

166

JOHN BESTOR ROBERTSON,
Complainant,

vs.

ELVA D. TROYER,
Respondent.

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

The Complainant in this cause on March 18, 1927 filed a Statutory Bill to quiet title to certain lands in Baldwin County, Alabama, described in said Bill of Complaint; on April 18, 1927 the Defendant filed demurrers to the Bill, which demurrers were over-ruled by a decree of the Court, dated April 21, 1928, and filed on May 11, 1928 and on the same date the Defendant filed her answer. On September 15, 1928 the Complainant took the testimony of J. B. Robertson, the Complainant, and on May 16, 1928 the Defendant filed an amended answer and cross bill, and it was to this amended answer and cross bill that the Complainant, on June 17, 1929, filed demurrer.

There are six separate grounds of demurrer. The first raising the question that there is no equity in the Respondent's cross bill, and the other five, question the right of the Respondent to file her amended answer and cross bill.

The Attorney for the Complainant, in his brief, discusses only two grounds of demurrer:

"1st. That the relief asked for in the cross bill may be had by the Respondent, if at all, under the Bill and answer previously filed in said cause.

2nd. That it is inequitable that the Respondent, at this late date, more than a year since the filing of his original answer, should be permitted to delay the hearing of the Bill and Original Answer by filing his amended answer and cross bill."

We take it from this that the Complainant has abandoned all grounds of demurrer, except those two discussed in his brief.

Our interpretation of the law is that the office of a demurrer is to test the legal sufficiency of pleadings, hence, as we see it, there has been only one real ground of demurrer filed by the Complainant, that is, the first ground "that there is no equity in Respondent's cross bill" the other five are grounds that should not and cannot be raised by demurrers, but rather by a motion to strike.

The Defendant may obtain relief against a party Complainant or Defendant for any cause connected with, or growing out of the bill, by alleging in his answer, and as a part thereof, the facts upon which such relief is prayed. The matters or facts thus alleged and put in issue must be considered in the nature of a cross bill and be heard at the same time as the original bill.
Code 1923 - Section 6550.

Amendments to bills in equity may be filed as a matter of right at any time before final decree, by striking out, or adding new parties, or to meet any state of evidence which will authorize relief; and amendments to answer may be filed as of right at any time before final decree, so as to set up any matter of defense; and if an amendment be filed at the hearing to bill or answer, the opposite party shall be entitled to a continuance as a matter of right, if the amendment requires the taking of additional testimony, and in this event, both parties shall have the right to take additional testimony without a special application, but the Court shall impose such terms upon the party amended in the hearing, not extending beyond the payment of all the costs, as may be fair and equitable.

Code 1923 - Section 6558.

Ex parte Delpey	66 So., 22
Acker vs Green et al	113 So., 411
Sloss, Sheffield Steel and Iron Company vs McLaughlin	62 So., 96

The purpose of a cross bill is to determine the respective rights of all the parties in the suit at one time and thereby avoid a multiplicity of suits.

The filing of a cross bill is necessary to the granting of an affirmative relief to the Defendant.
Farmers State Bank vs Kirkland et al 75 So., 894

A cross bill is proper and allowable whenever it becomes necessary to do justice between the parties and adjust all the equities between them growing out of and connection with the subject matter of the original bill.
Ashe-Carson Company vs Bonifay et al 147 Ala., 376

When a court of equity has jurisdiction over a cause for any purpose, it may retain the same for all purposes and proceed to a final determination of all matters at issue.

Smith et al vs Rhodes et al	90 So., 349
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Equity's desire and purpose is to completely ascertain

and determine in a single proceeding the rights and interest of all who may properly be brought within its jurisdiction.
Metcalf vs Griffin et ux 81 So., 571

It was not necessary to the equity of the cross bill in an action to quiet title that the cross Complainant should set up title to the entire property described in the original bill, nor was any formal disclaimer necessary as to that part not claimed by him.
Smith et al, vs Rhodes et al 90 So., 349

The rule that an original bill to quiet title without actual possession of land in Complainant is wanting in equity, does not apply to a cross bill.
Smith et al, vs Rhodes et al 90 So., 349

The Respondent and cross Complainant, under the above citations, clearly had a perfect right to file her cross bill, which is in Statutory form, and places the entire matter before the Court, so that it may be able, at one time, to determine all the rights of the respective parties and to grant affirmative relief to the party who is entitled to it.

Bebe & Stae
Solicitors for Respondent and Cross
Complainant.

1/2

RECORDED

Filed Apr 18/27
J. W. Williams
Register

JOHN BESTOR ROBERTSON,
Complainant,

VS

ELVA D. TROYER
Respondent.

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

) IN EQUITY.

) #662.

Now comes the Respondent, Elva D. Troyer, in the above styled cause, and by leave of the Court first had and obtained, amends her answer heretofore filed in this cause so that the same shall read as follows:

The Respondent, Elva D. Troyer, admits she is over the age of twenty-one years and resides at Fairhope, in Baldwin County, Alabama.

1. The Respondent denies that the Complainant is in the actual, peaceable possession of the following described tract of land, claiming to own the same or that he owns the same in his own right, to-wit:

All that real property in Baldwin County, Alabama described as lot "A", Seacliff Subdivision, as per plat of same recorded on the Probate records in Baldwin County, Alabama.

2. The Respondent says that she is the owner of lot "A", Seacliff Subdivision having acquired the title thereof by deed dated January 27th, 1925 and recorded in Deed Book 35NS, pages 395-6, in the office of the Probate Judge of Baldwin County, Alabama. The Respondent admits that there is no suit pending to enforce or test the validity of such title, claim or encumbrance.

3. The Respondent says that she is the owner and in possession of said land, to-wit: Lot "A", Seacliff Subdivision as shown by plat, recorded in the office of the Probate Judge in Baldwin County, Alabama, by virtue of a state tax deed from W. B. Allgood, State Auditor, dated January 27th, 1925,

and filed for record in the office of the Probate Judge of Baldwin County, Alabama, on January 30th, 1925 and recorded therein in Deed Book 35NS, pages 395-6.

