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R. B. VAIL
EDITOR AND PROPRIETOR

BAY MINETTE, ALA.

AFFIDAVIT OF PUBLICATION

STATE OF ALABAMA,
BALDWIN COUNTY,

R. B. Vail, being duly sworn, deposes and says that he is
the PUBLISHER of THE BALDWIN TIMES, a Weekly Newspaper published at Bay
Minette, Baldwin County, Alabama; that the notice hereto attached of _____

Was published in said Newspaper for 1 consecutive weeks in the following

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Subscribed and sworn to before the undersigned this 7th day of

April 1926
T. W. Richerson
Clerk Circuit Court.

R. B. Vail
Publisher.

NOTICE TO NON-RESIDENT

State of Alabama, Baldwin County, Circuit Court, in Equity. This the 19th day of January 1926.

Charles W. Olds, vs. No. 547, August Ohler et als, Deft and Cross Complainants.

In this cause it being made to appear to the Register of this Court by the affidavit of D. B. Cobbs, Solicitor of record for cross complainants, that the Defendant to said cross bill, Hiram H. Maynard, is a non-resident of the State of Alabama, and his post office address is Harris Trust Bldg., 171 Monroe St., Chicago, Ill., and further, in the belief of said Affiant the Defendant is over the age of 21 years; it is therefor ordered that publication be made in the Baldwin Times, a newspaper published in Bay Minette, Baldwin County, Alabama, once a week for four consecutive weeks, requiring Hiram H. Maynard, the said Defendant to answer or demur to the Bill of Complaint in this cause by the 22nd day of February, 1926, or after thirty days therefrom a decree Pro Confesso may be taken against him.

T. W. RICHERSON, Register
D. B. Cobbs, Atty. for Cross Complainant. 51-41

Charles W. Olds, Complainant,
vs. No. In Baldwin Circuit Court, In Equity.
August Ohler, et als., Defendants.

Amendment of Cross-Bill.

Now come the cross-complainants in this cause, John August Ohler, Mrs. Regina Smith, Mrs. Louis Jas, Mrs. Carolina Weigand, and Mrs. Christina Ottlieb, and amend their cross-bill in this cause by adding thereto the following averments and prayers, namely :-

7. That recently certain persons feeling an interest in the acquirement of the title to the aforesaid tract of twenty-seven and 37/100 acres, deeming it already or else prospectively valuable and desirable property, put forward certain efforts towards that end, and it has resulted that certain written instruments have been spread upon the records of conveyances of Baldwin County, Alabama, tending to create different chains of title to said lands; and creating clouds upon the right and title thereto previously vested in these cross-complainants. Cross-complainants are informed and believe and thereon aver that the original complainant Charles W. Olds, whose name is mentioned in one of said chains, has set up a claim that these cross-complainants, or else their ancestor the said Felix Ohler, lost their title and rights in and to said lands, which cross-complainants say is not the case, and they now are further informed and believe and thereupon charge and aver that said Charles W. Olds has, after filing his original bill in this cause, made and signed an instrument of writing in and by which he has parted with all his right, title and interest in said land, unless he still has some incumbrance or lien thereon, and therefore cross-complainants do not fully know ~~just what are the real~~ facts of the matter as between said Charles W. Olds and his grantees or the grantees named in deeds under him. They deny that he ever had and aver that he never had any title in said land beyond a possible undivided two sevenths interests under conveyance from the other two heirs of said Felix Ohler, as aforesaid, but they aver that as aforesaid he has parted with that and has no interest left unless he have some incumbrance or lien on the property.

But cross-complainants further aver that said Charles W. Olds claims or is reputed to claim or to own some right, title or interest in or lien or incumbrance upon said land or some part thereof, and cross-complainants now hereby call upon him to set forth and specify in answer to this cross-bill what is the right, title or interest, lien or incumbrance that he claims in or to or upon said land and each part thereof, and how and by what instrument or instruments the same is derived and created.

8. And cross-complainants further aver that Hiram H. Maynard claims or is reputed to claim or to own some right, title, interest, lien or incumbrance in, to or upon said land or some part thereof, and cross-complainants now hereby call upon him also to set forth and specify in answer to this cross-bill what is the right, title, interest, lien or incumbrance that he claims in, to or upon said land and each part thereof, and how and by what instrument or instruments the same is derived and created.

They are informed and believe and thereupon aver the fact to be that said Hiram H. Maynard is a non-resident of the State of Alabama, residing in the State of Illinois, and that he has a postoffice address in the Harris Trust Building, at ~~11~~ Monroe Street, in the city of Chicago, Illinois ..

9. Cross-complainants aver that notwithstanding that said Hiram H. Maynard claims or is reputed to to claim or to own said land or some interest therein or some lien or incumbrance thereon, he does not, by reason of the law and the facts in this case, own beyond a possible undivided two-sevenths interest in said land which the

original cross-bill, in the information then at hand, attributed to said Charles W. Olds, and they now aver that if they were mistaken in attributing said undivided two sevenths to said Charles W. Olds as a tenant in common, then the said undivided two sevenths interest in said land, conveyed by said other two heirs of said Felix Ohler, are now owned by said Hiram H. Maynard, and the other five undivided sevenths of said land are owned by your cross-complainants, all as tenants in common. In other words, cross-complainants are the owners of five undivided sevenths interest in said land, and the other two undivided sevenths interest therein are owned between the said Charles W. Olds and said Hiram H. Maynard or else by the said Hiram H. Maynard, all as tenants in common, or as lien holders, except that cross-complainants have not a lien or incumbrance on the land or any part of it. Other than as indicated by such instruments as have been placed upon record, your cross-complainants are not informed as to the state of claim between said Chas. W. Olds and said Hiram H. Maynard, and cannot better allege the state of title as between them. Hence they call on each of them to set forth and specify his rights claimed herein, as aforesaid.

10. Prayers added.

Cross-complainants therefore pray that said Hiram H. Maynard be made a defendant to their cross-bill as amended, and be required to answer the same as by law provided.

They further pray that said Hiram H. Maynard be required to set forth and specify what is the right, title and interest, claim, lien or incumbrance that he has or claims in, to and upon said land and each part thereof, and how the same is created and derived, and by what instrument or instruments the same is created and derived.

They further pray that the said original complainant and cross-defendant Charles W. Olds shall set forth and specify what is his right, title, interest, lien or incumbrance, in, to or upon said land and each part thereof, and how and by what instrument or instruments the same is derived and created.

Cross-complainants further pray that the court will decide upon, ascertain and decree the rights, title, interests in said lands of all the parties to this cause, and give judgment according to the rights of the parties; that all questions of title and interest of whatever kind in or to or upon said land be tried and determined in this suit; that all clouds upon the title of any of the cross-complainants, whenever the evidence may develop any, be finally removed and cancelled on their faces and records; that the court will adjust and determine all the equities if any that may exist between all and any of the parties as concerns said land so as to properly effectuate a separation of their interests as prayed in the cause, and will settle and quiet the claims and rights of all the parties to the cause.

They further pray that the court will finally decree that the cross-defendants Chas. W. Olds and Hiram H. Maynard have and has each of them respectively no other right, title or interest in said land than as tenants in common, and that the interests of both of them together do not aggregate beyond two undivided seventh interests, and that the interests of the cross-complainants aggregate five undivided seventh interests in said land, as tenants in common; that the court will decree who are the tenants in common of said land, remove clouds from such interests, clear up the title to the whole land, and will finally effectually separate the interests of the owners of the land as tenants in common, by partition or else by sale for division, according to the law in such cases.

And cross-complainants further pray for such other and further or different relief in the premises as in equity and good conscience they ought to have.

And as in duty bound, etc.

D. B. Cobbs

Solicitor for Cross-complainants.

Foot-Note.

The cross-defendants Chas. W. Olds and Hiram H. Maynard are each

required to answer all of the allegations contained in the foregoing cross bill as amended, contained in paragraphs or sections numbered from I to 9 inclusive, but not under oath; the oaths to the answers are hereby expressly waived.

A. B. Cobbs,

Solicitor for Cross-Complainants.

State of Alabama)

Baldwin County.) Before me T. W. Richerson, Clerk of the Circuit Court of Baldwin County, Alabama, personally appeared William S. Anderson, the Solicitor for the Complainant in the above stated cause, who after being by me first duly sworn, deposes and says, that the defendants named in said Bill of Complaint, to which this affidavit is attached are all non-residents of the State of Alabama, that they each reside in the City of New Orleans in the State of Louisiana; that he has made diligent inquiry to ascertain the post office address of each of said Defendants, and he states as a result of said inquiries, that August Ohler's Post Office address is Corner of Mandeville and Johnson Streets, New Orleans, Louisiana; the Post Office address of Defendant, Mrs Regina Smith is, 1418 Arts Street, New Orleans, Louisiana; the Post Office address of Mrs Louise Jasz, is, 1918 Elysian field, Avenue, New Orleans, Louisiana; the Post Office address of Mrs Caroline Weigand is, Gentilly Terrace, New Orleans, Louisiana; the Post Office address of Mrs Christina Ottlieb is, St Claude Street, Louisiana;

Affiant further says that each of said defendants is over the age of twenty-one years; that Complainant is over the age of twenty-one years and resides in Mobile, Alabama.

Subscribed and sworn to before me }
this 23rd. day of November 1925.

T. W. Richerson

Wm. S. Anderson

Clerk Circuit Court, Baldwin County, Alabama.

Charles W. Olds, complainant,

vs.

Ohler et al., defendants and cross-complainants.

A brief for Hon'ble John D. Leigh, Judge, on demurrer and motion for security for costs, by D. B. Cobbs, Solicitor for defendants and cross-complainants.

To state the facts giving rise to the questions concerned now, Chas. W. Olds by his solicitor Hon'ble William S. Anderson, filed his bill in the Baldwin Circuit Court, to quiet title under the personal proceeding statutes, against five defendants, Ohler et al. The original bill alleged these five defendants "are the heirs at law or next of kin of Felix Ohler, deceased", and called on them to set forth and specify their rights, etc. The five defendants came in by their answer by D. B. Cobbs their solicitor, and admitted that they are heirs of said Felix Ohler, deceased, but set up that there are seven such heirs, of whom they are five. That the land concerned was owned by said Felix Ohler in his lifetime, and that he left these seven heirs, who owned as tenants in common, the land concerned, but that the complainant had bought out the interests of two of these heirs and is a tenant in common owning two undivided sevenths interest in the land; that the five defendants are the other five heirs, and had not sold their undivided five sevenths interests, which the complainant had also endeavored to purchase from them, and that they still own these five undivided seventh interests as tenants in common, and that they are tenants in common with the complainant Chas. W. Olds, who succeeded in purchasing the two undivided interests of the other two heirs. The answer alleged that they own an undivided five sevenths interest in the land, and

