

4077

JOHN D. CLARKE,	I	
Complainant,	I	IN THE CIRCUIT COURT OF
vs.	I	
	I	BALDWIN COUNTY, ALABAMA
F. M. SHIVERS and HENRY	I	
SHIVERS,	I	IN EQUITY
Respondents.	I	

DEMURRER

Come the Respondents in the above styled cause and demur to the Bill of Complaint filed in said cause in its several aspects and as grounds therefor, say:

1. As to that aspect of the Bill of Complaint as set out in paragraph "3", the Respondents assign the following separate and several grounds, viz:

- a. That the allegations are too general.
- b. That it is not stated what land is referred to and where the same is located
- c. That the period of time referred to is too general.
- d. That it is not stated whether the agreement referred to was in writing.
- e. That the terms of the contract are not set out in detail.
- f. That it is not alleged what consideration was to be paid F. M. Shiver for his duties under such contract.
- g. That it is not alleged that no accounting had been previously between the parties to this agreement.
- h. For aught that appears the parties accounted annually or more frequently for their performance under such agreement.
- i. That it is not alleged what portion of the land referred to was in cultivation and what portion was in timber.

2. As to that aspect of the Bill of Complaint as set out in paragraph "4", the Respondents assign the following separate and several grounds, viz:

- a. That it is not alleged when Henry Shiver was employed by the Complainant.
- b. That it is not alleged during what period of time he worked for the Complainant.
- c. It is not alleged what consideration was to be paid Henry Shiver.
- d. That it is not alleged the number of acres that Henry Shiver was to work.
- e. That it is not alleged whether Henry Shiver would be allowed to work elsewhere during this period of time.

- f. That the duties of Henry Shiver are not fully set out.
- g. That the allegation of this aspect of the Bill of Complaint is so general that it does not properly set out what duties Henry Shiver was to perform, what he was to be paid or what he was called upon to answer.

3. As to that aspect of the Bill of Complaint as set out in paragraph "5", the Respondents assign the following separate and several grounds, viz:

- a. That it is not alleged when the Respondents sold the articles referred to in this paragraph.
- b. It is not alleged to whom such timber was sold.
- c. It is not alleged that the Respondents received any money from the sale of such lumber or timber.
- d. That said paragraph fails to inform the Respondents as to the amount that they are called upon to account for.
- e. For aught that appears the Respondents have not received any money for the sale of lumber or timber products.

4. As to that aspect of the Bill of Complaint as set out in paragraph "6", the Respondents assign the following separate and several grounds, viz:

- a. That said paragraph fails to allege what period of time is referred to.
- b. That said paragraph fails to allege what crops the Respondents planted.
- c. That it is not alleged when the Respondents used the Complainant's seed, fertilizer, farm machinery, gasoline and farm labor on such crops.
- d. The allegations of this paragraph are too general and fail to inform the Respondents of what they are called upon to defend.
- e. For aught that appears from this paragraph the Complainant did not own any seed, fertilizer, farm machinery, gasoline and had no labor for which was paid for by the Complainant.

5. As to that aspect of the Bill of Complaint as set out in paragraph "7", the Respondents assign the following separate and several grounds, viz:

- a. That it is not alleged when the Respondents traded, sold, gave away and butchered the Complainant's cattle.
- b. It is not alleged what the Respondents received for such cattle.
- c. It is not alleged to whom such cattle were traded, sold or given away.
- d. For aught that appears the Complainant did not own any cattle which were under the control of the Respondents.

- e. The allegations of this paragraph are too general and fail to inform the Respondents of what they are called upon to defend.

6. As to that aspect of the Bill of Complaint as set out in paragraph "8", the Respondents assign the following separate and several grounds, viz:

- a. That this paragraph of the Bill of Complaint does not allege when the Respondents rented the Complainant's land and buildings.
- b. It is not alleged whether such lands were timber lands or farm lands.
- c. It is not alleged to whom such lands and buildings were rented or what the Respondents received as such rent.
- d. That the allegations of this paragraph are too general to inform the Respondents what they are called upon to account for.

