

H. C. DEVINE ET AL
VS.
GEORGE W. HILSTEAD

H. C. DEVINE & ELLA V. DEVINE
VS.
A. G. MILES & ETHEL B. MILES

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H. C. DEVINE and ELLA
V. DEVINE,

Plaintiffs,

VS.

GEORGE W. WILSTEAD,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

LAW SIDE. No. 1236

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon George W. Wilstead to appear within thirty days from the service of this Writ in the Circuit Court to be held for said County at the place of holding the same, then and there to answer the Complaint of H. C. Devine and Ella V. Devine.

Witness my hand this 24th day of September, 1948.

ALICE J. DUCK
Clerk.

COMPLAINT

COUNT ONE

The Plaintiffs sue to recover possession of the following described tract of land viz:-

Begin at the Southeast corner of Section 23, Township 5 South, Range 3 East, run thence West along the South line of said Section 1354 feet to the point of beginning; run thence North 662 feet to a point; run thence West 167 feet to a point; run thence South 662 feet to a point; run thence East 167 feet to the point of beginning, said land being situated in Baldwin County, Alabama,

of which they were in possession and upon which, pending such possession, and before the commencement of this suit, the Defendant entered and unlawfully withholds, together with Two Hundred Fifty Dollars (\$250.00) for the detention thereof.

HYBART, CHASON
Attorneys for Plaintiffs.

Plaintiffs demand a trial of this cause by a jury.

HYBART & CHASON
Attorneys for Plaintiffs.

Filed September 24, 1948.
ALICE J. DUCK
Clerk.

Executed 10-18-48
by serving copy of within
Summons and Complaint on
GEORGE W. WILSTEAD.

TAYLOR WILKINS, Sheriff.
H. F. HALL, D.S.

ANSWER

Now comes the Defendant and for answer to the Plaintiff's complaint says:

1.

Not guilty.

2.

That the Defendant is the owner and in the possession of the Southeast quarter of Southwest quarter of Southeast quarter of Section 23, Township 5 South, Range 3 East, more particularly described as follows:

Begin at the Southeast corner of Section 23, Township 5 South, Range 3 East, run thence West along the South line of said Section 1349.2 feet to a point, the place of beginning, run thence North 662 feet to a point, run thence West 674.6 feet to a point, run thence East 674.6 feet to the place of beginning.

3.

And for further answer to the Plaintiffs' Complaint the Defendant suggest in writing that this suit arises over a disputed boundary line between the properties of the

Office copy

H. C. DEVINE AND ELLA
V. DEVINE,

Plaintiffs,

VS.

GEORGE W. MILSTEAD,

Defendant,

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE. No. 1236

H. C. DEVINE and ELLA
V. DEVINE,

PLAINTIFFS,

VS.

A. G. MILES & ETHEL BARGINEAR
MILES,

DEFENDANT,

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE. NO. 1237

1768
1368
1744

Plaintiffs and the Defendant. The Defendant alleges and suggests that the location of the true boundary line between the properties of the Plaintiffs and the Defendant is the East line of the following tract of land:

Begin at the Southeast corner of Section 23, Township 5 South, Range 3 East, run thence West along the South line of said Section 1349.2 feet to a point, the place of beginning, run thence North 662 feet to a point, run thence West 674.6 feet to a point, run thence South 662 feet to a point, run thence East 674.6 feet to a point, the place of beginning.

Filed Oct. 25, 1948
Alice J. Duck, Clerk.

H. M. Hall
Attorney for Defendant.

MOTION TO STRIKE PLEAS

Comes the plaintiffs in the abovestyled cause and move the Court to strike pleas 1, 2 and 3 filed by the Defendant in said cause, separately and severally and assign the following separate and several grounds, viz:

1. That said pleas are inconsistent and incompatible.
2. That plea 2 is inappropriate.
3. That plea 2 is immaterial.
4. That plea 2 sets up no defense to the Complaint.
5. That plea 2 seeks to set up defensive matter available to the Defendant under plea 1.
6. That plea 2 described lands not described in the Complaint and not the subject of this suit.
7. That plea 3 was waived by the filing of plea 1.
8. That plea 3 is inconsistent and incompatible, with plea 1.
9. That plea 3 attempts to described lands not involved in this suit.
10. That plea 3 describes a strip of land 4.8 feet East and West and 680 feet North and South, East of the lands described in said suit which is not covered by said complaint.

Filed February 25th, 1949.
Alice J. Duck, Clerk.

Hybart, Chason & Stone
Attorneys for Plaintiffs.

JUDGMENT ENTRY

3-11-49 Came the Plaintiff by his attorney and files motion to strike pleas 1, 2 and 3. Pleas No. 1 and 2 struck on motion of Plaintiff. Plaintiff files replication to plea No. 3.

Telfair J. Mashburn, Jr.
Judge.

REPLICATION

Comes the Plaintiffs in the above styled cause and for Replication to the Defendant's suggestion of a disputed boundary line say:

That the true boundary line between the property of the plaintiffs and that of the Defendant is the West line of the following described land to-wit:-

Begin at the Southeast corner of Section 23, Township 5 South, Range 3 East, run thence West along the South line of said section 1354 feet to the point of beginning; run thence North 662 feet to a point; run thence West 167 feet to a point, run thence South 662 feet to a point; run thence East 167 feet to the point of beginning, said land being situated in Baldwin County, Alabama.

Filed March 11th, 1949
Telfair J. Mashburn Jr.
Judge.

Hybart, Chason & Stone
Attorneys for Plaintiffs.

JUDGMENT ENTRY

11-3-49 Came the parties by their attorneys, came also a jury of good and lawful men, to-wit: A. W. FAULK, and eleven others, who being impanelled and duly sworn according to law, on their oaths say, We, the jury, find the issue in favor of the Plaintiffs and true boundary line fixed as set forth in Plaintiffs Replication. And the same being considered by the Court:

It is ordered and adjudged by the Court that true boundary line be fixed as set forth in Plaintiffs Replication, and recover of the Defendant and costs in this behalf expended, for which execution may issue.

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MOTION FOR NEW TRIAL

Now come the Defendants and moves the Court to grant them a new trial in this cause, and for grounds thereof, say:

1.
The verdict is contrary to law.
2.
The verdict is contrary to the evidence.
3.
The verdict is contrary to the law and evidence.
- 4.

The Court erred in giving, at the request of the Plaintiffs, the following charge: "The court charges the jury that if you believe the evidence in this case you must find for the Plaintiffs".

5.
The Court erred in refusing to give the following charge at the request of the Defendants: "I charge you Gentlemen of the jury that in a conveyance of land by Government subdivision, the acreage given is merely descriptive and does not determine amounts sold."

H. M. HALL
Attorney for the Defendants

Filed Nov. 25, 1949
ALICE J. DUCK, Clerk.