are five of the seven heirs of said Felix Ohler, that they claim their five undivided seventh interests as such five heirs, that said Felix Ohler formerly resided in Baldwin County, that he owned this land, which commonly went by his name; that at his death he left surviving him seven children, his heirs at law, of whom these defendants are five, and that the other two heirs are also living, but that the complainant had negotiated with all seven of said heirs to purchase the land from them, and had succeeded in buying the two undivided interests of two of the heirs, but that the defendants, being the other five heirs, did not part with their interests to anyone, but still own the same. That each of the defendants owns an undivided one seventh interest in said land, so that the five of them own undivided five sevenths and that the complainant Olds owns the other two undivided seventh interests, all the parties owning, as the bill distinctly says, as tenants in common of the land. Thus the five defendants stated that they claim the title of 5/7ths as tenants in common, and claim as heirs of said Felix Ohler, deceased. They did not set up any other claim, whether of incumbrance or title, than merely as tenants in common owning 5/7ths, and that the complainant Olds is a tenant in common with them, owning the other two undivided seventh interests in this land. These averments, of tenancy in common claiming the title, are expressly made. But the bill did not allege in so many words that said Felix Ohler owned the land at the moment of his death, and it did not say that he "formerly" owned it. It stated that he formerly resided in Baldwin, and that he owned this land, and that he is dead and that these are his heirs, etc., as above stated. But that they claim it as such heirs is made expressly and plainly, and that he owned it is also clearly stated in the answer. Before any grounds of demurrer were filed by complainant Olds, after the answer had been made a cross-bill, the defendants amended their cross-bill to bring into it as a defendant one H.H. Maynard, and alleged in their amendment of the cross-bill that after the original bill had been filed by Olds, he had sold his interest in the land to

this Mr. Maynard, and that Mr. Maynard does not own beyond a possible two undivided seventh interests in this land, and that complainant Olds does not own any interest in it unless he has some lien or incumbrance thereon, and that there is a relation of tenants in common of this land amongst the five defendants and said Maynard, with a possible ^{in favor of Olds} lien/on that part of it which the original bill attributed to said Olds and which Olds had now conveyed to Maynard. The amendment did not strike out anything, but simply added to the original ^{cross-}bill, and thus the cross-bill as amended was one to test the title of complainant and said Maynard, by allegations pleaded as well under the partition statutes, as under the statutes to quiet title. As amended it prayed that the interests of all the parties to the suit be ascertained and decreed and that the interests of the tenants in common be separated by partition by lines and bounds or else by sale for division between such of the parties as turn out to be tenants in common, so as to leave any alone who may turn out not to be tenants in common, except barely to ascertain their interests.

There are two demurrers, with sets of grounds, but as the demurrer joined in by both said solicitors, Judge Anderson and Judge Turner, includes all the grounds assigned by both together, we may as well take up only the demurrer filed by them together. And they can be summarized as follows :- their grounds being :-

1st. No equity in the cross-bill as amended.

2nd, No averment that the cross-complainants are in possession.

3rd, Fail to set forth and specify in the answer and cross-bill their right, title, interest, lien or incumbrance, and by what instrument it is derived or created. Do not show they have any right, title, interest, claim, or incumbrance, nor set up any possession under claim of ownership.

4th. Entirely wanting in equity, as there is no averment of any right, title, interest, claim, or incumbrance to entitle them to maintain any bill for relief. They do not claim possession. The allegation that "formerly their father Felix Ohler

resided in Baldwin County, Alabama, and that he was the owner of said lands, which went by his name " does not show any present right, title or interest in cross-complainants .

The cross-bill is also for partition, etc., as shown below .

The case is under submission on the demurrer including the above grounds .

It is plain that the last stated ground, -- that the averment that the dead man formerly resided in this county, and that he owned this land, does not show any present interest in the land -- is but an argumentative ground, addressed to one particular averment of the cross-bill, and paying no attention to other averments of the whole cross-bill; but since this is but one ground assigned , and the demurrer is on its face addressed to the entire cross-bill in all its purposes, it follows that if the demurrer is bad as to any purpose of the bill, it must be overruled, notwithstanding the fact, if it had been a fact, that some one ground or other might be good, as to some particular part of averment of the crossbill. For instance, if a bill be filed in two aspects, and one of them is good and contains equity while the other does not, then a demurrer, in order to be sustained, when addressed to the whole bill, must be good as to the whole ; of course, if it were addressed to only one aspect , and is good as to that, it might well be sustained as to that aspect, but not when it is addressed to the bill as a whole , as this demurrer is . The grounds of a demurrer are nothing more than simply the plader's reasons for a demurrer to the effect that a bill is insufficient, in part or in whole; hence if only one of such reasons is good that demurrer must be sustained, for it needs only one good ground; but this is not necessarily true when the demurrer goes to the whole bill, because in such case the demurrer, on some ground or other, must be good to the whole bill. So that if the bill be good in one aspect, though bad in another, then a demurrer to the whole bill has to be overruled, entirely, notwithstanding

some ground may be good as to some part of the bill. For example, where the bill is filed in a double aspect, or cross-bill either, a demurrer with a dozen grounds, eleven of which are bad, must be sustained if only one ground be good; this is true, whether it be addressed to one aspect or both; if addressed to both, however, there must be at least one ground which is good to both aspects, otherwise it has to be overruled. These decisions are too numerous for question, and are applicable in this case. The ground that the allegation of former title does not indicate any present title is evidently addressed to this particular allegation in the cross-bill, (though misquoted in the demurrer). As addressed to the whole bill it can not avail for any purpose, because there are other allegations in the cross-bill which do show plainly a present title. And a demurrer to the whole cross-bill, with a ground that one part of the cross-bill is not sufficiently alleged, cannot be sustained where there are other allegations that make the cross bill good for ^{at least} one of its purposes.

If this cross-bill had been filed under only the personal proceeding statute to quiet title, as the original bill was, then the defendants, would not have needed to obtain any affirmative relief by way of a cross-bill -- they could have simply set up their claim by an answer, without making it a cross-bill, and they would then have the burden of establishing whatever right, title, interest, lien or incumbrance they set up and specified as theirs.

Smith vs. Irvington Land Co., 190 Ala., 459.

East Bgham R.R. Co. vs. Bgham Mach. & F. Co., 160 Ala., 466.

In other words, this would be simply the relief that the statute itself provides, no more, and no less. 160 Ala., 466.

101 So., 836.

And in that event, the defendants could not have tested out the right, and title, etc., of the complainant who filed the original bill.

But where the defendant desires affirmative relief of some kind, he should file a cross-bill and pray for it, if he confines himself to the statutory proceeding to quiet title. Otherwise, the issue could be, the same as in an answer alone, what is the right of the defendants in the bill as against the complainant. IOI So.Rep., 836.

If the purposes are cognate to the land concerned in the original bill, then the cross-bill filed may do several things, or as many as it will. For instance, it can thus test out and ascertain what is the right and title, interest, claim, lien or incumbrance, of the complainant himself. Or, it can bring in outside matters appropriate to any of the parties about the same land, just so it is not multifarious--~~untho'~~ the statute on multifariousness now permits almost anything to be brought in, under its terms and language, and no question of multifariousness has arisen here. Here, the cross-bill brings in a status of tenancy in common (formerly called a joint title) and asks that the interests of all the parties to the cause be ascertained and declared in the decree, and that the land be partitioned or sold for division between such of the parties as the evidence may show are tenants in common of it.

But the grounds of this demurrer claim that this whole cross-bill is bad because the cross-bill does not set forth and specify what is the defendants' right and by what instrument it is derived or created, does not show they have any right, lien, incumbrance, etc. This reason for sustaining the demurrer to the whole bill evidently is addressed to only that aspect of the bill as to quieting title under the statute. Of course, it is bad and must be overruled, if there be anything in the cross-bill to give it any equity. Even if the cross-bill were merely to ascertain the interests of the complainant under the statute, as to quieting titles, it is never requisite that one whom this statute requires to set forth and specify his right ~~and~~ by what instrument or how it was derived and created, shall set forth and specify matters of evidence, such as is contained in a chain or source of title. The statute does not say they

~~must set forth by what instrument the title is derived in them--~~

must set forth and specify by what instrument, in every case, the defendant derives his title or by which it is created, for in some instances, such as here, it would not be possible, legally speaking, to do so, as where one claims by inheritance. Just as in ejectment it required a statute to be enacted so as to require one to set forth and specify his title, etc., or chain of title, so in the bill to quiet title a defendant is not required by any statute to set forth his chain or the source of his title or otherwise to plead matters of evidence. If he has a deed, or a will, he must set it up, and in this kind of suit he must set up every different title that he claims, if he has different claims of title, because he is going to lose out on everything that he does not set up, even tho' he wins on what he does set up. The statute means what it says :- if he has a deed or will made directly to himself, he must set it up if he desires to rely on that derivation; but if he claims by inheritance, he does not necessarily have to do more than show that fact, and that his ancestor from whom he derived the claim he makes, had the title; to require him to set up the deed to his ancestor, if there was a deed, is to require him to plead matters of evidence. Suppose, again, that his ancestor did not have any instrument, neither deed nor will directly to himself; then all that would be required is to show how the defendant derives his title or claim, by inheritance; for if it were required always to set up that one has a deed, or a will, then the fact that the ancestor had acquired title by adverse possession without even a color of title, would be totally unavailing to a defendant, tho' he may have inherited the full title. A defendant is not required to set up and specify the source of his claim, nor his chain of title. *Lek v. Kahn*, 105 So. Rep., 185. He may, if he wishes, do more than the statute requires, and thus incur himself with a greater burden of proof, of "unnecessary or redundant allegations", but the statute does not require it-- he need not set out the sources from which he claims the title. *Ward vs. Janney, & Cheney*, 104 Ala., 122. *Adler vs. Sullivan*, 115 Ala., 584. Neither does a cross-complainant have to set out more, when by a cross-bill he asks merely the affirma-

tive relief of testing out to ascertain what interest the complainant has . Drennan v. White, 191 Ala., 274.

Adler vs. Sullivan, 115 Ala., 584.

This is expressly stated concerning a cross-complainant in the last above decisions, just as in the above analogous cases relating to complainants . And just as this is true in the statutory proceeding only, so it is all the more true when the cross-bill, or the original bill either, brings into the case other matters besides such statutory matters, as is a common practice .

This the present cross-bill does, as is permitted . After first setting out and specifying what is the title of the cross-complainants, and that it was derived by inheritance from Felix Ohler, deceased, which is sufficient to make it a good cross-bill under the statute so as to ascertain that the other two undivided sevenths are owned by the original complainant or his grantee Maynard, or that it is owned between them in whatever way it is owned between them, it goes further and asks for further affirmative relief, as is lawful, namely, it asks for a separation of interests between whoever are the tenants in common.

This, manifestly, would not have been permissible under decisions in force just before the code of 1923, under which this proceeding is taken, went into force . But it is now .

Under those former decisions it was required that where such a separation of interests is sought, by partition or sale for division, it must be between persons who are tenants in common in the land, and if it ever turned out that a party appears finally not to be such a tenant in common with the rest, the requirement was that either such non-tenant be put out of the case or else the bill must be dismissed, upon the ground that an outsider, one having no tenancy in common with the others, could not be brought into the case with those having interests in the land to be divided or sold . Thus, a tenant in common, desiring to bring in such an entire outsider, in order to clear

up any dispute or doubt or cloud, that the property may be freed of such trouble for the benefit of those who are to share in it, could not bring such an outsider into the case, on objection. If then, it finally appeared that someone is in who is not such a tenant in common, regardless of whatever sort of claim he might have or make against the land, that trouble could not be settled up in a partition suit, but the bill would have to be dismissed wholly, if he were not himself amended or dismissed out of it. This left his claim, whatever it was, undetermined. This was a great disadvantage and worry and trouble to those who were interested in the land. And there was some strong reasoning against this view, but it prevailed. And because it was regarded as unjust to the tenants in common, it was changed by the legislature. This was done in 1920 by acts that are now in the new code, as appears in its sections 9331, 9332, 9333, and 9334 as amended by said act of 1920. To quote them briefly, in substance, 9331, as to equity jurisdiction and powers, gives this court original jurisdiction to divide or sell amongst tenants in common of land, regardless of who is in possession of it, and regardless of what sort of claims may be set up by the defendants in the bill for partition; it says in so many words, that this is so, "whether the defendant denies the title of complainant, or sets up adverse possession or not". Section 9332 provides for an outsider to come in voluntarily with whatever right or claim heets up, by way of interpleader. Section 9333 requires the court to declare the rights of everybody in the case, whether the outsider comes in or is brought in. And section 9334 as amended in 1920, requires the court to settle all questions, remove all clouds, adjust all equities of the tenants in common as between each other, as well as any equities or incumbrances or claims by outsiders against someone or more of the tenants in common-- every right of everybody in the case is to be settled and determined, and the whole matter ended in the one suit in equity. All these are under the partition subject, and there can be no doubt that the cross-bill as amended has equity, for one purpose or the other or for both purposes,

according to its allegations .

