lands for the State and County taxes then due from Smallman, MacQueen Construction Co., a corporation. That the State of Alabama became the purchaser at a due and regular Tax Sale for said land and that the time for redemption by Smallman, MacQueen Construction Co. or others having an interest therein elapsed without redemption. That D. E. Grove became the purchaser from the State of Alabama and received all right, title and interest of Smallman, MacQueen Construction Co.. That D. E. Grove on the Tenth day of November, 1942 conveyed all of his right, title and interest to said property to the complainant by virtue of which complainant claims all right, title and interest to said property and that on that date complainant entered into peaceful possession and has since been continuously in peaceful possession of said land. That each year since taking possession of said land the complainant has assessed the land in the office of the Tax Assessor and regularly paid the taxes thereon.

FOUR

The title to said land stands on the records of the Judge of Probate of Baldwin County, Alabama in the name of the Complainant by virtue of the conveyance from D.E. Grove.

FIVE

No one but the complainant and D. E. Grove has paid taxes on said land within ten years next preceding the filing of this bill.

SIX

Complainant avers that he has exercised diligence in trying to ascertain the names of any persons or corporations who claim said land or any interest in said land but has failed to obtain such information. The records have been searched and the only possible claimants accordingly are G. E. MacQueen, Analee MacQueen, G. C. MacQueen and Smallman, MacQueen Construction Co., all made respondents to this bill and unknown heirs of the heretofore named parties. That

he has diligently tried to ascertain the names of any heirs, their addresses or the addresses of the parties named in this bill but has been unable to obtain such information.

SEVEN

Complainant further avers that there is no suit pending to test their interest in or title to or possession of said land.

The premises considered, complainant files this his verified bill of complaint against Smallman, MacQueen Construction Co. a Corporation, G. E. MacQueen, Analee MacQueen, G.C. MacQueen and their heirs and against the land and against any and all persons claiming any title thereto, interest in, lien or encumbrance upon said land or any part thereof and to establish the right or title to said land and to clear up all doubts or disputes concerning the same and that the parties hereinabove named shall be made respondents to this bill of complaint and that publication be made requiring them to plead, answer or demur to the same within the time required by law or decree pro confesso may be entered against them, and pray that this court will make and enter all orders, judgments and decrees that may be meet and proper in the premises and that upon final hearing of this cause will decree that complainant is the owner of said land and has a fee simple title thereto, free from all encumbrances and liens, and will grant to complainant such other, further or different relief as may be meet and proper in the premises, and in any and every way he will ever pray.

Arthur C. Epperson

A ttorney for Complainant

STATE OF ALABAMA

BALDWIN COUNTY

Before me, *Pearl L. Duncan*, a Notary Public, personally appeared Arthur C. Epperson who upon oath disposes and says, that he is the agent and attorney of and for the complainant in the above styled cause and is therefore duly authorized to make this oath, that he is informed and believes and upon such information and belief says that the allegations and averments contained in the foregoing bill of complaint are true.

Pearl L. Duncan

Sworn to and subscribed before me this 10 day of May 1949

Pearl L. Duncan

C. WILLIAM MCGEE
Complainant

CIRCUIT COURT
BALDWIN COUNTY, ALABAMA
IN EQUITY.

No. _____

LOT 2 ACCORDING TO MAP AND PLAT OF
ROSALIE BOUDAN ESTATE AS SURVEYED AND MADE BY
DAN WILLIAMS SITUATED ON THE NORTH SIDE OF
THE EAST PRONG OF FISH RIVER IN SECTION 31,
TOWNSHIP 7 SOUTH, RANGE 3 EAST AND SMALLMAN
MACQUEEN CONSTRUCTION CO, C. E. MACQUEEN,
ANALISE MACQUEEN, G. C. MACQUEEN, ET al.

Respondents

It is ordered in this cause that the notice provided for
in Section 1119, Tit. 7, Code 1940, be published in the Onlooker,
which is a newspaper having general circulation and published
in the County of Baldwin, Alabama, where the lands described in
the bill of complaint lie.

Done this the 21st day of May, 1949.

J. J. A. Mashburn, Jr.
Circuit Judge

C. WILLIAM MCGEE,

Complainant

-vs-

LOT 2 ACCORDING TO MAP AND PLAT OF
ROSALIE BOUDAN ESTATE AS SURVEYED
AND MADE BY DAN WILLIAMS SITUATED
ON THE NORTH SIDE OF THE EAST PRONG
OF FISH RIVER IN SECTION 31, TOWN-
SHIP 7 SOUTH, RANGE 3 EAST, AND
SMALLMAN MacQUEEN, ANALEE MacQUEEN,
G.C. MacQUEEN, et al.,

Respondents.

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALA-


BAMA, IN EQUITY

No. 2289

WHEREAS the Respondent in the above styled cause
has filed a motion for re-hearing, it is,

ORDERED, ADJUDGED and DECREED that said Motion
be heard on the 20th day of March, 1953, at 3:30 p.m. at the
Law Offices of Rickarby & Rickarby, in Fairhope, Alabama.

Done this the 6th day of March, 1953.


E. G. Rickarby, Jr.,
Special Judge

NOTE OF SUBMISSION

C. WILLIAM McGEE,

I

Complainant,

I

VS.

I

LOT 2 ACCORDING TO MAP AND PLAT OF
ROSALIE BOUDAN ESTATE AS SURVEYED
AND MADE BY DAN WILLIAMS SITUATED
~~ON THE NORTH SIDE OF THE EAST PRONG~~
OF FISH RIVER IN SECTION 31, TOWN-
SHIP 7 SOUTH, RANGE 3 EAST AND
SMALLMAN MacQUEEN CONSTRUCTION CO.,
G. E. MacQUEEN, ANALEE MacQUEEN,
G. C. MacQUEEN, et al.,

I

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Respondents.

I

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY

CASE NO. 2289.

Comes now the Complainant in the above styled cause and submits for
a final decree the proof on which he rests his case: The Complainant's verified
Bill of Complaint, demurrers to the Respondent's answer, Plea and answer to
Respondent's amended answer and cross-bill, the Decree Pro Confesso rendered
in this cause and the testimony of the Complainant's witnesses and exhibits
thereto, who have heretofore testified orally before the Court in the Complainant's
behalf.


