LOURILLA AUTRY, A non compos mentis, By: James Donald, as her next friend, Complainant, vs. THEREASA DONALD and GULIE CUMBIE, 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, SITTING IN EQUITY:

Your Complainant, Lourilla Autry, a non compos mentis, by James Donald, as her next friend, respectfully shows unto the court and your Honor as follows:

1. Your Complainant, Lourilla Autry, is over the age of twenty-one years and a resident of Baldwin County, Alabama, The Respondents are each over the age of twenty-one years and residents of Baldwin County, Alabama.

2. That the Complainant is in the peaceable possession of, and is the owner of an undivided one-half interest in and to the following described property situated in Baldwin County, Alabama, to-wit:

> The South half of the Southwest Quarter of Section 1; The Northeast Quarter of Northwest Quarter of Section 12, in Township 3 North, Range 3 East;
>
> Beginning at the Southwest corner of the Southeast Quarter of Section 1, Township 3 North, Range 3 East, run thence East 165 yards to a point; run thence North 653½ yards to a point; run thence West 165 yards to a point; run thence South 653½ yards to the point or place of beginning.

The Complainant is informed and believes, and upon such information and belief, avers the facts to be, that the Respondents claim or are reputed to claim some right, title or interest in or encumbrance upon the said property described herein.

3. That no suit is pending to enforce or test the validity of such title, claim or encumbrance.

4. That on, to-wit, October 2, 1957, Complainant executed a deed conveying all of the above described property to the Respondent, Thereasa Donald, which said deed is recorded in Deed Book 257 at page 339, Baldwin County, Alabama Records. A copy of

said deed is hereto attached, marked Exhibit "A" and made a part of this Bill of Complaint the same as if specifically set out herein. Complainant avers that on the date of the execution of the said deed aforesaid, she was a very old woman, to-wit, ninety years old and was in poor, feeble, and constantly declining health; that she was very weak mentally as well as physically, and that a confidential relationship existed between Complainant and the Respondent, Thereasa Donald. That because of the said Complainant's great age and physical and mental incompetency, she was under the influence and dominion of the Respondent, the said Thereasa Donald, in whom she reposed confidence and trust; that the deed to her property as shown by the attached exhibit, was executed as a result of undue influence exerted by the Respondent, Thereasa Donald, on your Complainant, and further as a result of the mental incompetence of your Complainant. That the Respondent, Thereasa Donald, paid no consideration whatsoever, for the execution of the said deed; that the execution of the said deed stripped the said Complainant of the ownership of all of her property of every kind and nature and was accomplished by the exercise of undue influence upon the Complainant by the Respondent, Thereasa Donald, and by the mental incompetency of your Complainant.

5. Complainant further avers that she is informed and believes and upon such information and belief, states the facts to be that sometime during the month of February 1958, the Respondent, Thereasa Donald, executed a deed to the Respondent, Gulie Cumbie, conveying a part of the above described property to him but that this deed has not been recorded in the Office of the Probate Judge of Baldwin County, Alabama; that your Complainant has not seen the said deed and therefore, she is unable to set forth a description of the said property conveyed to the said Respondent, Gulie Cumbie.

The premises considered, Complainant makes the said Respondents, Thereasa Donald and Gulie Cumbie, parties Respondent to this Bill of Complaint, and in order that the Complainant may have the relief hereinafter prayed for, may it please the Court to cause the State's writ of subpoena to be issued to said Respondents,

commanding them to plead, answer or demur to this Bill of Complaint within the time allowed by law and the rules of this Honorable Court or failing therein that a decree pro confesso be taken against them. Complainant further prays that upon a final hearing of this cause that this Court will make and enter an order or decree holding the said deed as shown by Exhibit "A" to be null and void and will cancel the said deed and will restore the said property to the Complainant; that your Honor will finally adjudge and decree whether the Respondents, or either of them, have any right, title or interest in or encumbrance upon such real property or any part thereof, and what such right, title, interest or encumbrance is and in or upon what part of the said property the same exists. Your Complainant prays for such other, further, general, special or different relief as may seem meet and proper and the facts of the case justified.

Solicitor for Complainant.

EXHIBIT "A"

STATE OF ALABAMA

BALDWIN COUNTY

STATUTORY WARRANTY DEED

THIS INDENTURE, made and entered into by and between LOURILLA AUTRY, a widow, hereinafter referred to as party of the first part, and THERESA DONALD, hereinafter referred to as party of the second part, WITNESSETH:

That for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, this day cash in hand paid to party of the first part by party of the second part, receipt whereof is hereby acknowledged, party of the first part has granted, bargained, sold and conveyed and by these presents does hereby GRANT, BARGAIN, SELL and CONVEY unto the party of the second part, all of my undivided interest in and to the following described property situated in Baldwin County, Alabama, To-wit:

The South Half of the Southwest Quarter of Section one, and the Northeast Quarter of the Northwest Quarter of Section Twelve, all in Township Three North, Range Three East.

ALSO, beginning at the Southwest Corner of the Southeast Quarter of Section One, Township Three North, Range Three East, run East 165 yards; North 653½ yards; West 165 yards; South 653½ yards to the point of beginning

Together with, all and singular, the rights, benefits, privileges, improvements, tenements, hereditaments and appurtenances unto the same belonging or in any wise appertaining.