7. As to that aspect of the Bill of Complaint as set out in paragraph "9", the Respondents assign the following separate and several grounds, viz:

- a. This paragraph fails to allege how much money which belongs to the Complainant has been received by the Respondents.
- b. That it does not allege who they received the money from.
- c. It is not alleged when the money referred to was received by the Respondents.
- d. For aught that appears the money referred to may have been deposited to the account of the Complainant with his knowledge and consent.
- e. That this allegation is too general to inform the Respondents of what they are being charged with.

8. As to that aspect of the Bill of Complaint as set out in paragraph "10", the Respondents assign the following separate and several grounds, viz:

- a. That the terms of the agreement referred to in this paragraph are not set out.
- b. It is not stated whether such agreement was oral or in writing.
- c. That such paragraph fails to allege how much the Complainant paid the Respondents during the year 1957.
- d. It is not alleged how much of the Respondent's time was spent on the crops which they planted for their own benefit.
- e. For aught that appears the Respondents did the work complained of after their regular working hours.
- f. For aught that appears the complainant did not require the Respondents to pay him any rent on the lands that were used by the Respondents.
- g. That said paragraph fails to allege what crops the Respondents have raised and sold in the year 1957.

- h. That the allegations of this paragraph are too general and do not inform the Respondents of what they are called upon to answer.

9. As to that aspect of the Bill of Complaint as set out in paragraph "11", the Respondents assign the following separate and several grounds, viz:

- a. That such paragraph is vague and indefinite and does not inform the Respondents of what they are called upon to answer.
- b. For aught that appears the Complainant does not own any seed, farm machinery, fertilizer or gasoline.
- c. That it does not appear how much seed, fertilizer or gasoline the Respondents used and during what period of time they used it.
- d. That it is not alleged how much of the Complainant's labor was used by the Respondents and during what periods of time it was used.

10. As to that aspect of the Bill of Complaint as set out in paragraph "12", the Respondents assign the following separate and several grounds, viz:

- a. That it is not alleged what money has been paid out by the Complainant for the benefit of the Respondents and when it was paid and to whom.
- b. That said paragraph fails to allege what notes which had been made by the Respondents were paid by the Complainant and the amount of payment on such notes and when he paid them.
- c. That it is not alleged which Respondent made the notes referred to in this paragraph.
- d. It is not alleged that the Complainant was authorized to pay the notes referred to.
- e. It is not alleged in this paragraph that the Complainant has called upon the Respondents to account to him for the money paid by him as alleged in this paragraph.
- f. That such allegation is vague and indefinite and is too general to inform the Respondents of what they are called upon to answer.

11. As to that aspect of the Bill of Complaint as set out in paragraph "13", the Respondents assign the following separate and several grounds, viz:

- a. That said paragraph fails to allege which Respondent traded the Complainant's farm equipment.
- b. The farm equipment referred to in this paragraph is not sufficiently described.
- c. This paragraph does not allege when such farm equipment was traded and to whom it was traded.
- d. It is not alleged what farm equipment the Respondents took in their own names.
- e. Said paragraph fails to allege which Respondent now owns the farm machinery referred to.
- f. Said paragraph does not allege how much money the Complainant furnished on such farm equipment.
- g. It is not alleged when he furnished such money on such farm equipment.

- h. It is not alleged what machinery the Complainant claims to own an interest in.
- i. That such paragraph is so vague and indefinite that the Respondents cannot determine what they are called upon to answer.

12. As to that aspect of the Bill of Complaint as set out in paragraph "14", the Respondents assign the following separate and several grounds, viz:

- a. That the period of time referred to in this paragraph is not specifically set out.
- b. That the Respondents are not informed as to what farm products the Complainant has reference to.
- c. For aught that appears from this paragraph the Respondents were entitled to sell the farm products referred therein and have deposited the proceeds received therefrom to the account of the Complainant.
- d. That such paragraph affirmatively states that such farm products belongs partly to the Complainant, to F. M. Shiver and it is not alleged what interest the Complainant has in such farm products.
- e. It affirmatively appears that a portion of these farm products belongs jointly with the Complainant, F. M. and Henry Shiver and it is not alleges what interest the Complainant had therein.
- f. It is not alleges during what period of time the Respondents were supposed to account to the Complainant.
- g. It is not alleged which Respondent was required to keep the accounts.
- h. For aught that appears from this paragraph the Respondents have performed all of their duties under their agreement with the Complainant.
- i. The allegations of this paragraph are too general to inform the Respondents what they are called upon to answer.