4. The Respondent admits that on January 27th, 1925, the State of Alabama, by the State Auditor, conveyed to her all of the right, title, and interest of lot "A", Seacliff Subdivision in Township Six (6) South, Range Two (2) East, as shown by deed recorded in the office of the Judge of Probate in Baldwin County, Alabama, and recorded therein in Deed Book 35NS, pages 395-6. The Respondent further avers that the said deed from the State of Alabama was intended to convey, and did convey, the same land as described in paragraph one of Complainant's Bill of Complaint in this cause.

And the Respondent for further answer to the said Complainant's Bill of Complaint and without waiving any of the matters hereinabove set out, for further answer to the said Bill of Complaint says:

1. That the said land, to-wit: lot "A", Seacliff Subdivision of W. M. Patterson Grant, Section Eight (8), Township Six (6) South, Range Two (2) East, and which is the same land described in the Complainant's Bill of Complaint was regularly assessed by the Seacliff Wharf Co., by J. B. Robertson, President, for the taxes due for the year 1913; ^{that said taxes were not paid;} that on the 27th day of April, 1914, the Probate Court of Baldwin County, Alabama, rendered a decree for the sale of said lands for the payment of State and County taxes then due from Seacliff Wharf Co., the owner of said lands, and for the payment of the fees, costs and expenses of and under said decree; that on the 1st day of June, 1914, under and in pursuance of the decree of the Probate Court of Baldwin County, Alabama, dated the 27th day of April, 1914

said lands were regularly offered for sale by the Tax Collector of Baldwin County for said taxes, fees, costs and expenses, and no person having bid a sufficient sum for said lands to pay the same, said lands were bid in for the State for the sum of said taxes, fees, costs and expenses, as shown by Sale Book 3, page 167 in the office of the Probate Judge of Baldwin County, Alabama; that the time allowed by law for the redemption of said lands having elapsed since said sale and the same having not been redeemed, the title thereto under said sale was in the State; that application was made to the Auditor of the State by the Respondent to purchase said lands, and on January 27th, 1925, W. B. Allgood, as Auditor of the State of Alabama, by virtue of and in accordance with the provisions of Chapter 58, Article 8 of the Code of Alabama of 1923 with the approval of the Governor of Alabama conveyed unto the Respondent herein all the right and title of the State of Alabama, in and to said lands, as shown by deed dated January 27th, 1925, filed for record January 30th, 1925 in the office of the Probate Judge of Baldwin County, Alabama, and recorded therein in Deed Book 35NS, pages 395-6.

And for further answer to Complainant's Bill of Complaint, the Respondent says:

2. That she is in the quiet and peaceable possession of said lands, ever claiming to own the same under and by virtue of said deed hereinabove set out.

Wherefore, the premises considered, the Respondent prays that this Honorable Court will take jurisdiction of the cause set out by the Respondent's Cross Bill, that your Honor will, by proper process, make the said Complaint, John Bestor Robertson, party Respondent to this, the Respondent's Cross Bill, requiring him to plead answer or demur to the same within

the time and under the penalty prescribed by law and the practice of this Honorable Court.

The Respondent and Cross Complainant, Elva D. Troyer, further prays that upon a final hearing of this cause that this Honorable Court, establish the title of Respondent and Cross Complainant in and to said lands herein described and further find and decree that the Complainant and Cross Respondent, John Bestor Robertson, has no claim, right, title, or interest in or encumbrance upon the lands herein described, or any part thereof, and grant unto the Respondent and Cross Complainant such other, further, different, or general relief as she may be in equity and good conscience entitle to receive, and as in duty bound the Respondent will ever pray.

Beebe & Hall
Solicitors for Respondent and
Cross Complainant.

FOOT NOTE:

The Complainant and Cross Respondent, John Bestor Robertson, is required to answer each and every allegation contained in the Respondent and Cross Complainant's Cross Bill set out in paragraph one to two, inclusive, but not under oath. Oath being hereby expressly waived.

Beebe & Hall
Solicitors for Respondent and
Cross Complainant.

JOHN BESTOR ROBERTSON,
Complainant,

VS.

Elva
~~ELVA~~ E. TROYER,
Respondent,

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

This cause coming on to be heard is submitted for decree on demurrer to the respondent's cross bill, and upon consideration thereof, I am of the opinion that said demurrer is not well taken.

It is, therefore, ordered, adjudged and decreed by the Court that said demurrer to respondent's cross bill, be, and the same hereby is, overruled.

This 17th., day of September, 1929.

L. W. Hare

Judge.

Equity 1/1/27
John D. Foster, ~~of Essex~~
vs
Eva D. Fayer

Decree on
Demurrer

Filed Sept 17/1924
T. M. McNamee
Register

John Bestor Robertson,
Complainant -

Versus

Elva D. Troyer,
Respondent.

IN EQUITY
Circuit Court,
Baldwin County,
Alabama.

Brief of complainant in support of demurrers
to cross bill filed by respondent. -

To the Hon. F. W. Hare,
Judge of 21st Judicial Circuit.

The grounds of the demurrers are, in substance -

- 1st . That the relief asked for in the cross bill may be had by the respondent, if at all, under the bill and answer previously filed in said cause ;
- 2nd. That it is inequitable that the respondent at this late date, more than a year since the filing of his original answer, should be permitted to delay the hearing on bill and original answer by filing his amended answer and cross bill.

As to the 1st statement of demurrer :

Bill of complainant admits that respondent claims title to the land in question under a deed executed by the State Auditor dated January 27, 1925, recorded in Book 35 NS pages 395-6, although the bill avers that the land conveyed by said deed is not in fact the same as that claimed in ownership by the ~~state~~ complainant (there being an omission in the description in said deed).

