

671

STEVENS, M<sup>C</sup>ORVEY, M<sup>C</sup>LEOD, GOODE & TURNER  
ATTORNEYS AT LAW  
502-8 FIRST NATIONAL BANK BUILDING  
MOBILE, ALABAMA

November 18th, 1927.

THOMAS M. STEVENS  
GESSNER T. M<sup>C</sup>ORVEY  
WILLIAM M<sup>C</sup>LEOD  
DAVID B. GOODE  
BEN D. TURNER  
C. M. A. ROGERS

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

Dear Sir:-

Enclosed herewith you will find our check for \$34.09 in settlement of the cost in case number 666 - Old Spanish Fort Development Company against Sections 38 and 39, and case 671 - Sibley against Hiram H. Maynard and others.

The total of these two bills after allowing credit for the \$50.00 heretofore deposited was, according to your statement, \$49.09. Some time ago we paid the Commissioner her fees in this matter, being \$15.00, and enclose herewith her receipt therefor. We have, therefore, reduced your bill by this \$15.00 item. If the amount of the check does not conform to your understanding as to what is due, please advise us promptly.

With kindest regards and best wishes of the writer, we are,

Yours very truly,

Stevens, McCorvey, McLeod, Goode & Turner,

BY Ben D. Turner

BDT:BG

Received of Stevens, McCorvey, McLeod, Goode & Turner  
Fifteen and no/100 Dollars (\$15.00) as my fee for acting as Commissioner  
in case No. 666, being the case of Old Spanish Fort Development Company  
vs. Sections 38 and 39, etc., heretofore pending in the Circuit Court  
of Baldwin County, Alabama, in Equity.

F. A. Brown.

Commissioner.

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DE Sibley  
NS

Maynard

Copy

C. E. Sibley, et al.,  
Complainants,

vs.

H. H. Maynard, et al.,  
Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

This cause coming on to be heard is submitted for decree on motion of the Respondent, Old Spanish Fort Development Company, to stay all proceedings in this cause until the issues raised by the bill of the Old Spanish Fort Development Company versus Sections 38 and 39, Township 4 South, Ranges 1 and 2 East, in Baldwin County, Alabama, and any and all persons, firms or corporations claiming any title to, interest in, or lien or encumbrance on said lands, or any part thereof, may be legally and properly disposed of, and on the motion of Complainant, C. E. Sibley and others to strike said motion to stay said cause, and on answer of said C. E. Sibley and others to said motion to stay.

It appearing to the Court that all of the parties have had notice of the time and place set for this hearing, and said parties having filed briefs therein, said motion to strike the motion to stay said proceedings coming on to be heard, the Court is of the opinion that said motion to strike should not be granted, and it is ordered, adjudged and decreed that the same be and is hereby overruled.

Said cause coming on further to be heard on the said motion of the respondent Old Spanish Fort Development Company to stay said cause, and the answer of the said C. E. Sibley and others thereto, and the Court having considered the facts as alleged in said motion to stay and in said answer, and having considered the briefs filed by the several parties in support of their respective contentions, the Court is of the opinion that said motion to stay said proceedings should be allowed and said proceedings stayed.

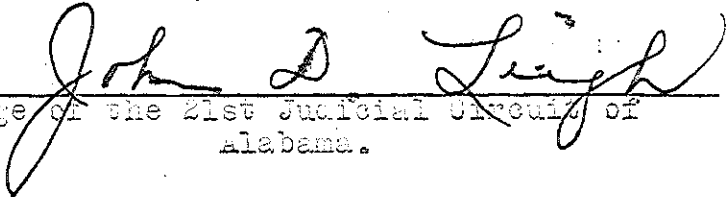
It is therefore ordered, adjudged and decreed by the Court that all proceedings in the case of C. E. Sibley, et al., Complainants, vs. H. H. Maynard, et al., Respondents, being cause No. 571 on the docket of this Court, be, and the same is hereby, stayed until the issues raised by the suit of the Old Spanish

Fort Development Company vs. Sections 38 and 39, Township 4 South, Ranges 1 and 2 East, in Baldwin County, Alabama, this cause being No. 666 on the docket of this Court, may be legally and properly disposed of.

It is further ordered that no respondent in this suit of C. E. Sibley, et al., vs. K. H. Maynard, et al., be required to answer, demur or plead to the bill of complaint filed therein until the suit of Old Spanish Fort Development Company versus Sections 38 and 39, Township 4 South, Ranges 1 and 2 East, in Baldwin County, Alabama, has been finally disposed of.