Your Honor thought once that the possession of a cross-complainant is necessary, but the above statute as to equity jurisdiction expressly applies both to partitions by metes and bounds and to sale for division, so that in equity the matter of possession cuts absolutely no figure, as a prerequisite for a separation of interests of parties in land ., by partition, or by sale . The statute itself is too clear for question on the point. And this is proper when you consider the real nature of a tenancy in common; it does not imply the legal title at all, for tenants in common may have only an equitable title ; they may be tenants in common of a leasehold estate, or other less estate than the full title . And even where the allegation is of the legal title, as in this case, the statute steps in and dispenses with any requirement that the tenants in common shall be in possession; if one is in, he is in for them all; but none of them needs to be in possession, and they can have a sale or else a partition in equity even where one is in who sets up and shows that he is in adverse possession claiming against them all.

The allegations for the separation of interests are not challenged expressly by any ground of the demurrer, and are not covered by the general demurrer or ground that the cross-bill has no equity . Let's see if that is true .

It is held it is not necessary to allege that the parties claimed to be tenants in common, nor to prove, that they have, the legal title-- a mere equitable title is sufficient. 128 Ala., 179. 205 Ala., 479. Hence all that is necessary is to allege that there are tenants in common, and what is the quantum of interest of each tenant in common. Code sections 9305 et seq. It is not necessary to allege the divisibility or nondivisibility of the land other than in the very terms and language of the statute itself giving this remedy , that is, in the general words there used. 180 Ala., 102.

Under these new and old sections in partition, the cross-bill as amended to bring in Mr. Maynard, is sufficient to clear up all questions of what interest he or complainant Olds has, and to obtain a decree in favor of whoever is entitled and asks a decree . You will recall that in equity the old rule that

all must recover or none can has been abolished by the statutes, and now under them even where there are many complainants anyone one or more may have a decree while others may not. And also the decree goes against whichever of the defendants is liable, regardless of whether other defendants are or not.

There is one case that has been decided under these new partition statutes, and under it, our allegations and prayers for partition are sufficient; for partition or separation of interests, along with settling up every right or claim asserted, between all the parties to the cause, however they come or are brought in, is now the practice, even as against some outsider who turns out not even to be a tenant in common. Sandlin v. Anders, 98 Southern, (Alabama) / 299.

Therefore, even if the allegations had not been sufficient to test out the rights of the complainant Olds, and his grantee Mr. Maynard, under the statute as to quieting titles, --- although I maintain they were -- whatever may be their rights is a subject matter of the partition cross-bill filed, under the express terms of the partition statutes, which thus enables their rights to be ascertained, determined, quieted fully, at the instance of the five Ohler cross-complainants.

To recapitulate, the cross-bill as amended needs not to allege or show any sort of possession, tho' it does show it by alleging tenancy in common, if Olds or Maynard be in possession; It does set forth and specify what right or title defendants and cross-complainants have, and does show how they ~~derived or acquired it.~~ It does set up a claim of ownership. authority for requiring a nonresident or anyone else, under the constitution, to make security for the costs, and to do ^{so,} its terms must be complied with, or the party be brought within it. In this case that is not true. For the statute itself and the decisions construing it, say so distinctly. The statute does not offend the present section 13 of the bill of rights, as to administering justice without sale, denial or delay, etc. But this question, as to bringing a party into the terms of this statute has arisen before and been settled. It is held that

under the above decisions and statutes, the allegation of everything necessary to ascertain and declare what are the rights of each party to this cause, and to have the separation of the interests prayed for in the cross-bill. I do not see how it is possible to doubt that the cross-bill has equity, and it follows that the demurrers filed against it should be overruled. This means the demurrer of Mr. Olds, and the demurrer of Mr. Maynard.

At the same time the case was submitted on a motion by Mr. Olds to require these cross-complainants to give security for "the costs . "

What costs ? On what grounds or reasons ?
" On the grounds that they are nonresidents of the State of Alabama ". Further because " The relief sought in their alleged cross bill is entirely different and distinct from the matters set out in the original bill, and they are bringing in new parties " . Because " The matters set up in the cross bill are an entire departure from the matter involved in the original bill. "

To require security for the costs, which means the whole costs of the cause, they must certainly bring us within the terms of the statute on this subject, and it doesn't seem to be a merely discretionary matter with the court to require security or not. On the contrary, the statute is the only authority for requiring a nonresident or anyone else, under the constitution, to make security for the costs, and to do^{so,} its terms must be complied with, or the party be brought within it. In this case that is not true. For the statute itself and the decisions construing it, say so distinctly. The statute does not offend the present section 13 of the bill of rights, as to administering justice without sale, denial or delay, etc. But this question, as to bringing a party into the terms of this statute has arisen before and been settled. It is held that

the costs for which the security, when properly required, is to be given, are all the costs for which the plaintiff may be or become liable . 124 Ala., 547 , on page 549. And it is manifest that in this case that this means not only the costs of the cross-bill alone, but all the costs of the cause-- it was held that it covers even costs already accrued as well as those created afterwards . Ib., p.549.

The statute requires that when this security is to be required, then the suit brought by the nonresident must be dismissed unless the security be given when the suit was commenced, or in the time fixed by the court, code section 7249, and another provides for dismissing it in 30 days after the ^{or order of court} notice to give the security when the suit is brought by a plaintiff who is resident and afterwards becomes a nonresident . 7252.

Construing ~~these~~ statutes, as to nonresidence, the supreme court, to make a long argument short, settled it, that this statute applies only when the nonresident, who has already been brought into court by a complainant, files a proceeding that wholly seeks some entirely new and independent relief not related to that sought by the complainant. I believe this to be a correct statement, but I will rather take ~~them~~ from the decisions themselves . There are a number of former decisions that held that wherever in any event a nonresident asked affirmative relief, the statute would apply and so the security for the costs of the cause could be required, but that related to an entirely new case, separate and distinct from the cause of action in the original suit , and this is evidently the reason why moveant alleges that the present cross-bill constitutes an entire departure from the original bill. This, on its action, appears plainly incorrect. You cannot read the two cases below cited without concluding moveant is in error . In McAdams vs. Beard, 34 Ala., 478, it was held plainly that a trial of the right of property is a suit begun by the claimant, is a suit within a suit, and yet is not within either the spirit or the letter of this statute as to requiring the claimant to give security for the costs . And in the case of ex parte

Blackburn, a nonresident was not required to give security for the costs, although taking a proceeding in a pending cause. Mrs. Moore, a nonresident, was made a defendant in a cause relating to her child, and its custody was therein awarded to another; thereupon Mrs. Moore, while still a nonresident, filed in the same cause her application for habeas corpus to recover the child, and it was held that this amounted to a new application to the same court in the same cause to modify said former decree giving the custody to that other person, and to have its custody now awarded to herself, Mrs. Moore. Thereupon a motion was made to require her to give security for the costs, and the supreme court held that it shall not be done, on the ground that this is not seeking some relief affirmatively which is entirely new and independent of the cause of action stated in the suit, but is merely the asking of additional or further orders in the same suit, and is not the bringing of a new suit such as the statute contemplates. So, our cross-bill, which at once asks relief as to testing out the complainant's title both under the statute as to quieting title and also under the partition statute, merely asks the further relief of separating those interests of the parties, after they shall have been ascertained, and this brings it clearly within the principle of the above Blackburn case, that where it merely seeks additional or further relief in the same case, it is not the commencement of a suit in the meaning of this statute. Moreover, the statute speaks of the suit being one by or for the use of the cross-complainant, and it is perfectly clear that the partition sought is not for the sole use of the cross-complainants, but also for the benefit of the complainant, they being tenants in common. This is also just, and right, because the cross-complainants did not themselves voluntarily bring suit in the first place, but were themselves first forced into the court against their will; and then they but ask the same kind of relief as in the original bill, relating to the same property, but also ask further or additional relief about it in the same suit into which they themselves were first forced. It seems plain that the cross-complainants, although brought in

themselves in the first place, as nonresidents, may file their cross-bill, when brought in, about the same subject-matter this land, and have like relief as the original bill seeks, and in addition the further relief of separating the interests ascertained, without being required to give security for proceeding not wholly in their own interest but for the use of the original complainant as well, as joint tenants of the land, without being required to give security, as if they had originally brought the partition suit themselves by original bill. The distinction is clearly made by the above two cases of Blackburn and McAdams .

Respectfully submitted,

D. B. Cobbs ,

Sol'r for Defts. & cross compkts.

STEVENS, McCORVEY, McLEOD, GOODE & TURNER
ATTORNEYS AT LAW
502-8 FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA

THOMAS M. STEVENS
GESSNER T. McCORVEY
WILLIAM McLEOD
DAVID B. GOODE
BEN D. TURNER
C. M. A. ROGERS

June 18th, 1928.

Hon. John D. Leigh,
Judge of the Circuit Court,
Brewton, Alabama.

Dear Judge Leigh:- In re: Charles W. Olds, complainant,
-vs.- August Ohler.

The above case is pending in the Circuit Court of Baldwin County, the original complainant being represented by Judge William S. Anderson. Prior to Judge Anderson's death the cause was submitted on demurrers of complainant to answer and cross-bill and demurrers of Hiram H. Maynard to said cross-bill, the said Maynard having been made a defendant thereto, and further submitted on motion of complainant to require cross-complainant to give security for costs. This matter was handled for the defendant by Judge Anderson during his lifetime and while the writer was interested therein as associate counsel, he never took an active interest in said case. Quite a while ago we were furnished with a copy of a brief by Judge Cobbs, who is on the other side of this case, and we were also furnished with a brief prepared by Judge William S. Anderson in support of the demurrers and motion as filed. Inasmuch as the litigation was handled by Judge Anderson up to the time of his death we hesitate to undertake to add anything to his brief because of our conviction that he thoroughly knew the state of the pleading and the several questions raised. We therefore submit you our brief in the matter, the original brief prepared by Judge Anderson which is hereto attached. We are sending a copy of this letter and brief to Judge Cobbs for his information.

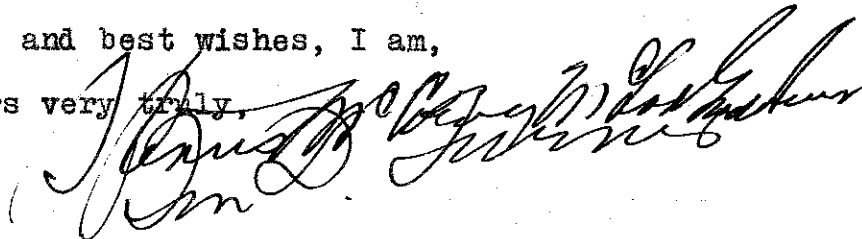
We are sending this letter directly to the Register at Bay Minette with the request that if the papers are not already in your hands that they be submitted to you at once. If at all possible we will appreciate your handing down a decision upon the matters involved as speedily as possible.