13. As to that aspect of the Bill of Complaint as set out in paragraph "15", the Respondents assign the following separate and several grounds, viz:

- a. That said paragraph fails to allege how many acres of oats were grown by the Respondent, Henry Shiver.
- b. That said paragraph does not state the amount of rent that should be paid by this Respondent.
- c. For aught that appears from this paragraph the Respondent Henry Shiver had the right to grow such oats.
- d. The complaint does not allege what interest Henry Shiver claims in such oats.
- e. For aught that appears from this paragraph the oats were grown on a share basis between the Complainant and Henry Shiver.

14. As to that aspect of the Bill of Complaint as set out in paragraph "16", the Respondents assign the following separate and

several grounds, viz:

- a. That said paragraph does not allege that the Complainant has been injured by the matters complained of in this paragraph.
- b. That the allegations of this paragraph are so vague and indefinite that Henry Shiver cannot ascertain what he is being called upon to answer.
- c. That such paragraph does not allege whether the agreement referred to was oral or in writing.
- d. For aught that appears from this paragraph the Respondent Henry Shiver has fully performed his portion of the agreement.
- e. That such paragraph does not allege when the Respondent Henry Shiver quit work.
- f. For aught that appears from said paragraph the Respondent Henry Shiver had the right to quit work when he did so.

15. As to that aspect of the Bill of Complaint as set out in paragraph "17", the Respondents assign the following separate and several grounds, viz:

- a. That said paragraph fails to allege the amount that the Complainant paid for the tools and farm implements which were purchased.
- b. For aught that appears the tools which were missing were worn out.
- c. That such tools and farm implements which are now missing may be located on the property of the Complainant other than his farm referred to.
- d. That this paragraph is so vague and indefinite that the Respondents are not informed as to what they are called upon to answer.

16. As to that aspect of the Bill of Complaint as set out in paragraph "18" of the Bill, the Respondents assign the following separate and several grounds, viz:

- a. That the allegation of this paragraph that an accounting is necessary is but a conclusion of the pleader.
- b. That the Complainant does not state which of the matters are within his knowledge and which of the matters are within the knowledge of the Respondents only.
- c. That the allegations of this paragraph are vague and indefinite.
- d. For aught that appears from this paragraph the Complainant and the Respondents have had an accounting annually during the period of time referred to.

filed July 31, 1957
Alice J. Duck, Registrar

James Bruce

and

CHASON & STONE

037

By:

John Chason

Attorneys for Respondents

ORDER FOR EXAMINATION OF WITNESS

JOHN D. CLARKE

COMPLAINANT

VS

F. M. SHIVERS AND
HENRY SHIVERS

RESPONDENTS

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

This day came Tolbert M. Brantley, attorney for John D. Clarke and in writing made affidavit and filed the same setting forth that John D. Clarke is a party to this suit and is 90 years of age and that his testimony is necessary for a proper accounting in this cause and praying that the testimony of John D. Clarke may be taken and perpetuated in said suit in accordance with the terms of the Code of 1940, Title 7, Sections 491-505 in as much as the said John D. Clarke could testify to certain facts set forth in said affidavit material and necessary to the prosecution of said suit. It is, therefore,

Ordered that the said John D. Clarke be examined in the premises as such witness; that such examination be had before this court at 9 o'clock on the 11th day of October, 1957, and that the said F. M. Shivers and Henry Shivers have notice of said application and proceedings by a copy of the said application and a copy of this order and that the same be personally served upon F. M. Shivers and Henry Shivers at least ten days before such examination.

Dated this 1st day of October, 1957.