On May 11, 1928, respondent files her original answer to said bill in which she denies that the complainant is the owner of the land described in his bill of complaint, and avers that she is the owner, "having acquired the same by a deed from the State of Alabama, by W. B. Allgood, State Auditor, dated January 27, 1925, and recorded in Deed Book NS 35, pages 395-6, in the office of the Probate Judge for Baldwin County, Alabama. "

So that an issue of fact would seem to be made up by the two pleadings as to whether the complainant or the respondent has the title to the said land.

The answer of respondent would seem, practically, to comply with Sec. 3104 of Code 1923 as to claiming under a tax sale. In any event the complainant has no intent to contest the sufficiency of such averment as made in her original answer.

If the defense might have been set up in original answer without cross bill, a cross bill is improper.
Parker vs Marks, 82 Ala 548;
Manning vs Moore, 203 Ala 186.

It is the understanding of complainant that the sole purpose of the cross bill is to save to the respondent her rights under Sec. 3104, in the event that the title to the land should be found against her.

As to the second ground of demurrer -

The original answer of respondent, as above stated, was filed more than a year ago, in May, 1928; The complainant, on the supposition that the parties were at issue as to the title to the land took the deposition of a witness on Sept. 15, 1928, and now contends that it would be inequitable to permit the respondent, nearly a year later, during which time no testimony has been taken by the respondent and no pleadings filed, to now file an amended answer and a cross bill.

Carson vs Sleigh, 201 Ala - on page 375 (6,7), referring to the statute (Code 1907, Sec. 3118) the Court said -

" but it does not intend that a cross complainant, by filing or neglecting to prepare her cross cause for hearing may indefinitely or unduly delay the submission of the original cause etc. "

Would not the same reason apply to failure or delay to prepare and file a cross bill and amended answer ?

It would seem equitable that the respondent should be required to withdraw her amended answer and cross bill, proceed to take testimony on the issue on which the parties would seem to be joined, or suffer the consequences of a decree in the suit.


Solicitor for complainant.

John Bestor Robertson,
Complainant -

Versus

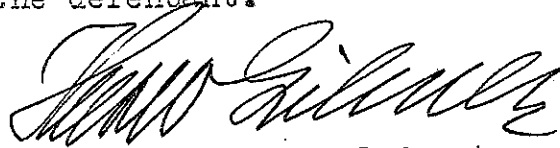
Elva D. Troyer,
Respondent.

In EQUITY
Circuit Court,
Baldwin County,
Alabama.

Comes the complainant in the above cause and for answer to the crossbill of the respondent filed therein says that it is insufficient in law, for demurrer thereto assigning the following causes.

1. That there is no equity in respondent's crossbill.
2. That the facts alleged in said crossbill are merely a more extensive statement of the facts alleged in said respondent's original answer and that the same relief might be granted the respondent under his original answer as that asked for in his crossbill.
3. That while the crossbill is offered as an amendment of the respondent's original answer it is inconsistent therewith in that the original answer admits, by not denying, complainant's peaceable possession of the land in question, whereas the crossbill denies such possession by the ~~complainant~~ ~~and~~ alleges such possession of the land by the respondent.
4. That the respondent was aware of all facts alleged, if true, in the said crossbill which was filed May 16, 1929, at the time that the original answer was filed in May, 1928, and that it is inequitable that the crossbill should be considered by this Court at this late date.
5. That the said crossbill sets out in substance, so far as concerns the title to said land under which the said respondent claims, only such facts as in a general way have been set out in the bill of the complainant filed in this cause.
6. That the substance of the respondent's crossbill is the same, in general, as the substance of his answer originally filed.

Wherefore this complainant prays the judgement of this Court whether he shall be compelled to make any further answer to the crossbill of the defendant.


Solicitor for complainant.

John Bestor Robertson,
Complainant -

Circuit Court for Baldwin County, Alabama;
I N E Q U I T Y-

Vs.

Elva D. Troyer,
Respondent -

The said complainant files this, his request, with
the Register of said Court, to take the oral testimony before
the Register of John Bestor Robertson on September, 15, 1928, to be
filed in said suit.


Solicitor for Complainant. 1

September 8, 1928

614
~~RECORDED~~
check
~~RECORDED~~

~~RECORDED~~
check

Filed Sept 8/528
T W Stinson
Regis

John Bester Robertson

vs In Equity.

Eva D. Troyer Circuit Court Baldwin County, Ala

The respondent admits that no other
suit is pending to enforce or test the
validity of the title, claim or encumbrance
of the complainant or of the respondent
to the deeds involved in the
above suit

11/19/28

Duke & Tall
Atys for Respondent

66.4
Equality **RECORDED**
Duck

Filed Nov 19/528
J. O. Richardson
Register

John Bestor Robertson,
Complainant -

VS

In Circuit Court for Baldwin County
Alabama, IN EQUITY -

Elva D. Troyer,
Respondent -

The said Complainant files this, his request, with the Register of said Court, to take the oral testimony before the Register of John Bestor Robertson on September 15, 1928.


Solicitor for Complainant.

September 8, 1928

We accept service of the
above notice this Sep 8th 1928 -
Bebe Stone
atly for Res -

acceptance
of service
& take oral
testimony
of J.B. Robertson

9/8/28

Original

SERVE ON

Circuit Court of Baldwin County
In Equity.

No.

SUMMONS

John Bester Robertson,

vs.

Elva D. Troyer

Prainhope
Ala.

George A. Sossaman.

Solicitor for Complainant

Recorded in Vol. Page

THE STATE OF ALABAMA,
BALDWIN COUNTY.

Received in office this 18th

day of March, 1927.

J. D. Hadley
Sheriff.

Executed this 23 day of

March 1927.

by leaving a copy of the within Summons with

Elva D. Troyer

Defendant.

J. D. Hadley
Sheriff.

By *J. P. White*
Deputy Sheriff.

J. BESTOR ROBINSON

VS

ELVA D. TROYER

)
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)
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)

CIRCUIT COURT OF BALDWIN

COUNTY, ALABAMA.

IN EQUITY.

