

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

DECEMBER 28, 1938.

Judge F. W. Hare,
Monroeville, Alabama.

Re: Julius Etzel v. Mary Polauf and Ignatz
Polauf - Equity:

RESPONDENTS' REPLY BRIEF.

Dear Judge Hare:

The solicitors for complainant throughout their brief lay much stress on the proposition, to quote a sentence on page 2 thereof, namely: "It was undoubtedly for the purpose of taking care of aged or unsuspecting grantors that the present section, 8046, was written into the code".

The Complainant's cause of action is not brought within this classification as the only allegation with reference to complainant's age is, in the language of the bill of complaint, "That your complainant is over twenty-one years of age. . . ." Any conjecture as to complainant's age other than this could not be based on the complaint as it is now written.

As to the ground of demurrer to the bill of complaint for failure to offer to do equity, I wish to call the Court's attention to the following:

"(7) The bill as originally filed did not offer to do equity at all, but the amendment cured such defect. Therefore, the original bill was subject to demurrer on account of this omission, but not so as to amended bill." Parker v. Ward, 139 So. 215.

The bill of complaint in the foregoing case was one for cancellation of a mortgage, so that the underlying principles of that case are similar to those of the present action. Also in support of this proposition I again cite the case of Shamblee v. Wilson, et al, 170 So. 769, par. 3. (Page 3 of Respondent's Brief on Demurrer).

Therefore, I submit that the Respondents' Demurrer is well taken.

Respectfully,


J. B. BLACKBURN, Solicitor for Respondents.

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

#2
Judge F. W. Hare.
12-28-1938.

I hereby certify that a copy of this Brief was mailed to the Honorable H. M. Hall, Solicitor for the Complainant, addressed to him at Bay Minette, Alabama, postage prepaid, on the 29th day of December, 1938.

Dated this 29th day of December, 1938.

J. B. Blackburn
Solicitor for Respondents.

JULIUS ETZEL,
Complainant,
VS.
MARY POLAUF and
IGNATZ POLAUF,
Respondents.

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

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

Comes your Complainant, JULIUS ETZEL, and humbly complaining against the Respondents, MARY POLAUF and IGNATZ POLAUF, and each of them, respectfully represents and shows unto your Honor and this Honorable Court as follows:

1. That your Complainant is over twenty-one years of age and a resident of Elberta, in Baldwin County, Alabama.
2. That the Respondents, MARY POLAUF and IGNATZ POLAUF, are over twenty-one years of age, and residents of Elberta, in Baldwin County, Alabama.
3. That on to-wit, May 22nd, 1934, your Complainant executed to the Respondents a deed, conveying the following described lands in Baldwin County, Alabama, to-wit:

The North half of the Northwest quarter of Section 35,
Township 7 South, Range 5 East;

that said deed is of record in the Office of the Probate Judge of Baldwin County, Alabama, in Deed Book 59 NS, pages 275-6; that a copy of said deed is hereto attached, marked Exhibit "A" and asked to be taken as a part hereof, as though herein fully set out.

4. That all, or a material part of the consideration for the execution of said deed was a promise on the part of the Respondents that they would maintain and support the Complainant during his lifetime; that the Respondents have failed or refused to maintain and support the Complainant, in accordance with the said agreement, and have treated the Complainant in such manner as to make it impossible for him to longer continue to live on the place.

5. That the Complainant has elected to and does hereby declare the said conveyance void, and files this proceeding to have the said conveyance declared null, as provided by law.

WHEREFORE, the premises considered, Complainant prays that your Honor

will, by proper process, make the said MARY POLAUF and IGNATZ POLAUF party respondents to this Bill of Complaint, requiring them to plead, answer or demur to the same within the time and under the penalties prescribed by law and the practice of this Honorable Court.

Complainant further prays that upon a final hearing of this cause, your Honor will make and enter an order and decree declaring the said conveyance from the Complainant to the Respondents null and void and of no effect, and that a proper decree be made and entered expunging the same from the records in the Office of the Probate Judge of Baldwin County, Alabama. Complainant further prays that your Honor will issue a writ of possession, directing the Sheriff of Baldwin County, Alabama, to remove the said Respondents, MARY POLAUF and IGNATZ POLAUF, from the said property and deliver the possession thereof over to your Complainant, JULIUS ETZEL. Complainant prays for such other, further, different or general relief as he may be in equity and good conscience entitled to receive, and as in duty bound he will ever prays.

Beebe & Co. Buhl
Solicitors for the Complainant.

FOOT NOTE:

The Respondents, MARY POLAUF and IGNATZ POLAUF, and each of them, are required to plead, answer or demur, to each and every allegation contained in the foregoing Bill of Complaint, in paragraphs 1 to 5, inclusive, but not under oath, oath being hereby expressly waived.

Beebe & Co. Buhl
Solicitors for the Complainant.

