

THE STATE OF ALABAMA,

BALDWIN

County.

CIRCUIT COURT, IN EQUITY.

To Hon. J. B. Blackburn

GREETING:

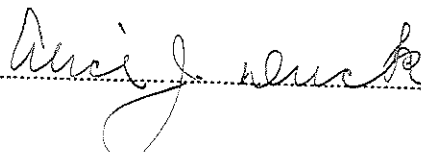
WHEREAS, John F. Brantley

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

against Ethel Flowers, Roberta Flowers, Geneva Carmichael, Jessie Davis and Joseph
R. Lazzari

Now, you are therefore cited to appear at the Term, 19... of the
Supreme Court of Alabama, to defend on said appeal, if you shall think proper so to do.

Witness, this 16th day of March 19... 50



Register.

THE STATE OF ALABAMA,

RALEIGH County.

CIRCUIT COURT, IN EQUITY.

JOHN F. BRANTLEY

Complainant.....

vs.

ETHEL FLOWERS, ROBERTA FLOWERS, GE

GENEVA CARMICHAEL, JESSIE DAVIS

AND JOSEPH R. LAZZARI

Defendant.....

CITATION OF APPEAL.

SERVE THIS NOTICE UPON

HON. J. B. BLACKBURN
Solicitors of Record.

Received in office this.....16.....

day of.....March.....1950

Jaylor Wilkins
Sheriff.

Executed by serving a copy of the within
notice upon.....J. B. Blackburn
on this.....17.....day of

March.....1950

Jaylor Wilkins
David D. Jaze, Deputy Sheriff
Sheriff

TWENTY-FIRST JUDICIAL CIRCUIT
OF ALABAMA
A. H. ELLIOTT, JUDGE
R. E. L. KEY, CIRCUIT SOLICITOR
MARY S. COXWELL, COURT REPORTER
BREWTON, ALABAMA

February 16, 1957

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

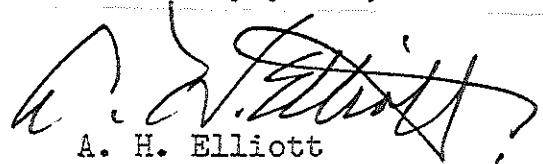
In Re: John F. Brantley
vs.
Ethel Flowers, et al.
Equity No. 2364

Dear Mrs. Duck:

I am enclosing herewith stipulation agreement between the attorneys in the above cause, which stipulation is dated January 31, 1957, and copy of an order dismissing the cause entered as of this date. Please file both of these in this cause.

With kind personal regards, I am

Sincerely yours,


A. H. Elliott

AHE/msc
Enclosures:

cc: Messrs. Chason & Stone
Mr. Tolbert M. Brantley
Mr. J. B. Blackburn

2364

JOHN F. BRANTLEY

COMPLAINANT

VS.

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS AND JOSEPH R.
MAZZARI.

RESPONDENTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

NO. 2364

Now comes the Complainant, John F. Brantley, and gives notice of appeal from the judgment and decree of the Circuit Court of Baldwin County, Alabama, in equity, rendered on the 13th day of March, 1950, in the above styled cause, sustaining the Respondents' demurrers to the Complainant's original bill of complaint, to the Supreme Court of the State of Alabama.

John F. Brantley
Attorney for Complainant

JOHN F. BRANTLEY

COMPLAINANT

VS.

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS AND JOSEPH R.
LAZZARI.

RESPONDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY

NO. 2364

FILED

MAR 16 1950

ALICE J. DUCK, Register

JOHN F. BRANTLEY,

Complainant,

vs.

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS and JOSEPH
LAZZARI.

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY.

NO. 2364.

Comes now the Respondent, Roberta Flowers and demurs to the Bill of Complaint heretofore filed in the above cause and to each and every aspect thereof, separately and severally and assigns the following separate and several grounds, viz:


1. The Complainant fails to state in what manner or by what conduct your Respondent, Roberta Flowers, has abandoned and waived her dower rights in and to any of the property owned by Buster Flowers, Deceased.

2. The Complainant fails to allege with sufficient particularity, the conduct by which the Respondent is alleged to have abandoned and waived all of her dower rights in and to any of the property owned by Buster Flowers, Deceased, during his life time.

3. That the allegation that the Respondent, Roberta Flowers, has, by her conduct, abandoned and waived all of her dower rights in and to any of the property owned by the said Buster Flowers, Deceased, during his life time, is but a conclusion of the pleader.

Chason & Stone

By:


Attorneys for Respondent.

DEMURRER

JOHN F. BRANTLEY,

Complainant,

vs.

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS and JOSEPH
LAZZARI,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY.

NO. 2364.

FILED

JUN 2 1960

ALICE J. DUCK, Clerk

LAW OFFICES

HYBART, CHASON & STONE

BAY MINETTE, ALABAMA

Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, ~~at the Capitol~~, this the
9th day of November 19 50.
J. Render Thomas
Clerk of the Supreme Court of Alabama.