Comes the Respondent in the above styled cause and admits that she is a resident of Fairhope, Baldwin County, Alabama, over the age of twenty-one years, and denies that the Complinant is the owner of all that real property in Baldwin County, Alabama, described as Lot A Seacliff Subdivision, as per plat of the same recorded in Book 7, pages 90-91 Probate records of Baldwin County, Alabama, but to the contrary states that she is the owner of the same, having acquired the same by a deed from the State of Alabama, by W. B. Allgood, State Auditor, dated January 27, 1925 and recorded in Deed Book 35, pages 395-6 in the office of the Probate Judge of Baldwin County, Alabama.

BEEBE & HALL

Solicitor for Respondent.

✓
RECORDED

Filed May 11/1928
T. W. Williams
Register

May 11, 1928

J. Peter Robertson
vs
Evelyn D. Troeger

Final Decree

Filed May 17/1928
D. W. Williams
Register

RECORDED

FILED
MAY 17 1928
D. W. WILLIAMS
REGISTER

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF BALDWIN
COUNTY , ALABAMA, SITTING IN EQUITY.

Comes your Orator John Bestor Robertson and exhibits this his bill of complaint against Elva D. Troyer who is over the age of 21 years and who resides at Fairhope, Baldwin County, Alabama.

1. Orator shows that he is in the actual, peaceable, possession of the following tract of land, claiming to own the same and does own the same in his own right, viz:- all that real property in Baldwin County, Alabama, described as lot "A" Seacliff Subdivision as per plat of same recorded in Book 7 pages 90-91 Probate Records of Baldwin County, Alabama.

2. Orator further shows unto the court that the respondent hereto denies or disputes his title thereto, or some part thereof, and claims or is reputed to claim or to own the same or some part thereof, or some right, title or interest therein, or to hold some lien or encumbrance thereon. Orator further shows that there is no suit pending to enforce or test the validity of such title, claim or encumbrance.

3. Orator calls upon said respondent to set forth and specify her title, claim, interest, or encumbrance upon said land, and how and by what instrument the same is derived and created.

4. Orator further shows that on January 27th 1925 the State of Alabama by the State Auditor conveyed to said respondent all of its right, title and interest in Lot "A" Seacliff Subdivision of Section 8 Township 6 South Range 2 East. Said deed being recorded in Book 35 N.S. page 395-6 Probate Records of Baldwin County, Alabama. And Orator avers that said deed casts a cloud and suspicions upon his title to the property described in paragraph one of this bill of complaint, although it does not cover the same property, nevertheless the descriptions are so nearly alike as to cast suspicions that they are intended to cover the same property.

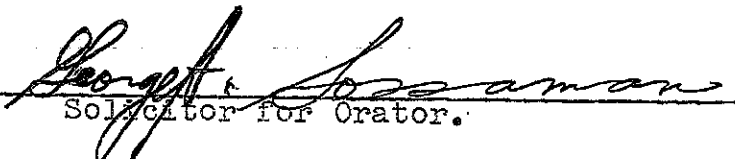
PRAYER FOR PROCESS.

Wherefore Orator prays that the Honorable Court will take jurisdiction of this cause, and that it will have its process issue to said respondent in all respects as required by law and the rules and practice of this court.

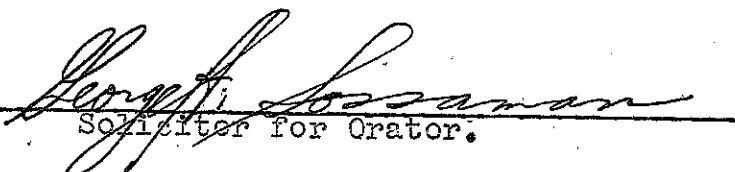
PRAYER FOR RELIEF.

And Orator prays that upon a final hearing of this cause that the court will decree that said respondent has no right, title, interest, claim, lien or encumbrance upon the land described in paragraph one of this bill of complaint, and that the court will settle the title to said land and clear up all doubts and disputes concerning the same.

And Orator further prays that the court will decree that the deed referred to in paragraph four of this bill of complaint does not affect the title, or vest any title in the respondent, to the property described in paragraph one of this bill of complaint and that the court will order it removed as a cloud upon the title to said land described in paragraph one of this bill of complaint. And Orator prays for all such other, further and different relief as he may be entitled to receive the premises considered. And in duty bound he will ever pray.


Solicitor for Orator.

FOOT-NOTE:- The respondent is required to answer each and every allegation of the foregoing bill of complaint, from paragraph 1 to 4 inclusive, but not under oath, answer under oath being expressly waived.


Solicitor for Orator.

1st

Bill

RECORDED

Filed March 18/927
T. W. Rice
Register

John Bestor Robertson,
Complainant -

Versus

Elva D. Troyer,
Respondent.

IN EQUITY
Circuit Court,
Baldwin County,
Alabama.

Brief of complainant in support of demurrers
to cross bill filed by respondent. -

To the Hon. F. W. Hare,
Judge of 21st Judicial Circuit.

The grounds of the demurrers are, in substance -

- 1st. That the relief asked for in the cross bill may be had by the respondent, if at all, under the bill and answer previously filed in said cause;
- 2nd. That it is inequitable that the respondent at this late date, more than a year since the filing of his original answer, should be permitted to delay the hearing on bill and original answer by filing his amended answer and cross bill.

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On May 11, 1928, respondent files her original answer to said bill in which she denies that the complainant is the owner of the land described in his bill of complaint, and avers that she is the owner, "having acquired the same by a deed from the State of Alabama, by W. B. Allgood, State Auditor, dated January 27, 1925, and recorded in Deed Book NS 35, pages 395-6, in the office of the Probate Judge for Baldwin County, Alabama."

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If the defense might have been set up in original answer without cross bill, a cross bill is improper.
Parker vs Marks, 32 Ala 543;
Manning vs Moore, 203 Ala 186.

It is the understanding of complainant that the sole purpose of the cross bill is to save to the respondent her rights under Sec. 3104, in the event that the title to the land should be found against her.