TO HAVE AND TO HOLD unto the party of the second part, her heirs and assigns, FOREVER.

IN WITNESS WHEREOF, the party of the first part has hereunto set her hand and seal on this the ____ day of October, 1957.

X _____ (SEAL)

STATE OF ALABAMA

BALDWIN COUNTY

I, _____, a Notary Public, in and for said County in said State, hereby certify that Lourilla Autry, a widow, 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, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 2nd day of October, 1957.

_____
Notary Public, Baldwin County, Ala.

ALABAMA BALDWIN COUNTY
10-3-57 11:45 A.M.
Recording Fee
Judge of Probate
By

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 4238

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon THEREASA DONALD and GULIE CUMBIE

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

THEREASA DONALD and GULIE CUMBIE, Defendant .....

by LOURILLA AUTRY, a non compos mentis, By James Donald as her next friend.

, Plaintiff.....

Witness my hand this 10 day of March 19 58

270

Alice J. Duke, Clerk

No. 4238 Page

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

LOURILIA NUTRY, a non compos mentis
By James Donald as her next friend

Plaintiffs

vs.

THEREASA DONALD and GULIE CUMBIE

Defendants

SUMMONS and COMPLAINT

Filed March 10, 1958, 19

Alice J. Duck, Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Little River

RECEIVED IN OFFICE

3/11, 1958

, Sheriff

I have executed this summons

this 13 March, 1958

by leaving a copy with

Thereasa Donald

Gulie Cumbie

Sheriff claims 140 miles at

Ten Cents per mile Total $ 14.00

TAYLOR WILKINS, Sheriff

BY W. C. Tolbert

DEPUTY SHERIFF

Taylor Wilkins Sheriff

W. C. Tolbert Deputy Sheriff

Little River

_____Div. No._____ CERTIFICATE OF APPEAL. (Equity Cases.)

No. 4238

JAMES DONALD
Complainant.

vs.

THEREASA DONALD AND GULIE CUMBIE
Respondent.

I, Alice J. Duck Register of the Circuit Court In Equity, Baldwin County, Alabama, hereby certify that in the cause of JAMES DONALD Complainant,

vs.

THEREASA DONALD AND GULIE CUMBIE Respondent,

which was tried and determined in this Court on the 23 day of June 1959, in which there was a decree in favor of the Defendants.

On the 21 day of July 1959, the Complainant took an appeal to the Supreme Court of Alabama, to be holden of and for said State.

I further certify that Complainant filed security for cost of appeal, to the Supreme Court, on the 21 day of July 1959, and that James R. Owen, _____ are sureties on the appeal bond.

I further certify that notice of said appeal was on the 24 day of July, 1959, served on Wilters & Brantley as attorney of record for said appellee.

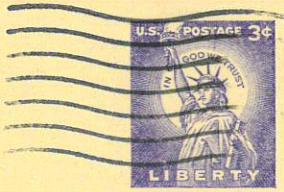
Witness my hand and the seal of this Court, this the _____ day of July, 1959

Alice J. Duck
Register of the Circuit Court In Equity of

Baldwin County, Alabama.

MONTGOMERY
JUL 23
6 PM
1959
ALA.

THIS SIDE OF CARD IS FOR ADDRESS



Mrs. Alice J. Duck
Register Baldwin Circuit Court
Box 239
Bay Minette, Alabama

1st Div. No. 857 Baldwin Circuit Court

In Equity-No. 4238

JAMES DONALD

Appellant.

vs.

THEREASA DONALD and GULIE CUMBIE

Appellees

Dear Mrs. Duck:=

~~Dear Sir:~~ The Certificate of Appeal

~~Your briefs~~ in above stated cause received and filed today.

Yours truly,

J. RENDER THOMAS,

Clerk Supreme Court.

JULY 23, 195 9.

LOURILLA AUTRY, a non compos mentis, by James Donald, as her next friend, Complainant, vs. THEREASA DONALD AND GULIE CUMBIE, Respondents.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA IN EQUITY. NO. 4238.

MOTION TO REVIVE:

Now comes James Donald, by his Solicitor, and respectfully represents unto the Court and your Honor as follows:

1. Lourilla Autry, the Complainant in this cause, has, since the commencement of this suit, died, without leaving a last Will and Testament and leaving surviving as her sole and only heir, James Donald.

2. This cause of action survived and should now be revived in the name of James Donald, in the manner provided by Equity Rule Number 35.

WHEREFORE, James Donald moves the Court to substitute the said James Donald as the party Complainant for the said Lourilla Autry, Deceased, and that this cause be revived as provided in Equity Rule Number 35 in the name of James Donald. The said James Donald moves the court to grant unto him such other, further and general relief as he may be equitably entitled to, the premises considered.

DATED this 13th day of May, 1958.

JAMES DONALD

By: [signature]
As his Solicitor.