No. 2364

THE SUPREME COURT OF ALABAMA

October Term, 19 50-51

1 Div. No. 411

John F. Brantley

Appellant,

v.

Ethel Flowers, Robert
Flowers, Geneva Carmichael,
Jessie Davis, and Joseph R.
Lazzari,
Appellees.

From Baldwin Circuit Court,
In Equity

CERTIFICATE OF REVERSAL

The State of Alabama,
Baldwin County, } Filed

this 10th day of Nov 19 52

Wm. J. Brantley

Div. No. _____

CERTIFICATE OF APPEAL. (Equity Cases.)

No. 2364

JOHN F. BRANTLEY

Complainant.

vs.

ETHEL FLOWERS, et als

Respondent.

I, Alice J. Duck

Register of the Circuit Court In Equity,

Baldwin

County, Alabama, hereby certify that in the cause of

John F. Brantley

Complainant,

vs.

Ethel Flowers, Roberta Flowers, Geneva Carmichael, Jessie Davis &

Respondent,

which was tried and determined in this Court on the 13th day of March 19 50, in which there was a decree in favor of the

Respondents

On the 13th day of March 19 50, the Complainant,

John F. Brantley

took an appeal to the

Supreme Court

of Alabama, to be holden of and for said State.

I further certify that John F. Brantley and Hubert M. Hall filed security for cost of appeal, to the Supreme Court, on the 16th day of March 19 50 and that

John F. Brantley

Hubert M. Hall

are sureties on the appeal bond.

I further certify that notice of said appeal was on the 16th day of March, 19 50, served on Hon. J. B. Blackburn as attorney of record for said appellee.

Witness my hand and the seal of this Court, this the 16th day of March, 19 50

Register of the Circuit Court In Equity of

Baldwin

County, Alabama.

JOHN P. BRANTLEY

COMPLAINANT

VS

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS AND JOSEPH
LAZZARI,

RESPONDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

IN EQUITY

NO. 2364

ORDER

It appearing to the Court from the Petition of John P. Brantley that under Equity Rule 60 he is entitled to the relief he seeks therein.

IT IS THEREFORE ORDERED that this cause be set for hearing and final submission on the _____ day of _____, 1954, at _____ o'clock _____ M.; said cause to be heard in the city of _____, Alabama, and the Register is directed to give notice to the Respondents in said hearing by having served upon their Solicitors of record a copy of this order.

Ordered this the _____ day of _____, 1954.

Judge of the 21st Judicial Circuit,
(Special Judge) in Equity sitting.

JOHN F. BRANTLEY

COMPLAINANT

VS

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS AND JOSEPH
LAZZARI,

RESPONDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

IN EQUITY

NO. 2364

ORDER

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IT IS THEREFORE ORDERED that this cause be set for hearing and final submission on the _____ day of _____, 1954, at _____ o'clock _____ M.; said cause to be heard in the city of _____, Alabama, and the Register is directed to give notice to the Respondents in said hearing by having served upon their Solicitors of record a copy of this order.

Ordered this the _____ day of _____, 1954.

Judge of the 21st Judicial Circuit,
(Special Judge) in Equity sitting.

JOHN F. BRANTLEY

COMPLAINANT

VS

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS AND JOSEPH
LAZZARI,

RESPONDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

IN EQUITY

NO. 2364

ORDER

It appearing to the Court from the Petition of John F. Brantley that under Equity Rule 60 he is entitled to the relief he seeks therein.

IT IS THEREFORE ORDERED that this cause be set for hearing and final submission on the _____ day of _____, 1954, at _____ o'clock _____ M.; said cause to be heard in the city of _____, Alabama, and the Register is directed to give notice to the Respondents in said hearing by having served upon their Solicitors of record a copy of this order.

Ordered this the _____ day of _____, 1954.

Judge of the 21st Judicial Circuit,
(Special Judge) in Equity sitting.

JOHN F. BRANTLEY,

Complainant,

VS.

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS AND JOSEPH R.
LAZZARI,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. 2364.

DECREE

This cause coming on to be heard is submitted on Respondents' Demurrer to Complainant's Bill of Complaint and the same being considered and understood by the Court and the Court being of the opinion that Complainant has ^{an}adequate remedy at law the Court is of the opinion that Respondents' Demurrer is well taken and should be sustained.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED,

That Respondents' Demurrer to Complainant's Bill of Complaint be, and it is hereby sustained.

DONE AND ORDERED this 13th day of March, 1950.

Jessie J. Mashburn, Jr.
Judge

No. 2364

RECORDED

DECREE SUSTAINING RESPONDENTS'
DEMURRER.

JOHN F. BRANTLEY,

Complainant,

VS.

ETHEL FLOWERS, ROBERTS FLOWERS,
GENEVA CARMICHAEL, JESSIE DAVIS
AND JOSEPH R. LAZZARI,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

NOV 9 1950

STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

SUPREME COURT OF ALABAMA

OCTOBER TERM, 1950-51

1 Div. 411

John F. Brantley

v.