SOLICITOR FOR COMPLAINANT

MOTION FOR FINAL DECREE

C. WILLIAM McGEE,

Complainant,

VS.

LOT 2 ACCORDING TO MAP AND PLAT OF
ROSALIE BOUDAN ESTATE AS SURVEYED
AND MADE BY DAN WILLIAMS SITUATED
ON THE NORTH SIDE OF THE EAST PRONG
OF FISH RIVER IN SECTION 31, TOWN-
SHIP 7 SOUTH, RANGE 3 EAST AND
SMALLMAN MacQUEEN CONSTRUCTION CO.,
G. E. MacQUEEN, ANALEE MacQUEEN,
G. C. MacQUEEN, et al.,

Respondents.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY

CASE NO. 2289.

Comes now the Complainant in the above styled cause and shows unto the Court that a Decree Pro Confesso has been heretofore rendered in this cause against all parties Respondent thereto except G. E. MacQueen, Jr. That this Court has heard the testimony of the witnesses testifying for the Complainant and for the Respondent, that both sides have rested their case. Your Complainant therefore humbly moves that Your Honor will enter up a final decree in this cause.



SOLICITOR FOR MOVENT

PLEA AND ANSWER

C. WILLIAM MCGEE,

X

Complainant and Cross Respondent,

X

VS.

X

IN THE CIRCUIT COURT OF

LOT 2 ACCORDING TO MAP AND PLAT OF ROSALIE
BOUDAN ESTATE AS SURVEYED AND MADE BY DAN
WILLIAMS SITUATED ON THE NORTH SIDE OF THE
EAST PRONG OF FISH RIVER IN SECTION 31,

X

BALDWIN COUNTY, ALABAMA.

X

IN EQUITY

TOWNSHIP 7 SOUTH, RANGE 3 EAST and SMALLMAN
MACQUEEN CONSTRUCTION CO., G. E. MACQUEEN,
ANALEE MACQUEEN, G. C. MACQUEEN, et al.,

X

CASE NO. 2289.

X

Respondents and Cross Complainants.

X

TO THE HONORABLE ELLIOTT G. RICKARBY, JR., ACTING JUDGE OF THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

It appearing to the Complainant in this cause that so much of the
Respondent, G. E. MacQueen, Jr.'s amended answer as follows: "That Respondent,
G. E. MacQueen further says in answer to the Bill of Complaint and for each part
thereof, separately and severally," is in the nature of a cross bill. Hence your
Complainant and Cross Respondent comes now and for answer to the Cross bill shows
unto your Honor as follows:

1.

Your Complainant denies that aspect of Respondent's cross bill
reading, "that he is the owner of said property involved."

2.

Your Complainant neither admits nor denies that aspect of the cross
bill which reads as follows: "that your Respondent's father and grandfather own-
ed, occupied and possessed said property for many years; that the purported tax
sale to the State of Alabama and the purported sale from the State of Alabama to
D. Z. Grove, if any there be, was not in compliance with the laws and prerequisites
of the State of Alabama with reference to and pertaining to tax sales; that said
tax sale, if any there be, was defective and voidable or void and not in strict
compliance with the laws of the State of Alabama; that said tax sale was for the
purpose of selling the interest of Smallman, MacQueen Construction Company, who
did not own or possess said lands involved and that your Respondent, G. E. MacQueen,
Jr., had no notice or knowledge of such tax sale and was not advised of same;"
but demands strict proof thereof.

3.

Your Complainant denies that aspect of the Respondent's cross bill stating, "that the alleged conveyance by D. Z. Grove on the 10th day of November, 1942, to the Complainant was void or voidable and defective and without legal authority, and conveyed no interest to the Complainant."

4.

Your Complainant neither admits nor denies that aspect of the Respondent's cross bill referring to the time he spent in the Armed Forces, but demands strict proof of the same. For further answer to this aspect of the Respondent's cross bill your Complainant says, that the Respondent had ample opportunity to clear up all doubts concerning his title to the land in litigation prior to the time he was in service. The Complainant further says that the Respondent waited twenty-two (22) months after he was out of service before filing a bill to clear his title on the land in litigation. That Title 50 USCA, Section 60 allows a veteran six (6) months after the termination of his service to redeem from a tax sale; that Respondent's pleading conclusively shows that he waited longer than the statutory period before attempting to clear his title or redeem from the tax sale, through which your Complainant acquired title.

5.

Your Complainant denies that aspect of the Respondent's cross bill in which he alleges that a suit is now pending to try title to the property now in litigation. For further answer to this aspect of the Respondent's cross bill the Complainant says that case number 2005 was an in personum suit between G. E. MacQueen, Jr., and C. F. Baker and Julia Baker. That said suit in no wise questioned the Complainant's title to the land now in litigation. Your Complainant further says that no notice of any type was given your Complainant of suit number 2005 either by personal service, publication, Lis Pendens or otherwise, that your Complainant was advised in no way of the fact that MacQueen and Baker were litigating the title to his property. The Complainant says for further answer to this aspect of the Respondent's cross bill that case number 2005 did not in any way determine the title to the land therein in litigation, but determined only which of the two litigants had the better title.

6.

Your Complainant denies that aspect of the Respondent's cross bill alleging that the Complainant's title is invalid because the tax sale to D. Z. Grove from the State of Alabama was defective, and demands strict proof of the same.

7.

Your Complainant denies that aspect of the Respondent's cross bill in which he states, "that he did thereafter proceed to institute a suit against C. F. Baker and his wife, who were the only adverse claimants that he knew of to said property at the time and that he proceeded to do so as expediently as the facts could be ascertained."

8.

Your Complainant neither admits nor denies the last aspect of the Respondent's cross bill, but demands strict proof of the same.

9.

Your Complainant denies any and all aspects of the Respondent's cross bill not heretofore fully answered.

ARTHUR C. EPPERSON
C. LENCIR THOMPSON
TOLBERT M. BRANTLEY

By: Tolbert M. Brantley
Solicitors for Complainant and Cross
Respondent.

RECORDED

PLEA AND ANSWER

C. WILLIAM MCGEE,

Complainant and cross Respondent,

VS.

CERTAIN LANDS, ET AL

Respondent and cross Complainant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY

CASE NO. 2289.