FILED

MAY 14 1958

ALICE L. BOCK, Register

LOURILLA AUTRY, a non compos mentis, by James Donald, as her next friend, Complainant,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA IN EQUITY. NO. 4238.
vs.	)	
THEREASA DONALD AND GULIE CUMBIE, Respondents.	)	

ORDER REVIVING CAUSE:

This cause coming on to be heard on this date is submitted on the motion of James Donald, from which it appears that the said Lourilla Autry, who was the Complainant named in this cause, has died since the commencement of this suit without leaving a last Will and Testament and leaving surviving as her sole and only heir, the said James Donald, and that this cause should be revived in the name of James Donald, upon consideration of all of which it is, therefore, ORDERED, ADJUDGED AND DECREED by the Court as follows:

James Donald shall be and he is hereby substituted as the party complainant for the said Lourilla Autry, who is now deceased and this cause shall be and it is hereby revived in the manner provided by Equity Rule Number 35, in the name of James Donald, as Complainant.

ORDERED, ADJUDGED AND DECREED this the 13 day of May, 1958.

Hubert M Hall
Judge.

JAMES DONALD	)	
COMPLAINANT	)	IN THE CIRCUIT COURT OF
VS	)	BALDWIN COUNTY, ALABAMA,
THEREASA DONALD AND GULIE CUMBIE	)	IN EQUITY
	)	NO. 4238
RESPONDENTS	)	

Comes now the Respondents in the above styled cause and for answer to the Complainant's Amended Complaint says as follows:

1.

That they admit the allegations of Section 1.

2.

The Respondents neither admit nor deny so much of Section 2 of the Complaint as deals with possession of the land and demands strict proof of the same.

Your Respondent, Gulie Cumbie, says that he does own an interest in the land described in the complaint; that he acquired his title from Thereasa Donald by a deed dated 11 June, 1958, and recorded in Deed Book 266, at page 144, and by a deed from Lourilla Autry dated 7 March, 1958, and recorded in Deed Book 263 at page 309.

3.

They admit the allegations to Section 3.

4.

The Respondents admits the allegations ofSection 4 as they relate to the execution of the two deeds described therein. For further answer to this Section the Respondents say that Lourilla Autry was living with Thereasa Donald at the time the deeds were executed and say further that she took care of Lourilla Autry for many years and that Lourilla stayed in the home of Thereasa Donald and Thereasa Donald prepared her meals and spent much time and money in and about her care and welfare. The Respondents say further that Lourilla Autry was not non compos mentis at any time during her life and especially when the aforesaid deed was executed. The Respondents say that Lourilla Autry was a very old woman and in declining health and say

further that she was not mentally weak nor mentally incapacitated nor incompetent. The Respondents say further that Thereasa Donald and Gulie Cumbie did not exercise undue influence on Lourilla Autry to cause her to execute the aforesaid deeds.

5.

The Respondent, Gulie Cumbie, says that he does have a deed from the Respondent, Thereasa Donald, the same having heretofore been referred to in this answer.

Wilters & Brantley

BY: Delbert M Brantley

Solicitors for the Respondents.

4238

JAMES DONALD

COMPLAINANT

VS

THERESA DONALD AND
GULIE CUMBIE

RESPONDENTS

ANSWER

FILED
JUN 23 1958
ALICE J. DUCK, Clerk

JAMES DONALD, Complainant,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
THEREASA DONALD AND GULIE CUMBIE, Respondents.	)	IN EQUITY. NO. 4238.

APPEAL AND SECURITY FOR COSTS:

Comes the Complainant in the above styled cause, by his Solicitor, and hereby appeals to the Supreme Court of the State of Alabama, from the final judgment of the Circuit Court of Baldwin County, Alabama, in Equity, rendered in the above styled cause on June 23, 1959.

Solicitor for Complainant.

I hereby acknowledge myself security for the costs of the foregoing appeal.

Taken and approved on this the

21 day of July, 1959.

Register of the Circuit Court of
Baldwin County, Alabama, in Equity.

LOURILLA AUTRY, a non compos mentis, by: James Donald, as her next friend,	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA,
COMPLAINANT	)	IN EQUITY
VS	)	
THEREASA DONALD AND GULIE CUMBIE	)	
	)	
RESPONDENTS	)	

COMES Now Thereasa Donald and Gulie Cumbie, Respondents in the above styled cause and for answer to the Complainants' Complaint says as follows:

1.

For answer to Section 1 of the Complainant's Complaint the Respondents say that Lourilla Autry is now dead; that she reached the age of twenty-one years before her death and that during her lifetime she resided in Baldwin County, Alabama; that the Respondents are each over the age of 21 years and are residents of Baldwin County, Alabama.

2.

For answer to so much of Section 2 of the Complaint that deals with possession of the land, the Respondents say that they neither admit nor deny these allegations, but demand strict proof of the same.

For further answer to Section 2 of the Complaint the Respondents say that they do own an interest in the lands described in the Bill of Complaint.

3.

The Respondents admit the allegations to Section 3.

4.

The Respondents admit that Lourilla Autry conveyed the lands described in the Bill of Complaint to Thereasa Donald.

For further answer to this Section, the Respondents say that Lourilla Autry was living with Thereasa Donald, who cared for her for many years; that she stayed in the home of Thereasa Donald; that Thereasa Donald prepared her meals and spent much time and money in and about her care and welfare. The Respondents say further that Lourilla Autry was not non compos mentis at any time during her life and especially when the aforesaid deed was executed. It is true that the Complainant was a very old woman

and was in declining health at the time she executed this said deed; that the land was given to Thereasa Donald to repay her for the monies and services given to the Complainant during her last years. The Respondents deny that there was any undue influence exercised on the Complainant; that she knew what she was doing at the time she executed the aforesaid deed. The Respondents say further that Thereasa Donald was a grand daughter of Lourilla Autry, deceased, and was the person to whom she wanter her property to be left.