MINUTE ENTRY

H. C. DEVINE ET AL.
VS.
GEORGE W. MILSTEAD.

11-3-49 Came the parties and submitted to the Court the Defendant's motion for a new trial in this cause on this 25th day of November, and the Court having heard argument of counsel on said motion, and considered and understood the same, is of the opinion that the same is not well taken and should be overruled: It is therefore ordered and adjudged by the Court that said motion be and the same hereby is overruled and denied.

NOTICE OF APPEAL

Now comes the Defendant, George W. Milstead, and gives notice of appeal from the judgment and verdict of the Circuit Court of Baldwin County, Alabama, rendered on the 3rd day of November, 1949, in the above styled cause to the Supreme Court of the State of Alabama.

Filed Dec. 8, 1949
ALICE J. DUCK, Clerk.

H. M. HALL
Attorney for the Defendant,

SECURITY FOR COSTS

We, George W. Milstead, and H. M. Hall, acknowledge ourselves security for all the costs of the appeal taken to the Supreme Court by the said George W. Milstead, from the said judgment in said cause.

Approved:
12-8-49
ALICE J. DUCK, Clerk.

GEORGE W. MILSTEAD

H. M. HALL

CITATION OF APPEAL

TO ANY SHERIFF OF THE STATE OF ALABAMA— GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the First Monday in Nov. 1949, in a certain cause in said Court wherein H. C. DEVINE ET AL. Plaintiff and GEORGE W. MILSTEAD Defendant, a judgment was rendered against said GEORGE W. MILSTEAD to reverse which judgment, the said GEORGE W. MILSTEAD applied for and obtained from this office an APPEAL, returnable to the Next Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the day of , 194 Next, and the necessary bond having been given by the said GEORGE W. MILSTEAD with H. M. HALL, Sureties,

Now, You Are Hereby Commanded, without delay, to cite the said H. C. DEVINE ET AL. or HYBART, CHASON & STONE, attorneys, to appear at the next Term of our said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 13th day of Dec., A.D., 1949.

Attest:
ALICE J. DUCK, Clerk.

Executed 12-13-49
By serving copy of the
within on
JOHN CHASON
TAYLOR WILKINS, Sheriff.
D.B. JAYE, D.S.

CERTIFICATE OF APPEAL

I, ALICE J. DUCK, Clerk of Circuit Court, of Baldwin County, Alabama, hereby certify that in the cause of H. C. DEVINE ET ALS. PLAINTIFF VS. GEORGE W. MILSTEAD Defendant, which was tried and determined in this court, on the 3rd day of November, 1949, in which there was a judgment for new boundary line in favor of the Plaintiff, the Defendant on the 8th day of Dec. 1949, took an appeal to the Supreme Court of Alabama to be holden of and for said State.

I further certify that H. M. HALL (Attorney) filed security for cost of appeal, to the Supreme Court, on the 8th day of Dec. 1949, and that George W. Milstead & H. M. Hall are sureties on the appeal bond.

I further certify that notice of the said appeal was, on the 13th day of Dec. 1949, served on HYBART & CHASON as attorney of record for said appellee, and that the amount sued for was New Boundary Line.

Witness my hand and seal of this Court, this the 13th day of Dec. 1949.

ALICE J. DUCK
Clerk of the Circuit Court of
Baldwin County, Alabama.

BE IT REMEMBERED THAT A REGULAR TERM OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, AT WHICH TIME OFFICERS AUTHORIZED BY LAW TO HOLD OR SERVE SUCH COURT WHERE SERVING, THE FOLLOWING PROCEEDINGS WERE HAD

SUMMONS

STATE OF ALABAMA
BALDWIN COUNTY.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE No. 1237

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon A. G. Miles and Ethel Barginear Miles to appear within thirty days from the service of this Writ in the Circuit Court to be held for said County at the place of holding the same, then and there to answer the Complaint of H. C. Devine and Ella V. Devine.

Witness my hand this 24th day of September, 1948.

Alice J. Duck
Clerk.

COMPLAINT

The Plaintiffs sue to recover possession of the following described tract of land, viz:-

Begin at the Southeast corner of Section 23, Township 5 South, Range 3 East, run thence West along South line of said Section 1354 feet to a point; run thence North 662 feet to a point which is the point of beginning; run thence West 168 feet to a point; run thence North 662 feet to a point; run thence East 168 feet to a point; run thence South 662 feet to the point of beginning, said land being situated in Baldwin County, Alabama, of which they were in possession and upon which, pending such possession, and before the commencement of this suit, the Defendants entered and unlawfully withhold, together with Two Hundred Fifty Dollars (\$250.00) for the detention thereof.

Hybart & Chason
Attorneys for Plaintiffs.

Plaintiffs demand a trial of this cause by a jury.

Hybart & Chason
Attorneys for Plaintiffs.

Filed September 24th, 1948.

Alice J. Duck
Clerk.

Executed 9-29-48
by serving copy of within Summons and Complaint on
A. G. Miles
Ethel Barginear Miles

Taylor Wilkins, Sheriff
by, H. F. Hall, D. S.

ANSWER

Now come the Defendants and for answer to the Plaintiff's complaint say:

1.

Not guilty.

2.

That the Defendants are the owners and in possession of the following described land; North half of Southwest quarter of Southeast quarter of Section 23, Township 5 South, Range 3 East, Baldwin County, Alabama, more particularly described as follows:

Begin at the Southeast corner of Section 23, Township 5 South, Range 3 East, run thence West along the South line of said Section 1349.2 feet to a point, run thence North 662 feet to a point, the place of beginning, run thence North 662 feet to a point, the Northeast corner of the Southwest quarter of Southeast quarter of said Section 23, run thence West 1349.2 feet to a point, the Northwest corner of the Southwest quarter of Southeast quarter of the said Section 23, run thence South 662 feet to a point, run thence East 1349.2 feet to a point, the place of beginning.

3.

The Defendants for further answer to the Plaintiffs' complaint suggest in writing that this suit arises over a disputed boundary line between the properties of the Plaintiffs and the Defendants. The Defendants suggest and allege that the location of the true line between the properties of the Plaintiffs and the Defendants is the East line of the

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following described tract of land:

Begin at the Southeast corner of Section 23, Township 5 South, Range 3 East, run thence West along the South line of said Section 1349.2 feet to a point, run thence North 662 feet to a point, the place of beginning, run thence North 662 feet to a point, the Northeast corner of the Southwest quarter of Southeast quarter of said section 23, run thence West 1349.2 feet to a point, the Northwest corner of the Southwest quarter of the Southeast quarter of said Section 23, run thence South 662 feet to a point, run thence East 1349.2 feet to a point, the place of beginning.

Filed Oct. 25th, 1948
Alice J. Duck, Clerk.

