

L. G. CROSBY,
Complainant,
VS.
CHARLES M. LARKIN,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 241.

FINAL DECREE

This cause coming on to be heard on this date, being the date heretofore fixed by the rules of this Court for the calling of the Equity Docket hereof, is submitted for Final Decree on behalf of the Complainant upon the following: Original Sworn Bill of Complaint; Writ of Injunction; Affidavits as noted by the Register; Decree Overruling Motion to Dissolve Temporary Injunction; Stipulation or Agreement as to taking testimony of Complainant's witnesses before Sarabel P. Reiss, as Special Commissioner dated September 20, 1938; Testimony of Complainant's witnesses as noted by the Register; and upon behalf of the Respondent upon the following: Demurrer; Answer; Notice of Motion to Dismiss Injunction; Motion to Dissolve Injunction; Affidavits as noted by the Register; Stipulation between parties dated October 18, 1939 relative to taking testimony of Respondent's witnesses; Testimony of the Respondent's witnesses as noted by the Register; upon consideration of all of which the Court is of the opinion that the Complainant is entitled to the relief prayed for by him in his said Bill of Complaint, WHEREUPON, it is therefore ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. The Demurrer filed by the Respondent in this cause was waived by him when his Answer was filed in this cause.
2. The Temporary Injunction heretofore granted in this cause shall be and it is hereby made permanent and the Respondent, Charles M. Larkin, his servants, agents and employees shall be and they are hereby permanently and perpetually enjoined from removing or attempting to remove from the bed of Styx River or from the

ponds and lagoons adjacent thereto, where it crosses the lands of the Complainant, L. G. Crosby, any sunken or stranded logs.

2. The said Respondent, Charles M. Larkin, his agents, servants or employees are hereby permanently and perpetually enjoined from trespassing on any part of Styx River where the bed of the said river crosses the lands of the Complainant, L. G. Crosby.

3. The costs of this proceeding are hereby taxed against the Respondent, for which execution may issue.

ORDERED, ADJUDGED AND DECREED this 24th day of September, 1945.

J. W. Hare

Judge.

EXHIBIT "B" TO AFFIDAVIT
OF I. G. CROSBY



STATE OF ALABAMA,

BALDWIN COUNTY.

-----:
L. G. Crosby, :

Complainant, :

-vs- :

Charles M. Larkin, :

Respondent. :

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

TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETING:

We command you that without delay you execute this writ and due return thereof make to us instanter at a term of our Circuit Court in Equity, to be held at Bay Minette on the _____ day of _____, 1936.

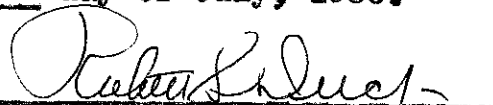
TO CHARLES M. LARKIN - GREETING:

WHEREAS, one L. G. Crosby has exhibited his bill of complaint in the said Circuit Court in Equity and has obtained from the Honorable J. Blocker Thornton, Judge of the Circuit Court for the Thirteenth Judicial Circuit of Alabama, an order for the issuance of an injunction returnable to the Circuit Court of Baldwin County, Alabama, to restrain and enjoin you as hereinafter mentioned; and,

WHEREAS, the said L. G. Crosby has, in accordance with said order, entered into bond with sureties, in the sum of \$ 250⁰⁰ payable to and approved by the Register of said Circuit Court and conditioned according to law;

NOW, THEREFORE, you, the said Charles M. Larkin, your servants, agents and employees, are hereby commanded and strictly enjoined from removing or attempting to remove from the bed of the Styx River at any and all points where the bed of said river crosses the land of complainant, L. G. Crosby, any sunken or stranded logs, being the logs referred to in the bill of complaint in said cause, until further orders of this Court.

Witness the hand of the Register and the seal of said Circuit Court in Equity this 6 day of July, 1936.


REGISTER.

L. G. CROSBY,
Complainant,
VS.
CHARLES M. LARKIN,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY,
NUMBER 241.

TO HONORABLE L. G. CROSBY, COMPLAINANT, AND MESSRS. STEVENS, MCGORVEY, MCLEOD, GOODE AND TURNER, SOLICITORS FOR THE COMPLAINANT IN THE ABOVE STYLED CAUSE:

NOTICE IS HEREBY GIVEN that motion will be made before Honorable F. W. Hare, Judge of the Circuit Court of Baldwin County, Alabama, on the 22 day of October, 1936, to dissolve the injunction issued in the above styled cause against the Respondent, his servants, agents and employees, from removing or attempting to remove from the bed of Styx River at any and all points where the bed of said river crosses the land of L. G. Crosby any sunken or stranded logs, upon the following grounds:

1. Upon the sworn answer of the Respondent signed in this cause on the 9 day of Oct ~~September~~, 1936.
2. Affidavits in support of the Respondent's answer.

C. M. Larkin
Respondent.

Becher & Becher
Solicitors for Respondent.

L. G. CROSBY,
Complainant,
VS.
CHARLES M. LARKIN,
Respondent.

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

NOTE OF TESTIMONY

This cause is submitted in behalf of the Respondent upon
the following:

1. Sworn Answer of the Respondent.
2. Motion to dissolve injunction.
3. Notice of motion to Complainant.
4. Affidavits of D. Gillis, J. D. Givens, E. S. Givens,
W. R. Mitchell, O. Givens, Roy Malone, and Lesley Mitchell.

Dated this Jan 21 1937. Ornduck
Register.

L. G. GROSBY,
Complainant,
VS.
CHARLES H. LARKIN,
Respondent.

)
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY,
NO. 241.

Comes the Respondent and demurs to the Complainant's
complaint and to each count thereof, separately and severally,
and for grounds thereof says:

FIRST:

That there is no equity in the bill.

SECOND:

The allegation that the said logs belonged to the
complainant is but the conclusion of the pleader.

Beberdall
Solicitors for the Respondent.

L. G. CROSBY,

Complainant,

VS.

CHARLES M. LARKIN,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 241.

NOTE OF TESTIMONY.

This cause is submitted in behalf of the Complainant upon the following:

1. Original sworn Bill of Complaint.
2. Writ of Injunction issued in this cause, dated July 6, 1936.
3. Affidavit of L. G. Crosby.
3. Affidavit of A. H. Waters.
4. Affidavit of James G. Allen.
5. Affidavit of O. Waters.
6. Affidavit of James Dennis Baggett.
7. Affidavit of Henry Allen.
8. Affidavit of W. H. Foley.
9. Affidavit of A. L. Waters.
10. Affidavit of T. L. Baggett.
11. Affidavit of E. Davidson.
12. Decree Overruling Motion to Dissolve Temporary Injunction.
13. Stipulation or Agreement as to taking of testimony of Complainant's witnesses before Sarabel P. Reiss, as Special Commissioner, dated September 20, 1938.
14. Testimony of L. G. Crosby, Complainant, and exhibits there-
to attached.
15. Testimony of W. H. Foley.
16. Testimony of Henry Allen.
17. Testimony of James G. Allen.
18. Testimony of A. H. Waters.
19. Testimony of A. L. Waters.
20. Testimony of James Dennis Baggett.
21. Testimony of O. Waters.

L. G. CROSBY,
Complainant,
VS.
CHARLES M. LARKIN,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY,
NUMBER 241.

Comes the Respondent in the above styled cause and moves the Court to dissolve the injunction heretofore issued in the aforesaid cause on the 6th day of July, 1936, enjoining the Respondent, his servants, agents and employees, from removing or attempting to remove from the bed of Styx River at any and all points where the bed of said river crosses the land of Complainant any sunken or stranded logs, and for grounds of such dissolution submits:

1. Upon the sworn answer of the Respondent signed in this cause on the 9th day of Sept, 1936.
2. Affidavits in support of the Respondent's answer.

C. M. Larkin
Respondent.

Behestert Behe
Solicitors for Respondent.

STATE OF ALABAMA,
BALDWIN COUNTY.

Before me, the undersigned authority, in and for said County, in said State, personally appeared Roy Malone who is known to me and who having been by me first duly sworn, deposes and says, that he is a resident of Seminole in Baldwin County, Alabama; that he is 31 years of age; that he knows and has known for the past 20 years what is commonly known as Styx River, in Baldwin County, Alabama; that he knows the lands bordering on said river, known as the lands of L. G. Crosby; and knows about where the North line of Crosby's land crosses the said river; that said river ranges from ten to twenty-five feet in width and from two to fifteen or twenty feet in depth; that there are several places where the water is as shallow as two feet, however, this condition is the result of the logs in the river causing sand bars or shoals; that the said river is now and has been during the entire time that the affiant has known it generally used by the public; that the said stream is at all seasons of the year, even during the driest season, capable of floating logs and small boats at any and all places where it is adjacent to the lands of the said Crosby; that the said stream has been used for commercial purposes during the entire time that the affiant has known it; that just recently and at regular intervals over the past several years the affiant has fished up and down the said river from above where Crosby's North line crosses the river to where it empties into Perdido River; that he has used a boat with an outboard motor and that the water up and down the said stream is of sufficient depth at all places to enable him to navigate it with the boat with the outboard motor attached.