5.

The Respondents say further that Thereasa Donald has executed a deed to Gulie Cumbie conveying all of her interest in all of the property described in this Bill of Complaint and that Gulie Cumbie paid theRespondent Thereasa Donald good and valuable consideration for this land.

Wilters & Brantley

BY: Sam Wilters Jr.

Solicitors for the Respondents

4238

LOURILLA AUTRY, a non compos mentis, by: James Donald, as her next friend,

Complainant

vs

THEREASA DONALD AND GULIE CUMBIE

RESPONDENTS

ANSWER

FILED
APR 29 1958
ALICE L. BECK, Clerk.

CITATION OF APPEAL

Printed by The Baldwin Times

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN THE CHANCERY COURT OF BALDWIN COUNTY

To THEREASA DONALD AND GULIE CUMBIE

Or To WILTERS & BRANTLEY, their, Solicitors of record.

Whereas, on the 21st day of July, 19 59, James Donald took an appeal from the decree rendered on the 23rd day of June 19 59, by the Circuit Court of said county, in the cause of James Donald, Complainant versus Thereasa Donald and Gulie Cumbie, Respondents

Now, therefore, you are cited to appear as required by law, before the Supreme Court of Alabama, to defend on said appeal, if you think proper so to do.

Witness my hand this 21st day of July, 19 59.

Alice J. Schuck
Register in Chancery.

#4632

Received 21 day of July 19 59

24 day of July 1969

a copy of the within Citation

Walter F Brantley

service on Mr Brantley

TAYLOR WILKINS, Sheriff

By W. A. Talbert D. S.

_____ Complainant

vs.

_____ Respondent

CITATION OF APPEAL

IN EQUITY

Issued _____ day of _____, 19____

TWENTY-EIGHTH JUDICIAL CIRCUIT OF ALABAMA
HUBERT M. HALL, JUDGE
BAY MINETTE, ALABAMA
TELEPHONE 3281

KENNETH COOPER
CIRCUIT SOLICITOR

LOUISE DUSENBURY
REPORTER

July 8, 1959

LOURILLA AUTRY, a Non Compos Mentis,
By: JAMES DONALD, AS HER NEXT FRIEND,

Complainant,

VS.

THEREASA DONALD AND GULIE CUMBIE,

Respondents

IN ACCOUNT WITH:

LOUISE DUSENBURY, Court Reporter,
Bay Minette, Alabama.

To original and four copies of transcript in the above styled case, on transcript paper for Supreme Court----------$135.00

JAMES DONALD, Complainant,	§	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
vs.	§	
THEREASA DONALD AND GULIE CUMBIE, Respondents.	§	IN EQUITY. NO. 4238.

APPEAL AND SECURITY FOR COSTS:

Comes the Complainant in the above styled cause, by his Solicitor, and hereby appeals to the Supreme Court of the State of Alabama, from the final judgment of the Circuit Court of Baldwin County, Alabama, in Equity, rendered in the above styled cause on June 23, 1959.

Solicitor for Complainant.

I hereby acknowledge myself security for the costs of the foregoing appeal.

Taken and approved on this the

_____day of July, 1959.

Register of the Circuit Court of
Baldwin County, Alabama, in Equity.

LOURILLA AUTRY, a Non Compos Mentis, By JAMES DONALD as her next friend, Complainant,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.
VS.	)	
THEREASA DONALD and GULIE CUMBIE, Respondents.	)	IN EQUITY NO. 4238

FINAL DECREE

This cause coming on to be heard is submitted for a final decree upon the following: Original bill of complaint filed March 10, 1958, amended bill of complaint filed June 2, 1958, motion to revive filed May 14, 1958, order of revival filed May 14, 1958, answer filed April 29, 1958, and amended answer filed June 23, 1958, and the testimony of the following witnesses: James Donald, Maybelle Wheeler, Mose Donald, Alice Boggan, Billy Finley, Mazie Finley, Henry Reynolds, Luevoing Reynolds, Answer to interrogatories by Gulie Cumbie, Sarah Pearl Ferguson, C. D. Phillips, Tom Cumbie, Henson Phillips, Willie Donald, James R. Donald, Johnny Weaver, R. A. Anderson, Estelle Anderson, Mamie Donald, Thereasa Donald, Gulie Cumbie, James Munnerlyn, Thomas Frank Burt, and C. T. Phillips, as taken before the Commissioner and the several exhibits attached to the testimony of the witnesses.

The Court, after considering the pleadings and the testimony is of the opinion and to the conclusion that the Complainant is not entitled to the relief prayed for - It is, therefore

ORDERED, ADJUDGED AND DECREED by the Court that the Complainant's bill of complaint be and the same is hereby dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Complainant pay the cost of this case, for which execution may issue.

Done at Bay Minette, Alabama, this the 23rd day of June, 1959.

Judge, 28th Judicial Circuit
of Alabama.

Filed 6-23-59
Register

JAMES DONALD, Complainant, vs. THEREASA DONALD AND GULIE CUMBIE, Respondents.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA IN EQUITY. NO. 4238.