H. W. Hall
Attorney for Defendants.

MOTION TO STRIKE PLEAS

Come the Plaintiffs in the above styled cause and move the Court to strike pleas, 1, 2 and 3 filed by the Defendants in said cause, separately and severally and assign the following separate and several grounds, viz:

1. That said pleas are inconsistent and incompatible.
2. That plea 2 is inappropriate.
3. That plea 2 is immaterial.
4. That plea 2 sets up no defense to the Complaint.
5. That plea 2 seeks to set up defensive matter available to the Defendants under plea 1.
6. That plea 2 described lands not described in the Complaint and not the subject of this suit.
7. That plea 3 was waived by the filing of plea 1.
8. That plea 3 is inconsistent and incompatible with plea 1.
9. That plea 3 attempts to described lands not involved in this suit.
10. That plea 3 describes a strip of land 4.8 feet East and West and 680 feet North and South, East of the lands described in said suit which is not covered by said Complaint.

Filed February, 25th, 1949.
Alice J. Duck, Clerk.

Hybart, Chason & Stone
Attorneys for Plaintiffs.

JUDGMENT ENTRY

3-11-49 Come the Plaintiffs by their attorneys and files motion to strike pleas 1, 2 and 3. Pleas No. 1 and 2 struck on Motion of Plaintiff. Plaintiff files replication to Plea No. 3.

Telfair J. Mashburn Jr.
Judge.

REPLICATION

Come the Plaintiffs in the above styled cause and for Replication to the Defendants' suggestion of a disputed boundary line say:

That the true boundary line between the property of the Plaintiffs and that of the Defendants is the West line of the following described land to-wit:

Begin at the Southeast corner of Section 23, Township 5 South, Range 3 East, run thence West along South line of said Section 1354 feet to a point; run thence North 662 feet to a point which is the point of beginning; run thence West 168 feet to a point; run thence North 662 feet to a point; run thence East 168 feet to a point; run thence South 662 feet to the point of beginning, said land being situated in Baldwin County, Alabama.

Filed March 11th, 1949.
Telfair J. Mashburn, Jr.
Judge.

Hybart, Chason & Stone
Attorneys for Plaintiffs.

H. C. DEVINE AND ELLA V. DEVINE,

Plaintiffs,

VS.

GEORGE W. MILSTEAD,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

LAW SIDE. NO. 1236.

H. C. DEVINE AND ELLA V. DEVINE,

Plaintiffs,

VS.

A. G. MILES AND ETHEL BARGINEAR
MILES,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

LAW SIDE. NO. 1237.

The above styled causes coming on to be heard on the 2nd day of November, 1949, in the Circuit Court of the 28th Judicial Circuit of Alabama, Civil Division, before Honorable Telfair J. Mashburn, Jr., Judge, and a jury, the following proceedings were had which do not otherwise appear of record:

APPEARING FOR THE PLAINTIFFS

C. L. Hybart, John Chason & Norborne
Stone

FOR THE DEFENDANTS

H. M. Hall

It was agreed between the parties to these causes in open court, with the court assenting, that Case Number 1236 and Case Number 1237, be consolidated for the purpose of trial, and that they be tried together.

Mr. Claude W. Arnold, a witness for the Plaintiffs, having been first duly sworn, testified as follows:

ON DIRECT EXAMINATION

By Mr. Chason

Q. Is this Mr. Claude W. Arnold?

A. It is.

Q. Where do you live, Mr. Arnold?

A. Fairhope.

Q. Are you a registered land surveyor?

A. Yes sir, I am.

Q. What is your number?

A. 1276.

Q. Were you such surveyor, registered surveyor, on September 21, 1948?

A. I was.

Q. At about that time, Mr. Arnold, did you go on the land owned by or claimed by Mr. H. C. Devine and his wife near Loxley in Baldwin County and run some lines and give him a plat of survey?

A. Yes sir, I did.

Q. I will show you here this plat (handing witness plat). Is that your certificate? And did you prepare that plat?

A. Yes sir. I prepared that plat for Mr. Devine, for the purpose of giving description to certain lands shown there.

Q. At the time you made the survey, Mr. Arnold, did you go out to an old fence row on the west line of what Mr. Devine said was his land?

A. I went out to it.

Q. Did you run that line in the course of your survey?

A. Yes, a portion of it.

Q. Did you also run the line where a new fence was built?

A. Yes, I ran that.

Q. Is that distance one hundred sixty-seven feet on the south side and one hundred and sixty-eight feet on the north side between those two fences?

A. Those were the measurements I took between the two fences. I found one hundred sixty-seven feet between the two fences on the south side and the north side one hundred and sixty-eight.

Q. When you made your survey had the fence been moved from the old line?

A. Yes, it had.

Q. Did you see anything to show where the old fence row on the west side of the Devine land was?

A. A definite physical evidence of fence line. Of course there was no way - fields built up, plowed up on both sides the fence. The fence had been removed and the land had been placed back in cultivation caused by the plowing of the fields. It was very clear besides that. Occasionally some of the posts had been completely removed, old posts, burnt stumps in enough instances, sometimes at one end we ran over old posts.

Q. Any pine trees growing in the old fence line?

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A. Besides that, there were, I don't know the exact number. I don't believe I counted them, maybe a dozen pine trees. The diameter would reach from ten to fourteen inches, fence wires passing almost in the center, evidently the trees had grown up in the fence line.

Q. There was evidence of the wire itself being near the center of some of those ten to fourteen inch trees?

A. It was grown well into the trees.

Q. I show you here this plat (handing witness plat) to refresh your recollection, I will ask you to look at the description and I will ask you whether this would be a correct description of the fence, the old fence that you have just testified about? Begin at the southeast corner of the west line of the following described land: Begin at the southeast corner of Section Twenty-three, Township Five South Range Three East, and run thence west along the south line of said section thirteen hundred fifty-four feet to the point of beginning, run thence north six hundred sixty-two feet to a point-

A. Pardon me. Are you reading the correct description of the west line or the old fence line?

Q. I am asking you when I describe this land if the west line of this tract of land would be the same as the old fence line? Beginning at the southeast corner of Section twenty-three, Township Five South Range Three East, and run thence west along the south line of said section thirteen hundred fifty-four feet to the point of beginning, run thence north six hundred sixty-two feet to a point, run thence west one hundred sixty-seven feet to a point, run thence south six hundred sixty-two feet to a point, run thence east one hundred sixty-seven feet to the point of beginning. Would the lower one-half of that old fence be the west line of the land described?

A. It would.

Q. I will read you this description and ask you whether the west line of this tract of land would be the north half of the old fence? Begin at the southeast corner of Section Twenty-three, Township Five South Range Three East, and run thence west along the south side of said section thirteen hundred fifty-four feet to a point; run thence north six hundred sixty-two feet to a point which is the point of beginning; run thence west one hundred sixty-eight feet to a point, run thence north six hundred sixty-two feet to a point, thence east one hundred sixty-eight feet to a point, run thence south six hundred sixty-two feet to the point of beginning. Would the west line of that tract of

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land be the north half of the old fence line?