Ethel Flowers, et al.

Appeal from Baldwin Circuit Court, in Equity.

SIMPSON, JUSTICE:

Bill for declaratory judgment to determine the marital status of the late Buster Flowers who died seized and possessed of the lands in controversy as against the claim of Ethel Flowers that she is the lawful widow of the decedent, and for incidental relief.

The trial court sustained the demurrer to the bill on the ground that it was without equity, (sic) "complainant has an adequate remedy at law." This appeal challenges that ruling.

In order for the bill to have equity there must be a bona fide justiciable controversy between the parties cognizable in a court of equity and it is not permissible to plead by way of conclusion that such controversy existed

between the parties, the requirement being that the facts must be pleaded to show such a controversy.- Shadix v. City of Birmingham, 251 Ala. 610, 38 So. (2d) 851. Though the bill here is somewhat skimpy and is certainly not a model of perspicuity in meeting this test, we think the allegations sufficient to avert the criticism that the bill was without equity.

The facts show that the controversy is between complainant Brantley who claims title to decedent's land by a conveyance from Geneva Lyman, his sister and only heir at law, and the respondents (except Roberta Flowers, who it is averred is the widow of decedent and has abandoned her widow's rights in the property) who claim rights in the property respectively as grantees and as mortgagee from the said Ethel Flowers, his claimed widow. Clearly it appears from the allegations that there does exist an actual justiciable controversy as to who is the widow of said Flowers, deceased, the determination of which will determine substantial property rights of the opposing parties. This is within the rule of our cases permitting the proceeding.

We will not attempt to mark the bounds of relief which maybe afforded under the declaratory judgments act but will construe the act as applied to different situations as suggested in each appeal as it is presented. - Teal v. Nixon, 233 Ala. 23, 169 So. 477.

It is enough to say here that the act is an enlargement of the powers of the court (Teal's case, supra) and since the amendment of the statute (whether wise or unwise) adding the provision that "the remedy provided * * shall not be construed * * as an unusual or extraordinary one but shall be construed to be an alternative or cumulative remedy." -

Gen. Acts, 1947, p. 444, amending § 167, Tit. 7, Code 1940, the scope of the court's powers to entertain such a proceeding would embrace the situation shown by the bill.

Of such was the import of White v. Manassa, et al., 41 So. (2d) 395, where it was held that if substantial rights are dependent upon a determination of the marital status of the parties the equity court will (1) make a declaration of that status and (2) grant other incidental relief on the recognized principle that equity having acquired jurisdiction for a proper purpose will accomplish complete relief by declaring the other rights, incident to the main equity, of all proper parties to the suit. See also Brantley v. Brantley, 38 So. (2d) 8.

We think the Manassa and Brantley cases are controlling and therefore hold the bill to contain equity and the learned trial court to have erred in the contrary holding.

Reversed and remanded.

Foster, Livingston, and Stakely, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 411

John F. Brantley, Appellant,

vs.

Ethel Flowers et al., Appellee, s

From Baldwin Circuit Court.
in Equity

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

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to 3 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 9th day of

November, 19 50

J. Render Thomas
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 1950-51

1 Div., No. 411

John F. Brantley

Appellant,

vs.

Ethel Flowers et al.,

Appellee.s

From Baldwin Circuit Court
in Equity

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1950

JOHN F. BRANTLEY

COMPLAINANT

VS

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS AND JOSEPH R.
LAZZARI,

RESPONDENTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY

NOTICE IS HEREBY given in accordance with Equity Rule No. 60, 1940 Code as Amended, that ten days hence the Complainant in the above styled cause shall request the Court to set this case down for final submission.

Walters & Brantley

By: John F. Brantley
Solicitors for the Complainant

To be served on J. B. Blackburn, as Solicitor for Ethel Flowers, Geneva Carmichael, Jessie Davis, and Joseph R. Lazzari, and upon the firm of Chason & Stone, Solicitors for Roberta Flowers.

We, Chason & Stone, do hereby accept service of the copy of the within notice this the 16th day of August, 1955

Chason & Stone

By: Marlene P. Stone
Solicitors for Roberta Flowers

I, J. B. Blackburn, do hereby accept service of the copy of the within notice this the 16th day of August, 1955.

J. B. Blackburn
By: Jan. R. O.

JOHN F. BRANTLEY

COMPLAINANT

VS

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS AND JOSEPH R.
LAZZARI,

RESPONDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY

PLEA AND ANSWER TO RESPONDENTS CROSS BILL

13.

For answer to Section 13 of the Respondents' answer and cross bill, the Complainant alleges that Ethel Flowers and Buster Flowers were not lawfully married on February 16, 1932, for at that time Roberta Flowers was the wife of Buster Flowers. The Complainant denies all other allegations of this section of the Respondents' answer and cross bill.

14.