AMENDED COMPLAINT:

Now comes the Complainant in the above styled cause and amends the Complaint heretofore filed, so that as amended the said complaint will read as follows:

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

Your Complainant, James Donald, respectfully shows unto the Court and your Honor as follows:

1. Your Complainant is over the age of twenty-one years and a resident of Baldwin County, Alabama. The Respondents are each over the age of twenty-one years and are residents of Baldwin County, Alabama.

2. That the Complainant is in the peaceable possession of and is the owner of the following described property situated in Baldwin County, Alabama, to-wit:

> The South half of the Southwest Quarter of Section 1; the Northeast Quarter of the Northwest Quarter of Section 12, Township 3 North, Range 3 East;
>
> Beginning at the Southwest corner of the Southeast Quarter of Section 1, Township 3 North, Range 3 East, run thence East 165 yards to a point; run thence North 653½ yards to a point; run thence West 165 yards to a point; run thence South 653½ yards to the point or place of beginning.

The Complainant is informed and believes and upon such information and belief, avers the facts to be, that the Respondents claim or are reputed to claim some right, title or interest in or encumbrance upon the said property described herein.

3. That no suit is pending to enforce or test the validity of such title, claim or encumbrance.

4. That on, to-wit, October 2, 1957, Lourilla Autry, who was at that time an owner of an undivided one-half interest in and to the above described property, executed a deed conveying an undivided one-half interest in and to all of the above described property to

the Respondent, Thereasa Donald, which said deed is recorded in Deed Book 257 at page 339, Baldwin County, Alabama Records, a copy of the said deed is hereto attached, marked Exhibit "A" and made a part of this complaint the same as if specifically set out herein. On, to-wit, March 7, 1956, the said Lourilla Autry executed a deed conveying all of the above described property to the Respondent, Gulie Cumbie, which said deed is recorded in Deed Book 263 at page 309, Baldwin County, Alabama Records. A copy of the said deed is hereto attached, marked Exhibit "B" and made a part of this complaint the same as if specifically set out herein. Complainant avers that on the date of the execution of the said deed aforesaid, the said Lourilla Autry was a very old woman, to-wit, 90 years old and was in poor, feeble and constantly declining health; that she was very weak mentally as well as physically, and that a confidential relationship existed between Lourilla Autry and the Respondent, Thereasa Donald. That because of the said Lourilla Autry's great age and physical and mental incompetency, she was under the influence and dominion of the Respondent, Thereasa Donald, in whom she reposed confidence and trust; that the deed to her property as shown by the attached exhibits, were executed as a result of undue influence exerted by the Respondent, Thereasa Donald, on the said Lourilla Autry, and further as a result of the mental incompetence of the said Lourilla Autry. That the Respondents, Thereasa Donald and Gulie Cumbie, paid no consideration whatever, for the execution of the said deeds; that the execution of the said deeds stripped the said Lourilla Autry of the ownership of all of her property of every kind and nature and was accomplished by the exercise of undue influence upon the said Lourilla Autry by the Respondent, Thereasa Donald, and by the mental incompetency of Lourilla Autry.

5. Complainant further avers that he is informed and believes and upon such information and belief, states the facts to be that some time during the month of February, 1956, the Respondent, Thereasa Donald, executed a deed to the Respondent, Gulie Cumbie, conveying a part of the above described property to him but that this deed has not been recorded in the Office of the Probate Judge

of Baldwin County, Alabama; that your Complainant has not seen the said deed and therefore, he is unable to set forth a description of the said property conveyed to the said Respondent, Gulie Cumbie.

The premises considered, Complainant makes the said Respondents, Thereasa Donald and Gulie Cumbie, parties respondent to this Bill of Complaint and in order that the said Complainant may have the relief hereinafter prayed for, may it please the court to cause the State's writ of subpoena to be issued to said Respondents, commanding them to plead, answer or demur to this Bill of Complaint within the time allowed by law and the rules of this Honorable Court or failing therein, that a decree pro confesso be taken against them. Complainant further prays that upon a final hearing of this cause that this Court will make and enter an order or decree holding the said deeds as shown by Exhibits "A" and "B" to be null and void and will cancel the said deeds and will restore the said property to the Complainant; that your Honor will finally adjudge and decree whether the Respondents, or either of them, have any right, title or interest in, or encumbrance upon such real property, or any part thereof, and what such right, title, interest or encumbrance is and in or upon what part of the said property the same exists. Your Complainant prays for such other, further, general, special or different relief as may seem meet and proper and the facts of the case justified.

/s/ James R. Owen
Solicitor for Complainant".

James R. Owen
Solicitor for Complainant.

EXHIBIT "A"

STATE OF ALABAMA

BALDWIN COUNTY

STATUTORY WARRANTY DEED

THIS INDENTURE, made and entered into by and between LOURILLA AUTRY, a widow, hereinafter referred to as party of the first part, and THERESA DONALD, hereinafter referred to as party of the second part, WITNESSETH:

That for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, this day cash in hand paid to party of the first part by party of the second part, receipt whereof is hereby acknowledged, party of the first part has granted, bargained, sold and conveyed and by these presents does hereby GRANT, BARGAIN, SELL and CONVEY unto the party of the second part, all of my undivided interest in and to the following described property situated in Baldwin County, Alabama, To-wit:

The South Half of the Southwest Quarter of Section one, and the Northeast Quarter of the Northwest Quarter of Section Twelve, all in Township Three North, Range Three East.