A. I got lost in that description and I am not certain I got back to the same point we started from.

Q. If you begin at the southeast corner of Section Twenty-three, Township Five South Range Three East and run west thirteen hundred fifty-four feet along the south line, thence north six hundred sixty-two feet for the point of beginning, thence run west one hundred sixty-eight feet, north six hundred sixty-two feet, each one hundred sixty-eight feet, south six hundred sixty-two feet to the point of beginning. Would the west line of that tract of land be where the old fence line stood?

A. It would.

Q. I believe you testified the new fence which you found there when you made your survey was one-hundred sixty-seven feet further east at the south side and one hundred sixty-eight feet further east at the north side?

A. That's right.

Q. Was the evidence that that was a new fence on the east side?

A. Yes. New posts, new post holes and new dirt around, new, up, right up through the cultivated field.

Q. Was there corn standing and hadn't been gathered, west of the new fence and east of where the old fence stood?

A. I am not certain. Corn? Might have been. I know there was a velvet bean crop that hadn't been harvested. Evidently the new fence cut off a portion of that field that had been under cultivation by whoever was farming Mr. Devine's land.

ON CROSS EXAMINATION
By Mr. Hall

Q. Mr. Arnold, did you locate the southeast corner of that section?

A. Yes.

Q. Are those regular forties, the southeast of the southeast and the southwest of the southeast of Section Twenty-three, Township Five South Range Three East, each forty thirteen hundred and twenty feet?

A. No.

Q. Are they large forties?

A. Almost certain to be.

Q. Did you make a survey of that south line from the southeast corner over the one-half section line?

A. No.

Q. Did you survey to determine the distance across the south line?

A. No, I didn't.

Q. Did you survey the boundaries of the southeast quarter of the southeast quarter as shown by the plat books?

A. No.

Q. Do you know the distance across the southeast of the southeast of Section Twenty-three, Five South, Three, as shown by the plat books and field notes?

A. No, I don't know what that distance is.

Q. You made no efforts to locate the bounds where the Government says?

A. No, I didn't.

Q. Mr. Arnold, where you have an excess acreage in a subdivision of that kind, what is the practice in the dividing line between two Government subdivisions?

MR. CHASON: We object to what is the practice when a dispute arises over a disputed boundary line. I alleged in my answer that it was the west line.

THE COURT: Overrule the objection.

MR. CHASON: We except.

A. The accepted method. Or did you ask the question what was the proper method?

Q. State the usual practice.

A. The usual practice for locating the southeast of the southeast and the southwest of the southeast, the usual, and in fact the proper practice, is to locate the southeast corner of the southeast quarter of the section and also locate the southwest of the southeast of the section and to set the division point half way between those two points.

Q. You didn't survey that line?

A. No.

Q. You don't know the distance from the southeast to the half section line on the south?

A. No, I don't know that distance.

Q. The only thing you chained out was this land Mr. Devine pointed out to you, is that right?

A. May I make this statement? I had been informed that another surveyor had surveyed those lands and that Mr. Fred Wilson had run those lines. I was particularly employed to furnish a description of the land that Mr. Devine claimed, the land he thought he owned, consequently having the evidence of another surveyor before me, I didn't feel it necessary to survey the entire half mile. That was not the purpose I was employed

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for. My business was to furnish suitable description of the land that was Mr. Devine's.

Q. In your furnishing the description did you check the survey of Mr. Fred Wilson?

A. Only superficially.

Q. I will ask you, did you check as to the southeast corner of that section, the southeast corner of the southeast of the southeast?

A. I measured the distance from the southeast corner to the post of Mr. Wilson had set, and it seemed to me to be the distance satisfactory to set the regular subdivision.

Q. Did you make any effort to prove up the southeast corner from the Government field notes?

A. Yes.

Q. The point Mr. Wilson located, in your opinion, it was the correct point?

A. Yes.

Q. In measuring westwardly you found a stake placed by another surveyor?

A. I assumed it was Mr. Wilson's stake.

Q. Where was the stake with reference to the south line?

A. I believe it was twenty feet north of the south line of the section thirteen hundred fifty-four feet west of the southeast corner of the section.

Q. Thirteen hundred fifty-four or thirteen hundred forty-nine?

A. Thirteen hundred fifty-four. That is the distance we chained.

Q. That stake you took to be the quarter section corner?

A. Right. I might say this. First, several hundred feet of that course chained was in water approximately waste deep and an error of three or four feet would not be surprising.

Q. Did you find a stake there on the south line what you took to be the quarter section corner?

A. Yes.

Q. This new fence on that line going directly north?

A. Yes.

Q. State whether that quarter section stake found on the south line?

A. I am not sure. Either there or twenty feet to the north.

Q. In going north and south?

A. On the line.

Q. In your opinion that is the dividing line between the two government subdivisions?

A. Approximately.

Q. Either of the defendants here, Mr. or Mrs. Miles or Mr. Milstead there?

A. Mr. Milstead came along just as I was finishing and asked what I was doing. He was pleasant. We had met before. We had a social chat.

I explained what I had done there and we had a conversation about it, my boys came up and we got back to town.

ON RE DIRECT EXAMINATION
By Mr. Chason

Q. Your only survey, you were only employed to get and describe a correct survey of the land between the old fence row and the new fence row and that was your primary object in making this survey?

A. It was my understanding that Mr. Devine employed me to get a description of the property in the southeast corner of that section he claimed and the property outlined by his fence, including the old fence on the west. Had to show notes, had to give description of the area lying between the old fence and the new fence.

Dr. O. F. E. Winberg, a witness for the Plaintiffs,
having been first duly sworn, testified as follows:

ON DIRECT EXAMINATION
By Mr. Chason

Q. Is this Dr. O. F. E. Winberg?

A. Yes sir.

Q. Where do you live?

A. Silverhill.

Q. How long have you lived in Silverhill?

A. Will be forty-four years next December.

Q. Were you connected with the South Alabama Plantation Company as an officer in 1913?

A. Yes sir.

Q. What officer were you?

A. Secretary.

Q. Did your company purchase the southwest of the southeast of Section Twenty-three, Township Five South Range Three East?

A. Yes sir.

Q. After your company bought it did you on behalf of such company have a dividing line fence erected between that forty and the southeast of the southeast quarter of the same section?

A. Yes.

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Q. Did that fence run north and south between the entire distance between those two forties?

A. Yes.

Q. I will ask you about when was that fence erected?

A. Erected in the winter of 1914.

Q. About how long did your company continue to own the southwest quarter of the southeast quarter of Section Twenty-three, Township Five South Range Three East?