With kindest regards and best wishes, I am,

Yours very truly,

Copy to

Judge D. B. Cobbs,
Mobile, Alabama.



Charles W. Olds,)	
Complainant,)	CIRCUIT COURT, BALDWIN COUNTY, ALABAMA.
vs.)	In Equity.
August Ohler et al.,)	
Defendants.)	<u>Bill to quiet the title of Complainant.</u>

Brief for Complainant on submission of cause, on Demurrers and motion to require Cross Complainants to give security for costs.

I hardly deem it necessary to notice the Demurrer to the original Bill. The Bill is in the statutory forms, it alleges that,

" Second. Complainant shows unto your Honor that he is in the peaceable possession of, and claiming to be the owner in his own right of all that tract or parcel of land in Baldwin County, Alabama, described as follows, to-wit: "

The Defendants demur to the Bill of Complaint upon the ground

"that it does not sufficiently set forth and allege that the complainant owns the land set forth and described in the Second paragraph of the Bill".

Demurrers to Answer and Cross Bill.

As an Answer required by the statute, it fails to set forth and specify, their title, claim, interest or incumbrance, and by what instrument the same is derived, or created.

In the 3rd paragraph of the answer, they admit that they claim some interest, claim or incumbrance on the land, and that they are the heirs at law of Felix Ohler, deceased, but do not say what that interest is.

The 4th. paragraph of the Answer, makes these statements,

"Respondents admit that Felix Ohler, deceased, was their father, and formerly resided in Baldwin County, Alabama, in which the land is located, and that he was the owner of said land, which went commonly by his name"

At the time of his death he left surviving him seven children, his heirs at law, of whom these respondents are five, and that the other two are also in life."

"Respondents also allege that the complainant negotiated with all seven of the heirs of said Felix Ohler to purchase their respective interests in said land; that he succeeded in obtaining deeds from two of said heirs for their two sevenths interest therein; but failed to obtain a deed or a contract of conveyance for the undivided interests of these respondents in said land".

"That these five respondents and said two other persons were at the time of said negotiations, heirs at law of said Felix Ohler and prior thereto, was a fact well known to the Complainant".

"Respondents did not part with their interests in said land to the complainants or to others, and this fact was well known to the complainant when he negotiated to take deeds from them for their interests.

5th. Paragraph.

"Respondents further allege that they each of them own respectively an undivided one-seventh interest in said land, so that the five respondents together own five undivided sevenths interest therein. The Complainant owns two undivided sevenths interest in said land. And Complainant and these respondents are accordingly tenants in common of said land, owning in proportion as above set forth."

6th. Paragraph and last paragraph. alleges,

That the land can be equitable divided by metes and bounds, ^{then follows the aver-} ~~ment~~ ^{ment} that it cannot be equitably divided, ~~and in that event they pray~~ ^{and in that event they pray} for a sale of the land for division.

The Prayer, calls for the Court to ascertain and determine the rights of the respective parties, and will determine that Cross Complainants are tenants in common with complainant. That there several interests be separated, or that the land be sold and the proceeds divided between the parties.

I have thus set out a full summary of the Bill, so that the Court may see that there is no Equity in the Bill as a Cross-Bill; and the Answer utterly fails to set forth and specify any title, claim, interest or encumbrance on the part of the defendants.

The only claim to ownership or interest is contained in the 4th. paragraph,

" Respondents admit that Felix Ohler, deceased, was their father and formerly resided in Baldwin County, Alabama, in which the land is located, and that he was the owner of said land, which went commonly by his name"

"At the time of his death he left surviving him seven children, his heirs at law, of whom these respondents are five, and that the other two are also in life".

These allegations may all be true, that Felix Ohler formerly resided in Baldwin County, and that he owned this land. They do not say how long ago that was, nor do they deny that he parted with his title in some way. It might have been twenty-five or thirty years ago, and he may have parted with his title.

The next allegation is that, "at the time of his death he left seven children, his heirs at law, of whom these respondents are five". There is an utter failure to allege that Felix Ohler was the owner of this land at the time of his death, or when his death took place.

Do these allegations show any present right, title or interest in respondents. Construing the allegations most strongly against the pleader, they would tend to show that Felix Ohler was not the owner at the time of his death, and that such interest as he had at some time was lost or disposed of by said Felix Ohler.

I would call the Court's attention to the fact, that the only basis for a claim that these respondents are tenants in common with complainant, is set out in the same 4th. paragraph of respondents answer and cross bill, that complainant negotiated with the seven children of said Felix Ohler, to purchase their respective interests, and succeeded in obtaining deeds from two of said heirs, but failed to get deeds from the five respondents.

That fact respondents conclude make them tenants in common.

That is the only ground on which they seek to base their claim that they are tenants in common with complainant. They say that by these deeds from the two heirs, the complainant became the owner of two sevenths, and these respondents ~~and the respondents~~ remained the owners of five sevenths, "And Complainant and respondents are accordingly tenants in common of said land, owning in proportion as above set forth."

I submit to the Court, that a complainant seeking to quiet the title to a tract of land from several parties who are reputed to have some right, title or interest in said land, even though they be brothers and sisters, who obtains a quit claim deed from one of said parties, does not thereby make himself a tenant in common with the others, who refuse to release their interest.

But such is the claim of the respondent in this case.

It has no other foundation.

The Amendment to Cross Bill, is in the nature of a Bill to Quiet the title against the defendants. but it contains no allegation that Cross Complainants are in possession of said lands or claim to be the owners thereof. Without setting up any ownership or possession of said lands cross complainants call upon the persons named as defendants, to set forth and specify in their respective answers, what is the right, title, interest lien or encumbrance, that they claim upon said land, and by what instrument it is derived or created.

The Cross Bill then claims that they are tenants in common by reason of the conveyance or ~~release~~ of two of the seven original heirs of Felix Ohler to Charles W. Olds.

We insist that there is no sufficient Answer to the Original Bill and the Cross Bill and amendment are entirely wanting in equity and should not require answers.

On the motion to require Cross-Complainants to give security for the costs.

We confidently submit to the Court, that this motion should be granted.

Cross-Complainants are non residents, by their own admissions.

The Cross-Complainants ask for relief entirely distinct and different from the matters set out in the Original Bill, and they are bringing in new parties. The matters set out in the Cross Bill are a departure from the matters involved in the Original Bill.

The Statute requiring security for costs, Sec. 7249 of the code of 1923 is in these words,

"Nonresidents must give security for costs. All suits at law or in equity, commenced by or for the use of a non-resident of this state, must be dismissed on motion, if security for the costs, approved by the clerk or register, be not given by such nonresident when the suit is commenced, or within such time thereafter as the court may direct".

As held by the Supreme Court in Ex parte Blackburn, 204 Ala. 132, (85 So. 495);

"The foregoing statute has heretofore received an elastic construction by this court, so as to make the giving of security for costs necessary in practically all proceedings or actions, which seek affirmative relief, by invoking the action of the court, and has been applied in several instances to petitions in pending suits".

The Supreme Court, however in this case of Ex parte Blackburn, cited above, which was a petition for habeas corpus seeking the custody of a minor child, the Court held,

"Filing of a petition for habeas corpus seeking the custody of a minor child, which merely sought further action by the court in a pending cause, in which the petitioner was a party and related to the custody of the child, which was a ward of the court, court never having lost jurisdiction, was not, "the commencement of a suit" within the influence of the statute, requiring that nonresidents must give security for costs."

This case clearly shows, that it was an exception to the rule, and related to the custody of a minor child which was a ward of the Court, and the court had never lost jurisdiction, to determine what was the best interest of the child.

This case is cited by council for cross complainants, as an authority, why they should not give security for costs, we think it is against them as this suit does not relate to the custody of a minor child.

In the case of Ex parte Blackburn 202 Ala 132, (85 So. 495) the Court quotes with approval the case of Garrett vs. Terry, 33 Ala. 514, where it was held, that "an application for a re-hearing by a non-resident defendant, is within the Statute requiring security for costs."

In the other case cited by Council in his Brief for Cross complainants, McAdams vs Beard, 34 Ala 478, we think our friend has entirely misconstrued the decision in that case.

He cites the case as holding that the Claimant, in a suit to try the right of property, is not such a suit as requires the claimant to give security for costs. The case makes no such holding.

The head note is this:

"The commencement of a statutory claim suit, is not the issue of the execution, nor its levy, but the making of the affidavit and the giving of the bond by the claimant."

Clearly under that decision if the Claimant were a non-resident he would be required to give security for the costs.

In that case, McAdams vs Beard, 34 Ala 478, Beard & Henderson were the plaintiffs in execution against David Edwards, and James McAdams was the claimant. McAdams was not a party to ^{the original} ~~that~~ suit.

The execution in the case of Beard & Henderson vs, Edwards, was levied on certain property on Dec 3, 1855; and the claimant, McAdams, made the statutory affidavit and gave the bond on Jan 7, 1856.

After several continuances by both parties, the case was finally called for trial at the Fall Term 1858, and the Claimant then moved to dismiss the levy on the ground that the plaintiff was a non-resident, and had failed to give security for costs.

There was no question raised in the case as to the claimant giving security for costs. He the claimant moved to dismiss the levy of the execution, because the plaintiff, in the cause was a non-resident and had failed to give security for the costs.

The only two cases cited by the Brief for cross-complainants, tend to show that the motion should be granted, and cross-complain-
ant required to give security for costs, if they are allowed to remain in the case and prosecute their Cross Bill.

R. S. Anderson

Charles W. Olds,
Complainant,
vs.
August Ohler, et als.,
Respondents.

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

4
This cause coming on to be heard is submitted for final decree on the pleadings, including the answer of Hiram H. Maynard this day filed, and the agreement of counsel dated the 14th day of July, 1928, and filed as of this date. Upon consideration of said pleadings and the agreement of counsel as aforesaid, it is ordered, adjudged and decreed by the Court as follows:

1. It is ordered that the several demurrers and motions heretofore filed in said cause, and referred to in said agreement be, and the same are hereby, permitted to be withdrawn, and are withdrawn by attorneys for the respective parties in open Court, and that the former submission on said demurrers and motion be, and the same is hereby, set aside and said cause re-submitted as aforesaid.

2. And it further appearing to the Court, pursuant to the terms of said agreement, that the said Maynard has this day filed his answer in said cause denying the material allegations of said cross-bill and praying that his title to said lands be quieted by an appropriate decree as against all of the respondents named in the original bill as heirs of Felix Ohler, and that said respective solicitors have agreed that said cause may be submitted for final decree without further notice to any of the parties to said cause, it is the opinion of the Court that the said Hiram H. Maynard is entitled to the relief prayed for in his said answer, and it is therefore ordered, adjudged and decreed by the Court that the title asserted by the five Respondents and Cross-Complainants, August Ohler, Mrs. Regina Smith, Mrs. Louise Jas, Mrs. Carolina Weigand and Mrs. Christina Otteib is in the said Hiram H. Maynard, and that said Respondents have no right, title, interest, lien or incumbrance in or upon the property described in said bill of complaint, viz:

The following described lands in Baldwin County, Alabama, viz:-
Beginning at a point where the section line between Sections 30 and 31 intersects Dolive Creek on the East side or

bank and running East 18.72 chains to half section post on said section line, thence South 15.50 chains to the North line of land sold by C. Sibley to one Calloway, thence due West 16.28 chains to Dolive Creek, thence North along the Creek to the point of beginning, being a part of the Northeast Quarter of the Northwest Quarter of Section 31 in Township 4 South of Range 2 East, containing 27 acres, more or less.

