

STATE OF ALABAMA)
BALDWIN COUNTY)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY.

Case No. 4611.

ARTHUR HARVILLE,
Complainant,

Vs.

DAISY BRYARS,
Respondent.

TO THE HONORABLE HUBERT M. HALL, JUDGE OF SAID COURT, IN EQUITY
SITTING:

Comes now Your Complainant, Arthur Harville, and respectfully represents unto Your Honor as follows:

FIRST

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

SECOND

That the Respondent, Daisy Bryars, is over twenty-one years of age, and resides at Montgomery, Louisiana, with her mailing address as:

P.O. Box 342
Montgomery, Louisiana.

THIRD

That J. Raymond Crosby was named by Eliza Dean, sometimes called Louisa Dean, as Executor of her will, as duly recorded in Book of Wills E, at page 82, in the office of Judge of Probate, Baldwin County, Alabama, and was granted letter testamentary by Hon W.R. Stuart, Judge of Probate of Baldwin County, Alabama, on the 8th day of April, 1946, and was acting in his capacity as Executor of the Last Will and Testament of Eliza Dean when he sold the real estate owned by her, to-wit, the Southwest quarter of the Southeast quarter of Section 26, Township 1 North, Range 3 East,

lying in Baldwin County, Alabama; but which said real estate was described as "The Southwest Quarter of the Southeast quarter

os Section 26, Township 1 North, Range 2 East"; said sale being made to Hubbard Fitzmaurice.

FOURTH

a. That on or about June 11, 1946, J. Raymond Crosby, as Executor of the Estate of Eliza Dean, sometimes called Louisa Dean, sold at public auction to the highest and best bid, the following described real estate:

The Southwest quarter of the Southeast quarter of Section 26, Township 1 North, Range 3 East,

but erroneously describing the real estate as

The Southwest quarter of the Southeast quarter of Section 26, Township 1 North, Range 2 East;

that Hubbard Fitzmaurice bought the said real estate on said date for valuable consideration and said transaction is recorded in Deed Book 124, Page 485, Office of Judge of Probate, Baldwin County, Alabama;

b. That Hubbard Fitzmaurice and her husband, J. Alex Fitzmaurice, sold aforementioned real estate to Leila Donaldson by warranty deed dated June 24, 1946, as recorded in Deed Book 109, pages 491-92, Office of Judge of Probate, Baldwin County, Alabama.

c. That Leila Donaldson transferred title to said real estate to A.C. Jacobson for valuable consideration by warranty deed dated January 11, 1950, as recorded in Deed Book 148, pages 381-82, Office of Judge of Probate, Baldwin County, Alabama.

d. That A.C. Jacobson and Georgia A. Jacobson, his wife, transferred title to said real estate, for valuable consideration, to Your Complainant by deed dated March 30, 1951, as recorded in Deed Book 205, pages 579-81, Office of Judge of Probate, Baldwin County, Alabama.

FIFTH

That the Respondent, Daisy Bryars, was one of the heirs of Eliza Dean, and as such heir received her equitable and lawful share of the estate of said Eliza Dean.

SIXTH

That subsequent to the transfers of aforementioned real estate between the parties as indicated in paragraph Fourth, preceding, your Complainant learned that the scrivener who prepared the deed for sale of the said real estate by J. Raymond Crosby to Hubbard Fitzmaurice for said property, dated June 11, 1946, made an error in inadvertently describing the premises sold as lying in Section 26, Township 1 North, Range 2 East, instead of describing the premises sold as lying in Section 26, Township 1 North, Range 3 East.

SEVENTH

That said mistake of the scrivener was not known by any of the parties mentioned in paragraph Fourth, preceding, at the time it was made, and that it was not discovered by any of the parties to said deeds until some time after the same was signed and executed by them.

EIGHTH

That it was the intention and understanding of all parties to aforementioned transactions concerning said parcel of land that the scribes should have inserted in said deeds the premises as lying in "3 East" instead of lying in "2 East", and no other premises.

