

STATE OF ALABAMA, on the relation		IN THE CIRCUIT COURT OF
of W. J. Terry, Superintendent of		
Education,		
Complainant		
vs		BALDWIN COUNTY, ALABAMA,
ROBERT R. NAHRGANG AND MARJORY		
NAHRGANG,		
Defendants		IN EQUITY

Comes the State of Alabama, on the relation of W. J. Terry, Superintendent of Education, complainant and cross respondent, and answering the cross bill filed by the respondents in the above styled cause on to-wit: October 27, 1953, says:

First: The allegation in paragraph two, that the complainant owns the lands described therein is true, that the implication of the respondents and cross complainants denial of complainant's ownership of the additional lands described in the bill of complaint is untrue. The complainant and cross respondent is the owner of and in peaceable possession of the lands and all the lands described in the bill of complaint.

Second: Complainant and cross respondent denies the allegations in paragraph three of the respondents cross bill that the respondents were presented a deed describing the land as in the complaint and deny that he did not read the said deed and deny that he understood and assumed that the deed was identical with the deed described with a specific distance reading 695 feet on a compass reading South 70° East; and the complainant says that both the said deeds, the one describing the property with a specific distance of 695 feet, and the one describing the property with a distance of 965 feet, were drafted or caused to be drafted by the respondents and both were executed by the respondents and delivered to the complainant and cross respondent, and were in fact duplicate deeds intending to convey, and conveying, the whole of the property described in complainant's bill of complaint.

Third: Answering the allegations of paragraph four of respondents cross bill, they deny that the respondents did not

read the deed filed for record March 31, 1952, and say that the said deed was drafted or caused to be drafted by the respondents and cross complainants and was intended to and did convey to the complainant the land described in the bill of complaint.

Fourth: Answering the allegations of paragraph five, complainant and cross respondent denies that there was no consideration for the signing of the deed recorded in 178 NS at pages 120-2 and say that the complainant paid to the respondents the sum of \$4,725.00 for the said lands, and complainant denies that the deed does not represent the intent of the respondents, grantors, and say that the said conveyance was a duplicate conveyance and both the said deeds were intended to and did convey the whole of lands described in the bill of complaint, but that the deed recorded in 79 NS, pages 129-30 through an error in the drafting gave the first course and distance as 695 feet and whereas it should have been 965 feet, and the other deed did give the correct description as 965 feet.

Fifth: Complainant denies the allegations in paragraph six that both the said deeds were not intended to be and were not duplicate deeds, and say that both said deeds were duplicate deeds and were intended to and did convey the whole of the lands described in the bill of complaint and that the respondents did provide and did furnish to the complainant in this cause the data required to be furnished by such deeds showing the description, dimensions and acreage, together with a plot of the adjoining lands, that the respondents furnished to the complainant an abstract showing the lands intended to be conveyed and along with such abstract and as a part thereof a map, both compiled by Harry H. Parker, county surveyor and abstractor, and both of which described the lands as the same is described in the bill of complaint and in addition thereto the respondents and cross complainants, there being a mortgage on the said lands to Murray W. Dunlap and Addie C. Dunlap, undertook to and did cause the said Murray W. Dunlap and Addie C. Dunlap to release the lands sold and conveyed to the complainant by the

respondents, in which such release the property so released was described as the said lands are described in complainant's bill of complaint.

Sixth: The complainant denies any and all other allegations made in respondents answer and cross bill and says that the respondents sold and conveyed to the complainant the whole of the lands described in the bill of complaint for and at the sum of \$4,725.00, that the consideration therefor has been paid in full, that the respondents undertook to and did furnish to this complainant an abstract of title and a map showing description, dimensions and acreage of such lands so sold, that the respondents undertook to and did draft duplicate deeds to the said lands and did deliver both said deeds to this complainant, that in the one recorded in 79 NS at pages 129-30 of the records of Baldwin County, Alabama, the first course and distance from the beginning point was erroneously given as South 70° East 695 feet, that the lands sold by the respondents and purchased by the complainant was the whole of the ~~lands described as in the bill of complaint, and the same as is~~ described in the deed executed and delivered by the respondents to the complainant and recorded in the office of the Judge of Probate of Baldwin County in deed book 178 at pages 120-2, which said deed correctly gives the first course and distance after the beginning point as South 70° East 965 feet.