It is further ordered that all of the parties in each of the said causes referred to in this decree be given due notice hereof.

Ordered and decreed this the 14<sup>th</sup> day of July, 1927.

  
\_\_\_\_\_  
Judge of the 21st Judicial Circuit of  
Alabama.

671

Sibley, Mal

vs

Waynard, Mal

Sibley, et al, Complainants, )  
vs. ) :- In the Circuit Court of Baldwin Co., Ala. Equity.  
H.H. Maynard, et al, Defts. ....

Mem. Brief in Reply to Briefs furnished by Judge  
Turner this afternoon, Tuesday, July 5th, 1927.

Judge Turner has furnished me this afternoon with a copy of his brief on  
this motion and a reply brief to mine mailed him last night.

In his statement of fact he says that the bill was filed by C.E. Sibley and  
~~others~~ <sup>Maynard and</sup> against two of the heirs of Cyrus Sibley, said two heirs filed against being  
sisters and brothers of the complainant C.E. Sibley and the other complainant. This  
is an error. The bill is filed by C.E. and W.S. Sibley against five minors, -who are  
half brothers and sisters of the complainants. <sup>Four</sup> ~~Two~~ days later it was amended and  
Maynard stricken out as a defendant and the Old Spanish Fort Development Co. sub-  
stituted. Theodore F. Searing was made a complainant by an amendment, <sup>and</sup> ~~and~~ Mrs. Flor-  
ence S. Baird of New Orleans, La., and her brother's widow and two children of  
Chicago, added as parties defendants, the proportionate interests being changed  
likewise. So we find that there are eleven parties to this suit besides the Old  
Spanish Fort Development Co., the petitioner who is seeking to stay the cause and  
stop the suit for partition.

It is stated <sup>d</sup> also that the complainants "seek" to amend their bill and  
make the Old Spanish Fort Development Co. a party defendant. This was ~~done~~ <sup>done</sup> ~~two~~ <sup>two</sup> ~~4~~  
days after the bill was filed, by filing the amendment, notice, etc.

The suits not only have not the same parties, but do not seek the same  
relief. The first filed, this one, seeks a partition of the property ~~against~~ amongst  
its owners. The second suit, in favor <sup>of</sup> which the stay is asked, does not seek partition,  
but simply asks the court to declare that the corporation owns the land and debar  
the rightful owners from claiming any interest therein, -if they do not come in, etc.,  
if they happen to hear of the suit. ~~There~~ <sup>It</sup> can be no partition in that suit. The stat-  
ute provides that parties claiming interests must set their claims up under the rules  
set out in that case, and the presumptions, etc., of that statute govern the decis-  
ion. No such ~~sue's~~ presumptions can be called on outside of the suit under that  
statute, putting the defendants to this disadvantage. They must come in by cross-  
bill also. There is no need of this second suit and it ought to be stayed, because  
the petitioning corporation can answer in this <sup>and</sup> can have the titles ~~washed~~ <sup>flushed</sup> out  
as well, except that they must be tried under the general laws.

The statement is made that the amendment ~~so~~ <sup>cannot</sup> ~~it will~~ relate back  
and deprive the petitioner of the right to proceed with its action. Amendments do re-  
late back to the filing of the suit. Technically it might be said that there was no  
suit filed to test the title as claimed by the petitioner, but this issue must be  
raised by ~~amendment~~ <sup>amendment</sup> to the

raised in the other suit filed by the corporation. Until someone alleges that there was a suit pending to test the title of the petitioner in that particular action, no question can be raised. It must be in the other suit. It cannot be settled here. If this Court stayed this suit, it could be raised there. So far no such question has been raised.

Of course there was a suit pending actually and the petitioner knew that it was intended to settle the question of title, but discovering the error, they filed the second suit themselves and seek to stay the earlier suit.

Let us test this question under his own authority, or proposition.  
1st. Is this suit between the same parties? It is not. The parties to this suit, eleven, are only made parties to the extent of two, nor would they be parties as to the pieces left out in one east, nor the part of the two grants in two east. The parties could not be the same.