ALSO, beginning at the Southwest Corner of the Southeast Quarter of Section One, Township Three North, Range Three East, run East 165 yards; North 653½ yards; West 165 yards; South 653½ yards to the point of beginning

Together with, all and singular, the rights, benefits, privileges, improvements, tenements, hereditaments and appurtenances unto the same belonging or in any wise appertaining.

TO HAVE AND TO HOLD unto the party of the second part, her heirs and assigns, FOREVER.

IN WITNESS WHEREOF, the party of the first part has hereunto set her hand and seal on this the ___ day of October, 1957.

X _____ (SEAL)

STATE OF ALABAMA

BALDWIN COUNTY

I, _____, a Notary Public, in and for said County in said State, hereby certify that Lourilla Autry, a widow, 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, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 3rd day of October, 1957.

_____
Notary Public, Baldwin County, Ala.

ALABAMA BALDWIN COUNTY
10-3-57 11:45 AM
$0
Judge of Probate
By

EXHIBIT "B"

BOOK 263 PAGE 309

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, That I, LOURILLA AUTRY, a widow, Grantor, for and in consideration of the sum of ONE ($1.00) DOLLAR and other good and valuable consideration to me in hand paid by GULIE CUMBIE, Grantee, the receipt of which is hereby acknowledged, do hereby REMISE, RELEASE, QUIT CLAIM AND CONVEY unto the said Grantee, all my right, title and interest in and to the following described real property situated in Baldwin County, Alabama, to-wit:

South half of Southwest quarter of Section 1; 22 acres, more or less, in West half of Southeast quarter of Section 1, described as follows: Beginning at the Southwest corner of Southeast quarter of Section 1, and run North 653 1/3 yards to a point, thence run East 165 yards, thence run South 653 1/3 yards, thence run West 165 yards to the point of beginning; Northeast quarter of Northwest quarter of Section 12, all in Township 3 North, Range 3 East, in Baldwin County, Alabama.

TO HAVE AND TO HOLD with the appurtenances thereunto belonging unto the said Grantee, his heirs and assigns forever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 7th day of March, 1958.

Lourilla Autry (SEAL)

witnesses: Wenny V. Cumbie
Buster Cumbie

STATE OF ALABAMA
BALDWIN COUNTY

I, June W. Slaughter, a Notary Public, in and for said County, in said State, hereby certify that Lourilla Autry, a widow, 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 conveyance, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 7th day of March, 1958.

June W. Slaughter
Notary Public, Baldwin County, Alabama

STATE OF ALABAMA, BALDWIN COUNTY
Filed 3-8-58 10:30 A.M.
Recorded ____ book ____ page ____
and I certify that the following Privilege Tax has been paid.
Deed Tax .50
Mortgage Tax ____
M R Stuart
Judge of Probate
By ____

278

APR 21 1960

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1959-60

1 Div. 857

James Donald,

v.

Thereasa Donald, et al.,

Appeal from Baldwin Circuit Court,
in Equity.

STAKELY, JUSTICE.

The original bill in this suit was filed by Lourilla Autry, a non compos mentis, by James Donald, as her next friend, against Thereasa Donald. The original bill contains statutory

allegations of a bill to quiet title and also sought the cancellation of a deed dated October 2, 1957, from Lourilla Autry to Thereasa Donald on the ground of mental incapacity on the part of Lourilla Autry and on the ground of undue influence exercised by Thereasa Donald over Lourilla Autry. The bill asked the court to ascertain what, if any, interest the respondent had in and to the property described in the bill of complaint. The original bill of complaint also sought general relief.

After the suit was commenced, Lourilla Autry died and the case was revived in the name of her sole and only heir, James Donald. James Donald (appellant) amended the original bill of complaint by praying the court to cancel not only the deed from Lourilla Autry to Thereasa Donald but also a deed from Lourilla Autry to Gulie Cumbie.

The respondents Thereasa Donald and Gulie Cumbie filed an answer to the amended bill of complaint. In the answer while admitting that Lourilla Autry was old and in declining health, it was denied that she was mentally incompetent and denied that the deeds were the result of undue influence exercised over Lourilla Autry. It was admitted in their answer that Lourilla Autry was living with Thereasa Donald when the deeds were executed, but alleged that Thereasa Donald prepared her meals and spent much time and money in and about her care and welfare.

The testimony in the case was taken before a commissioner and was submitted for final decree on the bill of complaint as amended, the answers of the respondents to the bill of complaint as amended and the testimony taken before the commissioner. The court rendered a decree dismissing the complainants' (appellants') bill of complaint. This appeal followed.

Since the case was submitted on testimony taken before a commissioner agreed upon by the parties, the case does not come here with any presumption in favor of the finding of the lower court and the evidence must be weighed and considered de novo in this court. — Skinner v. Ellis, 245 Ala. 397,

According to the testimony of James Donald (appellant), he was over eighty years of age and lived on the property involved in this suit all of his life, that he had four brothers and sisters, all of whom were dead, and that he was now the only heir of his father James Donald, who was in his lifetime the owner of the property involved in this suit. He also testified that his sister, Lourilla Autry, was something over 90 years of age, that she was not of sound mind and that she had been sick for many years. It was stipulated between the parties that James Donald, the father of James Donald, the appellant, and Lourilla Autry, was the owner of all the property described in the amended bill of complaint at the time of his death.