A. That, I don't remember.

Q. Several years?

A. May I give an explanation? We divided forty acres into five acre tracts and sold contracts. We remained the owner of the land until the buyers had fulfilled their agreement.

Q. From the time you acquired title to the southwest quarter of the southeast quarter in October, 1913, up until you parted with that title several years later, was that fence recognized by your company and the owner of the southeast quarter of the southeast quarter as the true dividing line between those two forties?

A. Yes.

Q. In later years, after your company parted with title, did your wife acquire title in the twenties sometime to the northeast quarter of the southwest quarter of the southeast quarter?

A. Yes.

Q. Did your wife own it for some period of time?

A. She did. How long, I don't remember.

Q. Was that old fence recognized as the dividing line between the southwest quarter of the southeast quarter and the southeast quarter of the southeast quarter?

A. Yes, indeed.

Q. You haven't been back to look at the fence? You don't know whether it still stands or not?

A. I haven't been up there in a long time.

Q. You know where the fence was erected?

A. Indeed.

Q. I believe you stated on behalf of the company you had it erected?

A. I just want to add there was a fence on the east side of that forty where we bought land and the company followed the old fence line.

Q. Do you know Richard Betsberg and Mr. E. G. Betsberg?

A. Yes.

- Q. Were they employed by your company along about that period of time?
- A. Yes, they were.
- Q. They worked for this South Alabama Plantation Company for several years?
- A. Worked nine years.
- Q. Do you know about what period of time?
- A. Between 1906 and 1918.
- Q. Have you seen them here today?
- A. Yes.

ON CROSS EXAMINATION

By Mr. Hall

- Q. Dr. Winberg, the South Alabama Plantation Company purchased the Southwest Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East?
- A. Yes.
- Q. When?
- A. In the fall of 1913.
- Q. Do you remember from whom the company purchased it?
- A. A man by the name of Carlson.
- Q. How long did the South Alabama Plantation Company retain title to that forty?
- A. That, as stated before, I couldn't tell exactly.
- Q. About how long, you said, some five or six years?
- A. Yes, more than that.
- Q. Do you know to whom the South Alabama Plantation Company conveyed the Northeast Quarter of the Northeast Quarter and the Southwest Quarter of the Southeast Quarter?
- A. No, I don't remember the name. Several you know. It was divided into five acre lots and that would be eight different owners.
- Q. You owned the Southeast of the Southeast at that time, Doctor, of that section?
- A. Southeast of Southeast? That the one we're discussing?
- Q. No, the Southwest of the Southeast.
- A. Southeast of the Southeast? That, I couldn't tell you.
- Q. Was there any agreement between your company or you as their officer and the owner of the Southeast of the Southeast of Twenty-three, Five, Three, as to the division line?
- A. No.
- Q. Was there ever any such agreement between you and the owner of such line

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at any time subsequent to that time?

A. There has never been any discussion of the line at all. The line was there when we started with it.

Q. The only thing you did was to build the fence on what you took to be the east line of the Southwest of the Southeast?

A. Yes.

Q. Did you later have that line surveyed?

A. No.

Q. During that time your company was claiming the entire Southwest of the Southeast of Twenty-three?

A. That's right, yes.

Q. Claiming it to the exclusion of everybody?

A. Yes.

ON RE DIRECT EXAMINATION
By Mr. Chason

Q. Dr. Winberg, from the time your company acquired title in 1913 up until your company parted with title, did the company ever claim any land east of the fence?

A. No.

Q. During the time your wife owned it did your wife ever claim any land east of the old fence?

A. No.

That's all.

Mr. Richard Betsberg, a witness for the Plaintiffs,
having been first duly sworn, testified as follows:

ON DIRECT EXAMINATION

By Mr. Chason

Q. This is Mr. Richard Betsberg?

A. Yes sir.

Q. How do you spell your last name?

A. B E T S B E R G.

Q. Where do you live, Mr. Betsberg?

A. I live at Silverhill.

Q. Were you ever employed by the South Alabama Plantation Company?

A. Yes sir, I was.

Q. When were you first employed by them?

A. In 1906.

Q. How many years did you work for them?

A. Worked from 1906 until 1915.

Q. While employed by this company, did the company buy the Southwest Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East and erect a fence along the east line?

A. I don't know who bought it or when it was sold or whom sold to but I remember when the fence was built.

Q. Are you familiar with that tract of land?

A. I know just where it's located.

Q. Was the fence built there while you were employed by the South Alabama Plantation Company?

A. There was a fence built there at that time.

Q. Did the South Alabama Plantation Company have that fence built?

A. Yes.

Q. You didn't particularly help or have any part in building it did you?

A. No sir.

Q. Do you know about when that fence was built there?

A. Built in 1914.

Q. Did that fence run north and south along the east line of that tract of land?

A. Run north and south.

Q. Have you been back there recently to see whether the fence is still stands there or not?

A. Yes, I was back there.

Q. About when were you back there?

A. Several months ago.

Q. Did you see where the old fence used to stand?

A. I did.

Q. Did you see anything there to indicate where the old fence used to be?

A. Saw the old trees, some stumps and some growing.

Q. Did you see a new fence that was built back east of that fence?

A. I saw a new fence.

Q. Where you saw those trees and stumps, that where the old fence was located in 1914?

A. That's where the old fence was located.

ON CROSS EXAMINATION

By Mr. Hall

Q. Whom were you working for in 1913 when the fence was built?

- A. Working for South Alabama Developing Company.
- Q. You didn't know where the east line of the subdivision was?
- A. I certainly did.
- Q. Did you survey it or see it surveyed?
- A. Never saw it surveyed, no.
- Q. You built the fence where the officers told you to?
- A. I didn't build the fence.
- Q. Were you there when it was built?
- A. Working for that company.
- Q. You know where the east line was located?
- A. Oh, yes, I do.
- Q. The fence was put on the line, you thought?
- A. It was put on that line.
- Q. It was your understanding that the South Alabama Plantation Company was building a fence on the east line of Section Twenty-three?
- A. They were. It was built.
- Q. The South Alabama Plantation Company at that time claimed all of the Southwest Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East?
- A. I couldn't tell you that.
- Q. Claiming everything within that government subdivision you said, didn't you?
- A. I couldn't tell you about where.
- Q. They told you the fence was supposed to be on the east line of the government subdivision?
- A. Yes sir.
- Q. Hasn't it, since that time, been proved it wasn't on the east line?
- A. No sir.
- Q. Don't you know there has been a recent survey down there?
- A. No sir.

Mr. E. G. Betsberg, a witness for the Plaintiffs, a man having been first duly sworn, testified as follows:

ON DIRECT EXAMINATION

By Mr. Chason

- Q. This Mr. E. G. Betsberg?
- A. Yes sir.
- Q. Where do you live, Mr. Betsberg?