2nd. Does the second bill, filed by petitioner, and this bill, set up the same state of facts and are both intended to accomplish the same result? No, this is a partition bill, filed under one statute, and the other is a bill to clear clouds from title, under a totally different statute, requiring the parties claiming interests to come in and set up by cross-bills their interests and providing for no partition or division, nor could partition or division be accomplished under that statute. Its limitations prevent it. In this suit, however, both settlement of titles and partition can be had. In that suit, after settlement of titles, this suit for partition would have to go ahead, or a new one be filed if partition was desired, etc. Therefore the result sought is not the same, nor the same set of facts set up.

The petitioner is in error, we submit, when it states that the Court can grant the relief sought in this bill if any of the Sibley heirs establish title, because it is seen by examining the statute that it is confined to the purpose of clearing the title under a peculiar kind of procedure, - a procedure in rem, not in personam, and not subject to the rule that the Court could go ahead and grant the further relief because it had taken jurisdiction. No other relief than authorized by that statute could be given, even if the complainants herein were compelled to drop this suit and file cross-bills in petitioner's suit to pray for partition, etc., *How*  
*could they bring the partition suit?*

Nor is the subject matter of the suit the same. We cannot settle here on this motion the questions of title involved. It is contended by petitioner that the prior patent from the U.S. government to Cyrus Sibley of fractional sectional 24, T4, R.1 E. was superceded by a recent patent to the two Spanish Grants and that they cover the fr. section 24. This is a question not to be settled on a stay of proceedings, motion. The two bills on their *face* do not cover the same property.



3. Brief.

This bill covers fr. section 24, theirs does not. Their bill covers exceptions to this and all of the two spanish grants which lies in two east. This bill covers no ground in range two east at all. Therefore it is seen that the bills have not the same subject matter.

The great test would be whether the relief granted in both bills would be the same and whether the second bill or the first should be stayed. The same relief could not be granted in the petitioner's bill, filed second, but the questions of title ~~was~~ could be settled in this bill and the partition had as well. If we had asked that their bill be stayed ~~it~~ would have been more in line. They claim their bill was not second, but this is a mere technicality, as they well knew it was sought to cover the petitioner's interest and Maynard made the party at interest by error, and would be immediately amended. Therefore, equitably, there was a bill pending to test petitioner's title. But if not, it cannot be said that they would have the right to stop our litigation. The courts are open.

Really it makes considerable difference<sup>xx</sup> to the seven parties, five of whom are minors, whether they can go ahead with their partition suit, or have to employ counsel to file cross-bills in this other suit, because in this suit the fee comes out of the fund in general and in the other they would be put to the expense of paying counsel. ~~and of course~~

IN REPLY TO JUDGE TURNER'S REPLY BRIEF. I, of course, accept Judge Turner's assurances that he did not intend to convey to me the impression that Maynard still owned the property.

However, this does not affect the fact that the letter relative to bringing this suit addressed to Mr. H. H. Maynard in Chicago a long time ago was referred to Judge Turner, who requested this counsel to hold up and we would talk over the matter, and that at no time did he ever say that he was representing other than Mr. Maynard, and that he knew when this suit was filed it was intended to cover this property. Under these circumstances, of course counsel did not go to Bay Minette and examine the record to see whether Maynard had transferred the property, his apparent counsel still offering to buy complainant C. E. Sibley and W. S. Sibley interest, at his price. He knew what the suit was intended for, and having this knowledge did file the second suit. But there was no notice <sup>given</sup> ~~of~~ counsel that no further negotiations would be considered and that suit would be filed. Counsel for complainants made a counter offer, which was not accepted, and did not accept a better offer made by Judge Turner. Judge Turner calling up to learn addresses of C. E. and W. S. Sibley indicated that he intended to file the bill to ~~file~~ clear title, the question being mentioned theretofore, put counsel wise. He therefore filed the bill which had been held up when Judge Turner received the letter to Maynard.

Respectfully submitted,  
James Bowen Cleveland  
Attorney for Complainants  
Sibley & Sibley

I neglected to notice Judge Turner's reference to my signing as counsel for complainant and certain respondents mentioned. This does not mislead Judge Turner, but the attention of the court is called to the fact that in partition suits the interests of both respondents and complainants may be the same and there be no contention between them. When the respondents mentioned were made parties I did not represent them, but was afterwards asked to do so by them. They may be made complainants instead of defendants by amendment, but it is unnecessary, as counsel for complainants can also represent these defendants, there being no conflict of interests, the complainants setting up the interest of respondents. *gpb*

George Bowen Cleveland  
ATTORNEY-AT-LAW  
Box 704  
MOBILE, ALA.

July 4th, 1927.