The Complainant admits the allegations of Section 14 of the Respondents' Answer and Cross Bill except that the land described therein should be described as the Northeast quarter of the Southeast quarter and the East half of the Northwest quarter of the Southeast quarter of Section 24, Township 5 South, Range 2 East, Baldwin County, Alabama.

15.

Complainant denies so much of the Respondents' Answer and Cross Bill contained in Section 15 thereof as reads as follows: "The total consideration for the conveyance from Nellie Victoria Loughlin to Guy E. Brooks and Buster Flowers, as described above, was Twelve Hundred Dollars (\$1200.00), which was paid with the proceeds of a loan which was made by the respondent, Joseph R. Lazzari, to Guy E. Brooks, E. A. Brooks and wife and Buster Flowers, which loan was secured by a mortgage given by the said parties to Joseph R. Lazzari, dated September 27, 1938, which was filed for record on October 10, 1938, and which is recorded in Book 77 of Mortgages at page 248, Baldwin County, Alabama Records. The said mortgage conveyed the above described property and other lands to secure the said debt. The other lands described in the said mortgage were the Northwest Quarter of the Southwest

Quarter of Section 19, Township 5 South, Range 3 East in Baldwin County, Alabama, which said property was released from the said mortgage, which is not cancelled." And further denies so much of the Respondents' Answer and Cross Bill as reads as follows: "The two said deeds were made for the purpose of dividing the property that had been purchased from and conveyed by Nellie Victoria Loughlin to Guy E. Brooks and Buster Flowers by the above described deed." The Complainant admits all the ^{other} allegations contained in Section 15 of the Respondents' Answer and Cross Bill except that the land referred to therein conveyed by Guy E. Brooks to Buster Flowers should be described as the South half of the Northeast quarter of the Southeast quarter and the Southeast quarter of the Northwest quarter of the Southeast quarter of Section 24, Township 5 South, Range 2 East, Baldwin County, Alabama.

16.

For answer to Section 16 of the Respondents' Answer and Cross Bill the Complainant says that Geneva Lyman was the owner of the property involved in this suit at the time she conveyed it to the Complainant, that he paid her good and valuable consideration therefor. The Complainant denies each and every other allegation contained in Section 16 of the Respondents' Answer and Cross Bill.

17.

For answer to Section 17 of the Respondents' Answer and Cross Bill the Complainant says that Roberta Flowers was Buster Flower's legal wife at the time of his death; that Ethel Flowers' marriage to Buster Flowers, if there was such a marriage, was mistaken or meretricious, that under this marriage she did not acquire title to the lands in this litigation. For further answer to this allegation the Complainant says that if Ethel Flowers did pay J. R. Lazzari Six Hundred (\$600.00) Dollars as she alleges, such payment did not make her the equitable owner to these lands for one voluntarily paying the mortgage indebtedness of another does not thereby become the equitable owner of the property securing such mortgage. For further answer to this section the Complainant says that if Ethel Flowers paid the Six Hundred (\$600.00) Dollars as she alleges, it was derived from the income and

proceeds of the estate of Buster Flowers and further answering this Section the Complainant says that if Ethel Flowers did pay Joe Lazzari Six Hundred (\$600.00) Dollars as she alleges she is entitled to nothing further out of the estate of Buster Flowers and she has had the use and rents of and from the property involved in this litigation since the death of Buster Flowers and has taken and used all of his personal property including his money, the total value of which is in excess of Six Hundred (\$600.00) Dollars.

Wilters & Brantley

By:

Albert M Brantley
Solicitor for the Complainant

2364

JOHN F. BRANTLEY

COMPLAINANT

VS

ETHEL FLOWERS, ROBERTA FLOWERS
GENEVA CARMICHAEL, JESSIE DAVIS
AND JOSEPH R. LAZZARI

RESPONDENTS

PLEA AND ANSWER TO RESPONDENTS'
CROSS BILL

FILED

JUL 27 1954

ALICE J. DUCK, Register

JOHN F. BRANTLEY

COMPLAINANT

VS

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS AND JOSEPH R.
LAZZARI,

RESPONDENTS

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

Comes now the Complainant, John F. Brantley, and amends his complaint
by striking Section 11 therefrom.

Walters & Brantley

BY: John M Brantley
Solicitors for the Complainant

2364

JOHN F. FRANTLEY

COMPLAINANT

VS

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS AND JOSEPH R.
LAZZARI,

RESPONDENTS

AMENDED COMPLAINT

FILED

JAN 6 1955

ALICE J. DUCK, Register

JOHN T. BRANTLEY

VS

ETHEL FLOWERS, ROBERTA FLOWERS,
GENEVA CARMICHAEL, JESSIE DAVIS,
JOSEPH R. LAZZARI

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 2364.