Sworn to and subscribed before me
this 29 day of Sept,
1936.

John Stace
Notary Public, Baldwin County, Ala.

STATE OF ALABAMA,)
BALDWIN COUNTY.)

Before me, the undersigned authority, in and for said County, in said State, personally appeared W. R. Mitchell, who is known to me and who having been by me first duly sworn, deposes and says, that he is a resident of Styxx River, in Baldwin County, Alabama; that he is 44 years of age; that he knows and has known for the past 45 years what is commonly known as Styxx River, in Baldwin County, Alabama; that he knows the lands bordering on said river, known as the lands of L. G. Crosby, and knows about where the North line of Crosby's land crosses the said river; that said river ranges from ten to twenty-five feet in width and from two to fifteen or twenty feet in depth; that there are several places where the water is as shallow as two feet, however, this condition is the result of the logs in the river causing sand bars or shoals; that the said river is now and has been during the entire time that the affiant has known it generally used by the public; that the said stream is at all seasons of the year, even during the driest season, capable of floating logs and small boats at any and all places where it is adjacent to the lands of the said Crosby; that the said stream has been used for commercial purposes during the entire time that the affiant has known it.

W. R. Mitchell

Sworn to and subscribed before me on this the 27 day of Sept., 1936.

W. R. Mitchell
Notary Public, Baldwin County,
Alabama.

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DEEDERS

I. G. CROSBY,

Complainant,

VS.

CHARLES F. LARTELLI,

Respondent.

IN THE CIRCUIT COURT OF
DADE COUNTY, ALABAMA,
IN EQUITY,
NO. 241.

Filed Aug. 28, 1936
R. S. Wells,
Reg.

RECORDED

2-277

NOTE OF TESTIMONY.

L. G. GOSBY,

Complainant,

VS.

CHARLES H. LARKIN,

Respondent.

IN THE CIRCUIT COURT OF

BALTIMORE COUNTY, ALABAMA,

IN EQUITY.

Filed January 21 1934

W. B. Smith
Clerk

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Filed January 21, 1937
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Mobile Ala

NOTICE OF MOTION TO DISSOLVE
INJUNCTION

L. G. CROSBY,
Complainant,

VS.

CHARLES M. LARKIN,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY,
NUMBER 241.

Filed Oct 9, 1936
R. S. Buck,
Register

130
Rec in office
10-9-36
J. H. W. Larkin

Served _____ 10 Day of Oct 1936
and on _____ 10 Day of Oct 1936
I served a Copy of the within _____
on Ben W. Purman _____

by service on _____

at _____
R. L. HOLCOMBE, Sr., Sheriff
By Mrs. Bernstein

7th. 62

RECORDED
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6-532

MOTION TO DISSOLVE INJUNCTION

L. G. CROSBY,

Complainant,

VS.

CHARLES M. LARSON,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY,
NUMBER 241.

Filed Oct. 9 1936

P. M. Weeks

Register

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

MARCH 19, 1937.

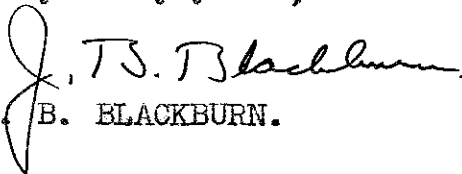
Judge F. W. Hare,
Monroeville, Alabama.

Dear Judge Hare:

I am handing you herewith a
copy of my Brief in the case of Crosby v.
Larkin, which has been submitted on Motion
to Dissolve the Injunction.

With best wishes and kindest
regards, I am

Very truly yours,


J. B. BLACKBURN.

JBB:OS
Encl.

L. G. CROSBY,
Complainant,
VS.
CHARLES M. LARKIN,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. _____.

BRIEF
of
J. B. BLACKBURN,
Solicitor for Complainant,

in
OPPOSITION

to

MOTION TO DISSOLVE INJUNCTION
IN THIS CAUSE.

TO THE HONORABLE F. W. HARE, JUDGE OF THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA:

The allegations of the Bill of Complaint and the Answer in this cause have already been ably discussed in the Brief filed in this cause by Messrs. Stevens, McCorvey, McLeod, Goode and Turner, so we will not burden the Court with a repetition of this discussion.

As we understand the case the first and primary thing to be determined by the Court is whether Styx River, at the place in question, is a navigable stream; not navigable for limited purposes at scattered periods but navigable in its fullest sense. Because, unless the stream in question is navigable in its fullest sense, the Respondent cannot possibly maintain his position. According to the pleadings in this case the burden of proving that Styx River, at the point in question, is navigable in its fullest sense, is upon the Respondent. (Rhodes v. Otis, 33 Ala. 578; Blackman v. Mauldin, 164 Ala. 337 (341-342)). Therefore, we will first consider the Respondent's case as made by his pleadings and proof as contained in his affidavits and endeavor to point out to the Court where he has absolutely failed to meet the burden of proof which rests upon him. In all of the Respondent's affidavits it is stated that Styx River has been used "for commercial purposes" or "by the public" which affidavits state nothing more than conclusions and

which set out few, if any, facts that would tend to lead the Court to the conclusion that the river is navigable in its fullest sense and meet the burden of proof that rests upon the Respondent. The clearest statement that is contained in the Respondent's affidavits is that the Respondent placed some logs in Styx River prior to the year 1924, which was some twelve years prior to the commencement of this suit, and that turpentine was unloaded along the banks of the stream and boats and barge were brought up from the mouth of said river and turpentine loaded on the boat and barge and brought down to Perdido River and on to Perdido Bay. The Court will, on a careful reading of these affidavits, be unable to ascertain what part of the river is referred to and certainly the affidavits do not state in clear terms, or even by implication, that the part of Styx River which is now in question was used for the purposes which are stated in Respondent's affidavits. Without saying more, these affidavits do not meet the burden that is placed on the Respondent of showing that the stream, at the place in question, is navigable in its fullest sense.

The Respondent attempts to justify his position in this case by claiming that the stream is navigable; that he placed logs in it and that he purchased logs and brands of other parties who had placed them in Styx River. If we were to admit for the sake of argument, and accept as entirely true, the statements made in some of the Respondent's affidavits, namely: That he placed logs in Styx River prior to 1924, these logs have remained on property of the Complainant and his predecessors in title

for more than twelve years prior to the commencement of this suit. Therefore, the Respondent has long ago forfeited any title that he may have had to the logs in question because if he had attempted to recover the logs in an action of detinue, his suit would have had to have been commenced within six years. (Section 8944 of the 1923 Code of Alabama). The Respondent, in alleging that he purchased logs and brands of other parties adroitly steered around stating specifically what logs or what brands he purchased and for ought that appears in his pleadings and proof, not one of the logs which he had raised from the bed of Styx River at the time the injunction in this cause was served upon him originally belonged to or carried the brand of the parties from whom he claims to have purchased these logs. When the Court carefully considers this question alone it must necessarily reach the conclusion that the Respondent is a mere trespasser who attempts to justify his position by this flimsy excuse.

In concluding this phase of the argument we respectfully submit that the Respondent has wholly failed to prove that Styx River, at the place in question, is navigable in its fullest sense and as a matter of fact, has failed to prove that it is navigable at the place in question for any purpose.

Before entering into a discussion of the Complainant's side of this controversy, we desire to call the Court's attention to the numerous affidavits which have been filed in this cause by the Complainant, practically all of which are made by men who have now reached the evening of life and who have known Styx River from the time that they were "knee breeches" boys. Practically

all of these men are known to the Court and when these affidavits are carefully read by the Court we confidently believe that the Court will necessarily reach the conclusion that the things stated in these affidavits are absolutely true.

It will appear from the Complainant's pleadings and proof that he purchased some seventeen thousand acres lying along and in the bed of Styx River more than ten years ago and that the Com-

plainant has been in active actual possession of the bed of Styx River for the purpose of floating timber. Whether the bed of Styx River is public or private property is immaterial. It is sufficient that the Complainant has been in active actual possession of the bed of Styx River for the purpose of floating timber. Whether the bed of Styx River is public or private property is immaterial. It is sufficient that the Complainant has been in active actual possession of the bed of Styx River for the purpose of floating timber.