FILED

8-3-5

REGISTER

C. WILLIAM MCGEE
Complainant.

VS.

CIRCUIT COURT

BALDWIN COUNTY, ALABAMA.

IN EQUITY.

LOT 2 ACCORDING TO MAP AND PLAT OF
ROSALIE BOUDAN ESTATE AS SURVEYED AND
MADE BY DAN WILLIAMS SITUATED ON THE
NORTH SIDE OF THE EAST PRONG OF FISH
RIVER IN SECTION 31, TOWNSHIP 7 SOUTH,
RANGE 3 EAST AND SMALLMAN MACQUEEN
CONSTRUCTION CO, C. W. MACQUEEN, AVALINE
MACQUEEN, C. C. MACQUEEN, et al.

Respondents.

This cause coming on to be heard on this the 27th day of July, 1949, is submitted for final decree upon Complainant's verified bill of complaint; upon the decree pro confesso rendered herein and upon the testimony of C. W. McGee, and the certificate of the Register and the pleadings and proof as noted by the Register and it appearing to the satisfaction of the Court,

First. That the complainant, C. William McGee, at the time of the filing of his bill of complaint in this cause, claimed in his own right a fee simple title to and was in the actual peaceable possession of the following described lands, lying in the County of Baldwin, State of Alabama, and more particularly described as follows:

Lot 2 according to map and plat of Rosalie Boudan Estate as surveyed and made by Dan Williams, situated on the East prong of Fish River in Section 31, Township 7 South, Range 3 East.

Second. That at the time of the filing of said bill of complaint, no suit was pending to test his title to, interest in, or the right to the possession of said lands.

Third. That his said bill of complaint was and is duly verified, and was filed against said lands and against any and all persons claiming any title to, interest in, lien or encumbrance on said land or any part thereof, and was to establish the right or title to such lands or interest, and to clear all doubts or disputes concerning the same, and that said bill of complaint did in all respects comply with the provisions of Code 1940, Tit. 7, Section 1117.

Fourth. That the addresses of none of the parties defendant were known to complainant, and that he exercised diligence to ascertain the facts with regard thereto.

Fifth. That notice of the pendency of said bill of complaint was drawn and signed by the Register of this Court, and said Register did have such notice published once a week for four consecutive weeks in the Onlooker, a newspaper having general circulation and published in Baldwin County, Alabama, as prescribed by rule of this Court, or by an order made in this cause.

Sixth. That a copy of said notice, certified by the Register as being correct, was recorded as a lis pendens in the office of the Probate Judge of said county, said notice being in strict accord and compliance with Code 1940, Tit. 7, Section 1121.

Seventh. That it has been more than sixty days since the first publication of said notice and the filing of a certified copy of said notice in the office of the Probate Judge of said county.

Eighth. That no person has intervened in this cause.

Ninth. That all of the allegations of fact contained in complainant's bill of complaint are true. It is, therefore,

Ordered, adjudged and decreed (1) that complainant is entitled to the relief prayed for in his bill of complaint, and that the fee simple title claimed by complainant in the above described lands has been duly proven.

(2) That the complainant is the owner of said lands, and has a fee simple title thereto, free of all liens and encumbrances, and that his said title thereto be and is hereby established, and that all doubts and disputes concerning the same be and are hereby cleared up.

(3) That a certified copy of this decree be recorded in the office of the Judge of Probate of Baldwin County, Alabama, and that it be indexed in the name of C. William McGee, on both the direct index and the indirect index of the record thereof.

(4) That complainant pay the costs of these proceedings, for which let execution issue.

Done this the 27th day of July 1949.

Judge.

LAW OFFICES

RICKARBY & RICKARBY

FAIRHOPE, ALABAMA

ELLIOTT G. RICKARBY

E. G. RICKARBY, JR.

24 January 1952

Mrs. Alice J. Duck
Register Circuit Court
Way Minette, Alabama

RE: C. William McGee, Complainant -vs- Certain Lands,
et al, Equity No. 289 and G. C. McQueen, Complainant,
-vs- C. F. Baker, et al, Respondent, Equity No. 2005:

Dear Mrs. Duck:

On the 19th and 29th of January my father, Elliott G. Rickarby was appointed to act as special Judge in these two cases which I understand are related.

My father is quite sick at the present time and it is impossible for me to say when and if he will be able to resume his duties.

I therefore request that he be releived of his duties in this case.

Yours very truly,

RICKARBY & RICKARBY

By: *E. G. Rickarby Jr.*

EGRjr/fc

cc: J. Terry Reynolds, Jr., Esquire
W. C. Beebe, Esquire
Arthur C. Epperson, Esquire

J. TERRY REYNOLDS, JR.

ATTORNEY AT LAW

907-909 FIRST NATIONAL BANK BLDG.

MOBILE 13, ALABAMA

ASSOCIATE:
MAURICE A. DOWNING

TELEPHONE 3-3661

August 2, 1950

Mrs. Alice J. Duck
Circuit Court Clerk
Bay Minette, Alabama.

In Re: C. William McGee, Complainant,
Vs. Lot 2 According, Respondents.

Dear Mrs. Duck:

Please file the enclosed paper in the above mentioned case
and mail a copy to the attorneys on the other side.

Your courtesy in this matter will be greatly appreciated.

Very truly yours,

J. Terry Reynolds, Jr.
J. TERRY REYNOLDS, JR.

JTR/br

C. WILLIAM McGEE)
Complainant.)
VS.)

CIRCUIT COURT
BALDWIN COUNTY, ALABAMA.
IN EQUITY.

LOT 2 ACCORDING TO MAP AND PLAT OF
ROSALIE BOUDAN ESTATE AS SURVEYED AND
MADE BY DAN WILLIAMS SITUATED ON THE
NORTH SIDE OF THE EAST PRONG OF FISH
RIVER IN SECTION 31, TOWNSHIP 7 SOUTH,
RANGE 3 EAST AND SMALLMAN MACQUEEN
CONSTRUCTION CO, C. E. MACQUEEN, ANALEE
MACQUEEN, G. C. MACQUEEN, et al.

Respondents.