Tolbert M. Brantley
JUDGE

ORDER FOR EXAMINATION OF WITNESS

JOHN D. CLARKE

COMPLAINANT

VS

F. M. SHIVERS AND
HENRY SHIVERS

RESPONDENTS

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

This day came Tolbert M. Brantley, attorney for John D. Clarke and in writing made affidavit and filed the same setting forth that John D. Clarke is a party to this suit and is 90 years of age and that his testimony is necessary for a proper accounting in this cause and praying that the testimony of John D. Clarke may be taken and perpetuated in said suit in accordance with the terms of the Code of 1940, Title 7, Sections 491-505 in as much as the said John D. Clarke could testify to certain facts set forth in said affidavit material and necessary to the prosecution of said suit. It is, therefore,

Ordered that the said John D. Clarke be examined in the premises as such witness; that such examination be had before this court at 9 o'clock on the 11th day of October, 1957, and that the said F. M. Shivers and Henry Shivers have notice of said application and proceedings by a copy of the said application and a copy of this order and that the same be personally served upon F. M. Shivers and Henry Shivers at least ten days before such examination.

Dated this 1st day of October, 1957.

Tolbert M. Brantley
JUDGE

STATE OF ALABAMA
BALDWIN COUNTY

I, James A. Blinn, a Notary Public, in and for said County, in said State, hereby certify that Henry Shiver, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 13 day of Aug. 1958.

filed Aug. 14, 1958
Alice J. Luck, Register

James A. Blinn
Notary Public, Baldwin County, Alabama

FILED
AUG 14 1958
ALICE J. DUCK, Registrar



40-76

AGREEMENT

STATE OF ALABAMA

BALDWIN COUNTY

Whereas John D. Clarke has filed a suit for an accounting against F. M. Shiver and Henry Shiver in the Circuit Court of Baldwin County, Alabama.

That since this suit was filed, these parties have agreed to settle their differences and do now mutually agree as follows:

1. That the suit now pending shall be forthwith dismissed and the Complainant will pay one-half the cost and the Respondents will pay one-half the cost.
2. That the money now in escrow in the State Bank of Elberta, Elberta, Alabama, and in the Farmers & Merchants Bank, Foley, Alabama, is the property of John D. Clarke, and these banks are hereby directed to deliver the same to him upon demand.
3. That F. M. Shiver and Henry Shiver do hereby relinquish all their claim to the oats, now in storage, wherever the same may be located.
4. That all the machinery, equipment and other personal property now in the hands of John D. Clarke and under his control are his property and F. M. Shiver and Henry Shiver do hereby relinquish all their claim to it and do now quit claim all their title to it to John D. Clarke. It is further understood and agreed that John D. Clarke will and he hereby does assume all debts now owing on the aforesaid property. F. M. Shiver and Henry Shiver agree to and do hereby deliver to John D. Clarke a bill of sale to all the aforesaid property to which there is a dispute as to the title.
5. That all the machinery, equipment and other personal property now in the hands of F. M. Shiver and Henry Shiver and under their control are their property and John D. Clarke does hereby relinquish all his claim to it and does now quit claim all his title to it to F. M. Shiver and Henry Shiver. It is further understood and agreed that F. M. Shiver and Henry Shiver will and they hereby do assume all debts now owing on the aforesaid property. John D. Clarke agrees to and does hereby deliver to F. M. Shiver and Henry Shiver a bill of sale to all the aforesaid property to which there is a dispute as to the title.
6. John D. Clarke agrees to and does hereby deliver to James E. Brice and John Chason, Attorneys for F. M. Shiver and Henry Shiver the sum of

\$1417.00, \$625.00 of this amount being for ditching done on John D. Clarke's land and paid for by F. M. Shiver and Henry Shiver, and \$792.00 the amount of a note Henry Shiver executed to the State Bank of Elberta.

7. F. M. Shiver and Henry Shiver agree to and do hereby deliver to John D. Clarke an affidavit showing that certain drainage ditch dug on the property of John D. Clarke was dug by F. A. Lipscomb and Ted Childress and that the total cost of this was \$625.00 and that the work has been paid for in full.