A. Silverhill.

Q. How long have you been living there?

A. Little over two years.

Q. How long have you lived in Baldwin County?

A. Ever since 1900, September, 1900.

Q. Were you working for the South Alabama Plantation Company in 1913 or 1914?

A. Yes sir.

Q. Are you acquainted with the Southwest Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East?

A. Yes sir.

Q. Are you acquainted with the Southwest Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East?

A. Yes sir.

Q. Was that forty bought by the South Alabama Plantation Company in October 1913 or about that time?

A. I just couldn't say.

Q. You don't know what time?

A. No.

Q. When did you get to working for this company, in what year?

A. I worked from 1906 to 1916.

Q. While you were employed by them did they build a fence running north and south along the east line of the Southwest Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East?

MR. HALL: I object. The question calls for a conclusion of the witness.

THE COURT: Overrule the objection.

MR. HALL: I except.

A. You mean the west line?

Q. Along the east line of the land owned by the Company?

A. Yes sir.

MR. HALL: I object. Calls for conclusion.

THE COURT: Overrule the objection.

MR. HALL: I except.

Q. Were you familiar with their land, owned by the company in that area?

A. Yes sir. I was up there working.

Q. Working for the company practically on this land?

A. Yes sir.

Q. Have you been back there recently to see where the fence used to stand?

A. Yes sir, back there last spring.

Q. You mean the spring of this year?

A. Yes sir.

Q. Could you see where the old fence used to be erected by the company while you were working for them?

A. Yes sir, showed plan to me.

Q. What signs along where the fence used to be; what was still physically there yet?

A. Pine trees.

Q. Is that where the pine trees were, where the fence was built by the company back when you were working for them?

A. Well, it's the line I'm telling you about, north and south.

Q. Did you see a new fence standing over there a little distance east?

A. Yes sir.

Q. What did it run out across on the north?

A. Run east of the old fence.

Q. You don't know how far, of your own knowledge, do you? Did you personally step it?

A. I didn't step it out. I just noticed the distance.

Q. About how far, in your best judgment, east of the old fence?

A. Oh, a hundred and fifty feet.

Q. East of the old fence line?

A. Yes.

ON CROSS EXAMINATION

By Mr. Hall

Q. At the time you were working for the South Alabama Plantation Company when the fence was built, is that right?

A. Yes sir.

Q. Did you help build the fence?

A. No.

Q. Did you work on the fence?

A. No sir.

Q. At that time the South Alabama Plantation Company was claiming the entire Southwest Quarter of the Southeast Quarter of Section Twenty-three Township Five South Range Three East?

A. I think so.

Q. Was it understood at that time that the fence was supposed to be on the east line of the Southwest of the Southeast of Twenty-three, Township Five South Range Three East?

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A. Well, that is, - I don't just get you.

Q. Was it the understanding that the fence running north and south was along the east line of the Southwest Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East?

A. Yes sir.

Q. South Alabama Plantation Company claimed to own the entire Southwest Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East regardless of where the fence was placed. Isn't that a fact?

A. Yes sir.

Mr. Ad Byrd, a witness for the Plaintiffs, having been first duly sworn, testified as follows:

ON DIRECT EXAMINATION

By Mr. Chason

Q. Is this Mr. Ad Byrd?

A. Yes sir.

Q. Where do you live, Mr. Byrd?

A. Live at Loxley, near Loxley.

Q. How long have you lived in Baldwin County?

A. Since December 9, 1899.

Q. Were you living down near Loxley, or visiting in that community about 1924 or 1925?

A. At that time I was living at Stapleton.

Q. Did you visit in the Loxley community?

A. Once in awhile.

Q. Are you acquainted with the Southeast Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East south of Loxley?

A. I am.

Q. Have you visited anybody who was farming that tract of land?

A. I did.

Q. Who was farming it, Eli Gardner?

A. A man by the name of Steadham.

Q. Do you know about when Eli Gardner was farming it?

A. Yes sir, if I make no mistake it was in '24.

Q. Did Eli Gardner live on that tract of land?

A. He did.

Q. While he was farming it?

A. Yes sir.

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Q. Did you visit him there on one or more occasions?

A. I went very often.

Q. Did you ever see any fences around that tract of land?

A. I did. Entire tract of land was fenced.

Q. Was a fence over on the west side of the tract?

A. It was.

Q. Are you familiar with that fence, or been near that fence in 1924 or 1925?

A. Very familiar with it, been there time, different times.

Q. Can you tell us anything about that fence, trees growing on it, describe the fence?

A. There was at that time quite a number of pine saplings, believe most of them are that (indicating) big around now, some are still standing, I don't know just how large around.

Q. How long has it been since you have been there?

A. Yesterday.

Q. In 1924 or 1925 when you say Eli Gardner was farming this in his farming did he clear up the fence on the west line?

A. Yes he did, went up to the west line.

Q. Do you recall whether anybody was farming the land west of that?

A. Wasn't at that time.

Q. You say you have been back there recently, yesterday?

A. Yes sir.

Q. Did you say you found some big pines there now, any fence standing there now where the old fence stood?

A. Nothing more than a piece of the old fence on the south side.

Q. Fence on anything?

A. Just a little piece of the old fence south side, end of the fence.

Q. The rest of the fence has been torn down?

A. All torn down.

Q. And those pine trees the same trees you saw there as saplings?

A. I wouldn't say whether they were the same trees.

Q. They are much larger than the ones you saw there?

A. Oh, sure, the trees there in 1924 were very small saplings. Now about ten or twelve trees on it. I can't call the man's name now on the south part of this old fence.

Q. You mean along toward the south half of the fence line, where it used to be?

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A. Milstead there now. There's some pines there. I don't know whether they are that large around.

Q. Did you see a new fence built there?

A. I did.

Q. Where is the fence located with reference to the old fence?

A. According to my judgment at the top 150 feet between fifty and seventy feet south of the old fence line.

Q. South of the fence?

A. Yes sir.

Q. Toward the highway?

A. Toward the highway from the old fence line. East of the old fence. The highway runs almost north and south, that's right.

Q. You say it's between one hundred and fifty and one hundred and seventy-five feet east of where the old fence used to be?

A. Right.

Q. The new fence runs right out through a field?

A. It do.

Q. Has that fence given evidence that it has been cultivated recently?

A. No sir, nothing more than looks like it has been plowed up.

Q. You don't know whether it was cultivated last year?

A. No. I don't know. Apparently it was, last year.

Q. The land between the two fences?

A. That's right.

ON CROSS EXAMINATION

By Mr. Hall

Q. You were down there in 1924, Mr. Byrd?

A. Yes sir.

Q. Eli Gardner there?

A. Yes sir.

Q. Eli Gardner on the land?

A. Yes.

Q. Know whether he rented it probably, or who owned it?

A. I really don't know who it belonged to.

Q. Do you know whether Eli Gardner claimed the land for somebody else?

A. Renting; probably renting.

Q. You don't know from whom?

A. No, I don't. Man by the name of Steadham in the old home.

Q. Do you know whether the other fellow claimed any part of it?

A. No, just renting.

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Q. You don't know who claimed the Southeast of the Southeast at that time?