The complainant then introduced a certified copy of a deed from Lourilla Autry to Thereasa Donald dated October 2, 1957. The complainant further introduced a certified copy of a deed from Lourilla Autry to Gulie Cumbie (appellee), dated March 7, 1958. The complainant then introduced interrogatories propounded to the respondent Thereasa Donald (appellee) and her answers thereto. Thereasa Donald in her answers to these interrogatories stated that she spent about $5.00 a week for the care and welfare of Lourilla Autry during her lifetime, that Lourilla Autry received $38.00 to $43.00 each month from the State Welfare Department and that she did not pay anything to Lourilla Autry for the execution of the deed from Lourilla Autry to her.

The complainant also introduced interrogatories propounded by him to Gulie Cumbie (appellee) and his answers thereto. In these answers Gulie Cumbie stated that he did not pay any consideration to Lourilla Autry for the execution of the deed from her to him. The complainant then introduced in evidence a deed from Thereasa Donald to Gulie Cumbie dated June 11, 1958. It appears to be undisputed that Gulie Cumbie paid Thereasa Donald $1400.00 for the deed from Thereasa Donald to himself.

It will be seen from the foregoing that James Donald and Lourilla Autry each owned an undivided one-half interest in the 142 acres of land involved in this suit at the time the events involved in this suit took place. About eighteen witnesses testified

as to the mental status of Lourilla Autry. It is undisputed that she was about ninety years of age and had been sick for sometime. There was no expert witness as to her mental condition. Nine witnesses including the complainant testified that she was in their opinion of unsound mind. There is no need to discuss this testimony in detail. —Leith v. Perry, 247 Ala. 687, 60 So.2d 821. Suffice it to say that this testimony was partly to the effect that she called people by their wrong names and that she would be talking about one thing and would go off on another, that she was of unsound mind because of her inability to remember. For example, one witness testified that, "She failed to recollect me once." Another witness testified that she had "a fainting—fading mind," but that she was not crazy. This particular witness stated that she knew what she was doing, that she was like anybody else. Another witness testified that she enjoyed talking to Lourilla Autry, that "she just sometimes looked like she had a good mind and sometimes she didn't." Another witness testified that she enjoyed talking to Lourilla, that "her mind was sorter fragly" and she would forget what she had said.

Nine witnesses for the appellee testified directly contrary to the foregoing evidence. Most of these witnesses testified that they had known Lourilla all of their lives. They described her mental status in various ways. For example, they testified that her mind was clear and bright, she was as sane as Jim, that she had as much

sense as I did and more, her mind didn't weaken, she seemed to be smart in her mind, she always knew exactly what she said and she seemed to be all right "from the time I knowed her until the time she died, her mind was as strong as mine." One of these witnesses testified that Lourilla Autry was normal and of sound mind.

It might be added that the only witnesses who testified that Lourilla Autry was of unsound mind were James Donald, the appellant, and his offspring, except one Reynolds, who according to tendencies of the evidence, had hard feelings toward one of the appellees. It may be further said that some of the children of James Donald and his grandchildren and some of his in-laws, gave testimony directly contrary to the testimony for the complainant. There were also witnesses, so far as the record shows, who appear to have been unbiased, disinterested and who were competent to testify, and their testimony showed that Lourilla Autry was not non compos mentis or weak-minded but of a stronger mind than the average person.

There was some testimony as to the value of the land in litigation and different witnesses placed various values on the land ranging from $70.00 to $200.00 per acre. We see no need to go into the testimony regarding the various values placed on the land because as we shall show, this is not material to the issues in this case.

From our examination of the testimony it appears to us that the respondent, Lourilla Autry, had possession of a part of the land. Hence we feel that the decree of the trial court dismissing the suit is warranted so far as the statutory bill to quiet title, is concerned.

We believe that the real question in the case is whether the deed from Lourilla Autry to Thereasa Donald should be set aside because of mental incapacity on the part of Lourilla Autry when she executed the deed and undue influence growing out of the relationship between Lourilla Autry and Thereasa Donald. If the deed from Lourilla Autry to Therease Donald is valid, thenit follows that the conveyance from Thereasa Donald to Gulie Gumbie is also valid.

At the outset it is well to say that the relationship of aunt and niece does not of itself create such a confidential relationship as will subject to closer scrutiny a deed from an aunt to a niece which is attacked as a product of undue influence. — Nalman v. Bullard, 261 Ala. 115, 73 So.2d 351. Furthermore influence in order to be undue must be such as to destroy free agency and substitute the will of another for that of the party nominally acting. — Nalman v. Bullard, supra; Lee v. Menefield, 249 Ala. 407, 31 So.2d 581; Harris v. Bowles, 208 Ala. 545, 94 So. 757.

Furthermore influence which is the result of sympathy and affection only is not the undue influence that is condemned by law. — Nalman v. Bullard, supra; Leeth v. Perry, 257 Ala. 687, 60 So.2d 821; Harris v. Bowles, supra.