NINETH

That subsequent to the discovery of the scribes' mistakes aforementioned all the heirs of Eliza Dean, sometimes called Louisa Dean, except the Respondent, Daisy Bryars, have reformed the said deed by J. Raymond Crosby, as Executor of the estate of Eliza Dean to Hubbard Fitzmaurice, by executing a new deed so as to correctly describe the said premises, and for this the deed is found in Deed Book 278, pages 445-6, Office of Judge of Probate, Baldwin County, Alabama; and all other subsequent

sellers and purchasers of said premises, to-wit, Hubbard Fitzmaurice, Leila Donaldson, and A.C. Jacobson, have reformed their respective instruments by execution of quitclaim deeds so as to correct the scriveners mistakes. Deed Book 278, pages 473 contains the transfer by Hubbard Fitzmaurice to Leila Donaldson; Deed Book 278, page 448 contains the transfer by Leila Donaldson to A.C. Jacobson; and Deed Book 278, page 447, contains the transfer by A.C. Jacobson and Georgia A. Jacobson, his wife, to Your Complainant.

Your Complainant offers to do equity, avers that he has no adequate remedy at law, and that he has an equitable right to have the deed reformed as above stated, by correcting the mistake of the scrivener in describing aforementioned real estate.

Wherefore, the premises considered, Your Complainant prays that this Honorable Court will take jurisdiction of this cause, and will cause proper process to issue out of this Court requiring the Respondent, Daisy Bryars, to plead, answer or demur to this Bill of Complaint within the time required by law, and that in default thereof, a decree pro confessor be taken against her.

Complainant further prays that this Honorable Court will order, adjudge and decree a reformation of the deed by J. Raymond Crosby, as administrator of the estate of Eliza Dean, sometimes called Louisa Dean, of which estate the Respondent was one of the heirs, so as to correctly describe the said real estate as follows:

The Southwest quarter of the Southeast quarter of Section 26, Township 1 North, Range 3 East,

and that Your Complainant may have such other and further relief as this Honorable Court may deem just.


Attorney for Complainant

SUMMONS AND COMPLAINT

Moore Ptg. Co.

The State of Alabama,
Baldwin County.

}

Circuit Court, Baldwin County

1611

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

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Daisy Bryars

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.....

.....Daisy Bryars....., Defendant.....

by.....Arthur Harville.....

....., Plaintiff.....

Witness my hand this 3rd day of June 1959

179

Alvin J. Luck Clerk

STATE OF ALABAMA)
BALDWIN COUNTY)

Before me, the undersigned Notary Public, in and for the State at Large, State of Alabama, personally appeared Arthur Harville, who, being by me first duly sworn, deposes and says that the facts alleged in the foregoing instrument are true.

Arthur Harville

Subscribed and sworn to before me this 3rd day of June, 1959.

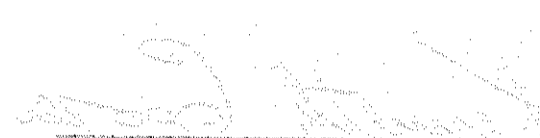
Kenneth Cooper

Notary Public
State at Large
State of Alabama

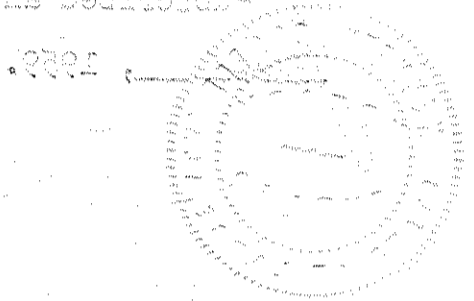
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FILED
JUN 3 1953
ALICE L. DICK, CLERK
REGISTER

4611

STATE OF ALABAMA)
BALDWIN COUNTY)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY

ARTHUR HARVILLE,
Complainant,
Vs.
DAISY BRYARS,
Respondent.

No. 4611

FINAL DECREE

This cause coming on to be heard on this date, is submitted for final decree upon Complainant's verified Bill of Complaint and upon the Decree Pro Confesso rendered therein against the Respondent, Daisy Bryars, after service by Registered mail, and the pleadings and proof as noted by the Register. The Court herein finds as follows:

A. That Arthur Harville bought the

Southwest quarter of the Southeast quarter of Section 26, Township 1, North, Range 3 East, containing 40 acres, more or less, in Baldwin County, Alabama, from A. C. Jacobson and Georgia A. Jacobson, his wife, by deed dated March 30, 1951, and recorded in Deed Book No. 205, pages 579-81, in the Office of Judge of Probate, Baldwin County, Alabama.