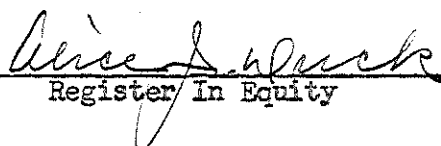
ORDER FOR SPECIAL JUDGE

WHEREAS, it has been made known to me that Hon. Herbert M. Hall, Judge of the Circuit Court of Baldwin County, Alabama, has declared himself incompetent to try, hear or render judgment in the above styled cause because of having discussed the facts in this cause prior to the time he became Judge, and does declare such incompetency and recuses himself from presiding upon hearing of such cause,

WHEREAS, Hon. Telfair J. Mashburn, Jr. possesses the qualifications of a Circuit Judge as provided in the law, and is a proper person to be appointed as Judge to hear said cause,

I, therefore appoint Hon. Telfair J. Mashburn, Jr. to preside as Judge in this said cause which is set down for hearing _____ at _____ o'clock.

Witness my hand this 25th day of April, 1956.



Register In Equity

2365

JOHN F. BRANTLEY,
Complainant,
VS.

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS and JOSEPH R.
LAZZARI,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY NO. 2364

DECREE

This cause coming on to be heard on this date is submitted for a final decree dismissing this cause on the stipulation of the parties, which has been filed herein; upon consideration of all of which, it is, therefore, ORDERED, ADJUDGED AND DECREED by the court as follows:

1. This cause shall be and it is hereby dismissed.
2. The costs of this proceeding are hereby taxed against the complainant, for which execution may issue.

ORDERED, ADJUDGED AND DECREED on this the 16th day of January, 1957.


Circuit Judge

Filed
2-28-57
Cliff Duck-Register

FINAL DECREE

JOHN F. BRANTLEY,

Complainant,

VS.

ETHEL FLOWERS, ROBERTA FLOWERS,
GENEVA CARMICHAEL, JESSIE DAVIS
and JOSEPH R. LAZZARI,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY NO. 2364

JOHN F. BRANTLEY,

Complainant,

VS.

ETHEL FLOWERS, ROBERTA
FLOWERS, GENEVA CARMICHAEL,
JESSIE DAVIS and JOSEPH R.
LAZZARI,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 2364

STIPULATION

It is stipulated and agreed by and between the parties to this cause, acting by and through their respective solicitors, as follows:

1. This cause has been settled between the parties and may be dismissed.
2. The costs of this proceeding shall be taxed against the complainant.

Dated this 31st day of January, 1957.

Walters & Brantley

by Robert M. Brantley

Solicitors for complainant
Chason & Stone

By: Marbone P. Stone, Jr.

Solicitors for respondent, Roberta
Flowers

J. B. Blackburn

Solicitor for all other respondents

STIPULATION

JOHN F. BRANTLEY,

Complainant,

VS.

ETHEL FLOWERS, ROBERTA FLOWERS,
GENEVA CARMICHAEL, JESSIE DAVIS
and JOSEPH R. LAZZARI,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY NO. 2364

Filed
2-18-57
Ans. Flowers
Rey

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon ALBERT ELMORE to appear within thirty days from the service of this writ in the Circuit Court to be held for said County, Equity Side, at the place of holding same, then and there to answer the Bill of Complaint filed by CLY T. SMITH and HECTOR A. SMITH.

WITNESS my hand this 7th day of October, 1949.

W. J. W. W. W.
Register.

The defendant's address is First National Bank Building, Mobile, Alabama.

CLY T. SMITH and
HECTOR A. SMITH,

VS.

Complainants,

ALBERT ELMORE,

Respondent.

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

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

Your Complainants, Cly T. Smith and Hector A. Smith,
present this Bill of Complaint against Albert Elmore and, thereupon,
your Complainants complain and show unto the Court and your Honor
as follows:

1. Your Complainants are residents of Bay Minette,
Baldwin County, Alabama and are over the age of twenty-one years.
The Respondent, Albert Elmore, is over twenty-one years of age and
a resident of Mobile County, Alabama, his address being the First
National Bank Building, Mobile, Alabama.

2. The Complainants are the owners of the following
described real property situated in Baldwin County, Alabama, to-wit:

West Half of the Northwest Quarter of the
Northeast Quarter of the Southeast Quarter,
Section 5, Township 9 South, Range 5 East,

which property the Complainants purchased from the Kittrell-Milling
Motor Company by deed, dated July 30, 1949 and recorded in Deed Book
143 at page 455, Baldwin County, Alabama Records.

3. On, to-wit, June 15, 1939 the Tax Collector of
Baldwin County, Alabama attempted to sell the above described prop-
erty for delinquent taxes for the tax year of 1938, assessed to
Kittrell-Milling Motor Company, and at the attempted sale of the
said property held on the said date, the said property was sold to
the State of Alabama for the sum of Ten and 98/100 Dollars (\$10.98),
which sale is recorded in Sales Book 15-2, page 71, Baldwin County,
Alabama Records.

4. The State of Alabama conveyed all of the right,
title and interest which it acquired in and to the said property at
the above described tax sale to Albert Elmore by Tax Deed, dated

April 7, 1948 and recorded in Deed Book 129 at page 472, Baldwin County, Alabama Records, a copy of which is attached hereto, marked "Exhibit A" and by reference made a part as though fully incorporated herein.