This cause coming on to be heard on this the 27th day of July, 1949, is submitted for final decree upon Complainant's verified bill of complaint, upon the decree pro confesso rendered herein and upon the testimony of C. W. McGee, and the certificate of the Register and the pleadings and proof as noted by the Register and it appearing to the satisfaction of the Court;

First. That the complainant, C. William McGee, at the time of the filing of his bill of complaint in this cause, claimed in his own right a fee simple title to and was in the actual peaceable possession of the following described lands, lying in the County of Baldwin, State of Alabama, and more particularly described as follows:

Lot 2 according to map and plat of Rosalie Boudan Estate as surveyed and made by Dan Williams, situated on the East prong of Fish River in Section 31, Township 7 South, Range 3 East.

Second. That at the time of the filing of said bill of complaint, no suit was pending to test his title to, interest in, or the right to the possession of said lands.

Third: That his said bill of complaint was and is duly verified, and was filed against said lands and against any and all persons claiming any title to, interest in, lien or encumbrance on said land or any part thereof, and was to establish the right or title to such lands or interest, and to clear all doubts or disputes concerning the same, and that said bill of complaint did in all respects comply with the provisions of Code 1940, Tit. 7, Section 1117.

Fourth. That the addresses of none of the parties defendant were known to complainant, and that he exercised diligence to ascertain the facts with regard thereto.

Fifth. That notice of the pendency of said bill of complaint was drawn and signed by the Register of this Court, and said Register did have such notice published once a week for four consecutive weeks in the Onlooker, a newspaper having general circulation and published in Baldwin County, Alabama, as prescribed by rule of this Court, or by an order made in this cause.

Sixth. That a copy of said notice, certified by the Register as being correct, was recorded as a lis pendens in the office of the Probate Judge of said county, said notice being in strict accord and compliance with Code 1940, Tit. 7, Section 1121.

Seventh. That it has been more than sixty days since the first publication of said notice and the filing of a certified copy of said notice in the office of the Probate Judge of said county.

Eighth. That no person has intervened in this cause.

Ninth. That all of the allegations of fact contained in complainant's bill of complaint are true. It is, therefore,

Ordered, adjudged and decreed (1) that complainant is entitled to the relief prayed for in his bill of complaint, and that the fee simple title claimed by complainant in the above described lands has been duly proven.

(2) That the complainant is the owner of said lands, and has a fee simple title thereto, free of all liens and encumbrances, and that his said title thereto be and is hereby established, and that all doubts and disputes concerning the same be and are hereby cleared up.

(3) That a certified copy of this decree be recorded in the office of the Judge of Probate of Baldwin County, Alabama, and that it be indexed in the name of C. William McGee, on both the direct index and the indirect index of the record thereof.

(4) That complainant pay the costs of these proceedings, for which let execution issue.

Done this the 27th day of July 1949.

Judge.

LAW OFFICES

RICKARBY & RICKARBY

ELLIOTT G. RICKARBY

FAIRHOPE, ALABAMA

E. G. RICKARBY, JR.

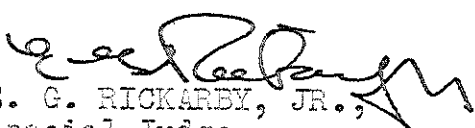
12 February 1952

Mrs. Alice J. Duck
Register
Bay Minette, Alabama

Dear Mrs. Duck:

McGEE -vs- CERTAIN LANDS; No. 2289 EQUITY: Please
file the above mentioned decree in this cause and
am obliged.

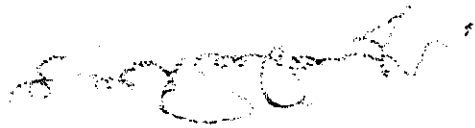
Yours very truly,


E. G. RICKARBY, JR.,
Special Judge

EGRjr/fc

cc: J. Terry Reynolds, Esq.

cc: Arthur Epperson, Esq.



LAW OFFICES

ELLIOTT & RICKARBY

RICKARBY & RICKARBY

FAIRHOPE, ALABAMA

11 February 1953

E. G. RICKARBY, JR.

Mrs. Alice J. Duck
Clerk Circuit Court
Bay Minette, Ala.


No. 2269 Equity
Re: McGee
Vs: Certain Lands

Dear Mrs. Duck:

With this I am filing final decree in this cause. Messrs. Reynolds and Brantley assured me they were sending you in the near future a statement as to compensation of the Special Judge which I ask that you obtain from them before figuring up Court costs.

Thanks.

Yours very truly,


E. G. Rickarby, Jr.,
Special Judge

R/i

3039

cc: J. Terry Reynolds, Esq.

cc: Tolbert M. Brantley, Esq.

Enc: Final Decree

2.

The bill is a proceeding in rem, naming certain respondents one of whom is appellant, to quiet title to certain land located on Magnolia River, described as "Lot 2 according to map and plat of Rosalie Boudan Estate, as surveyed and made by Dan Williams, situated on the east prong of Fish River in Section 31, Township 7 South, Range 3 East, in Baldwin County, Alabama," and was filed May 11, 1949.

The bill shows that the Probate Court of Baldwin County on the 10th day of April 1939 decreed the sale of certain lands, including Lot 2, for the state and county taxes then due by assessment of Smallman, MacQueen Construction Company, a corporation; that the State of Alabama became the purchaser at the tax sale and that there was no redemption; that D. Z. Grove purchased the land from the State on June 17, 1942, and he sold said land to complainant McCee on November 10, 1942, and that complainant had been in the continuous and peaceful possession of the land and had regularly paid taxes thereon since that time and that there was no suit pending to test complainant's interest in or title to or possession of the land.

The complainant took a decree pro confesso in July 1949 which was later set aside as to respondent MacQueen and after his demurrer to the bill was overruled, he filed an answer and cross complaint in which he denied that complainant had acquired any title under the conveyance from D. Z. Grove and he showed that the property in this litigation, and property across the river from it, had originally been owned by Smallman, MacQueen Construction Co., a corp.; that said company had executed a mortgage on both tracts and the property had been bought in at mortgage foreclosure sale by Trustee Investment Co. of which appellant was sole owner; that

3.

respondent and cross-complainant MacQueen entered the military service of the United States in April 1942 and remained in said service until November 1945; that in February of 1947 he employed an attorney to look into the matter of redeeming both tracts of land which had been bought from the state by D. Z. Grove; that he filed an action in personam against C. F. and Julia Baker, who had purchased the property across the river from D. Z. Grove, but in his bill of complaint he described both tracts. The prayer of the cross bill asked that he be decreed to be the legal title holder to the lot and that he be placed in possession.