8. John D. Clarke, F. M. Shiver and Henry Shiver do now mutually agree to and do hereby release one another from all claims, liability, debts and obligations which they may have against the other and do hereby accept this agreement as a full settlement and accounting to one another for all their past transactions; except a fertilizer bill now due the American Agricultural Chemical Company which each party to this agreement contends he does not owe.

Executed in triplicate this the 20th day of June, 1958.

John D. Clarke (SEAL)
John D. Clarke
F. M. Shiver (SEAL)
F. M. Shiver
Henry Shiver (SEAL)
Henry Shiver

STATE OF GEORGIA
COUNTY OF McINTOSH

I, Mary Smith, a Notary Public, in and for said County, in said State, hereby certify that John D. Clarke, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 20th day of June, 1958.

Mary Smith
Notary Public,

STATE OF ALABAMA
BALDWIN COUNTY

James A. Quinn, a Notary Public, in and for said County, in said State, hereby certify that F. M. Shiver, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 13 day of August, 1958.

James A. Quinn
Notary Public, Baldwin County, Alabama

JOHN D. CLARKE

COMPLAINANT

VS

F. M. SHIVER AND
HENRY SHIVER

RESPONDENTS

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

Comes now the Complainant in the above styled cause and alleges that the Complainant and Respondent in this matter have reached an agreement relative to the matters complained of in the complaint and respectfully request the court to dismiss the complaint in this matter.

Walters & Brantley

BY:

Robert M. Brantley
Solicitors for the Complainant

DAVID L. CLARKE

COMPLAINANT

VS

H. M. SHIVER AND
HENRY SHIVER

RESPONDENTS

that appellee has caused appellee to be harassed and to be harassed

therefore is hereby ordered that appellee be enjoined from harassing

appellee and from harassing appellee and from harassing appellee

appellee and from harassing appellee and from harassing appellee

JOHN D. CLARKE

COMPLAINANT

VS

H. M. SHIVER AND
HENRY SHIVER

RESPONDENTS

MOTION TO DISMISS SUIT

IN THE CIRCUIT COURT OF

THE FIRST JUDICIAL CIRCUIT

IN FLORIDA

FILED

AUG 28 1958

ALICE J. DUCK, CLERK
REGISTER

JOHN D. CLARKE

COMPLAINANT

VS

F. M. SHIVER AND
HENRY SHIVER

RESPONDENTS

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

This day came the Complainant, by written motion, and the Respondents by their attorney at law, and asks the court to dismiss the Complaint in this cause.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, by the Court that this cause be dismissed of record.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Complainant and Respondents be equally taxed with the court cost herein accrued for which execution may issue.

Done this 26 day of August, 1958.


Circuit Judge

JOHN D. CLARKE

COMPLAINANT

VS

F. M. SHIVER AND
HENRY SHIVER

RESPONDENTS

ORDER DISMISSING SUIT

FILED

AUG 28 1958

ALICE J. DUCK, CLERK
REGISTER

JOHN D. CLARKE,

Complainant,

vs.

F. M. SHIVERS and HENRY
SHIVERS,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

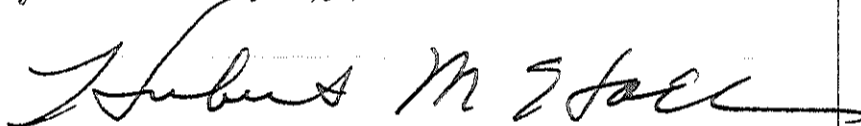
IN EQUITY

ORDER SUSTAINING DEMURRER

This matter coming on to be heard on the demurrer filed by the Respondents, to the Bill of Complaint filed in said cause, and the Court having considered the same is of the opinion that the demurrer should be sustained.

It is therefore ordered and decreed by the Court that the demurrer filed by the Respondents to the Bill of Complaint filed in said cause be and the same is hereby sustained.

Done this 24 day of October, 1957.


Judge

FILED

NOV 22 1957

ALICE J. BECK, Register

JOHN D. CLARKE

COMPLAINANT

VS

F. M. SHIVER AND
HENRY SHIVER

RESPONDENTS

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

Comes now the Complainant in the above styled cause and alleges that the Complainant and Respondent in this matter have reached an agreement relative to the matters complained of in the complaint and respectfully request the court to dismiss the complaint in this matter.