5. The Tax Sale in which the said Respondent claims title to the said property, which was held on June 15, 1939 in the name of Kittrell-Milling Motor Company, and which is recorded in Sales Book 15-2, page 71, Baldwin County, Alabama Records, is void for the following separate and several reasons, to-wit:

A. The Tax Collector of Baldwin County, Alabama in his report to the Probate Judge of Baldwin County, Alabama of his inability to collect the taxes assessed against the property without a sale of the same, did not anywhere in said report or in connection therewith in the delinquent tax list, as required by Section 250 of Title 51, Code of Alabama, 1940, specify the amount of taxes due the State, the amount of taxes due Baldwin County and the amount of taxes due to any special Tax District.

B. The alleged Decree of Sale against the said property purports to have been made and entered on May 8, 1939 and the Tax Collector of Baldwin County, Alabama commenced advertisement on the said Tax Sale, which was held on June 15, 1939, on May 11, 1939, which was before the expiration of the term of the Probate Court in which the said decree was rendered.

C. The Probate Court of Baldwin County, Alabama had no jurisdiction of the owner of the said property or of the said property on May 8, 1939, at which time a Decree of Sale was rendered by the said Court, ordering a sale of the said property, for the reason that no proper service had been had on the owner of the said property.

D. The alleged decree by the Probate Court of Baldwin County, Alabama, which named the 10th day of April, 1939 as the day set for the trial to determine whether the said property should be sold for taxes, was made on April 10, 1939 and the owners of the said property received no notice of the said trial subsequent to April 10, 1939.

6. The Respondent has not had such possession of the property as will bar the Complainants' right to redeem it from the above described Tax Sale.

7. Your Complainants offer to do equity and pay the full amount necessary to redeem the said property, as allowed by Title 51, Section 283 of the Code of Alabama, 1940.

PRAYER FOR PROCESS

Your Complainants pray that the Court will take jurisdiction of the cause made by this Bill of Complaint and that due notice thereof be given to the Respondent, Albert Elmore, in the form and manner provided by law, requiring him to appear and plead, answer or demur to the same within the time and under the pains and penalties prescribed by law and the practice of this honorable Court.

PRAYER FOR RELIEF

Your Complainants pray for the following separate and several relief:

1. That a proper decree be made and entered adjudging and decreeing that the said Tax Sale is void; that your Complainants are entitled to redeem the said property from the said Tax Sale and that this cause be referred to the Register of this Court, who shall be instructed and directed to hold a Reference to ascertain the amount to which the Respondent is entitled under Title 51, Section 283 of the Code of Alabama, 1940, on redemption of the said property.

2. That on payment by your Complainants of the amount found to be due for redemption of the said property from the said void Tax Sale, that all right, title and interest of the Respondent in and to the said property be divested out of him and vested in your Complainants.

3. Your Complainants pray for such other, further and

general relief as they may be equitably entitled to, the premises considered.

J. B. Blackmun
Solicitor for Complainants.

EXHIBIT "A"

ORIGINAL

No. 13419

THE STATE OF ALABAMA

KNOW ALL MEN BY THESE PRESENTS: THAT WHEREAS, on 10 day of April, A.D. 1938, the Probate Court of Baldwin County rendered a decree for the sale of lands hereinafter described and conveyed, for the payment of State and County taxes then due from Kittrell-Milling Motor Company the owner of said lands, and for the payment of the fees, costs, and expenses of and under said decree, and the sale had in execution thereof,

AND WHEREAS, thereafter, to-wit, on the 15 day of June, 1939, under and in pursuance of said decree, said lands were regularly offered for sale by the Tax Collector of Baldwin County for said taxes, fees costs, and expenses, and no person having bid a sufficient sum for said lands to pay the same, said lands were bid in for the State for the sum of said taxes, fees, costs, and expenses.

AND WHEREAS, the time allowed by law for the redemption of said lands has elapsed since said sale, and the same not having been redeemed, the title thereto under said sale is still in the State.

AND WHEREAS, said lands having been entered upon the books of the State Land Commissioner, and the State Land Commissioner of the State of Alabama, with the approval of the Governor, has fixed the price of said land, and ascertained that the sum of One Hundred Twelve and No/100 (\$112.00) Dollars is sufficient to cover and satisfy all claims of the State and County against said lands for or on account of taxes, interest, fees and costs, and officers' fees which were due upon or have accrued against said lands, as provided for by law.

AND WHEREAS, application has been made to the State Land Commissioner of the State of Alabama by Albert Elmore to purchase said lands, and said sum of One Hundred Twelve and No/100 (\$112.00) Dollars therefor has been paid into the State Treasury.