Complainant further answering the said cross bill says that the respondents placed the complainant in possession of the whole of said lands described in the bill of complaint and the complainant has been in continuous possession thereof from the date of the delivery of the deeds on to-wit: the 26th day of December, 1942, down to and including the date of the filing of the complaint in this cause, and the respondents never at any time denied or disputed complainant's title to the said lands as described in the bill of complaint; that when the error in the first deed was discovered the respondents attention was called to the same by S. M. Tharp, then Superintendent of Education of Baldwin County, and by W. C. Beebe, attorney for the Board of Education of Baldwin County, and the

respondents did not then or at any time thereafter dispute or deny that the whole of the said lands described in the bill of complaint was conveyed by them to the State of Alabama, that they from time to time and on numerous occasions promised to give to the State of Alabama a new conveyance reciting that the deed recorded in Deed Book 178 at pages 120-2 correctly described the lands and that said lands were the lands conveyed, but that he undertook to, and did, delay the execution of such deed, as he expressly said, for the purpose of compelling the State of Alabama to locate the roads and streets within the above described property according to his own wishes and whim, and never at any time until he filed his answer in this cause did he ever deny or dispute the fact that he sold and conveyed the lands to the State of Alabama as described in its bill of complaint and he never at any time after the conveyance aforesaid claimed any interest in any part of the lands described in the bill of complaint and never at any time exercised or attempted to exercise possession over any part of the same.

And now having fully answered respondents cross bill in this cause the complainant prays that he may go hence with his reasonable costs in this behalf expended.


Solicitor for complainant

STATE OF ALABAMA
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

WE COMMAND YOU, that you summon Robert R. Nahrang and Marjory Nahrang, whose address is Fairhope, Alabama, to be and appear before the Judge of the Circuit Court of Baldwin County, Alabama, exercising Chancery Jurisdiction, within thirty days after the service of summons, and there to answer, plead or demur, with- out oath, to a bill of complaint lately exhibited by the State of Alabama, on the relation of W. J. Terry, Superintendent of Ed- ucation of Alabama, against the said Robert R. Nahrang and Marjory Nahrang and further to do and perform what said Judge shall order and direct in that behalf and this the defendants shall in no wise omit, under penalty of the law; and we further command that you return this writ with your endorsement thereof, to our said court immediately upon the execution thereof.

WITNESS, ALICE J. DUCK, Register of said Circuit Court this the _____ day of _____, 1952.

Register.

STATE OF ALABAMA, on the relation of W. J. Terry, Superintendent of Education,

Complainant

VS

ROBERT R. NAHRANG AND MARJORY NAHRANG

Defendants

IN EQUITY.

TO THE HONORABLE TRIFAIR J. MASHBURN, JR., JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA:

Comes your petitioner, the State of Alabama, acting

through and by W. J. Terry, Superintendent of Education of the

State of Alabama, and being heretofore duly authorized by the

Honorable Gordon Persons, Governor, in writing on the _____ day of _____,

and Marjory Nahrang respectfully shows unto your Honor as follows: *Original*, 1952, and humbly complaining against Robert R. Nahrang

FIRST: That your complainant, as the sovereign State of

Alabama, and under the constitution and laws of the State of Alabama,

is authorized to institute and prosecute this action to establish

and quiet its title to lands owned by it; and that the defendants

are each over the age of twenty-one years and reside at and their

post office address is Fairhope, Alabama.