Filed Aug. 28, 1958
Alice J. Duck, Reg.

Wiltors & Brantley

BY:

Robert M. Brantley
Solicitors for the Complainant

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4077

JOHN D. CLARKE

COMPLAINANT

VS

F. M. SHIVERS AND
HENRY SHIVER

RESPONDENTS

MOTION TO DISMISS SUIT

FILED

AUG 28 1958

Alice J. Duck, CLERK
REGISTER

JOHN D. CLARKE

COMPLAINANT

VS

F. W. SHIVERS AND
HENRY SHIVERS

RESPONDENTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA, IN EQUITY

Comes now the Complainant in the above styled cause and amends his
Complaint filed in this cause on the 11th day of July, 1957, by striking
Section 16 therefrom in its entirety.

Walters & Brantley

BY:

Robert M Brantley

VICE 'B' BOOK REGISTER

SEP 11 1957



SEP 11 1957

WILLIAM W. BENTLEY
JANUARY 21 1899

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and ensure the same safety concerns are addressed with a different kind of communication. We won't have to compromise on safety.

TO THE DIRECTOR, FBI, WASHINGTON, D.C.

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2006

Figure 1. The structure of the proposed model.

Abstract

COGITO

JOHN D. CLARKE

COMPLAINANT

VS

P. M. SHIVERS AND
HENRY SHIVERS

RESPONDENTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA, IN EQUITY

Comes now the Complainant in the above styled cause and amends his
Complaint filed in this cause on the 8th day of July, 1957, by striking
Section 16 therefrom in its entirety.

filed Sept. 11, 1957
Alice J. Luck,
Register

Walters & Brantley

BY:

Robert M Brantley

FILED

SEP 11 1957

ALICE J. DUCK, Register

JOHN D. CLARKE

COMPLAINANT

VS

F. M. SHIVERS AND
HENRY SHIVERS

RESPONDENTS

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

TO THE HONORABLE H. M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA:

The undersigned, Tolbert M. Brantley, attorney for John D. Clarke,
respectfully shows unto Your Honor as follows:

That John D. Clarke is a party to the above styled cause and is over
90 years of age and resides in Darien, Georgia; that he is the sole witness
to many of the facts in this cause and his testimony is necessary to have
a complete and accurate accounting.

Premises considered, your affiant prays that Your Honor will make an
order allowing the examination of John D. Clarke as witness in this suit
and that all such orders and decrees may be had and other proceedings had
as may be necessary and proper to entitle the testimony of John D. Clarke
to be given in evidence in this suit.

Tolbert M. Brantley

Sworn to and subscribed before me this 1 day of October, 1957.



filed Oct. 1, 1957
Alice J. Luck, Register
Executed Oct. 1, 1957
By Service on.
F. M. Shivers +
Henry Shivers

Lawrence S. Sordal
Notary Public,

4097



Clark

OS

Shiver

Joley

11.60

FILED

OCT 1 1957

ALICE J. DUNK, Register

Received 1 day of Oct, 1957
and on 1 day of Oct, 1957
I served a copy of the within St C,
on _____

By service on T. M. Shiver
Norrey Shiver 10-8-57
TAYLOR WILKINS, Sheriff
By J. J. Joley D. S.
Shiver

Joley

Sheriff claims 116 miles at
Ten Cents per mile Total \$ 11.60
TAYLOR WILKINS, Sheriff
BY Norrey Shiver
DEPUTY SHERIFF

COMPLAINT

JOHN D. CLARKE

COMPLAINANT

VS

F. M. SHIVERS AND
HENRY SHIVERS

RESPONDENTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA, IN EQUITY

Comes now the Complainant in the above styled cause and shows unto Your
Honor as follows:

1.

That your Complainant, John D. Clarke is over the age of twenty-one years
and is a resident of Darien, Georgia.

2.

That the Respondents are each over the age of twenty-one years and each
reside in Baldwin County at Foley, Alabama.

3.