NOW THEREFORE, The State Land Commissioner of the State of Alabama, by virtue of and in accordance with the authority in him vested by law, with the approval of the Governor of Alabama, and in considera-

tion of the premises above set out, has this day granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, and convey unto the said Albert Elmore, without warranty or covenant of any kind on the part of the State, express or implied, all right and title of the State of Alabama in and to said lands, described as follows:

W $\frac{1}{2}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 5,
Township 9 S, Range 5 E,

lying and being situate in said County and State, to have and to hold the same, the said right and title of the State in the lands aforesaid, unto Albert Elmore and his heirs and assigns forever.

In testimony whereof I have hereunto set my hand and seal this the 7 day of April, 1948.

Approved
James E. Folsom
Governor

STATE LAND COMMISSIONER OF ALABAMA
By J.A. Stephens
State Land Commissioner

THE STATE OF ALABAMA,
MONTGOMERY, COUNTY.

I, Mary Slade, a Notary Public in and for said County, in said State, hereby certify that J. A. Stephens, whose name is signed to the foregoing conveyance as State Land Commissioner, and who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he, in his capacity as such State Land Commissioner, executed the same voluntarily on the day the same bears date.

Given under my hand this the 7 day of April, 1948.

Mary Slade, Notary Public

State of Alabama
Baldwin County.

Filed in office this 20 day of April, 1948, at 2:P.M. and recorded in Deed Book 129 page 472, and I certify that \$.50 deed tax has been paid as required by law.

W.R. Stuart, Judge of Probate

STATE OF ALABAMA
BALDWIN COUNTY.

I, W.R. Stuart, Judge of the Probate Court and Custodian of the records and files thereof, in and for said State and County, hereby certify that the above and foregoing is a true, correct and complete copy of the Deed, as the same appears of record in Deed Book 129, page 472, now on file in the office of Judge of Probate of Baldwin County, Alabama.

Witness my hand and seal of said Court, this 12, day of Sept. 1949.

(Signed)

W.R. Stuart, Judge of Probate

Received in Sheriff's Office
this 7 day of Dec, 1949
TAYLOR WILKINS, Sheriff

584
CD. No 2365
BILL OF COMPLAINT 33

CLY T. SMITH and HECTOR A. SMITH,

Complainants,

VS.

ALBERT ELMORE,

RECORDED

Respondent.

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

412

Filed 10-7-49
Alice J. Luck
Register

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

Received 11th Day of Dec 1949
and on 12th Day of Dec 1949
served a copy of the within documents
on Albert E. Elmore
by service on

W. H. HOLCOMBE, Sheriff

By Alice Blackburn, D.A.

The State of Alabama,
BALDWIN COUNTY

CIRCUIT COURT. (Equity)

TERM, 19

No. 246 vs.