As to the second ground of demurrer -

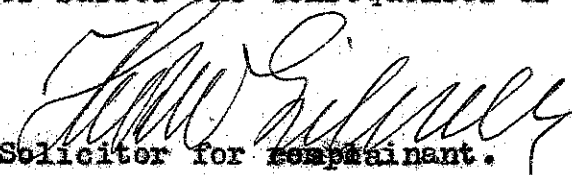
The original answer of respondent, as above stated, was filed more than a year ago, in May, 1928; The complainant, on the supposition that the parties were at issue as to the title to the land took the deposition of a witness on Sept. 15, 1928, and now contends that it would be inequitable to permit the respondent, nearly a year later, during which time no testimony has been taken by the respondent and no pleadings filed, to now file an amended answer and a cross bill.

Carson vs Sleigh, 201 Ala - on page 375 (6,7), referring to the statute (Code 1907, Sec. 3118) the Court said -

" but it does not intend that a cross complainant, by filing or neglecting to prepare her cross cause for hearing may indefinitely or unduly delay the submission of the original cause etc. "

Would not the same reason apply to failure or delay to prepare and file a cross bill and amended answer ?

It would seem equitable that the respondent should be required to withdraw her amended answer and cross bill, proceed to take testimony on the issue on which the parties would seem to be joined, or suffer the consequences of a decree in the suit.


Solicitor for complainant.

JOHN BESTOR ROBERTSON,
Complainant,

vs.

ELBA D. TROYER,
Defendant.

IN THE CIRCUIT OF BALDWIN
COUNTY, ALABAMA.

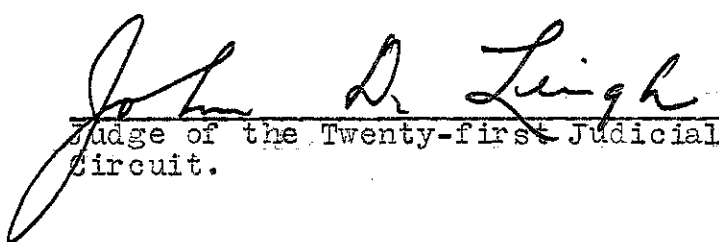
NO _____ IN EQUITY.

On May 24th, 1927, papers in this cause were forwarded to me by Honorable T. W. Richerson, Register of the Circuit Court of Baldwin County, Alabama, accompanied by a letter stating that complainant's counsel had requested him to forward the papers to me, and that briefs would be forwarded to me. No such briefs of any kind from any of the parties have ever reached me. There have been several terms of the Circuit Court of Baldwin County, Alabama, held since the papers were forwarded me. At no time has counsel for complainant appeared to look after the interest of his client, and I have been strongly tempted to dismiss his case for want of prosecution, but hardly thought that fair to the complainant. I have studied the bill, together with the demurrer thereto, and am clearly of the opinion that the demurrer is not well taken and should be overruled, a conclusion that would have been reached long since had complainant's counsel complied with his promise to send briefs. On receipt of the papers, without looking at them, I put them aside pending receipt of briefs. I have been informed that complainant is complaining at the delay and has been led to believe that failure to pass on the question is due to my fault, hence the above explanation, As said already I am of the opinion that the demurrer to the bill is not well taken and should be overruled:

It is therefore ordered, adjudged and decreed by the Court that the demurrer to the bill of complaint be, and the same is hereby overruled and that defendant have ~~twenty~~ ^{fifteen (15)} (20)

days from the date hereof in which to file answer.

Ordered and decreed ~~In Vacation~~ this the 21
day of April 1928.


Judge of the Twenty-first Judicial
Circuit.