That during the past six years F. M. Shivers and Henry Shivers have lived
on the Complainant's land and worked for him. That the Complainant owns about
10,000 acres of land in this County and that part of it is in cultivation and
part in timber. The Complainant says further that during this time, he lived
in Darien, Georgia, and made only occasional visits to Baldwin County. That
during this period of time, F. M. Shivers was his general agent in this County
and his farm manager. That F. M. Shivers was given the authority and duty to
rent the Complainant's cultivatable lands and collect the rents; to grow spe-
cified crops and to plant and grow pasture and foodstuffs for the Complainant's
cattle. He was given the authority and duty to supervise timber cutting and
to hire labor to be used on the Complainant's farm. To buy the necessary
machinery, fertilizers, seeds, gasoline, and insecticides necessary to grow
the aforesaid crops. It was the duty of F. M. Shivers to tend a herd of cattle
owned by the Complainant.

The Complainant avers that he paid the Respondent, F. M. Shiver, adequate
and valuable consideration for the performances of the aforesaid duties.

4.

That Henry Shivers was hired, during the aforesaid period of time, to do farm work on the Complainant's farm and to assist his father, F. M. Shivers, in carrying out his duties. Henry Shivers was paid valuable consideration for this.

5.

Your Complainant avers that the Respondents have sold or exchanged for valuable consideration lumber, poles, posts, pulpwood, hardwood and stumps off the Complainant's land without his consent, permission or knowledge and have not paid this money to the Complainant, or accounted to him for it.

6.

During this period of time the Respondents planted crops on the Complainant's land, without his knowledge or consent and paid no rent for its use. They used the Complainant's seed, fertilizer, farm machines, gasoline and farm labor on these crops without the Complainant's knowledge or consent. They worked these crops at a time they were hired to work for the Complainant and have not accounted to him for this.

7.

Your Complainant avers that the Respondents have traded, sold, given away and butchered the Complainant's cattle without his permission and have not accounted to him for them.

8.

The Complainant further avers that the Respondent has rented the Complainant's lands and building, received valuable consideration thereof and have failed to pay this to the Complainant or account to him for it.

9.

The Complainant avers that the Respondents have received money belonging to the Complainant and have not delivered it to the Complainant or accounted to him for it.

10.

Your Complainant says that the Respondents agreed to work exclusively for him during the year, 1957, for which the Complainant paid them valuable consideration. He says further that they did not work for him exclusively but planted crops on the Complainant's land without his knowledge, without paying rent, and have sold the crops without accounting to the Complainant.

11.

The Complainant avers that the Respondents have used his seed, farm machinery, fertilizer, gasoline, and hired labor for their own use without Complainant's knowledge or permission and have not accounted to him for this.

12.

The Complainant says further that he has paid money and notes for the Respondents or one of them and that they have not repaid this to him or accounted to him for it.

13.

Complainant says further that the Respondents or one of them traded some of the Complainant's farm equipment on other farm equipment and took the latter in the Respondents or one of the Respondents names. That at the request of the Respondents, the Complainant furnished them money for part payment on farm machinery; that this farm machinery was taken in one of the Respondents names. That much of the machinery now on the Complainant's farm; or which was and until recently; is in one of the Respondents names. That the Complainant owns an equitable part in almost all, if not all, of this machinery. The Complainant has not yet been able to ascertain the exact amount he and the Respondents each own in the aforesaid machinery.

14.

That during this period of time, F. M. Shiver made many sales of many farm products, including cut flowers, bulbs, flower containers, cattle, hay, soy beans, corn, grain, potatoes, watermelons, cantaloupes, and cucumbers, belonging sometimes to the Complainant exclusively and sometimes to both the Complainant and F. M. Shiver, and at times to the Complainant and F. M. Shivers and Henry Shivers. That he rented lands for the Complainant, and houses, he had timber cut and sold for the Complainant. The Respondent, F. M. Shivers, for the use and benefit of the Complainant, hired, farm machinery, labor, ditches dug, lumber cut and machinery repaired. He purchased machinery, lubricants, insecticides, seed, fertilizers, small tools, and gasoline.