The appellee Motee filed an answer to the cross bill generally denying the allegations and setting up the statute of limitations as a bar to the action.

For the purposes of this opinion we pretermitt certain questions of appellant's title prior to his entry into the military service and will assume that title was in appellant at the time the lot sold to the state for taxes. We think under the authority of U.S.C.A. Title 50, § 525 (Soldiers' and Sailors' Civil Relief Act of 1940); Peace v. Bullock, 252 Ala. 155, 40 So. 2d 82, and LeMaistre v. Leffers et al., 333 U. S. 1, 68 Sup. Ct. 371, that our short statute of limitations (Code of 1940, Title 51, § 295), was tolled as long as MacQueen was in the military service, or, in this case, until November, 1945. We are primarily concerned with what happened after that time, but it would be appropriate to state that MacQueen visited the property in 1944 while in the military service and noticed the timber on the lot had been cut.

4.

The complainant McGee had taken possession of the property in 1943 under his quit claim deed from Grove and rented it to Clarence and Paul Eslava and they continued to be his tenants from 1943 up to the time of the trial of the case.

The Emmett Brothers, Richard and James, lived on property adjoining Lot No. 2 and testified as witnesses for appellant. They knew that the place had been offered for sale to them by Mr. Grove, that he had cut the timber off the place before selling to McGee, that the Eslava boys had used the land for some purposes every year since 1943 but the use had not been visible from the public road in front of the property.

After employing his attorney in the early part of 1947, Mr. MacQueen had a search made of the records of Baldwin County by an attorney at Bay Minette, who in June 1947 reported that both tracts of land had been sold for taxes in the name of Smallman, MacQueen Construction Company, and in 1942 sold by the State to Mr. D. Z. Grove. Mr. Grove sold the property on the south side of the river to the Bakers, and as already stated, sold the lot on the north side of the river, here involved, to Mr. McGee. The McGee deed was recorded on August 22, 1947, which was prior to the date the suit against Mr. and Mrs. Baker was filed, November 10, 1947, but subsequent to the check of the records by the attorney.

It is undisputed that the first information which the appellee or his attorney had of the Baker suit was in July 1949 when he secured a decree pro confesso in the instant case. The final decree in the Baker suit was signed in May 1952.

5.

Considered in the light most favorable to appellant, he had until November 1948 to redeem the land involved in this suit. He took such action against the Bakers in November 1947 and was permitted to redeem that part which Grove had sold to them. At the time the Baker suit was filed, the appellant could have ascertained the following facts: (1) That the deed from McGee to Grove was of record and had been since August 22, 1947; (2) that the records in the tax assessor's office showed an assessment of the lot by Mr. McGee for the tax years 1944-45-46 and 47; (3) that his witnesses, the Emmett Brothers, living on the adjoining lot, knew that Mr. McGee claimed the property and that the Eslava boys were using it as tenants of McGee; (4) that the Eslava boys, who lived about 1/4th mile on the opposite side of the property from the Emmetts, were claiming possession as tenants under McGee. Notwithstanding this available information, the suit of appellant was in personam against the Bakers alone, and as such could have no binding effect on McGee, the holder of record title and the party in possession.

We are, therefore, of the opinion that the relief prayed for in appellant's cross bill was properly denied and that his right of redemption was barred by the "short statute of limitations," Code 1940, Title 51, § 295, the applicable part of which reads: "No action for the recovery of real estate sold for the payment of taxes shall lie unless the same is brought within three years from the date when the purchaser became entitled to demand a deed therefor; * * *."

The foregoing has application when a party comes into equity to quiet title, where the land was bought in by and later purchased from the State, and where the tax sale was void. —Odom v. Averett, 248 Ala. 289, 27 So. 2d 479.

6.

There was sufficient evidence to support the decree to quiet title, in that the essential elements of adverse possession as listed in Moorer v. Malone, 248 Ala. 76, 26 So. 2d 558, and the use or exercise of such dominion over it "as in its present state it is reasonably adapted to" were established.

Having decided that the appellant's action is barred by the statute of limitations, it is unnecessary to consider other points raised by appellant, except to note that we have examined every case cited in brief as supporting the contention that appellee was estopped to plead the statute of limitations, and we find no case which is applicable to the case at bar.

It follows that the decree of the trial court should be affirmed.

Affirmed.

Livingston, C. J., Lawson and Stakely, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 565

G. E. MacQueen, Jr. , Appellant,

vs.

C. William McGee , Appellee,

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 six 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 21st day of

January, 19 54

J. Render Thomas

Clerk of the Supreme Court of Alabama.

15

THE SUPREME COURT OF ALABAMA

October Term, 19 53-54

1st Div., No. 565

G. E. MacQueen, Jr.

Appellant,

vs.

C. William McGee

Appellee.

From Baldwin Circuit Court.
in Equity

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1985

January 21, 1954

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1953-54

1 Div. 565

G. E. MacQueen, Jr., also
sometimes known as G. E.
MacQueen,

vs.

C. William McGee,
Baldwin Circuit Court,
In Equity.
No. 2289

Come the parties by attorneys, and appellee's Motion to Dismiss the Appeal and the record and matters therein assigned for errors, being argued and submitted and duly examined and understood by the Court, it is considered and ordered that appellee's Motion to Dismiss the Appeal be and the same is hereby overruled.

IT IS FURTHER CONSIDERED that in the record and proceedings of the Circuit Court, In Equity, there is no error.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the decree of the Circuit Court, In Equity, be in all things affirmed.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the appellant, G. E. MacQueen, Jr., also sometimes known as G. E. MacQueen, and United States Fidelity & Guaranty Company, surety on the appeal bond, pay the costs of appeal of this Court and of the Circuit Court, In Equity, for which costs let execution issue accordingly.

STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 565

G. E. MacQueen, Jr., also
sometimes known as G. E.
MacQueen.

, Appellant.,

v.

C. William McGee

, Appellee.,

From

Baldwin Circuit

In Equity

No. 2289

Court.