Equity ~~663~~
John B. Roberts
25 Dec 2
Elba D. Troop

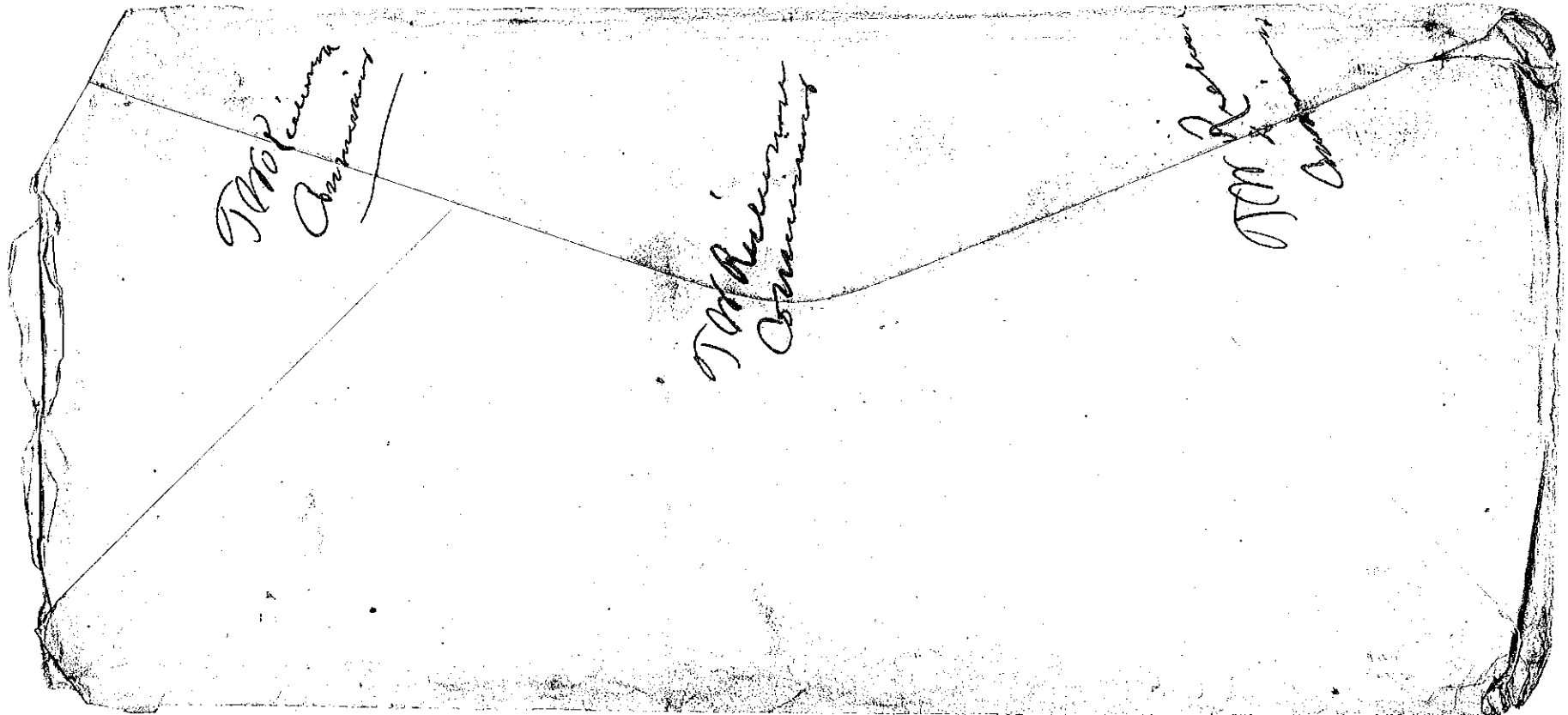
Decree
or
order

Filed Apr 21/1928
D. W. Williamson
Register

AFTER FIVE DAYS RETURN TO
T. W. RICHESON
REGISTER AND CLERK OF THE CIRCUIT COURT
BALDWIN COUNTY
BAY MINETTE, ALA.

*Filed Sept 15th 1885
T. W. Richeson
Register*

Deposition of Witness
John Restor Robertson
In Cause of John Restor
Robertson, Complainant
VS
Elva D. Proyer.



Prop. ...
The ...

The ...
The ...

The ...
The ...

.. record in the office of the Probate Judge for Baldwin County, Alabama the 29th day of September, 1905 and was recorded in the same office in Deed Book 9 N.S. page 371 by which deed the Grantors conveyed to the Grantee the following property in Baldwin County, Alabama:-

..... A certain portion of the land known as Block "A" which is in the Seacliff subdivision Township 6 South, Range 2 East according to a map recorded in Record Book No 7. N.S. pages 90-91 of the Probate Court of Baldwin County, Alabama and more particularly described as follows:-

..... Commencing at a point on Mobile Bay Eight Hundred (800) feet South of a line due West from the intersection of Section lines Nos. 4 & 9 Township 6 South, Range 2 East thence running due East Nine Hundred (900) feet more or less to the West Bank of Fly Creek thence down the meanders of said Creek ^{to} ~~to~~ a point on the West Bank of Fly Creek One Hundred and Sixty-Five (165) feet South from the North line of Lot "A", thence due West Five Hundred and Five (505) feet to a point, thence due South Two Hundred and Seventy-five (275) feet more or less to the North Bank of Fly Creek, thence down the meanders of said Creek to Mobile Bay, thence up Mobile Bay to the place of beginning, being the Northern and Western portion of Lot "A",

I hold in my hand and introduce into evidence a deed from the Seacliff Wharf Company, a corporation, by John Bestor Robertson as its Vice-President attested by George A. Scossaman as Secretary of said corporation, respectively with the seal of said Corporation affixed to said deed, which deed is dated the 24th day of February, 1927, is properly acknowledged as to both of the officers of thwe said corporation signing the same and was admitted to record in the office of the Probate Judge for Baldwin County, Alabama, in Deed Book 42 N.S. on page 258 on the 2nd day of March, 1927, which deed conveyed to J.B. Robertson the following property:-

..... A certain portion of the land known as Block "A", which is in the Seacliff Subdivision, Township 6 South, Range 2 East, according to a map recorded in Record Book No. 7 N.S., Pages 90-91 of the Probate Court of Baldwin County, Alabama, and more particularly described as follows:-

.. record in the office of the Probate Judge for Baldwin County, Alabama the 29th day of September, 1905 and was recorded in the same office in Deed Book 9 N.S. page 371 by which deed the Grantors conveyed to the Grantee the following property in Baldwin County, Alabama:-

..... A certain portion of the land known as Block "A" which is in the Seacliff subdivision Township 6 South, Range 2 East according to a map recorded in Record Book No 7. N.S. pages 90-91 of the Probate Court of Baldwin County, Alabama and more particularly described as follows:-

..... Commencing at a point on Mobile Bay Eight Hundred (800) feet South of a line due West from the intersection of Section lines Nos. 4 & 9 Township 6 South, Range 2 East thence running due East Nine Hundred (900) feet more or less to the West Bank of Fly Creek thence down the meanders of said Creek ^{to} ~~to~~ a point on the West Bank of Fly Creek One Hundred and Sixty-Five (165) feet South from the North line of Lot "A", thence due West Five Hundred and Five (505) feet to a point, thence due South Two Hundred and Seventy-five (275) feet more or less to the North Bank of Fly Creek, thence down the meanders of said Creek to Mobile Bay, thence up Mobile Bay to the place of beginning, being the Northern and Western portion of Lot "A".