SECOND: That the complainant is the owner of and in the

peaceable possession of the following described lands situated in

the County of Baldwin, State of Alabama, to-wit:

From the Southwest corner of Lot 23, Block 12, all being according to the map of Volants, Alabama, recorded in Misc. Book No. 1, page 371, signed by Theo. Wadell, Surveyor, April 27th, 1914; thence run South 20° West 361.8 feet along the East margin of Section Street, for a point of beginning; thence South 70° East 965 feet; thence South 1570 feet, more or less, to the North line of the property of the City of Fairhope in the center of Bayou Charbon; thence Northwesterly up the aforesaid North line of the property of the City of Fairhope to the East margin of the aforesaid Section Street; thence North 50 feet, more or less, to a stake on the East margin of Section Street; thence North 20° East 750 feet, to the point of beginning; containing 30 acres, more or less, and lying in Section 37, Barron De Ferriet Grant, Township 6 South, Range 2 East.

Excepting therefrom a right-of-way along and over the North twenty feet of the property herein described, and a right-of-way along and over the East twenty feet of the property herein described.

THIRD: That the said Robert R. Nahrang and Marjory Nahrang claim or are reputed to claim some right, title or

interest in, lien or encumbrance upon the above described lands, or some part thereof, and the complainant calls upon them, and each of them, to set forth and specify their right, title, claim, interest in, lien or encumbrance upon the said lands, or any part thereof, and to show how and by what instrument or instruments the same is derived or created.

FOURTH: That there is no suit pending to enforce or test the validity of the complainant's title to the said lands, or to enforce or test the validity of the defendants' right, title,

claim, interest in, lien or encumbrance upon the said lands, or any part thereof.

WHEREFORE, your complainant prays this Honorable Court

take jurisdiction of the cause made by this bill of complaint

and make the said Robert R. Nahrang and Marjory Nahrang parties

defendant hereto, and by appropriate process require them, and

each of them, to plead, answer or demur to the same within the

time and under the penalties prescribed by law and the practice

of this Honorable Court.

Complainant further prays that upon the hearing of this

cause this Honorable Court will make and enter an order and decree adjudging and decreeing that the said defendants, Robert R. Nahrgang and Marjory Nahrgang, have no right, title, claim, interest in, lien or encumbrance upon the said lands, or any part thereof, and that the title to the said lands be quieted and established in this complainant as against the said defendants; and that the said defendants be forever enjoined from asserting or attempting to assert, or from claiming or attempting to claim any right, title or interest in, lien or encumbrance upon, the said lands, or any part thereof; and this complainant prays for such other, further or different relief as in equity it shall be entitled to receive in the premises.

RECORDED
INDEXED
MAY 21 1905

The State of Alabama

by *W. Henry*
Superintendent of Education.

9855

STATE OF ALABAMA, on the relation
of W. J. Terry, Superintendent of
Education,

COMPLAINANT

VS

ROBERT R. NAHRGANG AND MARGORY
NAHRGANG

RESPONDENTS

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

TO THE HONORABLE TETRAIR J. MASHURN, JR., JUDGE OF THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA:

Comes the Defendants and demurs separately and severally to each count of
said petition filed in said cause, and for demurrer says as follows, and as
to each count and every paragraph thereof separately and severally, to-wit:

1. There is no equity in said bill.
2. That said petition does not inform the Respondents of what they are
to defend.
3. For aught that appears on the face of said petition, the Complainant
has no title to said property.
4. For aught that appears in said petition, it does not state a cause of
action under the laws of the State of Alabama.
5. That the Complainant has an adequate remedy at law, that said petition
is in contradiction of facts in said cause.
6. That said petition wholly fails to allege facts to support the alleged
conclusion therein.
7. That said petitioner has no right in equity in as much as a remedy
at law exist.
8. That said allegations of said petition are mere conclusions of the
pleader without supporting facts.
9. That as to the second paragraph of said petition the remedy exist at
law to the Complainant.

[Signature]
Attorney for Respondents

[Signature]
Attorney for Respondents

STATE OF ALABAMA, on the relation
of W. J. Terry, Superintendent of
Education,

Complainant

VS

ROBERT R. NAHRGANG AND MARJORY
NAHRGANG.

DEMURRERS

From the Law Offices of
C. LeNoirThompson
Attorney At Law
Bay Minette, Alabama

FILED
SEP 5 1952

ALICE J. DUCK, Register

STATE OF ALABAMA, on the relation of
W. J. Terry, Superintendent of
Education.