In this connection we desire to call the Court's attention to the fact that the bed of Styx River was not considered at the time the territory was made. There are no fractional sections on either side of the stream, the land lines run across the stream wherever they touch it and the bed of Styx River is public property. (Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AB, AC, AD, AE, AF, AG, AH, AI, AJ, AK, AL, AM, AN, AO, AP, AQ, AR, AS, AT, AU, AV, AW, AX, AY, AZ, BA, BB, BC, BD, BE, BF, BG, BH, BI, BJ, BK, BL, BM, BN, BO, BP, BQ, BR, BS, BT, BU, BV, BW, BX, BY, BZ, CA, CB, CC, CD, CE, CF, CG, CH, CI, CJ, CK, CL, CM, CN, CO, CP, CQ, CR, CS, CT, CU, CV, CW, CX, CY, CZ, DA, DB, DC, DD, DE, DF, DG, DH, DI, DJ, DK, DL, DM, DN, DO, DP, DQ, DR, DS, DT, DU, DV, DW, DX, DY, DZ, EA, EB, EC, ED, EE, EF, EG, EH, EI, EJ, EK, EL, EM, EN, EO, EP, EQ, ER, ES, ET, EU, EV, EW, EX, EY, EZ, FA, FB, FC, FD, FE, FF, FG, FH, FI, FJ, FK, FL, FM, FN, FO, FP, FQ, FR, FS, FT, FU, FV, FW, FX, FY, FZ, GA, GB, GC, GD, GE, GF, GG, GH, GI, GJ, GK, GL, GM, GN, GO, GP, GQ, GR, GS, GT, GU, GV, GW, GX, GY, GZ, HA, HB, HC, HD, HE, HF, HG, HH, HI, HJ, HK, HL, HM, HN, HO, HP, HQ, HR, HS, HT, HU, HV, HW, HX, HY, HZ, IA, IB, IC, ID, IE, IF, IG, IH, II, IJ, IK, IL, IM, IN, IO, IP, IQ, IR, IS, IT, IU, IV, IW, IX, IY, IZ, JA, JB, JC, JD, JE, JF, JG, JH, JI, JJ, JK, JL, JM, JN, JO, JP, JQ, JR, JS, JT, JU, JV, JW, JX, JY, JZ, KA, KB, KC, KD, KE, KF, KG, KH, KI, KJ, KK, KL, KM, KN, KO, KP, KQ, KR, KS, KT, KU, KV, KW, KX, KY, KZ, LA, LB, LC, LD, LE, LF, LG, LH, LI, LJ, LK, LL, LM, LN, LO, LP, LQ, LR, LS, LT, LU, LV, LW, LX, LY, LZ, MA, MB, MC, MD, ME, MF, MG, MH, MI, MJ, MK, ML, MM, MN, MO, MP, MQ, MR, MS, MT, MU, MV, MW, MX, MY, MZ, NA, NB, NC, ND, NE, NF, NG, NH, NI, NJ, NK, NL, NM, NN, NO, NP, NQ, NR, NS, NT, NU, NV, NW, NX, NY, NZ, OA, OB, OC, OD, OE, OF, OG, OH, OI, OJ, OK, OL, OM, ON, OO, OP, OQ, OR, OS, OT, OU, OV, OW, OX, OY, OZ, PA, PB, PC, PD, PE, PF, PG, PH, PI, PJ, PK, PL, PM, PN, PO, PP, PQ, PR, PS, PT, PU, PV, PW, PX, PY, PZ, QA, QB, QC, QD, QE, QF, QG, QH, QI, QJ, QK, QL, QM, QN, QO, QP, QQ, QR, QS, QT, QU, QV, QW, QX, QY, QZ, RA, RB, RC, RD, RE, RF, RG, RH, RI, RJ, RK, RL, RM, RN, RO, RP, RQ, RR, RS, RT, RU, RV, RW, RX, RY, RZ, SA, SB, SC, SD, SE, SF, SG, SH, SI, SJ, SK, SL, SM, SN, SO, SP, SQ, SR, SS, ST, SU, SV, SW, SX, SY, SZ, TA, TB, TC, TD, TE, TF, TG, TH, TI, TJ, TK, TL, TM, TN, TO, TP, TQ, TR, TS, TT, TU, TV, TW, TX, TY, TZ, UA, UB, UC, UD, UE, UF, UG, UH, UI, UJ, UK, UL, UM, UN, UO, UP, UQ, UR, US, UT, UY, UZ, VA, VB, VC, VD, VE, VF, VG, VH, VI, VJ, VK, VL, VM, VN, VO, VP, VQ, VR, VS, VT, VU, VV, VW, VX, VY, VZ, WA, WB, WC, WD, WE, WF, WG, WH, WI, WJ, WK, WL, WM, WN, WO, WP, WQ, WR, WS, WT, WU, WV, WW, WX, WY, WZ, XA, XB, XC, XD, XE, XF, XG, XH, XI, XJ, XK, XL, XM, XN, XO, XP, XQ, XR, XS, XT, XU, XV, XW, XX, XY, XZ, YA, YB, YC, YD, YE, YF, YG, YH, YI, YJ, YK, YL, YM, YN, YO, YP, YQ, YR, YS, YT, YU, YV, YW, YX, YY, YZ, ZA, ZB, ZC, ZD, ZE, ZF, ZG, ZH, ZI, ZJ, ZK, ZL, ZM, ZN, ZO, ZP, ZQ, ZR, ZS, ZT, ZU, ZV, ZW, ZX, ZY, ZZ.)

purpose was immediately after the 1906 storm when it was used for the purpose of floating timber that had been blown down by this storm. The affidavits further show that in recent years the timber which has been cut along this river has either been removed by railroad or truck and that the public is not now interested in the use of Styx River even for the purpose of floating timber. The Court will notice on reading the affidavit of W. H. Foley, who owns lands on both sides and in the bed of Styx River that he recently sold some logs from the bed of this stream and that the party who purchased these logs recognized

him as the owner thereof and purchased them from him on a stump-
age basis of \$2.00 per thousand. In this same affidavit Mr.
Foley states that practically nine out of every ten logs which
were raised from the bed of Styx River on his property were cut
with axes. This conclusively proves that the logs were originally
cut and placed in the river more than thirty years ago because
since that time saws, and not axes, have been generally used for
cutting timber. The affidavit of Mr. E. Davidson shows that he and
Mr. H. L. Taylor own land on Styx River just north of the Crosby
property, that they too were recognized as the owners of the bed
of the stream and sold logs from it for \$2.00 per thousand.

The most that the Respondent can claim in this case
is that he and those from whom he claims to have purchased logs,
had the right to use the river for the purpose of floating this
timber. Clearly they did not have the right to use the adjoining
land either in the bed of the stream or along the banks thereof
as a place for depositing or storing logs. (Watkins, et al, v.
Dorris, 64 Pacific Reporter 840 (843)) (Henry, et al, v. Roberts,
50 Federal 902). The Court will recall that in the oral argument
of this case Respondent's Solicitor stated that his client was not
entitled to the logs in the lakes and ponds outside of the bed of
Styx River. As we understand the case Respondent's Solicitor
thereby admitted the weakness of his entire case because under
the law and the evidence the Respondent's rights as to the logs
in the bed of Styx River are no different from his rights as to
those which are now imbedded in the ponds and lagoons along the
river. I, J. E. Blackburn, do hereby certify that I have

mailed a copy of the foregoing Brief, postage prepaid, to Mr.
H. M. Hall, Solicitor for the Respondent, Bay Minette, Alabama,
on this the 19th day of March, 1937.

Dated this 19th day of March, 1937.

J. B. Blackburn
Solicitor for Complainant.

 L. G. Crosby, :
 Complainant, :
 : :
 -vs- :
 Charles M. Larkin, :
 Respondent. :

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

KNOW ALL MEN BY THESE PRESENTS, That we, L. G. Crosby, as
 principal, and L. G. Crosby and _____,
 as sureties, are held and firmly bound unto the Register of the
 Circuit Court, in Equity, for Baldwin County, Alabama, and his
 successors in office, in the sum of \$ 250.00, for the
 payment of which to said Register or his successors we bind our-
 selves, our executors and administrators, jointly and severally.

Sealed with our seals and dated this _____ day of July,
 1936.