I hold in my hand and introduce into evidence a deed from the Seacliff Wharf Company, a corporation, by John Bestor Robertson as its Vice-President attested by George A. Scossaman as Secretary of said corporation, respectively with the seal of said Corporation affixed to said deed, which deed is dated the 24th day of February, 1927, is properly acknowledged as to both of the officers of thwe said corporation signing the same and was admitted to record in the office of the Probate Judge for Baldwin County, Alabama, in Deed Book 42 N.S. on page 258 on the 2nd day of March, 1927, which deed conveyed to J.B. Robertson the following property:-

..... A certain portion of the land known as Block "A", which is in the Seacliff Subdivision, Township 6 South, Range 2 East, according to a map recorded in Record Book No. 7 N.S., Pages 90-91 of the Probate Court of Baldwin County, Alabama, and more particularly described as follows:-

Commencing at a point on Mobile Bay eight hundred (800) feet south of a line due West from the intersection of section lines Nos. 4 and 9, Township 6 South, Range 2 East; thence running due East nine hundred (900) feet more or less to the West Bank of Fly Creek; thence down the meanders of said Creek to a point on the West Bank of one hundred sixty-five (165) feet south from the north line of Lots "A"; thence due West Five Hundred ^{Five} (505) feet to a point; thence due South two hundred seventy-five (275) feet more or less to the North Bank of Fly Creek; thence down the meanders of said Creek to Mobile Bay; thence up Mobile Bay to the place of beginning; being the northern and western portion of Lot "A".

of Fly Creek

And I testify that the above three deeds comprise and include all of Lot "A" in the Seacliff subdivision as per plat thereof on file in the office of the Probate Judge for Baldwin County, Alabama in Deed Book No. 7 N.S. pages 90-91. Prior to and at the time of filing the Bill of Complaint in this suit I had been and was exercising the following acts of possession of said tract of land: viz: The said land was fenced by me in 1925 along the Bay Front... and along the North line thereof along the east and south boundaries of said lot which are along Fly Creek. I had put up the following signs: "No trespass ^{ing} under penalty of law. J.B. Robertson, owner."... and the same signs also, one at the North end of the lot and one at the South end of the lot both facing Mobile Bay. On the said lot there is a three-room building which was occupied for a number of years as a residence while the property was owned by the Seacliff Wharf Company, the keys to which building have been in my possession and the building under my control for the past seven or eight years.

John B. Robertson

I, J. F. W. Richardson, as Register and Commissioner hereby certify

that the foregoing deposition on Oral Examination was taken down in writing by me in the words of the witness and read over to him and he signed the same in the presence of Hon. T. W. Gilmer also Hon. H. M. Hall, myself

at the time and place herein mentioned; that I have personal knowledge of personal identity of said witness or had proof made before me of the identity of said witness; that I am not of counsel or of kin to any of the parties to said cause, or any manner interested in the result thereof I enclose the said Oral Examination in an envelope to the Register of said Court.

Given under my hand and seal, this 15th day of Sept 1928
J. F. W. Richardson (L. S.)

NO. PAGE

THE STATE OF ALABAMA
BALDWIN COUNTY

IN CIRCUIT COURT, IN EQUITY.

J. Bestor Robertson

vs. Complainant

Elva Troyer

Respondent.

Oral Deposition

Filed Sept 15th, 1928

J. F. W. Richardson, Register.

Recorded in _____ Record _____

Vol. Page

_____, Register

THIS DEED, Made the 20th day of January, 1904, between Warren W. Worcester and M.E.Worcester, his wife, parties of the first part, and J. Bestor Robertson, party of the second part, WITNESSETH, That the parties of the first part, in consideration of Three Hundred and Fifty & 00/100 dollars, and other valuable considerations to them in hand paid, by the party of the second part, the receipt of which is hereby acknowledged, have bargained and sold and by these presents do grant, bargain, sell, convey and deliver unto the said party of the second part, his heirs and assigns forever, all that real property in Baldwin County, Alabama, described as follows, to-wit:-

All the William Patterson Grant, section eight (8) township six (6) South of Range Two (2) east which lies west of Bayou Volante (Fly Creek) and south of a line projected due west to Mobile Bay from the north west corner of section nine (9) in said township. Excepting from this conveyance a strip on the north side of the land herein conveyed, previously sold to the party of the second part, by said parties of the first part.

Together with all appurtenances thereunto belonging, to have and to hold forever and against any person lawfully claiming the same, said parties of the first part shall forever warrant and defend.

In Witness Whereof the parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of

W.W.Worcester (seal)
 M.E.Worcester (seal)

The State of Alabama, |
 |
 Baldwin County. |

I, George H. Hoyle, a Notary Public in and for said county hereby certify that Warren W. Worcester and M.E.Worcester, his wife, whose names are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day, that being informed of the contents of the conveyance they executed the same voluntarily on the day

the same bears date.

Given under my hand this 25th day of January, A.D., 1904.

George H. Hoyle, Notary Public,
Baldwin County, Alabama.

State of Alabama, |
|
Baldwin county. |

I, George H. Hoyle, a Notary Public in and for said county and State, do hereby certify that on the 25th day of January, 1904, came before me the within named Mattie E. Worcester, known to me to be the wife of the within named W.W.Worcester, who being examined separate and apart from her husband touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of the husband.

In Witness Whereof, I hereunto set my hand, this 25th day of January, 1904.

George H. Hoyle, Notary Public,
Baldwin Co., Ala.

Filed for record May 19th, 1904 at 8 A.M.

Recorded May 21st, 1904.

Chas. Hall, Judge of Probate per J.K.

The State of Alabama, |
County of Baldwin |

I, G.W.Humphries, Judge of Probate in and for said State and County hereby certify that the above and foregoing is a true, correct and complete copy of an instrument of writing as the same appears of record in Deed Record No. 7 N.S., at page 253, now on file in the office of Judge of Probate of Baldwin County, Alabama.

Witness my hand and the seal of said Court this 15th day of September A.D., 1928.

G.W. Humphries
Judge of Probate.

This Indenture, Made the 26th day of September 1905, between

J. Bestor Robertson and Isabel M. Robertson, his wife

Parties of the first part, and

Seacliff Wharf Company, Party

of the second part; Witnesseth that the parties of the first part, in consideration of Two 00/100 Dollars, and other valuable considerations, hereby acknowledged to have been paid the parties of the first part by the party

of the second part, Do grant, bargain, sell and convey, unto the said party of the second part, its heirs and assigns, all that real property in Baldwin County, State of Alabama described as follows:

A certain portion of the land known as Block A which is in the Seacliff Subdivision, Township 6, South Range 2 East, according to a map recorded in Record Book No. 7, N.S. Pages 90-91 of the Probate Court of Baldwin County, Alabama, and more particularly described as follows: Commencing at a point on Mobile Bay, Eight hundred (800) feet South of a line due West from the intersection of section lines Nos. 4 and 9, Township 6, South Range 2 East; thence running due East Nine hundred (900) feet more or less to the West bank of Fly Creek; thence down the meanders of said Creek to a point on the West bank of Fly Creek One hundred and Sixty five (165) feet South from the North line of lot A; thence due West Five hundred and five (505) feet to a point; thence due South Two hundred & Seventy five (275) feet more or less to the North bank of Fly Creek; thence down the meanders of said Creek to Mobile Bay; thence up Mobile Bay to the place of beginning; being the Northern and Western portion of lot A.