B. That prior thereto the said land was sold on June 11, 1946, by J. Raymond Crosby, as Executor of the estate of Eliza Dean, sometimes called Louisa Dean, to Hubbard Fitzmaurice, said sale being recorded in Deed Book 124, page 485, in the Office of Judge of Probate, Baldwin County, Alabama. That said Hubbard Fitzmaurice and her husband, J. Alex Fitzmaurice, sold aforementioned real estate to Leila Donaldson by deed dated June 24, 1946, as is recorded in Deed Book 109, pages 491-2, Office of Judge of Probate, Baldwin County, Alabama. That Leila Donaldson transferred title to said real estate aforementioned to the aforementioned A. C. Jacobson, and his wife, Georgia A. Jacobson, on January 11, 1950, and said deed is recorded in Deed Book 148, pages 381-2, in the Office of Judge of Probate of Baldwin County, Alabama.

C. That subsequent to the land transfers mentioned in paragraphs A and B, above, it was learned that the scrivener who prepared the deed for sale of aforementioned real estate by J. Raymond Crosby to Hubbard Fitzmaurice made an error in advertently describing the said real estate sold on June 11, 1946, as lying in Section 26, Township 1 North, Range 2 East, instead of showing it as lying in Section 26, Township 1 North, Range 3 East.

D. That subsequent to the discovery of the scrivener's mistake aforementioned all the heirs of Eliza Dean, except the Respondent, Daisy Bryars, have reformed, in effect, the said deeds, by executing new deeds so as to correctly describe the real estate mentioned in paragraph A, above, and for this the deed in found in Deed Book 278, pages 445-6, in the Office of Judge of Probate, Baldwin County, Alabama. And all other subsequent grantors and grantees of said real estate, to-wit, Hubbard Fitzmaurice, Leila Donaldson, and A. C. Jacobson, have reformed their respective instruments by execution of quit claim deeds so as to correct the scrivener's mistake. Deed Book 278, page 473 contains the transfer by Hubbard Fitzmaurice to Leila Donaldson; Deed Book 278, page 448 contains the transfer by Leila Donaldson to A. C. Jacobson; and Deed Book 278, page 447 contains the transfer by A. C. Jacobson and Georgia A. Jacobson, his wife, to the Complainant herein, Arthur Harville.

THEREFORE, it appearing to the satisfaction of the Court that the Complainant is entitled to the relief prayed for, it is ORDERED, ADJUDGED AND DECREED:

1. That the deed from J. Raymond Crosby, as Executor of the Estate of Eliza Dean, sometimes called Louisa Dean, to Hubbard Fitzmaurice, dated 11 June, 1946, and recorded in Deed Book 124, at page 485, in the Office of Judge of Probate, Baldwin County, Alabama, be, and the same is hereby reformed so that the description of the land thereby conveyed shall read as follows:

The Southwest quarter of the Southeast quarter of Section 26, Township 1 North, Range 3 East, containing 40 acres, more or less, being that forty acres of the one place of deceased on which is located the field, the dwelling, barns and outhouses.

2. That neither Daisy Bryars, the Respondent herein, nor her successors in title, have any right, title or interest, either at law or in equity, to the real estate described in paragraph numbered 1, above.

3. That the Clerk in the Office of Judge of Probate, Baldwin County, Alabama, be, and he hereby is directed to record a copy of this decree in the current Deed Book in the said Office, and index same in the name of *J. RAYMOND CROSBY*, Grantor, and *HUBBARD FITZMAURICE*, Grantee, and to indorse on the margin of Deed Book 124, page 485, wherein the deed from J. Raymond Crosby, as Executor of the Estate of Eliza

Dean, sometimes called Louisa Dean, to Hubbard Fitzmaurice is recorded, the following statement:

Deed reformed by Final Decree of Circuit Court of Baldwin County, Alabama, In Equity, Case No. 4611, dated 17 July, 1959, and recorded in Deed Book 280, page 227.

4. That the Complainant, Arthur Harville, pay the costs of this proceeding.

Done this the 17th day of July, 1959.

Hubert M. Hall

Judge, Circuit Court

RECORDED
JUL 20 1959

DEED DEGREE

IN EQUITY

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

COMPLAINANT

ARTHUR HARVILLE

vs.

DEFENDANT

HUBBARD FITZMAURICE

FILED

IN EQUITY

IN EQUITY

No. 4611

ARTHUR HARVILLE,

Complainant,

Vs.