Judge John D. Leigh, Circuit Judge,  
Brewton, Ala.

Dear Sir:-

I entered into a written agreement with Judge Turner, of Stevens, McCorvey, McLeod, Goode and Turner, of this city, to submit on brief on Wednesday, the petition of the Old Spanish Trail Co., one of the several defendants in the suit of C.E. Sibley, et al, vs. H.H. Maynard, et al, to stay the suit, in addition to any motions to strike it, demurrers, etc. I have filed an answer to the petition, which I am sending to the Clerk, as well as a motion to strike it, the motion not being waived in the answer. I answer as well as move to strike in order to expedite Judge Turner's desire for a decision on the petition.

I am also sending a memorandum brief. I have not received that of Judge Turner, or any other counsel, if any, in the case. Judge Turner said Moorner was interested and he could not debar him from coming and arguing orally, but I presumed he referred to Moorner's being in the chain of title, as I have no knowledge of his appearing as counsel for any party (252 St. Francis St.)

Yours truly,



C.E.Sibley, et al, Complainant, )

vs.

: -In the Circuit Court. In Equity.

H.H.Maynard, et al, defendant. )

.....

Mo. to Strike.

Comes the complainants and move to strike the petition heretofore filed by the defendant Old Spanish Fort Development Co. to stay this cause until the end of the suit filed by said corporation against all parties claiming an interest in Spanish Grant Sections 38 and 39 in township four south and range one and two east, because:-

1. Said petition is without equity and is without precedent or justification.
2. The bill sought to be stayed ~~first~~ was filed first, the fact being known to the said corporation when its bill was filed, it simply seeking to take advantage of the fact that it was not known that its interest had been transferred into a corporation, or a corporation organized to own it.
3. That the land sought to be divided in this bill is not altogether the same land sought to be quitted in the corporation bill of complaint. Fractional section twenty four, township four south of range one east is not included in the corporation's bill, and parts of the said two grants in one east are contained in the corporation's bill ~~with~~ and not contained in this bill, being especially excepted therefrom. That part of sections 38 and 39 contained in range two east is not covered by this bill. Therefore the two bills do not cover the same subject matter. In addition, parties to this bill are not made parties to the corporation's bill. There is no reason why the complainant's and interested defendant's should be stopped from having the land divided because the corporation desires to litigate title to the land in controversy in this bill and other lands.
4. If it is desired, the corporation can answer this bill and contest the title of any of the parties thereto, or set up the fact, if true, that there are interested parties who are not parties hereto who should be made parties and stay this cause until they are so made parties.

*George Bruce Leonard*  
Attorney for complainants and  
defendants Theodore F. Searing  
and Mrs. Baird.

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*Filed July 10th 1927*  
*D. W. Richardson*  
*Register*

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 Florence S. Beard, 8718 Jeannette  
St New Orleans La. Fannie Gillespie Searing, Chicago, Ill,  
Robert George Searing, Chicago, Ill, Dora Searing, Chicago, Ill,

of \_\_\_\_\_ 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 Sum-  
mons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by

C.E. Sibley et al

against said Florence S. Beard, Dora Searing,  
Robert George Searing, Fannie Gillespie Searing,

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 9th day of  
June 1927.

*T. W. Richerson* Register.

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

ORIGINAL.

SERVE ON

Circuit Court of Baldwin County  
In Equity.

No.

SUMMONS

\*\*\*\*\*

C. E. Sibley et al.

vs.

Old Spanish Fort Development  
Co.

Defendant.

Sheriff.

By \_\_\_\_\_ Deputy Sheriff.

G. B. Cleveland.

Solicitor for Complainant

Recorded in Vol \_\_\_\_\_ Page \_\_\_\_\_

THE STATE OF ALABAMA,  
BALDWIN COUNTY.

Received in office this

day of

192

Sheriff.

Executed this \_\_\_\_\_ day of

192

by leaving a copy of the within Summons with

\_\_\_\_\_

\_\_\_\_\_ Defendant.

\_\_\_\_\_ Sheriff.

By \_\_\_\_\_ Deputy Sheriff.

June 9th, 1927.  
Copy of Bill and copy of  
summons registered to  
Florence S. Beard  
8718 Jeannette St, New Orleans.  
La. Fannie Gillespie Searing  
Chicago, Ill, Robert George Sear  
Chicago Ill, Dora Searing,  
Chicago, Ill.

*T. W. ...* Register.