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 two inclusive, contain a full, true, and correct copy of the Decree Overruling Appellee's Motion to Dismiss the Appeal and Affirming the Decree of the Circuit Court, made and entered by 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 21st day of

January 19 54.

J. Render Thomas

Clerk of the Supreme Court of Alabama.

16.
October Term 1953-54

THE SUPREME COURT OF ALABAMA

1st Div., No. 565

G. E. MacQueen, Jr., also
sometimes known as G. E.
MacQueen,

Appellant,

v.

C. William McGee

Appellee.

From Baldwin Circuit Court.
In Equity

Certified Copy of

Decree Overruling Appellee's
Motion to Dismiss Appeal and
~~Affirming Decree of Circuit~~
Court - January 21, 1954.

C. WILLIAM MC GEE,

Complainant,

VS.

LOT 2 ACCORDING TO MAP AND PLAT
OF ROSALIE BOUDAN ESTATE AS
SURVEYED AND MADE BY DAN WILLIAMS
SITUATED ON THE NORTH SIDE OF THE
EAST PRONG OF FISH RIVER IN SECTION
31, TOWNSHIP 7 SOUTH, RANGE 3 EAST
and SMALLMAN MACQUEEN CONSTRUCTION
CO, G. E. MACQUEEN, ANALEE MACQUEEN,
G. C. MACQUEEN, et al,

Respondents.

)
)
) IN THE CIRCUIT COURT OF
) BALDWIN COUNTY, ALABAMA
) IN EQUITY
) NO. 2289

We hereby acknowledge ourselves as sureties for the costs of the appeal
taken by G. E. MacQueen, Jr., also sometimes known as G. E. MacQueen,
from the decree rendered by the Circuit Court of Baldwin County, Alabama,
sitting in Equity in the above entitled cause at the April Term, A. D. 1953
thereof, on to-wit: the 11th day of February A.D. 1953, which appeal is made
returnable to the Supreme Court of Alabama on the _____ Monday of
MAY 25, A.D. 1953.

Witness our hands this the 25th day of

May

A.D. 1953.

G. E. MacQueen, Jr. also sometimes known
as G. E. MacQueen
Principal

UNITED STATES FIDELITY & GUARANTY COMPANY

By: Lee O. Whiskey

Attorney-in-Fact

Taken and approved this the 2nd day of June, 1953.

Archie H. Nuck
Register

SECRET
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REF ID: A68907

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NO. 558
MEXICO
SAN JUAN COUNTY, N.M.
MAY 1900

SECURITY FOR COSTS OF APPEAL

ken, approved and filed this 2nd
y of June A. D. 1953.
Alice French
Register

Register

GENERAL POWER OF ATTORNEY

No. 64550

Know all Men by these Presents:

That the UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint

Leroy Monsky

of the City of Birmingham
its true and lawful attorney in and for the State of Alabama

for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said UNITED STATES FIDELITY AND GUARANTY COMPANY, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said

Leroy Monsky

may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 7th day of August, A. D. 1950

UNITED STATES FIDELITY AND GUARANTY COMPANY.

(Signed)

By E. W. Levering, Jr.
Vice-President.

(SEAL)

(Signed)

F. C. Ayres
Assistant Secretary.

STATE OF MARYLAND
BALTIMORE CITY.

On this 7th day of August, A. D. 1950, before me personally came E. W. Levering, Jr., Vice-President of the UNITED STATES FIDELITY AND GUARANTY COMPANY and F. C. Ayres, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they resided in the City of Baltimore, Maryland; that they, the said E. W. Levering, Jr. and F. C. Ayres were respectively the Vice-President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of the Company.

My commission expires the first Monday in May, A. D. 1951.

(Seal)

(Signed)

Frieda Walter
Notary Public.

STATE OF MARYLAND
BALTIMORE CITY.

I, M. Luther Pittman, Clerk of the Superior Court of Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that Frieda Walter, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 7th day of August, A. D. 1950.

(SEAL)

(Signed)

M. Luther Pittman
Clerk of the Superior Court of Baltimore City.

GENERAL POWER OF ATTORNEY

64550

No. _____

Know all Men by these Presents:

That the UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint

Leroy Monsky

of the City of Birmingham
its true and lawful attorney in and for the State of Alabama

for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said UNITED STATES FIDELITY AND GUARANTY COMPANY, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said

Leroy Monsky

may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 7th day of August, A. D. 1950

UNITED STATES FIDELITY AND GUARANTY COMPANY.

(Signed)

By E. W. Levering, Jr.
Vice-President.

(SEAL)

(Signed)

F. C. Ayres
Assistant Secretary.

STATE OF MARYLAND
BALTIMORE CITY.

On this 7th day of August, A. D. 1950, before me personally came E. W. Levering, Jr., Vice-President of the UNITED STATES FIDELITY AND GUARANTY COMPANY and F. C. Ayres, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they resided in the City of Baltimore, Maryland; that they, the said E. W. Levering, Jr. and F. C. Ayres were respectively the Vice-President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of the Company.

My commission expires the first Monday in May, A. D. 1951.

(Seal)

(Signed)

Frieda Walter
Notary Public.

STATE OF MARYLAND
BALTIMORE CITY.

I, M. Luther Pittman, Clerk of the Superior Court of Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that Frieda Walter, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 7th day of August, A. D. 1950

(SEAL)

(Signed)

M. Luther Pittman
Clerk of the Superior Court of Baltimore City.

C. WILLIAM MC GEE,

Complainant,

VS.

LOT 2 ACCORDING TO MAP AND
PLAT OF ROSALIE BOUDAN ESTATE
AS SURVEYED AND MADE BY DAN
WILLIAMS SITUATED ON THE NORTH
SIDE OF THE EAST PRONG OF
FISH RIVER IN SECTION 31, TOWN-
SHIP 7 SOUTH, RANGE 3 EAST and
SMALLMAN MACQUEEN CON-
STRUCTION CO, G. E. MACQUEEN,
ANALEE MACQUEEN, G. C. MACQUEEN,
et al,

Respondents.