And it is further ordered, adjudged and decreed by the Court that the title to said land is now in Hiram H. Maynard, free of any right or claim on the part of said Respondents above named, and that as against said Respondents, or any claim asserted or to be asserted by them in the future, the title of said Hiram H. Maynard in and to said lands is forever quieted.

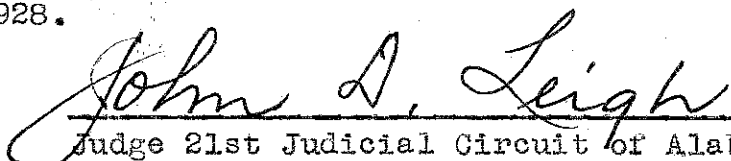
It is further ordered, adjudged and decreed that the Register of this Court shall, within thirty days from the rendition of this decree, file a certified transcript thereof for record in the Probate Court of Baldwin County, Alabama, and tax the expense thereof as an item of costs in this cause pursuant to Section 9909 of the Code of Alabama of 1923.

It is further ordered that the Probate Judge of Baldwin County, Alabama be, and he is hereby directed to enter in his lis pendens docket, at the proper place therein, the following entry:

"This cause has resulted in final decree dated August 14th, 1928, in favor of Hiram H. Maynard, a party to said cause, declaring the title to the property described in the attached lis pendens notice to be in the said Hiram H. Maynard and quieting his said title as against the five Respondents named in the bill of complaint to which said notice refers."

It is further ordered, adjudged and decreed that the costs of this cause be, and the same is hereby taxed against Hiram H. Maynard, for which let execution issue.

Done in term time, at Bay Minette, Alabama, this the 14th day of August, 1928.


 Judge 21st Judicial Circuit of Alabama.

(B)
Charles W. Olds,
Complainant,
vs.
August Ohler, et al.,
Defendants.

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

In this cause, as will fully appear from the papers filed therein, the proceedings were begun by an original bill of complaint filed by Charles W. Olds as Complainant, vs. August Ohler, Mrs. Regina Smith, Mrs. Louise Jasz, Mrs. Carolina Weigand and Mrs. Christina Otteleib, as Respondents. All of said Respondents appeared in said cause and filed a demurrer to said bill and an answer thereto and prayed that said answer be considered as a cross-bill in said cause, and that thereafter said Respondents above named amended their cross-bill in such particulars as will appear from said amendment on file in this cause, among the other matters accomplished by said cross-bill being the bringing in of Hiram H. Maynard as a Respondent to said cross-bill; that thereafter the Complainant and cross-respondent, Charles W. Olds, and cross-respondent Hiram H. Maynard each filed separately their demurrers to the cross bill of Respondents, and also filed a motion to require the Complainants to give security for costs of said proceedings. Said cause now stands submitted on the several demurrers and motions above set out.

The said bill of complaint describes and involves the title to the following property:

The following described lands in Baldwin County, Alabama, viz:-

Beginning at a point where the section line between Sections 30 and 31 intersects Dolive Creek on the East side or bank and running East 18.72 chains to half section post on said section line, thence South 15.50 chains to the North line of land sold by C. Sibley to one Calloway, thence due West 16.28 chains to Dolive Creek, thence North along the Creek to the point of beginning, being a part of the Northeast Quarter of the Northwest Quarter of Section 31 in Township 4 South of Range 2 East, containing 27 acres, more or less.

And now all of the parties to said suit, acting through their respective Solicitors, having reached an agreement as to the settlement of said suit, it is agreed that said cause may be

settled in the following manner:

1. It is agreed that the several demurrers and motions filed by the respective parties as hereinabove outlined shall be and are hereby withdrawn and the former submission on such demurrers and motion be and the same is by agreement set aside.

2. That the said Hiram H. Maynard shall this day file his answer in said cause, denying the material allegations of said cross-bill and praying that his title to said lands be quieted, by an appropriate decree, as against all of the Respondents named in the original bill, they being ~~the~~ heirs of Felix Ohler, and that thereupon said cause may be submitted for final decree without further notice to any of the parties in said cause on the original bill, the answer and cross-bill and the answer of the said Hiram H. Maynard to the cross-bill, said decree to be rendered immediately upon such submission by the Judge of the Circuit Court in which the cause is pending, or any other Judge designated by proper authority to act in said premises, either in term time or vacation.

3. That upon said submission the Judge of said Court, or such Judge as may be designated to act in said cause, shall enter a decree adjudging and decreeing that the title asserted by the five defendants and cross-complainants above named is in the said Hiram H. Maynard, and that said five Respondents have no right, title, interest, lien or incumbrance in or upon the property described in said bill, and that the title to said lands, as against said Respondents, is decreed to be in the said Hiram H. Maynard, and his title to said land as against these Respondents forever quieted.

4. That upon the entering of said decree the presiding Judge shall issue an order to the Probate Judge of Baldwin County, to enter in his lis pendens docket, at the proper place therein, an endorsement showing the result of said suit, and the devolution of title to the property therein described in and to the said Hiram H. Maynard.

5. The original of this agreement shall be filed in said cause in support of and as authority for the entering of the decree herein agreed to.

IN WITNESS WHEREOF this agreement is executed by D. B. Cobbs, as Solicitor of Record for the Respondents in the original bill and Cross-Complainants; and by Ben D. Turner as the Solicitor of Record for the Original Complainant, Charles W. Olds, and Cross-Respondent, Hiram H. Maynard, on this the 14TH day of July, 1928.

D. B. Cobbs

As Solicitor of Record for Defendants and Cross-Complainants, August Ohler, (John August Ohler) Mrs. Regina Smith, Mrs. Louise Jasz, Mrs. Carolina Weigand, and Mrs. Christina Otteib, heirs of Felix Ohler, Deceased.

Ben D. Turner

As Solicitor of Record for Charles W. Olds and Hiram H. Maynard.

J

Charles W. Olds, :
Complainant, :
-vs.- :
August Ohler et al., :
Respondents. :

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

+
Comes the cross-respondent, Hiram H. Maynard, and
for answer to the cross-bill heretofore filed in this cause by
John August Ohler, sometimes known as August Ohler, Mrs. Regina
Smith, Mrs. Louise Jas, Mrs. Carolina Weigand, and Mrs. Christina
Ottlieb, as amended, says:

That subsequent to the filing of the original bill
in this cause by Charles W. Olds, complainant, he purchased from
the said Charles W. Olds all of his right, title, and interest in
and to the property described in said bill of complaint; that under
and by virtue of said purchase he acquired the full and complete
title to said lands and went into possession thereof; that the
cross-complainants above named have no right, title, or interest
in, or encumbrance upon, said lands or any part thereof.

He therefore denies each and every material allega-
tion of said cross-bill as amended which would tend to assert a
claim of title on the part of said cross-complainants and demands
strict proof of the same, and prays that upon a hearing of this
cause the Court will determine that his right in and title to said
property is superior to any and all claims asserted or to be as-
serted on the part of said cross-complainants and will enter a
decree to the effect that the legal title to said lands is in said
Hiram H. Maynard and his title thereto be forever quieted against
any claim on the part of said cross-complainants.

Stevens, McCorvey, McLeod, Goode & Turner,
By *Hiram H. Maynard*
Solicitors for the said Hiram H.
Maynard.

+
(a)

T. W. RICHESON
REGISTER AND CLERK OF THE CIRCUIT COURT
BALDWIN COUNTY
BAY MINETTE, ALA.

June 8th, 1929

Hon. D. B. Cobbs
Mobile Alabama,
Dear Mr. Cobbs:-

Enclosed find \$8.87 amt you paid Baldwin
Times for advertising fee in case of Olds vs Ohler,
which was collected a few days ago by Mr. Turner along
with the other costs,

Very truly, yours,

T. W. Richeson

*Thank you, check rec'd this am,
for 8⁷² which is O.K. +
Yours, D. B. Cobbs - June 10/29.*

Largest Weekly Circulation in South Alabama

Bay Minette Ala., 4/1/26

M J.W. Richardson
clerk

THE BALDWIN TIMES

FINE JOB PRINTING. BEST ADVERTISING MEDIUM

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All Bills Must Be Paid Within 30 Days

Oloors Okler et al. # —
run due 3-10-17-24-18900004 1/2

851

Olds vs. Ohler .

Jany. 18th, 1926.

Hon. T.W. Richerson,
Register Circuit Court,

Bay Minette;

Dear Mr. Richerson :-

In the case of
Chas. W. Olds, complainant, against August Ohler et als., in your court,
I am enclosing an amendment of my cross-bill recently regarded, and would
thank you to file the amendment, and notify judge Anderson. I am also
taking the liberty of asking of you the favor of filing with judge Sta-
pleton the enclosed notice of lis pendens and turning over to him the
check enclosed for one dollar to cover the costs of recording it, if
sufficient, and if not enough ask him to advise me. I also enclose you
my affidavit for publication against Hiram H. Maynard, a defendant to the
cross-bill as thus amended. Thanking you for attention to these,

I remain,

yours truly,

A. B. Coombs
D. B. Coombs,

Sol'r for cross-complainants .

THE BALDWIN TIMES

PUBLISHED IN THE LAND OF THE GOLDEN SATSUMA

SUBSCRIPTION \$2.00 PER YEAR IN ADVANCE
ADVERTISING RATES GIVEN ON APPLICATION

R. B. VAIL
EDITOR AND PROPRIETOR

BAY MINETTE, ALA.

AFFIDAVIT OF PUBLICATION

STATE OF ALABAMA,
BALDWIN COUNTY.

R. B. Vail

_____, being duly sworn, deposes and says that he is
the PUBLISHER of THE BALDWIN TIMES, a Weekly Newspaper published at Bay
Minette, Baldwin County, Alabama; that the notice hereto attached of _____

NOTICE TO NON-RESIDENT

State of Alabama, Baldwin County, Circuit Court, in Equity.

This the 30th day of November 1925.

Charles W. Olds, vs August Ober, et al.

In this cause it being made to appear to the Register of this Court by the affidavit of William S. Anderson, Esquire, that the Defendants, August Ober, Mrs. Regina Smith, Mrs. Louise Jasz, Mrs. Caroline Weigand, and Mrs. Christina Othlieb, are non-residents of the State of Alabama, and further that in the belief of said Affiant the Defendants are all over the age of 21 years, it is, therefore, ordered that publication be made in the Baldwin Times, a newspaper published in Bay Minette, Baldwin County, Alabama, once a week for 4 con-

secutive weeks, requiring the said August Ober, Mrs. Regina Smith, Mrs. Louise Jasz, Mrs. Caroline Weigand and Mrs. Christina Othlieb to answer or demur to the Bill of Complaint in this cause by the 2nd day of January, 1926, or after that time, therefrom a decree Pro Confesso may be taken against them.

J. W. RICHMOND, Register.
Wm. S. ANDERSON, Attorney for Plaintiff.

Was published in said Newspaper for 4 consecutive weeks in the following

issues:

Date of first publication	<i>Dec 3 1925</i>	Vol.	<i>36</i>	No.	<i>44</i>
Date of second publication	<i>Dec 10</i>	Vol.	<i>36</i>	No.	<i>45</i>
Date of third publication	<i>Dec 17</i>	Vol.	<i>36</i>	No.	<i>46</i>
Date of fourth publication	<i>Dec 24</i>	Vol.	<i>36</i>	No.	<i>47</i>

Subscribed and sworn to before the undersigned this 7th day of

April 1926
J. W. Richmond
Clerk Circuit Court.