Whereas, the said L. G. Crosby has filed his bill of
 complaint in the said Circuit Court, in Equity, and has obtained
 thereon an order for the issuance of an injunction from the Hon.
 J. Blocker Thornton, Judge of the Circuit Court for the Thirteenth
 Judicial Circuit of Alabama, returnable to the Circuit Court of
 Baldwin County, Alabama, to restrain and enjoin one Charles M.
 Larkin, his agents, servants, and employees, from removing or at-
 tempting to remove all sunken, stranded, or lost logs from the
 bed of Styx River where the same crosses the lands of the complain-
 ant in Baldwin County, Alabama:

Now, therefore, the condition of the above obligation is
 such that, if the said L. G. Crosby, his heirs, executors, and
 administrators, or any of them, shall pay or cause to be paid all
 damages which any person may sustain by the suing out of said in-
 junction if the same is dissolved by the Circuit Court of Baldwin
 County, Alabama, in Equity, on the bill filed by the said L. G.
 Crosby as aforesaid, then the above obligation to be void, other-
 wise to remain in full force and effect.

Witness our hands and seals on the day and year first
 above written.

Taken and approved this
6 day of July, 1936.

Robert Salinas
 Register.

L. G. Crosby (SEAL)
L. G. Crosby (SEAL)
 _____ (SEAL)

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 Charles M Larkin.

of Baldwin. 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

L G Crosby.

against said Charles M Larkin.

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, Robert S. Duck, Register of said Circuit Court, this 6th day of July 1936

Robert Duck Register

N. B.—Any party defendant is entitled to a copy of the bill upon application to the 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 CHARLES M. LARKIN
Millview, Florida

of BALDWIN 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

L. G. CROSBY

against said CHARLES M. LARKIN

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, Robert S. Duck, Register of said Circuit Court, this 24th day of JULY 1936

Robert S. Duck Register

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

STATE OF ALABAMA,)

BALDWIN COUNTY.)

Before me, the undersigned authority, in and for said County, in said State, personally appeared D. Givens, who is known to me and who having been by me first duly sworn, deposes and says, that he is a resident of Seminole, in Baldwin County, Alabama; that he is 46 years of age; that he knows and has known for the past 35 years what is commonly known as Styx River, in Baldwin County, Alabama; that he knows the lands bordering on said river, known as the lands of L. G. Crosby, and knows about where the North line of Crosby's land crosses the said river; that said river ranges from ten to twenty-five feet in width and from two to fifteen or twenty feet in depth; that there are several places where the water is as shallow as two feet, however, this condition is the result of the logs in the river causing sand bars or shoals; that the said river is now and has been during the entire time that the affiant has known it generally used by the public; that the said stream is at all seasons of the year, even during the driest season, capable of floating logs and small boats at any and all places where it is adjacent to the lands of the said Crosby; that the said stream has been used for commercial purposes during the entire time that the affiant has known it; that for many years, from 1917 to 1924, the affiant worked with C. M. Larkin in the logging business, and knows of his own personal knowledge that the said C. M. Larkin placed thousands of logs in Styx River to be floated to his mill, at Millview, Florida; that many of the said logs, or what are commonly known as dead heads or "sinkers", went to the bottom of the stream and still remain there; that during the time the affiant worked for Larkin and many years prior thereto the said Larkin had been placing logs in the said river to be floated down to his mill; that the said river was at that time and still is capable of floating logs, and has been used during the entire time that the affiant has known said stream by the general public for pleasure and commercial purposes.

D. Givens

Sworn to and subscribed before me
this 29 day of Sept,
1936.



Notary Public, Baldwin County, Ala.

L. G. Crosby,	:	
Complainant,	:	IN THE CIRCUIT COURT OF
	:	
vs.	:	BALDWIN COUNTY, ALABAMA.
	:	
Charles M. Larkin,	:	
Respondent.	:	No. 241. IN EQUITY.
	:	

Personally appeared before me, the undersigned authority in and for Mobile County, Alabama, T. L. Baggett, who, being duly sworn, deposes and says:

My name is T. L. Baggett. I am 65 years of age and reside near Gateswood, in Baldwin County, Alabama. I have known the property in Baldwin County claimed by L. G. Crosby for approximately 45 years. I knew the property many years before Mr. Crosby bought it. He bought it about 11 years ago and since that time he has been in the continuous possession thereof, claiming to own the same, and also claiming to own and having possession of the stranded and sunken logs in the bed of the Styx River which traverses his property. I know the Styx River from Mr. Crosby's south line to his north line and above. This river is not of sufficient depth to allow the floating of logs down the same except when there is a freshet and high water from heavy rains. In ordinary low water you can wade across the river at many places without getting in water over knee deep. In some places you can even cross it without the water coming over your shoe tops. You could not paddle a boat from Crosby's south line to his north line in ordinary water without pulling the boat over logs, stumps, brush and sand bars. There has not been, since I have known the river, any attempt on the part of the people to use it as a navigable stream. Its use has been confined solely during that period of time to the floating of logs down the stream in high water and this use has been limited to those persons who own land near the river who desired to float their logs. They would accomplish this by cutting the logs and putting them on the bank of the river and awaiting a rainy season and a freshet in order to float them to market. Many of the

L. G. Crosby,	:	
Complainant,	:	
	:	IN THE CIRCUIT COURT OF
vs.	:	
	:	BALDWIN COUNTY, ALABAMA.
Charles M. Larkin,	:	
Respondent.	:	
	:	No. 241. IN EQUITY.

Personally appeared before me, the undersigned authority in and for Mobile County, Alabama, James G. Allen, who, being duly sworn, deposes and says:

My name is James G. Allen and I reside at Gateswood, Baldwin County, Alabama, and have lived there 66 years, having been there all of my life. I am familiar with the property of L. G. Crosby in Baldwin County, Alabama, which he bought about 1925, known as the Brock Tract. Since Mr. Crosby bought this property he has been in possession of it and has claimed to own it. It has always been considered in this section of the country that the owner of the land through which Styx River passed was the owner of the dead-head and sunken and stranded logs in the bottom of the river or along its banks. So far as I can remember there have not been any logs cut and put into Styx River to float to market in the last 28 years, the last cutting of this nature having been done in 1907 and 1908, and these logs being cut from timber which was blown down in the 1906 storm. According to tradition and custom in this country all logs lying in the bottom of the Styx River or along its banks near the river have been regarded as lost and stranded logs and have been treated as the property of the owner of the land upon which they were located. Within the last 30 years I have not known or heard of C. M. Larkin or the Perdido Lumber Company or the Brent Lumber Company doing any logging on the Styx River nor going into the Styx River for the purpose of removing any sunken or stranded logs. I know that Mr. Foley and others who owned a part of the bed of Styx River northwest of the Crosby property recently sold the logs in their part of the river to a man named Faircloth, and that these logs were bought by Fair-

L. G. Crosby, :
Complainant, :
 :
-vs- :
 :
Charles M. Larkin, :
Respondent. :

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.
IN EQUITY.
NO. 241.

Before me, the undersigned authority in and for Mobile County, Alabama, personally appeared Henry Allen, who being duly sworn deposes and says:

I am sixty-five years of age and a resident of Baldwin County, Alabama, where I have resided all of my life. I now live about one mile from Styx River in Baldwin County, Alabama, and have resided in this location for around thirty years. I am familiar with the logging operations that were formerly conducted on Styx River and was for a number of years engaged in this business. The last logs, according to my knowledge, which were put in this river were the logs that were cut after the 1906 storm. It is a recognized custom along Styx River that the sunken or stranded logs in the bed of Styx River and along its banks are considered as the property of the landowners. I have known of parties purchasing logs imbedded in the bed of Styx River from Mr. W. H. Foley and from Mr. Wilcox, and I was informed that they purchased these logs on a stumpage basis. For the last twenty-eight or thirty years practically all of the logs that were removed from the Styx River territory were removed by carts or trucks and hauled to a railroad or milled by small mills located in the community where the timber was cut. I know where Mr. Crosby's north line crosses Styx River and at this point the river is not over eight or ten inches deep and it would be impossible for one to travel down Styx River from Mr. Crosby's north line to his south line in a small skiff without dragging the boat over sandbars, stumps, logs, and other obstructions. In all of the time that I have known this river it has not been used for commercial purposes except for the occasional rafting of logs and this was only done during high water and at that time

L. G. Crosby,	:	
Complainant,	:	IN THE CIRCUIT COURT OF
vs.	:	BALDWIN COUNTY, ALABAMA.
Charles M. Larkin,	:	
Respondent.	:	No. 241. IN EQUITY.