We further note that while courts of equity will be astute to discover signs of fraud, imposition and unfair dealings and are eager to thwart such evil ends, yet at the same time courts of equity

must be extremely careful not to interfere with the right of free disposal which inheres in the ownership of property and not to defeat the uncoerced wishes of its owner. Undue influence to avoid a conveyance must be such "as dominates the grantor's will and coerces it to serve the will of another in the act of conveying." — Stroup v. Austin, 180 Ala. 240, 60 So. 879; Halman v. Bullard, supra.

We also add that what constitutes undue influence depends on the facts and circumstances of each particular case. —Milliner v. Grant, 253 Ala. 475, 45 So.2d 314.

It is argued by the appellant that Thereasa Donald handled and spent Lourilla's money for her own use. However, Miss Sarah Ferguson, the Post Mistress of Lost River, who ran a store there and which was about a mile and a half from the place where Lourilla Autry lived, and Thereasa Donald both testified that Lourilla Autry handled her own money. It was argued that the only income Thereasa Donald had was a welfare check but the testimony of Thereasa Donald and Miss Ferguson showed that Thereasa Donald spent Lourilla's money only for the use of Lourilla and further that Thereasa Donald worked part time and that her own son, who worked, gave her money.

Many of the witnesses stated that Lourilla Autry had told them that she wanted Thereasa to have her land. Thereasa Donald made no arrangements for the execution of the deed by Loruilla Autry to herself. On the contrary Lourilla Autry sent for Miss Sarah Ferguson and through her arranged to have the deed drawn.

It seems to be undisputed that Thereasa Donald did not know that Lourilla Autry was going to give her the land until Miss Sarah Ferguson came to have the deed drawn. We do not think that the evidence shows that Thereasa Donald had anything to do with the arrangements for drawing the deed and getting it executed. In fact, according to the testimony of Miss Sarah Ferguson, she, Sarah Ferguson, went to a lawyer in Bay Minette and got him to draw the deed.

The testimony further shows that Thereasa Donald took care of her mother while she was ill, her Aunt Ida while she was ill and her aunt Lourilla while she was ill. There is testimony that Lourilla Autry was angry with her brother, James Donald, because he would not visit her nor haul her any wood. She was angry with some of her nieces and nephews because they had taken her deeds. In other words Lourilla Autry had love, affection and sympathy for Thereasa Donald and she expressed it by giving her the deed. She had hard feelings towards and little love for the complainant and some of his children, and she expressed it in this way.

We note that Lourilla Autry had independent advice about her deed from Miss Sarah Ferguson. See Scott v. Hardyman, 218 Ala. 515, 119 So. 224. It seems that Lourilla Autry had worked for Miss Ferguson and her family for many years. They were good friends

and it appears that Lourilla evidently placed confidence in her and in her judgment. The matter of the deed was discussed between them and drawn in accordance with their decision and Lourilla's wishes.

A case quite similar to the present case is that of Halman v. Bullard, supra. That case in its statement of the law supports the position of the respondents in this case and after careful consideration of the evidence we have reached the conclusion that the court acted correctly in dismissing the bill of complaint.

The decree of the lower court is affirmed.

AFFIRMED.

Lawson, Simpson and Merrill, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st *Div., No.* 857,

JAMES DONALD, *Appellant*

vs.

THEREASA DONALD and GULIE CUMBIE, *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 ten *inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.*

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 21st *day of*

APRIL, 19 60

J. Render Thomas

Clerk of the Supreme Court of Alabama

THE SUPREME COURT OF ALABAMA

October Term, 19 59-60

1st *Div., No.* 857

JAMES DONALD
Appellant,

vs.

THEREASA DONALD, et al.,
Appellees

From BALDWIN CIRCUIT IN EQUITY Court.

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1958

No=4238

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 59=60

To the Register *of the* Circuit *Court,*

Baldwin *County—Greeting:*

Whereas, the Record and Proceedings of the Circuit *Court* In Equity *of said county, in a certain cause lately pending in said Court between*

James Donald, *Appellant*,

and

Thereasa Donald and Gulie Cumbie, *Appellees*,

wherein by said Court it was considered adversely to said appellant=, *were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant*=:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, adjudged, and decreed by our Supreme Court, on the 21 *day of* April, 19 60, *that said* ~~Decree~~ * * * * * * * * * * * *of said* Circuit *Court be in all things affirmed, and that it was further considered, ordered, adjudged, and decreed that the appellant*:=

~~xxx~~ James Donald,

and

James R. Owen,

surety on the appeal bond,

pay

the costs accruing on said appeal in this Court and in the court below, for which costs let execution issue.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, at the Judicial Department Building, this the 21 *day of* April, 1960.

J. Render Thomas

Clerk of the Supreme Court of Alabama.

No=4238

THE SUPREME COURT OF ALABAMA

October Term, 19 59=60

1st Div., No. 857

James Donald

Appellant,

vs.

Thereasa Donald:

Gulie Cumbie,

Appellee. S

From Baldwin Circuit In Equity Court.

CERTIFICATE OF AFFIRMANCE

The State of Alabama,

County. } Filed

this 24 day of Apr 19 60

Alice J. Hewett

BROWN PRINTING CO., MONTGOMERY 1957