R. B. Vail

Publisher.

STEVENS, McCORVEY, McLEOD, GOODE & TURNER
ATTORNEYS AT LAW
502-8 FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA

THOMAS M. STEVENS
GESSNER T. McCORVEY
WILLIAM McLEOD
DAVID B. GOODE
BEN D. TURNER
C. M. A. ROGERS

August 14th, 1928.

Hon. T. W. Richerson,
Register of the Circuit Court,
Bay Minette, Alabama.

Dear Mr. Richerson: In re: Charles W. Olds vs.
August Ohler.

I hand you herewith the following papers in this
cause:

1. Agreement of counsel dated the 14th day of
July signed by D. B. Cobbs and the writer as counsel
for the respective parties.
2. Answer of Hiram H. Maynard filed according
to said agreement.
3. Blank decree which we have prepared for the
signature of Judge Leigh.

Please file as of this date the agreement of coun-
sel and the answer of said Hiram H. Maynard.

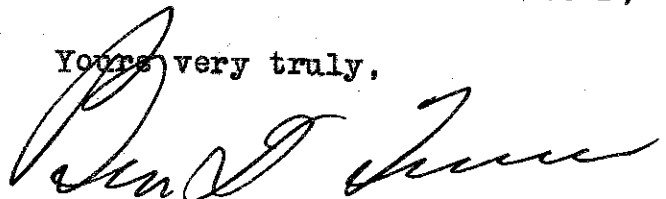
Mr. D. B. Cobbs, counsel for the respondent, will
hand you this letter together with the several papers there-
in mentioned. He will request that Judge Leigh sign the
decree today and in this request I earnestly join. I will
thank you to see that the matter is brought to the attention
of the Judge and the decree signed promptly.

You will note that the decree requires a certified
copy to be filed in the Probate Office, and the same is
handed you herewith, it being necessary that you add thereto
your certificate. You will note further that the Probate
Judge is directed to enter an order on the lis pendens docket
showing the termination of this cause, and we will thank you
to see that this is done. The costs in the cause are taxed
against Hiram H. Maynard and as soon as you send me bill
therefor I will pay the same.

Thanking you for your prompt attention to the matter,
I am,

Copy to
Mr. Norborne Stone,
Bay Minette, Alabama.

Yours very truly,



RECEIPT FOR REGISTERED ARTICLE NO. 521

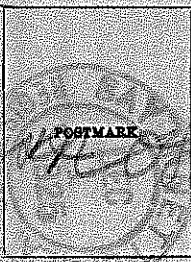
15 fee paid. class postage paid. 12-1-1925 (Date)
From T. W. Richerson

Addressed to Mrs. Christina Gottlieb

Accepting employee will place initials in spaces applicable to indicate indorsements, etc.

Return receipt desired. Special delivery

Delivery restricted { To addressee in person. To addressee or order. Postmaster, per



RECEIPT FOR REGISTERED ARTICLE NO. 522

15 fee paid. class postage paid. 12-1-1925 (Date)
From T. W. Richerson

Addressed to Mrs. Christina Gottlieb

Accepting employee will place initials in spaces applicable to indicate indorsements, etc.

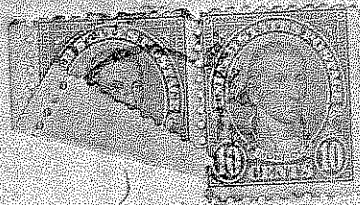
Return receipt desired. Special delivery

Delivery restricted { To addressee in person. To addressee or order. Postmaster, per



AFTER FIVE DAYS RETURN TO
T. W. RICHERSON
CLERK OF THE CIRCUIT COURT AND
REGISTER IN CHANCERY
BAY MINETTE, ALABAMA

REGISTERED
NO. 519



RETURN RECEIPT REQUESTED!

FEE PAID 3 CENTS

(Deliver to addressee only)
(Return receipt demanded)

Mrs. Christina Gottlieb
~~34 Claude St~~
New Orleans, La.

UNCLAIMED
From New Orleans

43333

*Received by
Christina Gottlieb
New Orleans, La.*

Post Office Department
OFFICIAL BUSINESS

REGISTERED ARTICLE
No. 519
INSURED PARCEL
No. _____

Return to J.W. Richers
(NAME OF SENDER)

Street and Number,
or Post Office Box, _____

Post Office at _____
State MINN.

65-6116

PENALTY FOR PRIVATE USE
TO AVOID PAYMENT OF
POSTAGE, \$300.

POSTMARK OF DELIVERING
OFFICE
43333
AND DATE OF DELIVERY

Post Office Department
OFFICIAL BUSINESS

REGISTERED ARTICLE
No. 521
INSURED PARCEL
No. _____

Return to J.W. Richers
(NAME OF SENDER)

Street and Number,
or Post Office Box, _____

Post Office at _____
State _____

65-6116

PENALTY FOR PRIVATE USE
TO AVOID PAYMENT OF
POSTAGE, \$300.

NEW ORLEANS
DEC 7
3 2 PM
1925

28215
AND DATE OF DELIVERY

Handwritten notes:
Rec'd
Dec 8th
1925
J.W. Richers
Reg'd

Post Office Department
OFFICIAL BUSINESS

REGISTERED ARTICLE
No. 522
INSURED PARCEL
No. _____

Return to J.W. Richers
(NAME OF SENDER)

Street and Number,
or Post Office Box, _____

Post Office at _____
State ALA.

65-6116

PENALTY FOR PRIVATE USE
TO AVOID PAYMENT OF
POSTAGE, \$300.

NEW ORLEANS
DEC 4
6 30 AM
1925
LA.

28210
AND DATE OF DELIVERY

number of which appears on the face of this card

X

(Signature or name of addressee)

(Signature of addressee's agent)

Date of delivery, 12-4-25, 192

Form 3811

Dec 1925
B. J. ...

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

X

(Signature or name of addressee)

(Signature of addressee's agent)

Date of delivery, 12/27, 192

Form 3811



RETURN RECEIPT.

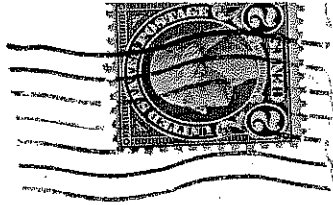
Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

(Signature or name of addressee)

(Signature of addressee's agent)

Date of delivery, _____, 192

Form 3811



Mr. T. W. Richerson,
 Register,
 Bay Minette,

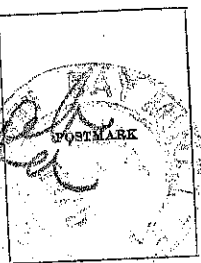
W.S. Richerson
June 10, 1925
No. 547

RECEIPT FOR REGISTERED ARTICLE NO. 519

15 fee paid. 1 class postage paid. 12-1-1925 (Date)
 From J. W. Richerson

Addressed to Mrs. Christina Hall
 Bay Minette, Ala.

Accepting employee will place initials in spaces applicable to indicate indorsements, etc.
 Return receipt desired. *yes* Special delivery
 Delivery restricted { To addressee in person
 To addressee or order Postmaster, per *W.S.*



RECEIPT FOR REGISTERED ARTICLE NO. 520

15 fee paid. 1 class postage paid. 12-1-1925 (Date)
 From J. W. Richerson

Addressed to Mrs. Caroline Wagoner
 Bay Minette, Ala.

Accepting employee will place initials in spaces applicable to indicate indorsements, etc.
 Return receipt desired. *no* Special delivery *no*



Charles W. Olds,
Complainant,

VS.

August Ohler,
Mrs Regina Smith,
Mrs Louise Jasz,
Mrs Caroline Weigand and
Mrs Christina Ottlieb,
Defendants.

IN CIRCUIT COURT, BALDWIN COUNTY,

ALABAMA.

In Equity.

To the Hon. John D. Leigh, Judge of the Circuit Court of Baldwin County, Alabama:

The Bill of Complaint of Charles W. Olds exhibited against August Ohler, Mrs Regina Smith, Mrs Louise Jasz, Mrs Caroline Weigand and Mrs Christina Ottlieb.

First.

Complainant shows unto your Honor that he is over the age of twenty-one years and resides in the City of Mobile, Alabama, that the defendants are each over the age of twenty-one years and reside in the City of New Orleans, Louisiana.

Second.

Complainant further shows unto your Honor that he is in the peaceable possession of, and claiming to be the owner ~~of~~ in his own right of all that tract or parcel of land in Baldwin County, Alabama, described as follows, to-wit:

Beginning at a point where the section line dividing sections thirty (30) and thirty-one (31) in Township Four (4) South, Range Two (2) East intersects Dolive Creek on the East side of said creek, thence running East eighteen (18) chains and seventy-two (72) links to the half section line, thence South Fifteen (15) chains and Fifty-four (54) links to the North corner of the land sold by Cyrus Sibley to Calloway, thence West Sixteen (16) chains and Twenty-eight (28) links to Dolive Creek, thence North along the creek to the point of beginning, all being in Section Thirty-one (31), Township Four (4) South Range Two East, and containing twenty-seven acres more or less and known as the Felix Ohler place.

Third.

Complainant shows unto your Honor that said defendants claim, or are reputed to claim some right, title or interest in, or encumbrance upon said lands. Defendants are the heirs at law or next of kin of Felix Ohler deceased: and Complainants now calls upon said defendants and each of them, to set forth and specify his or her title, claim, interest or encumbrance, and how and by what instrument the same is derived and created. And Complainant further shows to the Court, that no suit is pending to enforce or test the validity of the title, claim or encumbrance asserted by said defendants to said land.

Prayer for Process.

To the end therefore that equity may be done in the premises, Complainant prays that the State's writ of subpoena may issue to each one of said defendants, requiring him or her to plead, answer or demur to this his bill of complaint filed against each of said defendants within the time required by law and the rules of this Honorable Court.

Prayer for Relief.

Complainant further prays, that upon the hearing of this cause your Honor will inquire into and ascertain the true nature of the claim, interest or encumbrance asserted by said defendants and each of them; and will decree that said defendants and each of them has no estate or interest in, or encumbrance upon said land or any part thereof, and that the title of Complainant may be fully established and defendants forever enjoined from asserting any interest in, and claim to or encumbrance upon said land as against Complainant, and that the title of Complainant may be forever established against said defendants; and that Complainant may have such other or further relief as he may be entitled to in the premises.

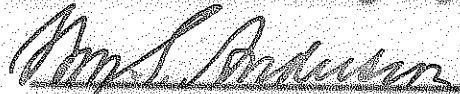
And as in duty bound he will ever pray so.



Solicitor for Complainant.

Foot note:

The defendants are each required to answer each paragraph of the Bill from Paragraph First to Paragraph Third, both inclusive, but not under oath, the oath of each defendant being expressly waived.



Solicitor for Complainant.

The Post Office address of each of the defendants is set out in the affidavit hereto attached and made a part of this Bill of Complaint.



Solicitor for Complainant.

State of Alabama)
 Baldwin County.) Before me T. W. Richerson, Clerk of the Circuit
 Court of Baldwin County, Alabama, personally appeared William S.
 Anderson, the Solicitor for the Complainant in the above stated
 cause, who after being by me first duly sworn, deposes and says,
 that the defendants named in said Bill of Complaint, to which this
 affidavit is attached are all non-residents of the State of Alabama,
 that they each reside in the City of New Orleans in the State of
 Louisiana, that he has made diligent inquiry to ascertain the post
 office address of each of said Defendants, and he states as a re-
 sult of said inquiries, that August Ohler's Post Office address is
Corner of Mandeville and Johnson Streets, New Orleans, Louisiana;
 the Post Office address of Defendant, Mrs Regina Smith is, 1418 Arts
 Street, New Orleans, Louisiana; the Post Office address of Mrs Louis
 Jasz, is, 1918 Elysian field, Avenue, New Orleans, Louisiana; the Post
 Office address of Mrs Caroline Weigand is, Gentilly Terrace, New
 Orleans, Louisiana; the Post Office address of Mrs Christina Ottlieb
 is, St Claude Street, Louisiana;

Affiant further says that each of said defendants is over the
 age of twenty-one years; that Complainant is over the age of twenty-
 one years and resides in Mobile, Alabama.