Personally appeared before me, the undersigned authority in and for Mobile County, Alabama, A. L. Waters, who, being duly sworn, deposes and says:

My name is A. L. Waters and I reside at Elsanor, Baldwin County, Alabama, approximately six miles from the Styx River. I am familiar with the lands in Baldwin County, Alabama, claimed by L. G. Crosby and known as the Brock Tract, and have known these lands for approximately 60 years. I am 82 years of age and have resided in the neighborhood of Styx River practically all of my life. Styx River is not a navigable stream except for floating logs down stream on freshets caused by rains in the Spring of the year. No logs, to my knowledge, have ever been floated down Styx River except on high water. The custom throughout the years among those would would attempt to use Styx River for logging purposes would be to hold their logs to the bank of the river and await the coming of the freshets to float them to the market and this would only be done by a few people who owned land near the river. A great majority of the logs which have been taken out of the territory, through which Styx River passes, were, in fact, logged by carts and wagons to railroads and hauled out in that manner. No logs have been cut and put into Styx River for floating purposes within the last thirty years. The bed of Styx River is wide in places and narrow in places but the depth of the river is not sufficient to float in ordinary water any boat or water craft except a canoe or a skiff boat and even in ordinary water if one would attempt to navigate the river in a skiff he would be compelled to push over sand bars and sunken logs in order to get through. I have been in the logging business all of my life and know the customs of logging

men in the community around Styx River. It is customary in this section when any person wants the logs which are imbedded in the bottom or on the banks of this stream that he make a trade with the person who owns the land upon which the stream is situated and pay him a stumpage for removing said logs, and I have never known of any logs removed from Styx River under any other circumstances. I have never known this river to be used for any commercial purposes except the floating of logs in high water. From my knowledge of the logs in Styx River, it is my opinion that all of the logs that are now imbedded therein have been so imbedded for thirty years or longer. To my knowledge, Mr. Crosby has been in possession of and claiming to own these sunken logs since he bought the so-called Brock Tract. In my opinion, based upon my experience and my knowledge of the freshets occurring on this river, the removal of the sunken logs from the bed of the river and the banks of the river where they are partly sunken and partly out of the water would injure the banks and cause the bed of the river to widen out and do serious injury to the land along the banks of the river.

I never knew of any claim to the sunken logs in Styx River on the part of C. M. Larkin until within the last one or two years. My knowledge of this claim came about by hearing it reported that Larkin was attempting, through Mr. Pendelton, to remove some sunken logs from Styx River. Some of the logs now imbedded in the bottom of Styx River were cut with an axe, and I am confident that no logs have been cut with an axe, for commercial purposes, in this territory within the last forty or fifty years. The freshets which occur on this river in the absence of continuing rain quickly disappear and the river, even in the wet weather season, is never navigable for the purpose of floating logs for any length of time, it being necessary in logging operations where one was depending upon the river to rush the logs down stream before the water would fall. From my knowledge of Styx River I know that the section lines cross

L. G. Crosby, :
Complainant, :
 :
-vs- :
 :
Charles M. Larkin, :
Respondent. :

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.
IN EQUITY.
NO. 241.

Before me, the undersigned authority in and for Mobile County in said state, personally appeared A. H. Waters, who being duly sworn deposes and says:

My name is A. H. Waters. I am fifty-two years of age and reside at Seminole, Baldwin County, Alabama. I am familiar with the lands owned by L. G. Crosby in Baldwin County, Alabama, and commonly known as the Brock Tract, consisting of approximately 17,000 acres and lying west of the Perdido River and being traversed by the Styx River. I have known this tract of land for approximately 18 years. Mr. Crosby bought this land in the fall of 1925. At that time I was employed by Mr. E. Y. Morgan and had been looking after his cattle which grazed over these lands for a number of years. About seven years ago I was employed by Mr. L. G. Crosby and took charge of these lands and have been continuously so employed from then until now. It was a part of my duties to keep off trespassers and protect these lands from trespassers and fire. I have known the Styx River practically all of my life. I know where the north line and the south line of the Crosby property cross the Styx River. The south line of the Crosby property is about one mile south of the Old Spanish Trail known now as the new bridge leading from Robertsdale to Pensacola on the paved highway. I know the separate and several section lines of the Crosby property where these lines cross the Styx River. All of said sections which cross Styx River are regular sections and the lines extend across Styx River wherever they strike this river. In other words, the bed of the Styx River is included in the survey of these sections and is claimed by Mr. Crosby. Since I have been employed by Mr. Crosby it has been a part of my duties to keep trespassers off

of his property, including such trespassers as might attempt to go onto his property or into his property by passing up the Styx River. During all of this time Mr. Crosby has claimed to own and has been in possession of all saw logs imbedded in the banks and in the bottom and along the sides of Styx River and in the lakes, ponds, and lagoons connected with or located near said river, and I have from time to time been instructed by him not to permit any person to interfere with or remove said logs. During the time of my employment no one has attempted to remove any of these sunken or imbedded logs except Mr. Louis Pendelton. On one occasion about three years ago Mr. Pendelton went into Styx River and began to remove some of the sunken logs. I found out that he was attempting to remove these logs and notified him to quit. I also notified Mr. Crosby. No further effort was made by any person to remove any of these logs from the bed of Styx River or from any other place on the so-called Brock Tract until sometime in July 1936, when Mr. Pendelton came back in the Styx River at a point on Styx River which is about halfway between Crosby's north and south line and again attempted to raise logs from the bed of the Styx River and did raise twenty-one. At the time he raised these logs he handed me a letter, telling me at the time that this letter gave him authority to remove these logs. I found that the letter was a letter written by Charles M. Larkin, the respondent in this cause, to Mr. Pendelton advising him that Mr. Ossie Givens had said it was all right for Mr. Pendelton to remove sunken logs from Styx River. I told Pendelton that he could not get the logs without a written order from Mr. L. G. Crosby. When I found that he had raised the twenty-one logs I stopped him and made him tie these logs up to the bank. About a month after this Pendelton went up the river between sundown and dark and I decided that he was going up to get these logs. I again notified Mr. Crosby and immediately thereafter the injunction in this suit was issued at Mr. Crosby's request. Mr. Pendelton at-

tempted to remove the logs and was stopped by the sheriff and the logs were tied up to the bank and have not yet been removed.

I am familiar with logging operations in the section of Baldwin County near Styx River and am positive that no logs have been cut and put into Styx River for floating to market within the last eighteen years. Styx River at the point where Pendelton raised and attempted to raise these logs is not a navigable stream. The only way logs within my knowledge have ever been floated down this river has been during a freshet when the river would be swollen by headwater due to the rainy season, and such operations have always been confined to the spring of the year when freshets occur. In other words, the stream in ordinary conditions is not navigable at any point which is more than a mile and a half north of the highway to which I have referred. Within my knowledge no form of commerce has been carried on down this river. It is not navigable for any considerable distance even for an ordinary skiff unless one stops and pulls the skiff over sandbars and logs, brush, and stumps which are in the river bed. At this time practically all of the marketable timber on the lands through which Styx River runs has been cut and removed and the general public is not interested in the use of said river for any purposes of navigation, and use of it for purposes of navigation for floating timber was never had except by a few individuals who own lands sufficiently near the river to make it profitable for them to float their logs down the river in times of high water. During the last seven years I have resided on the banks of this river and know that there has been no traffic whatever up or down said river for commercial purposes, the river being used only by an occasional fisherman.

I have read the statements of fact contained in the bill of complaint filed in this case and to the best of my knowledge, information and belief said facts are true. I know of my own

L. G. Crosby, :
Complainant, :
-vs- :
Charles M. Larkin, :
Respondent. :

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.
IN EQUITY.
NO. 241.

Before me, the undersigned authority in and for Mobile County, Alabama, personally appeared O. Waters, who being duly sworn deposes and says:

My name is O. Waters. I am eighty years of age and reside at Gateswood, Baldwin County, Alabama, and have resided there for the last forty years. I know the property now claimed by L. G. Crosby and originally known as the Brock Tract. Mr. Crosby bought this property about eleven years ago and has been in possession thereof claiming to own the same ever since. I know that he claims to own and has been in possession of the sunken and stranded logs in the bed of Styx River. I live about four miles from Styx River. It is the custom in that section of the country for anyone who desires to remove sunken logs from the bed of Styx River to pay the owner of the land a stumpage price for said logs. I recall that last summer a man named Faircloth attempted to remove logs from the bank of the Styx River where it runs over the lands of Mr. Wilcox. Mr. Wilcox stopped him from removing these logs and Faircloth bought the logs and paid him for them on a stumpage basis. I have heard that Mr. Foley, who also owns land on Styx River, made a similar trade with Faircloth. There has not been any logging done, that is, any logs cut and put into Styx River, to my knowledge, in the last thirty years. Neither the Perdido Lumber Company nor C. M. Larkin has operated on Styx River within that time. The last logs that were cut and put into Styx River were the logs which were blown down in the storm of 1906.

I am thoroughly familiar with the bed of Styx River. It has never been used for any commercial purpose except to float logs down it in high water. Customarily such logs as

each side of the river own the bed of the river.

O Wates

Sworn to and subscribed before me
this 9th day of December, 1936.