A. No.

Q. You said he claimed up to the fence at that time?

A. I did. They cultivated it.

Q. You don't know they claimed it?

A. No.

Q. Then the only thing you know is that somebody was cultivating the land, claiming ownership or under any one that did?

A. I know nothing more than I knew they cultivated it.

Q. Then so far as you know they might have been cultivating it for the owner of the land to the west?

A. So far as I know.

Mr. H. C. Devine, one of the Plaintiffs, having been first duly sworn, testified as follows:

ON DIRECT EXAMINATION

By Mr. Chason

Q. Is this Mr. H. C. Devine?

A. Yes sir.

Q. Are you the Plaintiff, or one of the Plaintiffs in this case, Mr. Devine?

A. Yes sir.

Q. Is Ella V. Devine your wife?

A. Yes.

Q. She the other Plaintiff in this suit?

A. Yes sir.

Q. Do you know Mr. A. G. Miles and Ethel Miles, his wife?

A. Well, I know them whenever I see them. I don't know, may have met them somewhere else.

Q. You know Mr. George W. Milstead?

A. Yes sir.

Q. They are the Defendants in these two suits you and your wife brought in this court?

A. Yes sir.

Q. How long have you been living in Baldwin County?

A. Since January 1, 1920.

Q. You have been here some, soon be thirty years?

A. Soon be thirty-one years.

Q. 1920 when you came?

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A. January 1, 1920.

Q. So where have you lived during that thirty years?

A. Owned a place there around Loxley right on up until now. Did live in Mobile. Worked in the railroad shops back there-

Q. You live in Loxley now?

A. Near Loxley.

Q. Are you acquainted with the Southeast Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East?

A. Yes sir.

Q. Do you own that tract of land, Mr. Devine, you and your wife?

MR. HALL: I object. The deed is the best evidence.

(No ruling by the Court)

Q. I show you here a certified copy of a deed from Ella W. Brown to you dated July 7, 1936, a little over thirteen years ago, for the Southeast Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East, is that where you acquired title to this land?

A. Yes sir. I bought all the way down to that fence.

MR. CHASON: Plaintiff offers in evidence photostatic copy of a Warranty Deed from Ella W. Brown, a spinster, to H. C. Devine, duly prepared from the Probate Records of Baldwin County, Alabama, where the deed is recorded, said deed being dated the 7th day of July, 1936 and recorded in the office of the Judge of Probate of Baldwin County, Alabama in Deed Book 59 N. S. at page 511, said deed conveying the following described lands situated in Baldwin County, Alabama, to-wit: The Southeast Quarter of the Southeast Quarter of Section Twenty-three Township Five South Range Three East of St. Stephens Meridian, in Alabama. Plaintiff asks that this deed be marked Plaintiff's Exhibit "1" and attached to his testimony and made a part thereof.

Plaintiff's Exhibit "1"

DEED WITH WARRANTY

THIS INDENTURE, made the 7th day of July, 1936, between Ella W. Brown, a spinster, of Evanston, Illinois, of the first part, and H. C. Devine, of the second part, Witnesseth, that the party of the first part in consideration of Five Hundred and no/100 (\$500.00) Dollars hereby acknowledged to have been paid the party of the first part by the party of the second part, does grant, bargain, sell and convey unto said party of the second part, his heirs and assigns, all the real property in Baldwin County, Alabama,

described as follows:

The Southeast quarter (SE $\frac{1}{4}$) of the southeast quarter (SE $\frac{1}{4}$) of section twenty three (23), township five (5) south, Range three (3) east of St. Stephens Meridian in Alabama, subject to taxes and assessments, to highways and easements and to rights of the parties in possession.

Together with all the rights and appurtenances to said described premises in anywise belonging. To have and to hold the same forever. And Ella W. Brown for herself and her heirs, the said described premises and appurtenances, will forever Warrant and Defend unto the said party of the second part, his heirs and assigns, against the lawful claims of all persons whatsoever, by, through or under her.

IN WITNESS WHEREOF, The said party of the first part has hereunto set her hand and seal the day and year above written.

Signed, sealed and delivered in the presence of

EDWARD F. CHIRHART

ELLA W. BROWN

(SEAL)

RUTH PARNELE

50¢ U. S. I. R. Stamps Attached

Cancelled 7/7/36 R L P

STATE OF ILLINOIS

COOK COUNTY

I, Edward F. Chirhart a notary public in and for said state and County, do hereby certify that Ella W. Brown, a spinster 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 she executed the same voluntarily on the day the same bears date.

Given under my hand (if before a foreign notary "notarial seal")

this 7th day of July, 1936.

EDWARD F. CHIRHART, Notary Public
Cook County, Illinois
My Commission expires Nov. 27, 1939

SEAL

STATE OF ALABAMA PROBATE COURT

BALDWIN COUNTY

Filed in office this 27 day of July, 1936, at 3:15 P. M. and duly recorded in Deed Book 59 N. S. page 511; and I certify that \$_____cts. 50 Deed Tax has been paid as required by law.

G. W. Robertson, Judge of Probate

G. W. Robertson, Judge of Probate

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STATE OF ALABAMA

BALDWIN COUNTY

PROBATE COURT

I, W. R. STUART, Judge of the Probate Court in and for said State and County, hereby certify that the within and foregoing pages contain a full, true and complete copy of the Ella W. Brown, H. C. Devine as the same appears of record in my office in Deed Book No. 59 Page 511.

Given under my hand and seal of office, this 28 day of October, 1949.

/s/ W. R. Stuart
Judge of Probate

Seal.

MR. CHASON: (Resuming his examination of witness)

Q. Was this land under fence?

A. Yes sir.

Q. Entirely enclosed by a fence?

A. Yes sir.

Q. Does your wife own an interest in this property with you?

A. At the time or now?

Q. Are you the Plaintiffs in this suit?

A. Yes sir.

Q. Mr. Devine, when you bought this land, did you go into possession and begin to farm it?

A. Yes sir.

Q. Have you and your wife owned it under that fence continually for the last, a little over thirteen years?

A. Yes sir.

Q. Have you assessed and paid taxes on it during that thirteen year period?

A. Yes sir.

Q. I will ask you when you went in possession of that land, was an old fence standing on the west boundary of that tract of land?