Complainant

vs

ROBERT R. NAHRGANG AND MARJORY
NAHRGANG

Respondents

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:

Comes the Respondents and for answer to said bill of complaint filed
in the foregoing cause says:

As to Count One.

They deny the allegations thereof.

As to Count Two.

They deny the allegations thereof.

As to County Three.

They admit the allegations therein as to the ownership of the
east 270 feet of said tract, and deny other allegations therein.

As to Count Four.

They admit the allegations therein.


Attorney for Respondents

2872

STATE OF ALABAMA, on the relation of
W. J. Terry, Superintendent of
Education.

Complainant

Vs

ROBERT R. NAHRGANG AND MARJORY
NAHRGANG

Respondent

From the law offices of
U. LeNoir Thompson
Attorney At Law
Bay Minette, Alabama

FILED
DEC 29 1952
ALICE J. DUCK, Register

STATE OF ALABAMA, on the relation
of W. J. Terry, Superintendent of
Education,

Complainant,

vs.

ROBERT R. NAHRGANG and MARJORY
NAHRGANG,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY

Come now your respondents and for answer to the complaint in the above
styled cause show unto this Honorable Court as follows:

1.

As to Count One of said complaint, admit the allegations thereof.

2.

As to Count Two of said complaint, your respondents expressly deny the
allegations thereof as to the description alleged, and instead admit that the
State of Alabama is the owner of and in peaceable possession of the following
described lands situate in Baldwin County, State of Alabama, to-wit:

From the Southwest corner of Lot 23, Block 12, all being
according to the map of Volanta, Alabama, recorded in
Miscellaneous Book No. 1, page 341, signed by Theo. Widell,
Surveyor, April 27th, 1914; thence run South 20 Deg. West
361.8 feet along the East margin of Section Street, for a
point of beginning; thence South 70 Deg. East 695 feet; thence
South 1570 feet, more or less, to the North line of the
property of the City of Fairhope in the center of Bayou Charbon;
thence Northwesterly up the aforesaid North line of the property
of the City of Fairhope to the East margin of the aforesaid
Section Street; thence North 50 feet, more or less, to a stake
on the East margin of Section Street; thence North 20 Deg. East
750 feet to the point of beginning; containing 30 acres, more
or less, and lying in Section 37, Barron De Ferrint Grant, Town-
ship 6 South, Range 2 East.

3.

As to Count Three of said complaint, your respondents show unto this
Honorable Court that your respondents sold and conveyed unto the State of
Alabama the property described in Count Two of this Answer, and were presented
the deed bearing the above description, which your respondents examined and
signed. Your respondents were also presented a deed bearing the description
set forth in the complaint in this cause, which your respondents did not read
but did sign, with the understanding and assurance that the deeds were identical
and that your respondents were conveying a specific distance of 695 feet on
the compass reading "South 70 Deg. East". That the deed so reading was filed
for record in the office of the Judge of Probate of Baldwin County, Alabama,
on February 10, 1943, at 9:30 A.M., and is of record in Deed Book No. 79 at
page 129-30.

4.

That the deed which your respondents did not read, believing same to be a duplicate of the description hereinbefore set out, and executed as a duplicate deed, was also executed on December 26, 1942, but was not filed for record until nearly ten years later, on, to-wit, March 31, 1952.

5.

There was no consideration for the signing of the last mentioned deed, which was recorded in Deed Book 178 NS, page 120-2 in the office of the Judge of Probate of Baldwin County, Alabama, and that said deed does not represent the intention of the grantors therein in that it purported to convey 965 feet on the compass reading "South 70 Deg. East", instead of 695 feet, as set forth in the original deed, which the grantors did read and examine.

6.

Further, said deed was not a duplicate of the original deed executed, in that in addition to the change in description, it also included an additional paragraph: "This deed will not be accepted unless accompanied by a plot showing location of land being deeded, giving the dimensions and acreage, together with plot of any adjoining school lands, if any", and that your respondents did not provide such data required under that restriction, not being instructed to furnish such blueprint, data or information at the time of execution, nor at any time within the nearly ten years elapsing thereafter.