Annie G. Pugh.
Notary Public, Mobile County, Alabama.

L. G. CROSBY,
Complainant,
VS.
CHARLES M. LARKIN,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY,
NUMBER 241.

Comes the Respondent, and for answer to the Complainant's Bill of Complaint, and to each count thereof, separately and severally, says:

FIRST:

For answer to Paragraph First: The Respondent admits that the Complainant is over the age of twenty-one years and a resident of the City of Pensacola, in the State of Florida; that the Respondent is over twenty-one years of age and a resident of Escambia County, Florida, his Post Office Address being Pensacola, Florida.

SECOND:

For answer to Paragraph Second: The Respondent says that he does not know of his own personal knowledge whether or not the Complainant acquired the fee simple title to the lands lying in Baldwin County through which runs the Perdido River and Styx River, but is advised that he owns something like seventeen thousand acres, and that the Complainant is in the possession of the said lands;

That there are along the banks, in the water and in the bottom of said rivers, logs, and in the lakes, ponds and lagoons contiguous thereto, that have been there for a number of years; that said logs are branded, stamped or marked in the ends thereof;

That he knew nothing about the Complainant claiming to own said logs, and, in fact, knows nothing about the Complainant claiming to own any logs at this time, and, in fact, the Complainant has never made any claim to the said logs;

That he knows about where the North line of Section 30, Township 5 South, Range 6 East is, which is near the mouth of Bell

Fountain Creek, where it runs into Styx River.

THIRD:

For answer to Paragraph Third: The Respondent denies the allegation that all of the logs described in the Bill of Complaint were lost and abandoned by the true owner more than ten years ago, and that the Complainant claimed as the owner of the property in the bed of said Styx River or that the said logs were the property of the Complainant.

FOURTH:

For answer to Paragraph Fourth: The Respondent admits that sometime during July, 1936, the Complainant, through one of his employees, went into the Styx River for the purpose of removing some logs, commonly known as "sinkers" and that the Complainant, by threats, drove his employees away; that later the Respondent, in person, advised the Complainant that he was going in and move the logs-that were the property of the Respondent.

FIFTH:

For answer to Paragraph Fifth: The Respondent says that he is the owner of the logs in Styx River, which he has attempted to move, and further intends to move, and remove them to the State of Florida; that he has no property in the State of Alabama, but does own considerable property in Escambia County, Florida.

SIXTH:

For answer to Paragraph Sixth: The Respondent admits that the logs have been embedded in the bottom of said stream for many years, but from common knowledge, having operated up and down said streams almost continuously since 1908, he is in position to state as a matter of fact that the removing of said logs will not tend in any manner to cause the banks of the stream to cave or wash or to cause irreparable injury.

SEVENTH:

That the Respondent denies each and every allegation contained in the said Bill of Complaint not herein specifically admitted, and demands strict proof of the same.

Brent Lumber Company from which the Perdido Lumber Company purchased the mill, equipment, and all timber as hereinabove set out;

That some three years ago, the Complainant complained against the Respondent removing logs from said stream, but the Respondent continued over the protest of the Complainant, and the Complainant ceased his complaint with full knowledge that the Respondent was continuing to raise and remove the said logs; that the Complainant has remained quiet until sometime during this year, when he again made complaint against the raising and removing of said logs.

That the said Styx River is at this time and has been for more than twenty-five years up to the point where it is alleged that the Respondent was removing logs, and many miles above, navigable and capable of being used for commercial purposes at all seasons of the year, and especially during the rainy seasons; that the said river is now and has been during the time affiant has known it, been used by the public in general for commercial purposes;

That the Respondent is now and has been at all times the owner of the said logs, which he was removing from the bed of said stream, as alleged by the Complainant; that he has, at all times, claimed to own the same and exercise his rights of ownership by regularly sending men there to raise and remove the said logs to his mill;

That all property in the said logs formerly belonging to the Perdido Lumber Company, Brent Lumber Company and Southern States Lumber Company is now vested in the Respondent.

Charles M. Garrison
Respondent.

Beckwith & Beckwith
Solicitors for Respondent.

STATE OF FLORIDA,)
COUNTY OF ESCAMBIA.)

Before me, the undersigned authority, in and for said County, in said State, personally appeared CHARLES M. LARKIN, who is known to me and who having been by me first duly sworn, deposes and says that he has read over and understands the answers in the foregoing paper, in the matter of L. G. Crosby, Complainant, vs. Charles M. Larkin, Respondent; that the facts therein alleged are true.

Charles M. Larkin

Sworn to and subscribed before me this 10th day of September, 1936.

W. C. Beebe
Notary Public, Escambia County,
Florida.

STATE OF ALABAMA,

BALDWIN COUNTY.

Before me, the undersigned authority, in and for said County, in said State, personally appeared E. S. Givens, who is known to me and who having been by me first duly sworn, deposes and says, that he is a resident of Seminole, Ala. Baldwin County, Alabama; that he is 42 years of age; that he knows and has known for the past 42 years what is commonly known as Styr River, in Baldwin County, Alabama; that he knows the lands bordering on said river, known as the lands of L. G. Crosby, and knows about there the North line of Crosby's land crosses the said river; that said river ranges from ten to twenty-five feet in width and from two to fifteen or twenty feet in depth; that there are several places where the water is as shallow as two feet, however, this condition is the result of the logs in the river causing sand bars or shoals; that the said river is now and has been during the entire time that the affiant has known it generally used by the public; that the said stream is at all seasons of the year, even during the driest season, capable of floating logs and small boats at any and all places where it is adjacent to the lands of the said Crosby; that the said stream has been used for commercial purposes during the entire time that the affiant has known it; that the affiant now and has been for a number of years in the turpentine business along the said river; that for a number of years, until just recently, the turpentine was unloaded along the banks of the stream and boat and barge were brought up from the mouth of the said river and turpentine loaded on the boat and barge and brought down to Perdido River and on to Perdido Bay.

E. S. Givens

Sworn to and subscribed before me
this 29 day of Sept,
1936.

W. W. [Signature]
Notary Public, Baldwin County, Ala.

The State of Alabama, } Circuit Court of Baldwin County, In Equity
Baldwin County

To Any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon **Charles M Larkin.**

of **Baldwin.** 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

I G Crosby.

against said **Charles M Larkin.**

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, Robert S. Duck, Register of said Circuit Court, this **6th** day

of **July** 193**6**



Register

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

L. G. CROSBY, COMPLAINANT,)

VS.)

CHARLES M. LARKIN, RESPONDENT.)

IN THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA. IN EQUITY. CASE NO. 241.

This cause coming on to be heard is submitted for decree on respondent's motion to dissolve the temporary injunction granted by the court in the foregoing entitled cause on, to-wit, July 6th., 1936, and upon consideration of said motion and affidavits offered in support and against said motion, the court is of the opinion that said motion should be over-ruled and denied.

It is therefore ordered, adjudged and decreed by the court that said motion to dissolve said temporary injunction be, and the same is, hereby over-ruled and denied.

This the 19th day of May, 1937.

F. W. Hare

Judge Circuit Court, Baldwin
County, Alabama.

Copies mailed

RECORDED
Duck
7-168-

L. G. CROSBY

VS.

CHARLES M. LARKIN

DECREE OVER-RULING MOTION TO
DISSOLVE TEMPORARY INJUNCTION.

Filed May 25, 1937.

R. S. Duck
Register.

Book
RECORDED
6-26-1

Serve on _____

Circuit Court of Baldwin County
IN EQUITY

No. 241

SUMMONS

J. H. Walker

D. M. Parker

VS.

Solicitor for Complainant

John McLean Moberg
Green

Recorded in Vol. _____

Page _____

THE STATE OF ALABAMA,
BALDWIN COUNTY

Received in office this _____

day of _____, 193_____

SHERIFF

Executed this _____ day of _____

193_____

by leaving a copy of the within Summons with

Defendant

Sheriff

By _____ Deputy Sheriff

Not found in my county after
diligent search and inquiry.
7/28/36

M. H. WILKINS, Sheriff.

BY *Thomas Bayless* D.S.