Free access to Seacliff Wharf from the South part of lot A. is expressly reserved in this deed.

Together with all rights and appurtenances to said described premises in anywise belonging: To have and to hold the same forever.

And the said parties of the first part for themselves and their heirs, the said described premises and appurtenances, will forever Warrant and Defend unto the said party of the second part, its heirs and assigns, against the lawful claims of all persons whatsoever.

IN WITNESS WHEREOF, The said parties of the first part have hereunto their hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of

Seal J. Bestor Robertson Seal
Isabel M. Robertson Seal

State of Alabama,

Mobile COUNTY.

I, Geo. N. Jones

a Notary Public in and for said County and State, do hereby certify that
J. Bestor Robertson and Isabel U. Robertson

whose names are assigned to the foregoing conveyance, and who are known to me, acknowledged before me, on this day, that being informed of the contents of the said conveyance they executed the same voluntarily on the day the same bears date.

Given under my hand and seal, this 26th day of September 1905.

Geo. N. Jones
Notary Public
Mobile, Ala.

State of Alabama,

_____ COUNTY.

I,

in and for said County and State, do hereby certify that on the _____ day of _____, 190____, came before me the within-named _____, known to me to be the wife of the within-named _____, who, being examined separate and apart from the husband touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, without fear, constraint, or threats, on the part of the husband.

In Witness Whereof, I have hereunto set my hand and official seal, this _____ day of _____ 190_____.

The State of Alabama, Office of the Judge of
Caldwin County, the Probate Court,

I, J. H. H. _____, Judge of said Court
do and for said County, do hereby cer-
tify that the within instrument was filed
in this office for record on the 29
day of Sept. _____ 1905 at
_____ o'clock a.m., and I further
certify that the same is duly recorded in
Record Book No. 9 N. S. Page 371
and duly examined.

Witness my hand this 30 day of
Sept. 1905
J. H. H. _____
Judge of Probate Court, Baldwin County

J. Bestor Robertson
&
Isabel U. Robertson
To Deed with Warranty.

Seacliff Wharf Company.

And from K. W. _____
to J. B. Robertson
P. B. 9 Page 265
Deed dated Jan 20 1904
Filed Oct 19 1905
W. H. _____

State of Alabama,
Baldwin County } Probate Court.

Filed in my office for record this 29 _____ day of
Sept. 1905, and recorded in
Deed Book No. 9 N. S., pages 371.

Judge of Probate.

STATE OF ALABAMA,
COUNTY OF BALDWIN.

THIS INDENTURE, Made this 24th day of February, 1927 by and between Seacliff Wharf Company, a corporation created and organized under the laws of the State of Alabama, party of the first part, and J. B. Robertson, party of the second part, WITNESSETH:

That the party of the first part, for and in consideration of the sum of One (\$1.00) Dollar to it in hand paid by J. B. Robertson, receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed unto the said party of the second part, his heirs and assigns forever, all and singular that certain real property situated in the County of Baldwin, State of Alabama, and more particularly described as follows, to-wit:

A certain portion of the land known as Block A, which is in the Seacliff Sub-division, Township 6 south, Range 2 east, according to a map recorded in Record Book No. 7 N. S., pages 90, 91 of the Probate Court of Baldwin County, Alabama, and more particularly described as follows:

Commencing at a point on Mobile Bay eight hundred (800) feet south of a line due west from the intersection of section lines numbers 4 and 9, Township 6 south, Range 2 East; thence running due East nine hundred (900) feet more or less to the west bank of Fly Creek; thence down the meanders of said creek to a point on the west bank of Fly Creek one hundred sixty-five (165) feet south from the north line of Lot A; thence due west five hundred five (505) feet to a point; thence due south two hundred seventy-five (275) feet more or less to the north bank of Fly Creek; thence down the meanders of said Creek to Mobile Bay; thence up Mobile Bay to the place of beginning; being the northern and western portion of Lot A.

Free access to Seacliff Wharf from the south part of Lot A is expressly reserved in this deed.

Together with all rights and appurtenances to said described property belonging or in any wise appertaining.

TO HAVE AND TO HOLD the same unto the said party of the second part, his heirs and assigns forever.

And the said party of the first part, for itself and its successors, herein covenant that it is lawfully seized in fee simple of the premises above described; that the said premises are free from all encumbrances; that it has the present right to sell and convey the same; and that it will, and its successors and assigns shall forever warrant and defend the same unto the said party of the second part, his heirs and assigns against the lawful claims of any and all persons now claiming, or hereafter to claim the same or any part thereof.

IN WITNESS WHEREOF, the Seacliff Wharf Company, a corporation, has caused this instrument to be signed by its Vice President, and its corporate seal to be affixed and attested by its Secretary, both of whom are thereunto duly authorized, all on the day and year first above written.



SEACLIFF WHARF COMPANY,
a corporation,

By John B. Robertson (SEAL)
As Vice President.

ATTEST:

George A. Sossaman
Secretary

STATE OF ALABAMA,

COUNTY OF MOBILE.

I, Cunice M. Addison, a notary public in and for said county, in said state, hereby certify that J. B. Robertson, Jr. and George A. Sossaman, whose names as Vice President and Secretary, respectively, of

the Seacliff Wharf Company, a corporation, are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal, on this 24th day of February, 1927.

Ernie M. Addison.
Notary Public, Mobile County,
Alabama.