)

)

) IN THE CIRCUIT COURT OF

) BALDWIN COUNTY, ALABAMA

) IN EQUITY

) NO. 2289

)


)

)

)

NOTICE OF APPEAL

Comes the Respondent, G. E. MacQueen, Jr., also sometimes known as G. E. MacQueen, in the above styled cause and gives notice of appeal to the Supreme Court of Alabama from the final decree of the Circuit Court of Baldwin County, Alabama, in Equity, rendered on the 11th day of February, 1953, and the overruling or denial of the Respondent's motion for a re-hearing specially set down for hearing on the 10th day of April, 1953, and overruled or denied on the 10th day of April, 1953, wherein G. E. MacQueen, Jr., also sometimes known as G. E. MacQueen, is one of the Respondents.


Solicitor for Respondent G. E. MacQueen,
Jr., also sometimes known as G. E.
MacQueen.

Taken and approved this the _____ day of May, 1953.

Register

ORDER

C. WILLIAM McGEE,

Complainant

-vs-

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

CASE NO. 2289

LOT 2 ACCORDING TO THE MAP AND
PLAT OF ROSALIE BOUDAN ESTATE AS
SURVEYED AND MADE BY DAN WILLIAMS S
SITUATED ON THE NORTH SIDE OF THE
EAST PRONG OF FISH RIVER IN SECTION
31, TOWNSHIP 7 SOUTH, RANGE 3 EAST
AND SMALLMAN MacQUEEN CONSTRUCTION
CO., G. E. MacQUEEN, ANALEE Mac-
QUEEN, et al,

Respondents

This cause being heard on motion for rehearing, the
Complainant moves to dismiss rehearing because improperly filed.

Motion Denied.

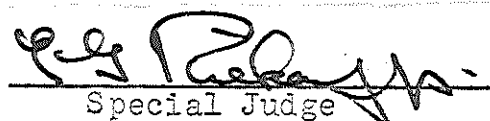
Respondent moves to amend petition by having same verified
by affidavit.

Motion Denied.

This cause now coming on again to be heard, is submitted
for decision upon the application for rehearing filed with the Reg-
ister on the 4th day of March, 1953, and upon consideration of the
same the court is of the opinion that said application should be
denied. It is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that the appli-
cation for rehearing of the decree and order rendered in this cause
on the 11th day of Febr., 1953, be and the same is hereby denied at
the cost of the applicant.

Done this the 10th day of April, 1953.


Special Judge

C. WILLIAM McGEE,

Complainant,

VS.

LOT 2 ACCORDING TO THE MAP AND PLAT
OF ROSALIE BOUDAN ESTATE AS SURVEYED
AND MADE BY DAN WILLIAMS SITUATED ON
THE NORTH SIDE OF THE EAST PRONG OF
FISH RIVER IN SECTION 31, TOWNSHIP 7
SOUTH, RANGE 3 EAST and SMALLMAN
MacQUEEN CONSTRUCTION CO., G. E.
MacQUEEN, ANALEE MacQUEEN, et al.

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY
CASE NO. 2289

Comes now the Complainant in the above styled cause and moves the Court
to dismiss the Respondent's petition for rehearing and for grounds for such
motion shows unto the Court as follows:

1.

This Court by oral order rendered its decree, in so far as it relates
to Respondent, in this cause, on the 13th day of January, 1953; in which it
granted the Complainant the relief he sought and denied the Respondent the
relief he sought by way of cross-bill; and this petition of the Respondent is
now barred, it not being filed within thirty days after the date of the Court's
decree.

2.

Respondent's petition for rehearing is not verified by affidavit.

Tolbert M. Brantley
Solicitor for Complainant

STATE OF ALABAMA

BALDWIN COUNTY

Before me, E. G. Pickens, a Notary Public in and for
said State and County, personally appeared Tolbert M. Brantley, who is known to
me and who being duly sworn, doth depose and say that he is the Solicitor for
C. William McGee, Complainant, in the foregoing motion and that the matters and
things therein alleged are true to his own knowledge, information and belief

Tolbert M. Brantley
Affiant

Sworn to and subscribed before me this 10th day of April, 1953.

E. G. Pickens
Notary Public

C. WILLIAM MC GEE,

Complainant,

VS.

Lot 2 ACCORDING TO THE MAP AND PLAT
OF ROSALIE BOUDAN ESTATE AS SURVEYED
AND MADE BY DAN WILLIAMS SITUATED
ON THE NORTH SIDE OF THE EAST PRONG
OF FISH RIVER IN SECTION 31, TOWNSHIP
7 SOUTH, RANGE 3 EAST AND SMALLMAN
MacQUEEN CONSTRUCTION CO., G. E.
MacQUEEN, ANALEE MacQUEEN, et al.,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY,

ALABAMA

IN EQUITY

Case No. 2289

TO THE HONORABLE ELLIOTT G. RICKARBY, JR., SPECIAL JUDGE
PRESIDING IN SAID CAUSE IN THE CIRCUIT COURT OF BALDWIN COUNTY,

ALABAMA:

Now comes your Petitioner, G. E. MacQueen, Jr., also some times known as G. E. MacQueen, one of the Respondents named in the above entitled cause, and applies for a re-hearing of the decree and order heretofore rendered in the above styled cause, on the 10th day of February, 1953, and as grounds for such application, your Petitioner respectfully shows unto Your Honor and unto this Honorable Court the following:

ONE

Said decree is contrary to the facts as presented on the trial of said cause.

TWO

Said decree is contrary to the law in said cause.

THREE

Your Petitioner claims the benefits and rights as provided under Alabama Equity Rule 62, in filing this application for a re-hearing.

FOUR

Petitioner, one of the Respondents named in said cause, avers that he has been materially damaged and injured by the decision of this Honorable Court as rendered.

FIVE

Because this Honorable Court erred in denying your Respondent's Answer and Cross Bill.

SIX

Because this Honorable Court erred in granting the Complainant relief prayed for in the complaint.

SEVEN

Because this Honorable Court admitted evidence, both oral and documentary,

which was not pertinent or material to this trial, but which materially affected the decision of this Honorable Court for an adverse ruling as to your Petitioner, one of the Respondents and Cross Complainant.

EIGHT

Because this Honorable Court erred in providing in said final decree that the Complainant obtained title to the land involved in said suit, by virtue of a deed from D. Z. Grove, on the 10th day of November, 1942.

NINE

Because this Honorable Court erred in providing in said final decree that the Complainant was in actual and peaceable possession of said land involved.