DAISY BRYARS,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

FINAL DECREE

FILED

JUL 17 1959

ALICE J. DUCK, Register

CLERK OF CIRCUIT COURT
BALDWIN COUNTY, ALABAMA

RECORDED & INDEXED JUL 17 1959

ALICE J. DUCK, Register

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Court at Baldwin County, Alabama, this 17th day of July, 1959.

ALICE J. DUCK, Register

ARTHUR HARVILLE,

Complainant

Vs.

DAISY BRYARS,

Respondent

CIRCUIT COURT OF Baldwin County.

IN EQUITY

In this cause it being made to appear to the Register that on the 5th day of June, 19 59, a copy of the Bill of Complaint filed in this cause was sent to delivered to Daisy Bryars, in Montgomery, La.,

Defendant, by registered mail, postage prepaid, marked "For delivery only to the person to whom addressed," and return receipt demanded addressed to the Register of this Court; and that on the 9th day of June, 19 59, such receipt was duly received and filed in this cause:

And it further appearing to the Register that the said Defendant has failed to plead, answer or demur to the said Bill to the date hereof, it is now, therefore, on motion of Complainant, ordered, adjudged and decreed by the Register that the said Bill of Complaint be, and it hereby is in all things taken as confessed against the said Daisy Bryars

Defendant

This the 11 day of July, 19 59

Alice J. Duck Register.

The State of Alabama, }
Baldwin County

No. 4611

CIRCUIT COURT, IN EQUITY

ARTHUR HARVILLE

, Complainant

Vs.

DAISY BRYARS

, Defendant

Motion is hereby made for a Decree Pro Confesso against Daisy Bryars

, Defendant

in the above stated cause, on the ground that more than thirty days have elapsed since service of summons upon said Defendant, and that said summons was duly served by Registered Mail, according to law, and that said Defendant has failed to demur, plead to or answer the Bill of Complaint in this cause to this date.

This 11th day of July, 1959.

180

Kenneth Cooper

, Solicitor.

No. 4611 Page

THE STATE OF ALABAMA
Baldwin County.

Circuit Court, In Equity

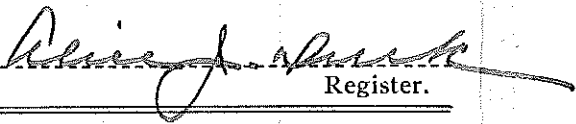
ARTHUR HARVILLE

vs.

DAISY BRYARS

Motion For Decree Pro Confesso
After Notice By Registered Mail

Filed July 11, 1959


Register.

Recorded in Record,

Vol. Page

Register.

ARTHUR HARVILLE,

vs.

DAISY BRYARS,

THE STATE OF ALABAMA

Baldwin County

IN EQUITY

Circuit Court of Baldwin County

This cause is submitted in behalf of Complainant upon the original Bill of Complaint, _____
and Oral Deposition,

and in behalf of Defendant upon Decree Pro Confesso against said Defendant.

Allice J. Luck
Register.

No. 4611

THE STATE OF ALABAMA
Baldwin County

IN EQUITY
Circuit Court of Baldwin County

ARTHUR HARVILLE

vs.

DAISY BRYARS

NOTE OF TESTIMONY

Filed in Open Court this 16

day of July, 1959, ~~194~~

Alice J. Luck
Register.

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court of Baldwin County, Alabama
(In Equity)

ARTHUR HARVILLE,

COMPLAINANT

vs.

DAISY BRYARS,

RESPONDENT

I, Alice J. Duck,

as Register and Commissioner

have called and caused to come before me Arthur Harville,

witness named in the requirement for Oral Examination, on the _____ day of July,

19 59 , at the office of myself

in Bay Minette , Alabama, and having first sworn said witness, him to speak the

truth, the whole truth, and nothing but the truth, the said Arthur Harville

doth depose and say as follows:

I am the owner of the real estate described as "the Southwest quarter of the Southeast quarter of Section 26, Township 1 North, Range 3 East, containing 40 acres, more or less, being that forty acres of the home place of Eliza Dean, sometimes called Louisa Dean, now deceased.