7.

As to Count Four of said complaint, your respondents admit the allegations therein.

8.

And now, having answered the complaint filed in the foregoing cause, your respondents respectfully ask that this Honorable Court take the following as a cross bill and further answer to the bill of complaint, and that W. J. Terry, as Superintendent of Education of the State of Alabama, and the State of Alabama be made parties cross respondent to this cause, and that your respondents be considered parties cross complainant thereto, and your cross complainants now show unto this Honorable Court that the deed executed by your parties cross complainant and recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Volume 178 NS, page 120-2, in which description the bearing reads "thence South 70 Deg. East 965 feet", be stricken from the record and declared void as failing to express the intention of the parties.

9.

9.

Further, that the deed executed by your parties cross complainant and recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Volume 178 NS, page 120-2, in which description the bearing reads "thence South 70 Deg. East 965 feet" be stricken from the record and declared void inasmuch as no consideration was passed for the execution of this conveyance.


10.

Further, that the deed executed by your parties cross complainant and recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Volume 178 NS, page 120-2, in which deed the express restriction is set forth as follows: "This deed will not be accepted unless accompanied by a plot showing location of land being deeded, giving the dimensions and acreage, together with plot of any adjoining school lands, if any", be stricken from the record and declared void by its own terms as not having been accepted, in that said deed was not recorded for nearly ten years.

WHEREFORE, your cross complainants and respondents pray this Honorable Court that this Honorable Court take jurisdiction of this cross complaint, and that the said complainants and cross respondents be required to plead, answer or demur to same within the time and under the penalties prescribed by law and practice of this Honorable Court.

AND, your cross complainants further pray that upon the hearing of this cause, this Honorable Court will make and enter an order and decree denying the complaint of the said complainants and cross respondents.

AND FURTHER, that this Honorable Court will make and enter a decree adjudging that said complainants and cross respondents have title only to the land described in that deed the description of which is set forth in Count Two of this answer and cross bill, which is of record in Volume 79 NS, page 129-30, in the office of the Judge of Probate of Baldwin County, Alabama; and further, will enter an order and decree adjudging that the deed filed on March 31, 1952, in Volume 178 NS, page 120-2, in the office of the Judge of Probate of Baldwin County, Alabama, be void and of no effect; and your cross complainants pray for such other, further or different relief as in equity they shall be entitled to receive in the premises; and your cross complainants further do offer to do equity in this cause before this Honorable Court.


Attorney for Robert R. Wahrgang and Marjory Wahrgang, Respondents and Cross Complainants.

Received in Sheriff's Office
this 27 day of Oct, 1953
TAYLOR WILKINS, Sheriff

2872

STATE OF ALABAMA, on the relation
of W. J. Terry, Superintendent of
Education,

Complainant,

vs.

ROBERT R. NAHRGANG and MARJORY
NAHRGANG,

Respondents.

Received 27 day of Oct, 1953
on 29 day of Oct, 1953
I served a copy of the within

service on W. C. Beebe

TAYLOR WILKINS, Sheriff

By H. F. Hall D. S.

ANSWER AND CROSS COMPLAINT

FILED

OCT 27 1953

ALICE J. DUCK, Register

From the Law Office of
C. LeNoir Thompson
Attorney at Law

STATE OF ALABAMA
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

WE COMMAND YOU, that you summon Robert R. Nahrgang and Marjory Nahrgang, whose address is Fairhope, Alabama, to be and appear before the Judge of the Circuit Court of Baldwin County, Alabama, exercising Chancery jurisdiction, within thirty days after the service of summons, and there to answer, plead or demur, without oath, to a bill of complaint lately exhibited by the State of Alabama, on the relation of W. J. Terry, Superintendent of Education of Alabama, against the said Robert R. Nahrgang and Marjory Nahrgang and further to do and perform what said Judge shall order and direct in that behalf and this the defendants shall in no wise omit, under penalty of the law; and we further command that you return this writ with your endorsement thereof, to our said court immediately upon the execution thereof.