Subscribed and sworn to before me
 this 23rd. day of November 1925.

T. W. Richerson

Clerk Circuit Court, Baldwin County, Alabama.

Wm S. Anderson

Charles W. Olds,
Complainant,

Vs.

August Ohler, et als.,
Defendants .

Demurrer, cross-bill and answer .

Now come John August Ohler, Mrs. Regina Smith, Mrs. Louise Jas , Mrs. Carolina Weigand, and Mrs. Christina Ottlieb , being the same persons named or intended to be named in the original bill herein as defendants , and demur to said bill of complaint upon the ground that it does not sufficiently set forth and allege that the complainant owns the land set forth and described in the second paragraph or section of the Bill .

And for answer to said bill of complaint and a cross-bill there-
to, respondents say as follows :-

1. They admit the allegation of the first paragraph of the bill setting forth the ages, names and residences of the parties, and they allege that the same are therein set forth correctly .
2. They deny the allegation of the second paragraph of the bill to the effect that the filing of the bill the complainant is in the peaceable possession of said land claiming to own the same, etc., and expressly deny any implication of title to the land contained in the allegation that he is in its peaceable possession claiming to own it . They admit that the complainant claims to own said land, since in his bill he states that he claims it, but they say that he does not own it in his own sole right and that he has only the rights of a tenant in common of the land .
3. Respondents admit the allegation of the third paragraph of the bill to the effect that they themselves claim some right, title or interest in or incumbrance upon said land. They admit the allegation of said paragraph that they are heirs at law of Felix Ohler, deceased. But other than by the bill itself they are not informed and do not know whether any suit is pending to enforce or test the validity of the title, claim or incumbrance attributed to them by the bill, or that which is herein set up by them, and accordingly they deny the allegation that no such suit is pending .
4. Respondents allege that Felix Ohler, deceased, was their father, and formerly resided in Baldwin County, Alabama, in which the said land is located, and that he was the owner of said land, which went commonly by his name .

At the time of his death he left surviving him seven children, his heirs at law, of whom these respondents are five, and that the other two are also in life .

Respondents further allege that the complainant negotiated with all seven of the heirs of said Felix Ohler to purchase their respective interests in said land ; that he succeeded in obtaining deeds from two of said heirs for their two seventh interests therein ; but failed to obtain a deed or a contract of conveyance for the undivided interests of these respondents in said land .

That these five respondents and said two other persons were

at the time of said negotiations heirs at law of said Felix Ohler, and prior thereto, was a fact well known to complainant.

Respondents did not part with their interests in said land to the complainant or to others, and this fact was also well known to the complainant when he negotiated to take deeds from them for their interests.

5. Respondents further allege that they each of them own respectively an undivided one-seventh interest in said land, so that the five respondents together own five undivided sevenths interest therein. The complainant owns two undivided sevenths interest in said land. And complainant and these respondents are accordingly tenants in common of said land, owning in proportion as above set forth.

6. Respondents allege that said land is capable of an equitable division by metes and bounds under the jurisdiction, practice and directions of this Court. And if by any means it be found that they are mistaken in the above allegation of its divisibility, they allege that it is not susceptible of an equitable division or partition by metes and bounds except by a sale of the land and division of its proceeds.

7th. Prayers.

Respondents therefore pray that the foregoing answer be taken and treated as their cross-bill in this behalf, and that said complainant Charles W. Olds be made defendant thereto and required to answer the same in the usual manner, as required by law, under the usual penalties.

Cross-complainants pray that the Court will ascertain and determine what are the rights of the respective parties herein and will firmly settle and determine that these respondents and cross-complainants have the rights as tenants in common which they have alleged hereinabove, and that the interests of the complainant in the original bill also be determined and settled, and that he be found to be likewise a tenant in common of the land.

They pray that that the interests of the parties to the cause be separated, and that if a partition in kind be had the five sevenths interest of the respondents be set apart to them together in a body, and the rest be allotted to the complainant.

They pray that if it be found that the land cannot be equitably divided in kind, then that it be sold under the jurisdiction and directions of the Court and the proceeds of the sale of it be divided between the parties to the cause in accordance with their respective interests in the land.

And cross-complainants pray for such other and further or different relief in the premises as in equity and good conscience they ought to have.

And as in duty bound, etc.

A. B. Cobbs,

Solicitor for Cross-complainants.

Foot-Note.

The complainant and cross-defendant is required to answer all the allegations of the foregoing cross-bill contained in its sections or paragraphs numbered from I to 6, inclusive, but not under oath; his oath to his answer he hereby waived.

A. B. Cobbs,

Solicitor for Cross-Complainants.

Charles W. Olds
Complainant,

CIRCUIT COURT, BALDWIN COUNTY, ALABAMA.

vs.

In Equity.

August Ohler et al
Defendants.

Now comes Hiram W. Maynard and demurs to the Cross Bill filed against him by the defendants in the above stated cause, and for grounds of demurrer, says,

1.

There is no Equity in said Cross Bill.

2.

Cross Complainant, do not allege that they are in possession of the lands, the subject matter of the suit.

Cross Complainant, in their Answer and Cross Bill fail to set forth and specify, their title claim, interest or encumbrance and by what instrument the same is derived or created, as they were required to do.

3.

Cross Complainants do not show that they have any right, title, claim, interest or encumbrance on said land, or the possession thereof under claim of ownership, which would authorize them to maintain a Bill for relief.

4.

The Amended cross Bill is entirely wanting in Equity, as there is no allegation of any right, title, interest, claim or encumbrance on said land by cross complainants, that would entitle them to maintain a Bill for relief. They do not claim any possession of said lands. The allegation, that Felix Ohler, their father, "formerly resided in Baldwin County, Alabama, and that he was, the owner of said land which went by his name", does not show any present right, title or interest in cross complainants.

Stevens, McCorvey, McLeod, Coode & Turner,
and



Solicitors for Hiram W. Maynard.

Charles W. Olds,
Complainant.

vs.

August Ohler, et al.
Defendants,

) In the Circuit Court of Baldwin County, Alabama

) In Equity.

Demurrers of Complainant to the Answer and Cross Bill filed by
the Defendants on Dec. 31, 1925.

1.

Said Answer and Cross Bill fails to set forth and specify, their
title, claim interest or encumbrance, and by what instrument the same
is derived or created, as they were required to do.

2.

The statement in the 4th. paragraph of the Answer and Cross-Bill
"that Felix Ohler was their father, that he formerly resided in Bald-
win County, Alabama, and that he was the owner of said land, which
went formerly by his name", does not show any present right, title
or interest in said land.

3.

Cross Complainants do not show or allege any right, title, interest
claim or incumbrance, or possession which would authorize them to
maintain a cross bill for relief.

To the amended Cross Bill.

1.

The Amended Cross Bill as well as the Answer and Cross Bill
is entirely wanting in Equity, as there is no allegation of any title
interest, or claim or encumbrance, that would entitle cross-complain-
ants to relief. They do not claim to be in possession.

And the allegation that the land formerly belonged to Felix
Ohler, deceased, their father, does not show any present right, title
or interest in cross Complainants.



Solicitor for Complainant.

Charles W. Olds,
Complainant.

vs.

August Ohler, et al.
Defendants,

) In the Circuit Court of Baldwin County, Alabama

)
) In Equity.
)

Demurrers of Complainant to the Answer and Cross Bill filed by
the Defendants on Dec. 31, 1925.

1.

Said Answer and Cross Bill fails to set forth and specify, their
title, claim interest or encumbrance, and by what instrument the same
is derived or created, as they were required to do.

2.

The statement in the 4th. paragraph of the Answer and Cross-Bill
"that Felix Ohler was their father, that he formerly resided in Bald-
win County, Alabama, and that he was the owner of said land, which
went formerly by his name", does not show any present right, title
or interest in said land.

3.

Cross Complainants do not show or allege any right, title, interest
claim or incumbrance, or possession which would authorize them to
maintain a cross bill for relief.

To the amended Cross Bill.

1.

The Amended Cross Bill as well as the Answer and Cross Bill
is entirely wanting in Equity, as there is no allegation of any title
interest, or claim or encumbrance, that would entitle cross-complain-
ants to relief. They do not claim to be in possession.

And the allegation that the land formerly belonged to Felix
Ohler, deceased, their father, does not show any present right, title
or interest in cross Complainants.



Solicitor for Complainant.

3 1/2

Charles W. Olds

vs.

August Ohler et al

Demurrers to Answer & Cross Bill

Filed Jany. 28, 1926

W. P. Beckman

Register.

NOTICE TO NON-RESIDENT.

547

MOORE P.T.G. CO BAY MINETTE

Charles W. Olds,

VS No.

August Ohler et als, Deft and
Cross Complainants,

STATE OF ALABAMA,
Baldwin County.

CIRCUIT COURT, IN EQUITY.

This the 19th day of
January, 1926

In this cause it being made to appear to the Register of this Court by the affidavit of

D. B. Cobbs, Solicitor of record for cross complainants,

that the Defendant to said cross bill Hiram H. Maynard,

is a non-resident of the State of Alabama and his post office address is
Harris Trust Bldg, 111 Monroe St, Chicago, Ill.,

and further, that, in the belief of said Affiant the Defendant is over the age of 21
years; it is, therefore ordered that publication be made in the Baldwin
Times, a newspaper published in Bay Minette

Baldwin County, Alabama, once a week for four consecutive weeks, requiring Hiram H. Maynard,
the said Defendant

to answer or demur to the Bill of Complaint in this cause by the 22nd day of
February, 1926, or after thirty days therefrom a decree Pro Confesso may
be taken against him.

J. W. [Signature] Register.

Attorneys for Plaintiff.

NOTICE TO NON-RESIDENT.

MOORE PTG. CO BAY MINETTE

Charles F. Olds,

vs No.

August Chier et als, Debt and
Cross Complainants,

STATE OF ALABAMA,
Baldwin County.

CIRCUIT COURT, IN EQUITY.

This the 19th day of
January, 1926

In this cause it being made to appear to the Register of this Court by the affidavit of

D.B. Cobbs, Solicitor of record for cross complainants,

that the Defendant said cross bill Hiram H. Hayward,

is a non-resident of the State of Alabama and his post office address is
Harris Trust Bldg, 111 Monroe St, Chicago, Ill.,

and further, that, in the belief of said Affiant the Defendant is over the age of 21
years; it is, therefore ordered that publication be made in the Baldwin
Times, a newspaper published in Bay Minette

Baldwin County, Alabama, once a week for four consecutive weeks, requiring Hiram H. Hayward,
the said Defendant

to answer or demur to the Bill of Complaint in this cause by the 22nd day of
February, 1926, or after thirty days therefrom a decree Pro Confesso may
be taken against him.

D. B. Cobbs Register.

Attorneys for Plaintiff.

The State of Alabama }
BALDWIN COUNTY.

CIRCUIT COURT OF BALDWIN COUNTY,
IN EQUITY.