TEN

Because this Honorable Court erred in holding in said decree that the State of Alabama acquired title to the land involved in this case, by virtue of a tax sale from Smallman MacQueen Construction Company, dated the 10th day of April, 1939, when said company did not own the property.

ELEVEN

Because this Honorable Court erred in providing in said final decree that for more than ten years next preceding the filing of the Bill of Complaint in this cause, no person, other than those through whom the Complainant claims title to the land, has assessed or paid taxes thereon.

TWELVE

Because this Honorable Court erred in providing in said final decree that the said C. William McGee, the Complainant, at the time of filing his Bill of Complaint and at this time, had and has the fee simple title to the land involved in this case.

THIRTEEN

For that this Honorable Court erred in providing in said final decree that neither of the Respondents, nor their heirs have any title in, interest, claim, lien or encumbrance on the lands involved in this suit.

FOURTEEN

For that this Honorable Court erred in rendering a decree that title be quieted and established in C. William McGee, the Complainant and Cross Respondent in this case.

FIFTEEN

For that this Honorable Court erred in said decree in taxing the court costs that accrued in this cause against G. E. MacQueen, Jr., one of the Respondents and Cross Complainant therein, after he filed his motion to set

aside said decree pro confesso which had been rendered against him.

SIXTEEN

For that said decree is contrary to the law and the facts as presented in the trial of this cause.

SEVENTEEN

For that the decision as rendered in this cause deprives your Petitioner, one of the Respondents and the Cross Complainant, of the rights and relief afforded him under the Soldiers and Sailors Civil Relief Act.

EIGHTEEN

For that the decree denying your Respondent and the Cross Complainant, G. E. MacQueen, Jr., the relief prayed for in his answer and cross bill and in granting the Complainant the relief prayed for, deprives your Petitioner of his equitable rights afforded under the law of the State of Alabama, and the law as laid down by Congress and approved by the President of the United States.

NINETEEN

For that said decree deprives your Petitioner of the relief granted and afforded him as a Service Man, having heretofore served in the United States Army.

TWENTY

For that said decree is contrary to the law and cases decided thereunder under Title 50, U.S.C.A., Section 560, of the Soldiers and Sailors Civil Relief Act.

TWENTY ONE

For that said decree is contrary to the law and cases decided thereunder under Title 50, U.S.C.A., Section 525 of the Soldiers and Sailors Civil Relief Act.

TWENTY TWO

For that said decree deprives your Petitioner of his three year statutory right to redeem the property involved in said proceeding from a tax sale.

TWENTY THREE

For that said decree deprives your Petitioner of the rights afforded him under Title 51, Section 295, of the Code of Alabama, 1940.

TWENTY FOUR

For that said decree deprives your Petitioner of the right to redeem his property from a tax sale as provided by the laws of the State of Alabama.

TWENTY FIVE

For that said decree deprives your Petitioner of the right to redeem his

property under a tax sale, as provided by the laws of the United States of America.

TWENTY SIX

For that the evidence in the trial of this cause clearly showed that this matter was res adjudicata and that your Petitioner had been vested with title to said property involved in the case of G. E. MacQueen, Jr. Vs. C. F. Baker, et als, being Case No. 2005, in Equity, in which case your Petitioner was granted a decree on the 8th day of May, 1952, in Equity, in the Circuit Court of Baldwin County, Alabama.

TWENTY SEVEN

For that the Complainant, C. William McGee, by virtue of this decree, has been permitted to profit and acquire the land involved by virtue of his laches in failing to record the deed which he acquired from D. Z. Grove in 1942, and retained until August 22, 1947, before recording.

TWENTY EIGHT

For that said decree permitted the Complainant, C. William McGee, to profit by his own mistakes.

TWENTY NINE

For that the evidence in said cause clearly shows that your Petitioner instituted suit after he was discharged from Military Service to recover the land involved within the time provided by law.

THIRTY

For that the evidence in this cause clearly shows that your Petitioner instituted suit involving the land involved in this case, on the 10th day of November, 1947, in which case your Petitioner received a decree in his favor as Complainant on the 8th day of May, 1952, before this Honorable Court in Equity.

THIRTY ONE

For that your Petitioner has been heretofore legally adjudicated as the owner of the property involved in this case before this Honorable Court in the case of G. E. MacQueen, Jr., vs. C. F. Baker, et als, Case No. 2005, in Equity on the 8th day of May, 1952.

THIRTY TWO

For that said decree deprives your Petitioner of the right to recover and recoup his lands involved in this case, as a result of his service in the United States Military Service during the years 1942 to 1945.

THIRTY THREE

For that the evidence in this case clearly shows that the Complainant,

C. William McGee, did not have open, notorious, hostile, adverse possession of the lands involved in this case, for the period of time as required by law.

THIRTY FOUR

For that the evidence in this case shows that the Complainant did not acquire and retain the adverse possession required under the law for him to hold as tax title claimant.

THIRTY FIVE

For that the Complainant, C. William McGee, acquired his title from a tax title claimant without the necessary adverse possession as required by law.

THIRTY SIX

For that the Complainant, C. William McGee, acquired title from a man who held a tax deed that was defective in the eyes of the law.

THIRTY SEVEN

Said decree is contrary to law in that the Complainant's predecessor in title, D. Z. Grove, was a tax title claimant, which tax deed was shown by the evidence to be defective and void or voidable.

THIRTY EIGHT

For that the title which C. William McGee, the Complainant, allegedly acquired, was the title of Smallman MacQueen Construction Company, Inc., who clearly held no legal title to said land at the time of the tax sale of the State of Alabama in the year, 1939.

THIRTY NINE

Said decree is contrary to the law because the State of Alabama delivered a tax deed to D. Z. Grove, the Complainant's predecessor in title, when actually the State of Alabama had not legally and properly foreclosed against the true owner of said lands for alleged taxes due.

FORTY

For that said decree is contrary to the great weight of the evidence in this case.

FORTY ONE

For that the evidence in this case clearly shows that your Petitioner used all due diligence in preceding to recover his lands from an alleged tax sale as required by law.

WHEREFORE, Your Petitioner prays that Your Honors and this Honorable Court grant a rehearing of said cause at such time as may be convenient to be fixed by the Court; that upon such rehearing the decree complained of be vacated