WITNESS, ALICE J. DUCK, Register of said Circuit Court this the 21st day of August, 1952.

Alice J. Duck
Register.

STATE OF ALABAMA, on the relation
of W. J. Terry, Superintendent of
Education,

Complainant

vs

ROBERT R. NAHRGANG AND MARJORY
NAHRGANG

Defendants

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:

Comes your petitioner, the State of Alabama, acting through and by W. J. Terry, Superintendent of Education of the State of Alabama, and being heretofore duly authorized by the Honorable Gordon Persons, Governor, in writing on the 8th day of August, 1952, and humbly complaining against Robert R. Nahrgang and Marjory Nahrgang respectfully shows unto your Honors as follows:

FIRST: That your complainant, is the sovereign State of Alabama, and under the constitution and laws of the State of Alabama, is authorized to institute and prosecute this action to establish and quiet its title to lands owned by it; and that the defendants are each over the age of twenty-one years and reside at and their post office address is Fairhope, Alabama.

SECOND: That the complainant is the owner of and in the peaceable possession of the following described lands situated in

the County of Baldwin, State of Alabama, to-wit:

From the Southwest corner of Lot 23, Block 12, all being according to the map of Volanta, Alabama, recorded in Misc. Book No. 1, page 341, signed by Theo. Widell, Surveyor, April 27th, 1914; thence run South 20° West 361.8 feet along the East margin of Section Street, for a point of beginning; thence South 70° East 965 feet; thence South 1570 feet, more or less, to the North line of the property of the City of Fairhope in the center of Bayou Charbon; thence Northwesterly up the aforesaid North line of the property of the City of Fairhope to the East margin of the aforesaid Section Street; thence North 50 feet, more or less, to a stake on the East Margin of Section Street; thence North 20° East 750 feet, to the point of beginning; containing 30 acres, more or less, and lying in Section 37, Barron De Ferriet Grant, Township 6 South, Range 2 East.

Excepting therefrom a right-of-way along and over the North twenty feet of the property herein described, and a right-of-way along and over the East twenty feet of the property herein described.

THIRD: That the said Robert R. Nahrgang and Marjory Nahrgang claim or are reputed to claim some right, title or interest in, lien or encumbrance upon the above described lands, or some part thereof, and the complainant calls upon them, and each of them, to set forth and specify their right, title, claim, interest in, lien or encumbrance upon the said lands, or any part thereof, and to show how and by what instrument or instruments the same is derived or created.

FOURTH: That there is no suit pending to enforce or test the validity of the complainant's title to the said lands, or to enforce or test the validity of the defendants' right, title, claim, interest in, lien or encumbrance upon the said lands, or any part thereof.

WHEREFORE, your complainant prays this Honorable Court take jurisdiction of the cause made by this bill of complaint and make the said Robert R. Nahrgang and Marjory Nahrgang parties defendant hereto, and by appropriate process require them, and each of them, to plead, answer or demur to the same within the time and under the penalties prescribed by law and the practice of this Honorable Court.

Complainant further prays that upon the hearing of this

cause this Honorable Court will make and enter an order and decree adjudging and decreeing that the said defendants, Robert R. Nahrgang and Marjory Nahrgang, have no right, title, claim, interest in, lien or encumbrance upon the said lands, or any part thereof, and that the title to the said lands be quieted and established in this complainant as against the said defendants; and that the said defendants be forever enjoined from asserting or attempting to assert, or from claiming or attempting to claim any right, title or interest in, lien or encumbrance upon the said lands, or any part thereof; and this complainant prays for such other, further or different relief as in equity it shall be entitled to receive in the premises.

The State of Alabama

by

W. Starnes
Superintendent of Education.

2872

Received in Sheriff's Office
this 21 day of Aug, 1952
TAYLOR WILKINS, Sheriff

Executed Aug 26 1952
by serving copy of within Summons and
Complaint on

Robert R. Nahrgang
Margory Nahrgang

Taylor Wilkins Sheriff
By H. F. Wolf Deputy Sheriff

2872

FILED
AUG 21 1952

ALICE J. DUCK, Register