BILL OF COSTS

REGISTER'S FEES:		@	AMOUNT	REGISTER'S FEE—Continued:		@	AMOUNT
1. Filing Bills or other paper.....		\$0.15		48. Each Certificate or Affidavit with Seal.....		.75	
2. Copy of Bill or other paper, 100 words.....		.20		49. Each Certificate or Affidavit without Seal.....		.50	
3. Docketing Cause		1.00		50. Each Notice not otherwise provided for.....		.75	
4. Issuing Subpoena on Bills.....		.75		51. Entering Orders by the Register.....		.50	
5. Copies50		52. Recording Registration, Removal or Suggestion of Death of Trustee.....		.75	
6. Entering Return15		53. Entering each Certificate of Supreme Court.....		.50	
7. Order of Publication to Non-Residents.....		1.25		54. Transcript at .15 per 100 words.....			
8. Abstract for Publication, 100 words.....		.20		55. Certified Copy of Decree.....		1.50	
9. Attachment Writ		1.00		56. Recording Copy of Decree in Probate Court25	
10. Injunction Writ		1.50		57. State Certificate50	
11. Copy50		58. Commission on Sales.....			
12. Entering Return15					
13. Entering Appearance50		TOTAL REGISTER'S FEES			6.35
14. Decree Pro Confesso		1.25		SHERIFF'S FEES:			
15. Appointing Guardian ad litem.....		1.25		1. Summoning on Bill, Each Defendant.....		\$1.50	
16. Issuing Commission to take Testimony.....		.75		2. Executing Writ of Injunction, or Ne Exeat, Each.....		1.50	
17. Receiving and Filing each pkg. of Testimony.....		.10		3. Executing Subpoena for Witnesses, Each.....		.65	
18. Endorsing ea. pkg. of Depositions published.....		.10		4. Executing Writs of Possession, Each.....		5.00	
19. Entering Order Submitting Cause for Decree50		5. Executing Scire Facias or Notice, Each.....		1.50	
20. Any Other Order.....		.25		6. Taking and Approving Bonds, Each.....		1.00	
21. Noting All Testimony50		7. Impaneling Jury75	
22. Abstract Docket each case.....		1.00		8. Collecting Execution for Costs Only, Each.....		1.50	
23. Entering Decree, 500 words or less.....		1.00		9. Sheriff's Commission			
24. Entering Decree, over 500 words for every 100 words over 500.....		.20					
25. Taking Account, Swearing Witnesses, etc., per day		3.00		TOTAL SHERIFF'S FEES			12.35
26. Taking Testimony on Reference, 100 words.....		.15		SUMMARY OF FEES, COSTS AND JUDGMENT—			
27. Report of 500 words or less.....		3.00		Fees in Circuit Court:			
28. Report of over 500 words, for every 100 words over 50020		1. Register's Fees			6.35
29. But when the amount claimed is less than \$500, and the Register is not required to pass upon any disputed item indebtedness, payment or credit Reference and Rept.		2.00		2. Ex-Register's Fees			
30. Issuing Subpoena, each Witness.....		.25		3. Sheriff's Fees			12.35
31. Witness Certificate25		4. Ex-Sheriff's Fees			
32. Issuing Execution75		5. Witness Fees			
33. Entering Return15		6. Commissioner's Fees			
34. Taking and Approving Bond.....		1.00		7. Guardian Ad Litem			
35. Making Complete Record, 100 words.....		.20		8. Publisher's Fees			
36. Hearing Application for Appointment of Receiver or Trustee.....		3.00		9. Solicitor's Fees			
37. Settlement with Receiver or Trustee.....		4.00		10. Court Reporter's Fees, Per Day or Fraction Thereof		5.00	
38. Examining Vouchers15		11. Trial Tax		3.00	
39. Examining Answer		3.00		12. <u>Receivable</u>			3.00
40. Taking Question and Answer and Recording Same in proceedings to perpetuate testimony, per 100 words25		13.			
41. For all other services relating to such proceedings		1.00		14.			
42. Taking Testimony to relieve Minors of the disabilities of non-age.....		5.00		Fees and Costs in Inferior Court:			
43. For making each Deed to property sold.....		3.00		15. Clerk of Inferior Court, Fees.....			
44. Notices sent by mail to creditors.....		.15		16. Sheriff's Fees			
45. Filing, receipting for and docketing ea. claim25		17. Witness Fees			
46. Entries on Subpoena Docket.....		.50		18.			
47. Entries on Commission Docket.....		.50		19.			
				20. Total Fees and Costs in Inferior Court.....			
				21. Total Fees and Costs.....			
				22. Judgment			
				23.			
				24.			
				25. TOTAL FEES, COSTS AND JUDGMENT.....			

I certify that the within is a true and correct Bill of Costs in the within styled cause.

ATTEST:

Register Circuit Court, Baldwin County, Ala.

Received payment this _____ day of _____, 19_____.

ATTEST:

Register Circuit Court, Baldwin County, Ala.

No. _____ Page _____

**THE STATE OF ALABAMA,
BALDWIN COUNTY**

CIRCUIT COURT

vs. Plaintiff _____

Defendant _____

EQUITY COST BILL

Term, 19_____

Fee Book _____, Page _____

Plaintiff's Attorney.

Defendant's Attorney.

CLY T. SMITH and HECTOR
A. SMITH,

Complainants,
VS.

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

ALBERT ELMORE,

Respondent.

LIS PENDENS NOTICE

TO WHOM IT MAY CONCERN:

Notice is hereby given that the Complainants in this suit did on this date file in the Circuit Court of Baldwin County, Alabama, Equity Side, a Bill of Complaint against the Respondent, in which they alleged, in substance, that the Complainants are the owners of the following described real property situated in Baldwin County, Alabama, to-wit:

West Half of the Northwest Quarter of the
Northeast Quarter of the Southeast Quarter,
Section 5, Township 9 South, Range 5 East,

which property the Complainants purchased from the Kittrell-Milling Motor Company by deed dated July 30, 1949 and recorded in Deed Book 143 at page 455, Baldwin County, Alabama Records; that on, to-wit, June 15, 1939 the Tax Collector of Baldwin County, Alabama attempted to sell the above described property for delinquent taxes, assessed to Kittrell-Milling Motor Company; that the said Tax Sale is void and that the Respondent claims title to the said property under the said Tax Sale.

The Bill of Complaint prays that the said Tax Sale be Adjudged and Decreed to be void and that the said Complainants be permitted to redeem the above described property from the said Tax Sale.

All persons are cautioned against purchasing the said property, except subject to the rights of the Complainants in this suit.

Dated this 7th day of October, 1949.

STATE OF ALABAMA, BALDWIN COUNTY

Filed 10-7-49.....39

Recorded Lis Pend. book 2.....page 263

W.R. Stuart
Judge of Probate

CLY T. SMITH and HECTOR A. SMITH,

By J. B. Blachman

As their Solicitor.

7 LIS PENDENS NOTICE 10-7-49
CLY T. SMITH and HECTOR A. SMITH,
15 Complainants,
VS.

ALBERT ELMORE, Respondent.

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

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TO THE COMMISSION OF THE EUROPEAN COMMUNITIES

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THE **WORLD'S** **LARGEST** **BOOKSTORE**

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