For all these items it was his duty and obligation to keep an accurate and complete record of all purchases and sales, all incoming and outgoing money and report and account to the Complainant, periodically. This he failed to do.

15.

That Henry Shivers grew a crop of oats on the Complainant's land in 1956-1957, without his permission and without paying rent for said land. That at the time he was growing said oats he was hired to work for the Complainant. That Henry Shivers now claims title to these oats or a part of them.

16.

The Complainant avers that he and Henry Shivers agreed that the Complainant would furnish Henry a house to live in and pay Henry a stated weekly wage and give Henry the right to grow 100 acres of soy beans on the Complainant's land upon the conditions that Henry grow 100 acres of soy beans and 100 acres of corn and tend to the Complainant's cattle during the year 1957. The Complainant says further that he furnished Henry the house and paid him the agreed wage, that Henry planted the corn and 100 acres of beans, but he quit work without just cause.

17.

The Complainant says that during the past six years, the Respondents purchased vast quantities of small tools and farm implements; that these were paid for by the Complainant. Complainant says further that he has recently had an inventory made of all the equipment which could be located on his farm in Baldwin County and that a great many of these items are missing; that the Respondents have failed to account for them being gone.

18.

The Complainant further shows unto the Court that an accounting is necessary to prevent a multiplicity of suits; that many of the matters necessary for a proper accounting between the Complainant and Respondents are in the peculiar knowledge of the Respondents. That the Respondents have been guilty of wrong dealings because of the matters hereinbefore alleged. Complainant says further that his remedy at law is inadequate, that the account between the Complainant and Respondents is mutual, that it covers a six year period of time and many hundreds of purchases, sales, and other transactions.

19.

The Complainant offers to account to the Respondents and offers to do equity.

PRAYER FOR PROCESS

The premises considered, your Complainant prays that F. M. Shivers and Henry Shivers be made party Respondents to this Bill of Complaint, and that they be required to plead, answer or demur to the foregoing Bill of Complaint within the time and in the manner required by law.

PRAYER FOR RELIEF

Your Complainant prays that Your Honor will cause an accounting to be made between the Complainant and Respondents, either before Your Honor, the Register of the Court or before a Master.

Your Complainant prays further that Your Honor will ascertain or cause to be ascertained, the Complainant's and Respondents's respective interest in and to the machinery referred to in the Complaint.

Your Complainant prays further that Your Honor will determine what part, if any, the Respondent, Henry Shiver, has in the oats referred to in the Bill of Complaint and what part, if any, he has in the soy bean crop referred to in the Bill of Complaint. The Complainant prays for such other, further or different relief to which he may be entitled.

Walters & Brantley

BY:

Tolbert M Brantley

I, Tolbert M. Brantley, do hereby acknowledge myself as security for the costs in the foregoing proceeding.

Tolbert M Brantley

Executed. 7-11-57

By service on
F. M. Shivers
Henry Shivers

Taylor Wilkins, Sheriff
Carlisle Childress D. S.

W. 4077

JOHN D. CLARKE

COMPLAINANT

VS

F. M. SHIVERS AND
HENRY SHIVERS

RESPONDENTS

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

FILED
JUL 8 1957
ALICE J. DECK, Register

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 4077

TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon F. M. Shiver and Henry Shiver

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

F. M. Shiver and Henry Shiver

Defendant

by John D. Clark

Plaintiff.....

Witness my hand this 8th day of July 19 57.....

031

Clerk

No. 14971

Page

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

JOHN D. CLARK

Plaintiffs

vs.

F. M. SHIVER AND HENRY SHIVER

Defendants

SUMMONS and COMPLAINT

Filed 7-8-57, 19.....

Alice J. Duck, Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED IN OFFICE

7-9, 1957

Sheriff

I have executed this summons

this July 11, 1957
by leaving a copy with

F M Shivers

Henry Shiver

Sheriff claims 144 miles at

Ten Cents per mile Total \$ 14.40

TAYLOR WILKINS, Sheriff

BY Charles Deputy SHERIFF

Taylor Wilkins Sheriff

Charles Deputy Sheriff

July