RECORDED

6-522

...the undersigned authority, in and for said
 County, in said State, personally appeared E. J. Hoover
 who is known to me and the having sworn by the first duly sworn
 deponent and have, that he is a resident of Bellevue
 within County, Kansas; that he is 4 1/2 years of age; that he
 knows and has known for the past 4 1/2 years what is commonly known
 as Spring River, in Bellevue County, Kansas; that he knows the
 location of said river; known as the lands of J. A. Hoover, and
 how about where the town line of Hoover's land crosses the
 river; that said river crosses 700 feet to twenty-five feet
 in width and is fifteen or twenty feet in depth; that there are
 several places where the water is as shallow as two feet; however,
 this condition is the result of the logs in the river causing some
 mud or silt; that the said river is now and has been during the
 entire time that the title has been in Hoover's name by the
 said Hoover; that the said river is in all seasons of the year, even
 during the driest season, capable of floating logs and small rafts
 as long as all places where it is adjacent to the banks of the
 said river; that the said river has been used for commercial pur-
 poses during the entire time that the title has been in Hoover's
 name and has been for a number of years in the transportation
 business along the said river; that for a number of years, until just
 recently, the transportation was conducted along the banks of the stream
 and boat and barge were brought up from the mouth of the said river
 and transportation loaded on the boat and barge and brought down to Bel-
levue River and on to Fort Scott.

Registered

Dec 9, 1936

[Signature]
[Signature]

Sworn to and subscribed before me
 this 9th day of Dec
 1936.
[Signature]
 Notary Public, Bellevue County, Kas.

ANSWER

L. G. CROSBY,

Complainant,

VS.

CHARLES M. LARKIN,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

IN EQUITY,

NUMBER 241.

L. G. Crosby,
Complainant,
-vs-
Charles M. Larkin,
Respondent.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.
IN EQUITY.
NO. 241.

Before me, the undersigned authority in and for Escambia County, Florida, personally appeared L. G. Crosby, who being duly sworn deposes and says:

My name is L. G. Crosby. I am the complainant in the above captioned cause. I have read the bill of complaint in this cause and reaffirm the truth of the facts therein stated. I bought the property referred to in this bill of complaint which consists of something over 17,000 acres of land on January 27, 1925, from Union Land & Timber Company, my purchase being evidenced by a deed of that date recorded in Book 36 N. S. pages 69-70 of the public records in the probate office of Baldwin County, Alabama, a true copy of said deed being hereto attached and marked Exhibit A and by reference made a part of this affidavit. Immediately upon purchasing the property I went into possession of the same. Said property is traversed by the Styx River. The bed of said river and its meanderings extends for many miles through said property. At the time I bought the property there were imbedded in the bottom and along the sides of Styx River and in the lakes, ponds, and lagoons contiguous and near thereto a great many saw logs. These logs had been there for many years prior to the time I purchased this property. Since I purchased the same I have not only claimed the land itself but have claimed as well the said sunken and stranded logs above referred to. I have examined the maps and field notes of the sections of land included in the aforesaid deed which are traversed by the Styx River. In the original survey of said lands the Styx River was not meandered and the section lines touching said river ran directly across the river wherever they intersected the same and the area in the river bed and the ponds and lagoons referred to

was not deducted from the acreage contained in said sections and was sold by the Government to the original patentees of said property and has been passed from said patentees by mesne conveyances to me. I therefore own and am in possession of the bed of the stream known as Styx River from the point where my south line crosses the same to where my north line crosses the same. I have had occasion to examine some of the sunken and stranded logs in the said Styx River and know of my personal knowledge that the logs which are there at this time were there when I bought the property nearly twelve years ago and according to my judgment and general knowledge of the situation said logs have been so imbedded and stranded for more than twenty years.

As soon as I bought the property I gave instructions to my employees who looked after the same to prevent any person or persons from removing or attempting to remove any of said logs from the bed of said stream or ponds without my consent. My claim and ownership of these logs was not questioned until approximately three years ago when one C. M. Larkin, acting through Louis Pendelton, undertook to remove some of these logs from Styx River. When I was notified by my agent, Mr. A. H. Waters, of this attempt to remove logs and informed that Mr. Pendelton was acting as the agent or employee of C. M. Larkin, the respondent in this suit, I went immediately to see Larkin and protested against his removal of any of said logs. I told him (Larkin) that I understood that Pendelton had gotten logs out of Styx River and had delivered them to him. I told Larkin that he had no right to the logs in Styx River and objected to his continuing to take any logs therefrom. At that time he proposed to me that since Pendelton had already pulled up between sixty and seventy logs at considerable expense to the said Larkin if I would permit him to remove said logs he would pay me the stumpage value thereof and he would not again enter the Styx River for the purpose of removing any more of said logs. He never paid me for these logs but did not at-

deep as five feet in the sand. I have been in possession of all of such logs in Styx River as well as such stranded, sunken and lost logs as are in the ponds, lakes and lagoons near the Styx River since I bought the land upon which said logs are situated and my possession thereof has remained undisturbed.

H. Crosby

Sworn to and subscribed before me, *Sara Sanchez*,
a Notary Public in and for Escambia County, Florida, as witness
my hand and official seal this 16th day of December, 1936.

Sara Sanchez
Notary Public, Escambia County, Fla.
My Commission expires 12/23/39

EXHIBIT A.

State of Alabama,

Baldwin County.

KNOW ALL MEN BY THESE PRESENTS, That Union Land & Timber Company, a corporation organized, existing and doing business under the laws of the State of South Dakota and duly authorized and qualified to do business in the State of Alabama, hereinafter called the grantor, for and in consideration of the sum of \$100.00 in cash and other valuable consideration in hand paid it by L. G. Crosby, hereinafter called the grantee, the receipt whereof is hereby acknowledged, and with which the said grantor is content and satisfied, it, the said grantor, has granted, bargained, sold and conveyed, and by these presents does hereby grant, bargain, sell and convey unto the said grantee all that real property in the County of Baldwin and State of Alabama described as follows, to-wit:-

In Township five South, Range Six East: All of Sections nineteen, twenty and twenty-one; the west half of the south-east quarter and west half of section twenty-two; the southeast quarter of section twenty-three; the southeast quarter, the southeast quarter of the southwest quarter and the west half of the southwest quarter of section twenty-four; all of sections twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four and thirty-five; all of fractional section thirty-six. In township six south, range six east: all of fractional sections one and two; all of sections three and four; the south half of the north half, the northwest quarter of southeast quarter and north half of southwest quarter of section five; all of sections six, seven, eight, nine and ten; all of fractional section eleven; the north half and southwest quarter of section fifteen; all of section sixteen; and the north half, the north half of the southeast quarter, the south half of the southwest quarter of section seventeen.

TOGETHER WITH ALL AND SINGULAR the rights, members, privileges, easements, appurtenances, reversions and remainders thereunto belonging or in any wise appertaining.

To have and to hold the same unto the said grantee, his heirs and assigns, forever.

And except only as to that certain right-of-way of the railroad now or formerly known as the P. M. & N. O. over and across a part of said lands, the said grantor does hereby covenant with the said grantee that it is seized in fee simple of said property and has good and lawful right to sell and convey the same, that said property is free from all encumbrances, and that it will warrant and forever defend the title to said property unto the said grantee, his heirs

and assigns, against the lawful claim of all persons whomsoever.

IN WITNESS WHEREOF, the said grantor has caused these presents to be executed by causing E. C. Hughes, its President, to sign its name hereto, and by causing A. E. Curry, its Secretary, to attest these presents and affix hereto its corporate seal, this the 27th day of January, 1925.

UNION LAND & TIMBER COMPANY (SEAL)

By (Signed) E. C. Hughes
President.

ATTEST:-

(Signed) A. E. Curry (CORPORATE SEAL)
Secretary.

State of Alabama,
Mobile County.

I, Annie G. Goode, a Notary Public in and for said State and County, hereby certify that E. C. Hughes and A. E. Curry, whose names as President and Secretary, respectively, of Union Land & Timber Company, a corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day, that, being informed of the contents of the said instrument, they, as such officers and with full authority, executed the same for and as the act of the said corporation.

Given under my hand this the 27th day of January, 1925.

(Signed) Annie G. Goode
Notary Public, Mobile County, Alabama.

(NOTARIAL SEAL)

STATE OF ALABAMA,

BALDWIN COUNTY.

Before me, the undersigned authority, in and for said County, in said State, personally appeared D. Gillis who is known to me and who having been by me first duly sworn, deposes and says, that he is a resident of Semmore in Baldwin County, Alabama; that he is 67 years of age; that he knows and has known for the past 19 years what is commonly known as Styr River, in Baldwin County, Alabama; that he knows the lands bordering on said river, known as the lands of L. G. Crosby, and knows about where the North line of Crosby's land crosses the said river; that said river ranges from ten to twenty-five feet in width and from two to fifteen or twenty feet in depth; that there are several places where the water is as shallow as two feet, however, this condition is the result of the logs in the river causing sand bars or shoals; that the said river is now and has been during the entire time that the affiant has known it generally used by the public; that the said stream is at all seasons of the year, even during the driest season, capable of floating logs and small boats at any and all places where it is adjacent to the lands of the said Crosby; that the said stream has been used for commercial purposes during the entire time that the affiant has known it; that the affiant now and has been for a number of years in the turpentine business along the said river; that for a number of years, until just recently, the turpentine was unloaded along the banks of the stream and boat and barge were brought up from the mouth of the said river and turpentine loaded on the boat and barge and brought down to Perdido River and on to Perdido Bay.