To Any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon August, Chior, Mrs. Eugenia Smith,
Mrs. Louise Jean, Mrs. Caroline Weigand, and Mrs. Christina Otlich,

of New Orleans, La. County, to be and appear before the Judge of the Circuit Court of Baldwin County, 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

Charles F. Child,

against said August, Chior, Mrs. Eugenia Smith, Mrs. Louise Jean, Mrs. Caroline Weigand, and Mrs. Christina Otlich,

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defendant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T. W. Richerson, Register of said Circuit Court, this 1st day of Dec

192

T. W. Richerson
Register.

N. B.—Any party defendant is entitled to a copy of the bill upon application to the Register.

Charles W. Olds,
Complainant.

vs.

August Ohler, et al
Defendants.

) In the Circuit Court, Baldwin County, Alabama.

) In Equity.

Now comes the Complainants in the above entitled cause, and moves the Court to require Cross-Complainants to give security for the costs, on the grounds that they are non-residents of the State of Alabama:

The relief sought in their alleged cross-bill is entirely different and distinct from the matters set out in the Original Bill and they are bringing in new parties.

The matters set up in the Cross Bill are an entire departure from the matters involved in the original Bill.



Solicitor for Complainant.

Charles W. Olds

vs.

August Ohler et al.

Motion to require cross-com-
plainants to give security for
costs.

Filed Jany. 28, 1926

W. P.Register

Notice

of

Lis Pendens .

Be it known to all persons, that in the cause now pending in the circuit court of Baldwin County, Alabama, of Charles W. Olds, complainant, versus August Ohler, Mrs. Regina Smith, Mrs. Louis Jas, Mrs. Carolina Weigand, and Mrs. Christina Ottlieb, defendants, the said defendants have filed their cross-bill against said Charles W. Olds and also against one Hiram H. Maynard, and that the land described in said bill is also concerned and involved in said cross-bill; that the land so concerned in said cross bill, which has been amended, bringing in said Hiram H. Maynard, is that certain piece or parcel of land located in Baldwin County, Alabama, beginning at a point where the section line dividing sections thirty and thirty-one in township four south, range two east, intersects Dolive Creek on the east side of said creek, thence running East eighteen chains and seventy two links (18 chs. 72 lks) to the half section line, thence south fifteen chains and fifty four links to the north corner of the land sold by Cyrus Sibley to one Calloway, thence West sixteen chains and twenty-eight links to Dolive Creek, thence north along the creek to the point of beginning, all being in section thirty-one (31), township four (4) south, range two (2) East, and containing twenty-seven acres more or less, to wit, twenty-seven and 37/100 acres of land, and known as the Felix Ohler Place; that the purpose of said cross-bill as amended is to enforce the undivided five sevenths interest in said land of the said five defendants and cross-complainants; to establish and quiet their title as owners of such undivided five sevenths as tenants in common; to ascertain that the cross-defendants between them own, or one of them owns, the other two undivided sevenths interests in said land, as tenants in common of cross-complainants; to remove clouds, if any appear, from the title of cross-complainants, fix and settle the rights of all the parties to the cause, and partition the land by metes and bounds between the tenants in common thereof, or in the alternative to sell the whole land and divide the proceeds of the sale amongst the parties according to their respective interests in the land. For the full purposes as therein expressed, see the cross-bill and amendment thereof, on file in said cause.

John August Ohler,
Mrs. Regina Smith,
Mrs. Louis Jas,
Mrs. Carolina Weigand, and
Mrs. Christina Ottlieb,

By *D. B. Cobbs*
Their solicitor .

Chley

THE STATE OF ALABAMA) Office of the Judge of
 BALDWIN COUNTY) the Probate Court

I, W. D. STAPLETON, Judge of said Court in and for
 said County, do hereby certify that the within instrument
 was filed in this office for record on the 19th
 day of Jan 1930 at 9:30
 o'clock am and I further certify that the
 same is duly recorded in Record Book No. 12
 page 42 and duly examined.

Witness my hand this 21st day of Jan
1930
~~W. D. Stapleton~~ Judge of Probate Court.

J. H. Richardson
city

1/19/30
9:30 am

A. B. Fern

Chas. W. Olds
vs. August Ohler et als.
Affidavit for Publication.

Charles W. Olds, complainant,

vs.

No.

In Baldwin circuit court, in equity.

August Ohler et als., defendants.

The State of Alabama,
Mobile County.

Before me, *Chas. W. Olds* a notary public in and for said county of Mobile, State of Alabama, personally came this day D. B. Cobbs, who being by me duly sworn, deposes and says that he is the solicitor of record of and for the cross-complainants in the cross-bill as amended in the above entitled cause, and that the defendant Hiram H. Maynard named in said cross-bill to be made a defendant to the said cross-bill is a nonresident of the state of Alabama, and resides in the state of Illinois, and is over the age of twenty-one years; that said Hiram H. Maynard has a postoffice address in the Harris Trust Building, one hundred and eleven Monroe street, in the city of Chicago, State of Illinois; that he makes this affidavit as solicitor for said cross-complainants, who are residing in New Orleans, Louisiana; and prays for an order of publication against said Hiram H. Maynard.

A. B. Cobbs, Solicitor for Cross-complainants.

Subscribed and sworn to before me
this January 18th, 1926.

Chas. W. Olds
Notary Public, Mobile County, Alabama *

Monte Carlo

45 August Older et al.

Olds

P.

Older, et al.

Filed Jan 19 1926

D. W. Richardson
Register

Affidavit for Publication
on cross-bill

RECORDED

Bay Minette, Ala.,

Aug 30

192

8

How I. W. Richardson

IN ACCOUNT WITH

G. W. Humphries

JUDGE OF PROBATE, BALDWIN COUNTY

Please Return Bill With Remittance

Deed Tax and
Mortgage Tax

Rec. Fee

Total

To

Deed Rec. Mort. from C. Wells vs August, Okla.

1.15

*Paid 9/7/28
G. W. Humphries
by J. H. [unclear]*

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

(Signature of recipient or addressee)

(Signature of addressee's agent)

Date of delivery
Month _____

192

© 1916

Handwritten:
Date of delivery
Month _____

STATE OF ALABAMA,
Baldwin County.

No. 547

Charles W. Olds

vs.

August Ohler et al.

CIRCUIT COURT, IN EQUITY.

This the 30th. day of

November 1925 192

In this cause it being made to appear to the Register of this Court by the affidavit of

William S. Anderson Esquire,

that the Defendant s August Ohler, Mrs Regina Smith, Mrs Louise Jasz, Mrs
Caroline Weigand and Mrs Christina Ottlieb, are

in non-resident of the State of Alabama

and further, that, in the belief of said Affiant the Defendant are all over the age of 21
years; it is, therefore ordered that publication be made in the Baldwin Times
, a newspaper published in Bay Minette

Baldwin County, Alabama, once a week for four consecutive weeks, requiring
the said August Ohler, Mrs Regina Smith, Mrs Louise Jasz, Mrs Caroline
Weigand and Mrs Christina Ottlieb,

to plead,

to answer or demur to the Bill of Complaint in this cause by the 2nd day of
January 1926, or after thirty days therefrom a decree Pro Confesso may
be taken against them.

J. W. Peterson Register.

Wm. S. Anderson

Attorneys for Plaintiff.

DANIEL B. COBBS
ATTORNEY AND COUNSELLOR AT LAW
FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA

Olds vs. Ohler et als.

December 6th, 1926.

Hon'ble John D. Leigh,

Brewton, Ala.;

Dear Sir :-

I am enclosing you herein a brief in the above stated cause pending in the circuit court of Baldwin County, on the demurrers filed by Judges Wm.S. Anderson and B.D. Turner, to the amended cross-bill of the defents, the five Ohler heirs represented by me, and on the motion to require them to give security for the costs. I will ask the register Mr. Richerson to forward the papers to his Honor Judge John Leigh, in order that the demurrers and motion, under submission, may be determined, but I am expecting that the Judge will hold up his decision to await the forwarding of briefs by judges Anderson and Turner, say in 10 days from this date, or more or less time, as may be necessary. I suppose 10 days is right.

With regards, yours very truly,

D. B. Cobbs
D. B. Cobbs

for Defts. and cross-complts.

I am sending copy of this letter, and a copy of the brief, to Judge Anderson, and to Judge Turner.
D.B.C.

Charles W. Olds,
Complainant,

VS.

August Ohler,
Mrs Regina Smith,
Mrs Louise Jass,
Mrs Caroline Weigand and
Mrs Christina Ottlieb,
Defendants.

IN CIRCUIT COURT, BALDWIN COUNTY,

ALABAMA.

In Equity.

To the Hon. John D. Leigh, Judge of the Circuit Court of Baldwin County, Alabama:

The Bill of Complaint of Charles W. Olds exhibited against August Ohler, Mrs Regina Smith, Mrs Louise Jass, Mrs Caroline Weigand and Mrs Christina Ottlieb.

First.

Complainant shows unto your Honor that he is over the age of twenty-one years and resides in the City of Mobile, Alabama, that the defendants are each over the age of twenty-one years and reside in the City of New Orleans, Louisiana.

Second.

Complainant further shows unto your Honor that he is in the peaceable possession of, and claiming to be the owner of in his own right of all that tract or parcel of land in Baldwin County, Alabama, described as follows, to-wit:

Beginning at a point where the section line dividing sections thirty (30) and thirty-one (31) in Township Four (4) South, Range Two (2) East intersects Dolive Creek on the East side of said creek, thence running East eighteen (18) chains and seventy-two (72) links to the half section line, thence South Fifteen (15) chains and Fifty-four (54) links to the North corner of the land sold by Cyrus Sibley to Calloway, thence West Sixteen (16) chains and Twenty-eight (28) links to Dolive Creek, thence North along the creek to the point of beginning, all being in Section Thirty-one (31), Township Four (4) South Range Two East, and containing twenty-seven acres more or less and known as the Felix Ohler place.

Third.

Complainant shows unto your Honor that said defendants claim, or are reputed to claim some right, title or interest in, or encumbrance upon said lands. Defendants are the heirs at law or next of kin of Felix Ohler deceased; and Complainant now calls upon said defendants and each of them, to set forth and specify his or her title, claim, interest or encumbrance, and how and by what instrument the same is derived and created. And Complainant further shows to the Court, that no suit is pending to enforce or test the validity of the title, claim or encumbrance asserted by said defendants to said land

Prayer for Process.

To the end therefore that equity may be done in the premises, Complainant prays that the State's writ of subpoena may issue to each one of said defendants, requiring him or her to plead, answer or demur to this his bill of complaint filed against each of said defendants within the time required by law and the rules of this Honorable Court.

Prayer for Relief.

Complainant further prays, that upon the hearing of this cause your Honor will inquire into and ascertain the true nature of the claim, interest or encumbrance asserted by said defendants and each of them; and will decree that said defendants and each of them has no estate or interest in, or encumbrance upon said land or any part thereof, and that the title of Complainant may be fully established and defendants forever enjoined from asserting any interest in, and claim to or encumbrance upon said land as against Complainant, and that the title of Complainant may be forever established against said defendants; and that Complainant may have such other or further relief as he may be entitled to in the premises.

And as in duty bound he will ever pray &c.



Solicitor for Complainant.

Foot note:

The defendants are each required to answer each paragraph of the Bill from Paragraph First to Paragraph Third, both inclusive, but not under oath, the oath of each defendant being expressly waived.



Solicitor for Complainant.

The Post Office address of each of the defendants is set out in the affidavit hereto attached and made a part of this Bill of Complaint.



Solicitor for Complainant.