EXHIBIT "A"

STATE OF ALABAMA,

BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS that Julius Etzell, a widower, for and in consideration of other valuable consideration and the sum of one dollar to him in hand paid by Mary Polauf and Ignatz Polauf, the receipt whereof being hereby acknowledged, does hereby grant, bargain, sell and convey unto the said Mary Polauf and Ignatz Polauf, their heirs and assigns all of the following described real estate in Baldwin County, Alabama, to-wit:

The North half ($N\frac{1}{2}$) of the Northwest quarter ($NW\frac{1}{4}$) of section thirty-five (35) in township seven (7) south range five (5) east, containing eighty (80) acres, more or less, together with all the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the same unto the said Mary Polauf and Ignatz Polauf, their heirs and assigns forever; subject, however, to the life estate of the grantor Julius Etzell in and to said premises, which said life estate is hereby expressly reserved to the grantor. The said Julius Etzell does hereby covenant and agree with the said Mary Polauf and Ignatz Polauf that he has an indefeasible title in fee simple in and to said premises, that the same are free and clear of all liens and encumbrances, except two mortgages held to Federal Land Bank of New Orleans, on which there is now due approximately the sum of thirteen hundred and 00/100 (\$1300.00) dollars and which said mortgages the grantees herein assume and agree to pay; that he has good right and lawful authority to sell the same and that he will and his heirs, executors and administrators shall warranty and defend the title to and possession of said premises unto the said Mary Polauf and Ignatz Polauf, their heirs and assigns against the lawful claims of all persons whomsoever.

In witness whereof I have hereunto set my hand and seal the 23rd day of May, 1934.

Julius Etzell

State of Alabama,
Baldwin County.

I, Lloyd A. Magney, a notary public, in and for said state and county do hereby certify that Julius Etzell, a widower, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

In witness whereof I have hereunto set my hand and official seal this 23rd day of May, 1934.

Lloyd A. Magney

Filed May 30th, 1934

Recorded Deed Book 59 NS, page 275-6.

JULIUS ETZEL,

Complainant,

VS.

MARY POLAUF AND IGNATZ
POLAUF,

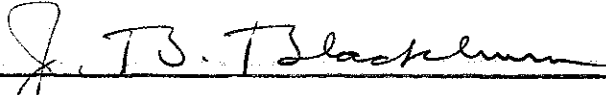
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 382.

ANSWER.

Now comes the Respondents in the above entitled cause and for answer to the Bill of Complaint filed in the said cause, and to each and every count thereof separately and severally deny each and every allegation of the Bill of Complaint and demand strict proof of same.


Solicitor for Respondents.

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

MARY POLAUF and IGNATZ POLAUF,

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

JULIUS ETZEL,

against said MARY POLAUF and IGNATZ POLAUF,

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 2nd day of December 1937

Robert S. Duck Register

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

JULIUS ETZEL,
Complainant,
VS.
MARY POLAUF and
IGNATZ POLAUF,
Respondents.


IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY,
NO. 382.

DECREE

This cause coming on to be heard is submitted on demurrer to the Bill of Complaint, and upon consideration, I am of the opinion that same is not well taken.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that said demurrer be and the same hereby is overruled, and Respondent is allowed twenty (20) days in which to answer.

Dated this 31st day of December, 1938.



Judge of the Circuit Court of Baldwin County, Alabama.

RECORDED

ANSWER.

JULIUS FITZEL,

Complainant,

VS.

MARY POLAUF AND IGNAFZ POLAUF,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 382.

Filed August 21, 1940
R. S. Smith, Register

RECORDED
3-409

DECIREE:

JULIUS ETZEL,

Complainant,

VS.

MARY POLAUF and
IGNATZ POLAUF,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

IN EQUITY,

NO. 382.

382

Filed December 31, 1933
R. S. DUCK
clerk, registered

By *W. H. Thompson*
Deputy

original

RECORDED
7-34-0

Serve on _____
Circuit Court of Baldwin County
IN EQUITY

No. 382

SUMMONS

JULIUS ETZEL,
Complainant,

vs.

MARY POLAUF and
IGNATZ POLAUF,
Respondents,

BERBE, HAIT & BERBE,
Solicitor for Complainant

Recorded in Vol. _____ Page _____

THE STATE OF ALABAMA,
BALDWIN COUNTY

Received in office this _____

day of _____, 193__

SHERIFF

Executed this 3rd day of

March 1937

by leaving a copy of the within Summons with

Mary Polauf and

Ignatz Polauf Defendant

M. H. Wilkins Sheriff

By John R. Davis Deputy Sheriff

Book
RECORDED 7-340

BILL OF COMPLAINT

JULIUS EITZEL,

Complainant,

VS.

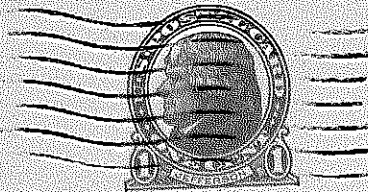
MARY POLAUF and
IGNATZ POLAUF,

Respondents.

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

Filed May 2 1939
By [Signature]
[Signature]

*Filed March 27, 1939
R. S. Duck.*



THIS SIDE OF CARD IS FOR ADDRESS

*Honorable R. S. Duck
Register Baldwin Circuit Court
Bay Minette, Alabama*

THE SUPREME COURT OF ALABAMA

1st Div. 57-]
Mary Polauf et al.]
vs.]
Julius Etzel]

Appeal from Baldwin
Circuit Court.
In Equity

Dear Sir:

~~TRANSCRIPT I~~

I beg to advise that ~~your brief, with~~ application for a rehearing, in the above stated cause, was today received and filed in this office, and that same will receive due consideration by the Supreme Court.

Montgomery, Ala.

Yours truly,

MAR 20 1939

J. R. THOMAS,
Clerk, Supreme Court.