That I first bought this said land, for valuable consideration, from A.C. Jacobson and Georgia A. Jacobson, his wife, by deed dated March 30, 1951, and it is recorded in Deed Book 205, pages 579-81, Office of Judge of Probate, Baldwin County, Alabama. That prior thereto the said land was sold on June 11th, 1946, by J. Raymond Crosby, as Executor of the estate of the said Eliza Dean, to Hubbard Fitzmaurice, and said sale is recorded in Deed Book 124, page 485, Office of Judge of Probate, Baldwin County, Alabama. That the said Hubbard Fitzmaurice and her husband, J. Alex Fitzmaurice, sold aforementioned real estate to Liela Donaldson by warranty deed, dated June 24, 1946, as is recorded in Deed Book 109, pages 491-2, Office of Judge of Probate, Baldwin County, Alabama. That Liela Donaldson transferred title to said real estate aforementioned to the said A.C. Jacobson, and his wife, Georgia A. Jacobson, on January 11, 1950, and said deed is recorded in Deed Book 148, pages 381-2, in the Office of Judge of Probate, Baldwin County, Alabama.

Daisy Bryars was one of the heirs of the said Eliza Dean, sometimes called Louisa Dean, and as such heir she received her lawful and equitable share of the estate of said Eliza Dean as a result of aforementioned sale of said real estate by J. Raymond Crosby on June 11, 1946.

I learned after the transfers of the real estate above described, that the person who drew the deed for the sale of this real estate by J. Raymond Crosby to Hubbard Fitzmaurice on June 11, 1946, made a mistake in that the land was described as lying in Section 26, Township 1, North, Range 2 East, Baldwin County, Alabama, when in fact the lands lay in Section 26, Township 1 North, Range 3 East. And I know it was the intention and understanding of all parties to the transactions mentioned above that the land really lay in Range 3 east instead of Reange 2 East.

(Continued on Page 2)

After the mistake was discovered I took action to get all the parties previously having any interest in, title to or rights in the said lands to execute quit claim corrective deeds to me to correct the scrivener's error. And all such persons have so executed such deeds, except the Respondent herein, Daisy Bryars, and she has been requested to do so, in writing, by me and my attorney, but she refuses to do so, though requested to do so on numerous occasions. Paragraph NINETH of the Bill of Complaint in this cause contains a record of these deeds to me.

At the time of the death of Eliza Dean, on March 20, 1946, she had six living children, and these were Tom Dean, Elsie Cooper, Hubbard Fitzmaurice, Annie Blackman, Lelia Donaldson (who is my mother), and Daisy Bryars. And there was one deceased child, Clara Dean, who had four living children, and these are Bessie Long, Ruby Taylor, Edna Paul and Ida Calloway.

Arthur Saville

RECEIVED
DEPT. OF REVENUE
MICHIGAN
MAY 10 1946

RECEIVED
DEPT. OF REVENUE
MICHIGAN
MAY 10 1946

ORAL EXAMINATION.

I, Alice J. Duck, as Register and Commissioner, hereby certify that the foregoing deposition on Oral Examination was taken down in writing in the words of the witness Arthur Harville and read over to him and he signed the same in the presence of myself and Kenneth Cooper at the time and place herein mentioned; that I have personal knowledge of his personal identity or had proof made before me of the identity of said witness; that I am not of counsel or of kin to any of the parties in said cause, or in any manner interested in the result thereof.

Given under my hand and seal this the 16th of July, 1959.

Alice J. Duck (L. S.)

Equity No.

11611

THE STATE OF ALABAMA

BALDWIN COUNTY

IN THE CIRCUIT COURT IN EQUITY

ARTHUR HARVILLE,

Complainant,

Vs.

DAISY BRYARS,

Respondent.

ORAL DEPOSITION

Filed July, 1959.

FILED

JUL 16 1959

ALICE J. DUCK, Register



POSTMARK OF
DELIVERING OFFICE



INSTRUCTIONS: Fill in items below and complete #1 on other side, when applicable. Moisten gummed ends and attach to back of article. Print on front of article RETURN RECEIPT REQUESTED.

← RETURN TO

REGISTERED NO.	NAME OF SENDER
	Alice J. Duck, Register
CERTIFIED NO. 676555	STREET AND NO. OR P. O. BOX
	Box 230
INSURED NO.	CITY, ZONE AND STATE
	Bay Minette, Alabama

POD Form 3811 Jan. 1958

4611

1-INSTRUCTIONS TO DELIVERING EMPLOYEE

Deliver *ONLY* to addressee

Show address where delivered

(Additional charges required for these services)

RETURN RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE *(must always be filled in)*

Daisy D. Bryant

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

6-5-59

ADDRESS WHERE DELIVERED *(only if requested)* #

ALICE J. DUNK, CLERK
JUN 6 1959
FILED