D. Gillis

Sworn to and subscribed before me
this 29 day of Sept.
1936.

Shurlee
Notary Public, Baldwin County, Ala.

STATE OF ALABAMA,)

BALDWIN COUNTY.)

Before me, the undersigned authority, in and for said County, in said State, personally appeared Sesley Mitchell who is known to me and who having been by me first duly sworn, deposes and says, that he is a resident of Seminole, in Baldwin County, Alabama; that he is 70 years of age; that he knows and has known for the past 14 years what is commonly known as Styx River, in Baldwin County, Alabama; that he knows the lands bordering on said river, known as the lands of L. G. Crosby, (and) knows about where the North line of Crosby's land crosses the said river; that said river ranges from ten to twenty-five feet in width and from two to fifteen or twenty feet in depth; that there are several places where the water is as shallow as two feet, however, this condition is the result of the logs in the river causing sand bars or shoals; that the said river is now and has been during the entire time that the affiant has known it generally used by the public; that the said stream is at all seasons of the year, even during the driest season, capable of floating logs and small boats at any and all places where it is adjacent to the lands of the said Crosby; that the said stream has been used for commercial purposes during the entire time that the affiant has known it.

sworn to and subscribed before
me on this the 27 day of
Sept, 1936.

W. Wallace

Notary Public, Baldwin County,
Alabama.

Sesley Mitchell

STATE OF ALABAMA,)

BALDWIN COUNTY.)

Before me, the undersigned authority, in and for said County, in said State, personally appeared J. D. Stevens who is known to me and who having been by me first duly sworn, deposes and says, that he is a resident of Seminole, in Baldwin County, Alabama; that he is 70 years of age; that he knows and has known for the past 50 years what is commonly known as Styx River, in Baldwin County, Alabama; that he knows the lands bordering on said river, known as the lands of L. G. Crosby, and knows about where the North line of Crosby's land crosses the said river; that said river ranges from ten to twenty-five feet in width and from two to fifteen or twenty feet in depth; that there are several places where the water is as shallow as two feet, however, this condition is the result of the logs in the river causing sand bars or shoals; that the said river is now and has been during the entire time that the affiant has known it generally used by the public; that the said stream is at all seasons of the year, even during the driest season, capable of floating logs and small boats at any and all places where it is adjacent to the lands of the said Crosby; that the said stream has been used for commercial purposes during the entire time that the affiant has known it; that for many years, from 1917 to 1924, the affiant worked with C. M. Larkin in the logging business, and knows of his own personal knowledge that the said C. M. Larkin placed thousands of logs in Styx River to be floated to his mill, at Millview, Florida; that many of the said logs, or what are commonly known as dead heads or "sinkers", went to the bottom of the stream and still remain there; that during the time the affiant worked for Larkin and many years prior thereto the said Larkin had been placing logs in the said river to be floated down to his mill; that the said river was at that time and still is capable of floating logs, and has been used during the entire time that the affiant has known said stream by the general public for pleasure and commercial purposes.

J. D. Stevens

L. G. Crosby,
Complainant,

-78-

Charles M. Larkin,
Respondent.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA,
IN EQUITY.
NO. 241.

Comes the complainant, L. G. Crosby, and on the hearing
of the motion to dissolve the injunction heretofore issued in
this cause notes the following:

1. The sworn bill of complaint.
2. The following affidavits:

Affidavit of L. G. Crosby; and exhibits;
Affidavit of W. H. Foley;
Affidavit of Henry Allen;
Affidavit of James G. Allen;
Affidavit of A. B. Waters;
Affidavit of A. L. Waters;
Affidavit of James Dennis Baggett;
Affidavit of C. Waters;
Affidavit of T. L. Baggett.
" " E Davidson.

Stevens, M. C. Conroy, M. C. Wood, Hood & Turner, J. B.
Solicitors for Complainant.

I hereby certify that the foregoing note of testimony
is correct, this 21st day of January, 1937. ~~XXXX~~

R. L. Lusk

Register.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority, within and for said County in said State, personally appeared E. Davidson, who, after being by me first duly and legally sworn, deposes and says : My name is E. Davidson. I am thirty-nine years of age and a resident of Bay Minette, in Baldwin County, Alabama, where I have resided practically all of my life. H. L. Taylor and I own approximately eight thousand acres of land, the greater part of which lies along Styx River in Baldwin County, Alabama, part of which lands adjoin the Northwest Corner of the L. G. Crosby lands which are known as "The Brock Tract" and in fact, we own the lands which adjoin L. G. Crosby's West line where his West line is crossed by Styx River.

In all of this territory the section lines run directly across the stream. That is, there are no fractional sectional sections on either side of the stream, and the various land owners own, assess and pay taxes on the bed of the stream, the same as they do on their other lands.

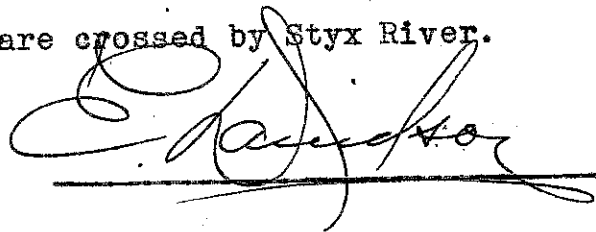
I am well acquainted with Styx River in this territory and know that it is a very shallow stream where it crosses the Northwest Corner of the L. G. Crosby property and runs into our property, and a person can wade across it at practically any place without getting into water that is more than knee deep.

The logs in the bed of Styx River are recognized by the people in that community as belonging to the owner of the land and during the last four years we have sold logs from the bed of Styx River on a stumpage basis of Two Dollars per thousand and these logs were removed by the persons purchasing them. During this time we sold some logs to a Mr. Faircloth and to a Mr. Merritt.

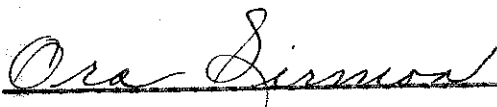
During the four years that we have been in business along this river no logs have been placed into it for the

purpose of being floated to market and there has been no commerce of any kind or nature up or down the said river, and in fact, the general public is not interested in any commerce up or down Styx River, which said river is too shallow to float any boat other than a small skiff, and in many places even a boat of this kind would have to be dragged over sandbars, logs, stumps and other obstructions.

During all of the time we have been engaged in business along this river I have never heard of C. M. Larkin or Charles M. Larkin claiming the logs in the bed of Styx River and as stated above they have always been recognized as belonging to the owners of the lands which are crossed by Styx River.



Sworn to and subscribed before me
on this the 11th day of December, 1936.



Notary Public, Baldwin County, Alabama.

E. DWALLEN

NOTARY PUBLIC

L. G. Crosby,
Complainant,
-vs-
Charles M. Larkin,
Respondent.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.
IN EQUITY.
NO. 241.

Before me, the undersigned authority in and for Mobile County, Alabama, personally appeared James Dennis Baggett, who being duly sworn deposes and says:

My name is James Dennis Baggett. I am seventy years of age and reside at Clear Springs, Baldwin County, Alabama, and have so resided for the past forty-five years. I am familiar with the property claimed by L. G. Crosby and known as the Brock Tract and have known this property for many years. Mr. Crosby bought this land about 1925 and since that time has remained in the continuous and uninterrupted possession thereof claiming to own the same and claiming to own the logs imbedded in the stream of Styx River where the same crosses his property. I did not know of C. M. Larkin claiming the logs in Styx River until after the controversy between him and Mr. Crosby had come up. It is customary among the landowners along Styx River to sell the sunken and stranded logs in the bed of Styx River to persons who desire to remove the same, the owners of the land being regarded as the owners of the logs in the bed of the river. I know Styx River from Mr. Crosby's south line to his north line. Throughout this distance, except for a small portion near the highway bridge on the road from Loxley to Pensacola, this river is not navigable for any purpose except during extremely high water and then only for the purpose of floating logs down the river. Since I have been familiar with this river some individuals who owned timbered lands near the river have from time to time cut logs and put them on the banks of the river to await a freshet and when the freshet came they would float these logs to the market. This is the only purpose for which the river has ever been used to my knowledge and this use was confined to a few persons up and along the

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Charles M. Lusk

(Signature or name of addressee)

(Signature of addressee's agent)

Date of filing
Form 3811

July 27, 1936

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36
July 29
Robert H. Lusk