A. There was.

Q. Did that fence, at the time you went in possession of it, give evidence it had been there a long period of time?

A. It did. Shortly after we went to Baldwin County there were good large saplings on it.

Q. You had known the land prior to the time you bought it?

A. Right.

Q. Have you assessed and paid taxes on it during the thirteen year period of time you have been there?

A. Yes sir.

Q. When did you first become acquainted with it?

A. Sometime during the year 1920.

Q. About the time you came here?

A. Shortly after we came here.

Q. Do you know who owned it at that time, of your own personal knowledge? If you don't, just answer you don't.

A. Lincoln Brown owned it at the time I came to Baldwin County and later on he sold it to Ella V. Brown.

Q. That who you bought from?

A. Correct.

Q. Mr. Devine, when you first knew that land in 1920 was there a fence along the west boundary?

A. Sure was.

Q. That fence you knew in 1920 remain there up until about the time this suit was filed?

A. It did.

Q. Mr. Devine, did you, from the time you went into possession, farm it and claim title up to the fence?

A. I did.

Q. Did you have continuous possession during over thirteen years you owned it up to the fence?

A. I had possession to that fence from the day I bought the place until they tore it up and put a fence across my field.

Q. What kind of trees were standing in the fence?

A. Pine, dogwood and persimmon.

Q. Any pines still standing there?

A. Ten or twelve of the same pines there as when I came there in 1920, still there today.

Q. Located along the south part of the land or the north part?

A. Mostly on the south and I believe, some on the north half I believe, some pines on the north half of the fence.

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Q. In 1948 did anyone farm that land under authority from you?

A. Yes sir.

Q. Who farmed it under your authority?

A. My son.

Q. What kind of crop did he have on it in September, 1948?

A. He had some corn on it.

Q. Was that fence destroyed by anyone and rebuilt east of where it was originally located?

A. Yes sir, it was.

Q. Who built a new fence and destroyed the old fence?

A. It was destroyed when I wasn't out there. I couldn't say who destroyed it, couldn't say who built a fence, or helped build a new fence except what they told me.

Q. Have you had a conversation with Mr. Miles or Mr. Milstead about the new fence?

A. No sir.

Q. Does Mr. Miles, Mr. A. G. Miles and Ethel Bargainear Miles own the land immediately south of the old fence as it used to stand there, or do they have possession of it?

A. West I, - Milstead you say?

Q. On the north end Milstead on the south end George W.?

A. Yes.

Q. Did your son go in and get the corn out?

A. Yes sir, he went and asked permission to get the corn.

Q. The arrangements were made between your son and Mr. Miles?

A. He went to their home and found out they would let him go get the corn. I don't know who he talked to. He told me they give him permission to get the corn.

Q. Is the true west boundary line of this land the Southeast Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East? Is that where the old fence used to stand?

A. The fence they tore down. The one that was there when I came here in 1920.

Q. Did you have this old fence surveyed by Mr. Arnold?

A. Yes sir.

Q. Did you have him survey the new fence?

A. I had Mr. Arnold go survey out what I had under the old fence, what I had in possession since I bought the place.

Q. Did Mr. Arnold give you this certificate of survey (handing witness

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paper)?

A. Yes.

Q. West line of this two tracts of land the true boundary?

A. West line is the true boundary line.

Q. Where the old fence used to stand?

A. Where the old fence used to stand. I always kept the old fence up.

Q. You farmed up to and claimed up to the old fence?

A. I did every year. My son farmed it as close as he could drive a tractor to it.

Q. Continually for the thirteen years you owned it?

A. Yes.

Q. You claim to own up to that fence?

A. I did, and did own to that fence.

ON CROSS EXAMINATION

By Mr. Hall

Q. Is this (indicating) the only deed under which you claim, Mr. Devine?

A. I claim the land up to the fence.

Q. I say is that the deed?

A. I couldn't tell you anything. I can't see to read it.

Q. You identified a moment ago the plat?

A. The plat is a larger thing.

Q. You could see a moment ago and identified it for Mr. Chason and now you can't see for me?

A. I own the land up to the fence.

Q. Have you assessed all the land you own in that section the last several years?

A. Me or my wife one.

Q. You are claiming only the land in that subdivision covered by your assessment?

A. I claim to own the land down to the fence.

Q. Did you assess the true line of the Southeast Quarter of the Southeast Quarter?

A. I assessed it just like Miss Ella W. Brown assessed it.

Q. And you are claiming no land not covered by the assessment?

A. I claim down to the fence.

Q. Do you own that land?

A. Yes sir, down to the old fence.

Q. You do?

A. Shore, I do.

Q. Do you remember when you went to these gentlemen and asked about surveying the true line?

A. No sir, I don't remember.

Q. Did you ever go to them and mention a true surveyed line?

A. Not going to true line?

Q. Answer my question. Did you go?

A. No, I didn't go to them.

Q. Did you ever go to or ask either of these gentlemen or both of them to go with you and get a surveyor to establish a true line to the subdivision?

A. No sir.

That's all.

MR. CHASON: That is the Plaintiffs' case.

Mr. George W. Milstead, one of the Defendants, having been first duly sworn, testified as follows:

ON DIRECT EXAMINATION

By Mr. Hall

Q. Is this Mr. George W. Milstead?

A. Yes sir.

A.

Q. Mr. Milstead, are you one of the defendants here?

A. Yes sir.

Q. In this suit in which Mr. and Mrs. Devine are the plaintiffs?

A. Yes.

Q. I show you an instrument (handing witness paper). What is that, Mr. Milstead?

A. Deed. My deed to the place.

MR. HALL: We offer in evidence as defendant, George W. Milstead's Exhibit "1", deed from Central Baldwin Bank, a Corporation, to George W. Milstead, dated January 28, 1949, and of record in Deed Book 139 at page 242, conveying:

The Northwest Quarter of the Northeast Quarter and the North Half of the Northeast Quarter of the Northeast Quarter and the North Half of the South Half of the Northeast Quarter of the Northeast Quarter all in Section Twenty-six, Township Five South, Range Three East, and the Southeast Quarter of the Southwest Quarter of the Southeast Quarter in Section Twenty-three, Township Five South, Range Three East, and the Northeast Quarter of the Northeast Quarter of the Northwest

Quarter of Section Twenty-six, Township Five South, Range Three East.

MR. CHASON: We object to the deed. It was made since the filing of this suit.

THE COURT: He is a party defendant. I will let it in.

MR. CHASON: I withdraw the objection.

Defendant, George W. Milstead's

Exhibit "1"

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, That the CENTRAL BALDWIN BANK, a corporation, Grantor, for and in consideration of the sum of ONE HUNDRED (\$100) DOLLARS, and other good and valuable consideration to it in hand paid by George W. Milstead, Grantee, the receipt of which is hereby acknowledged, do hereby GRANT, BARGAIN, SELL, AND CONVEY unto the said Grantee, the following described property situated in Baldwin County, Alabama, to-wit:

The Northwest Quarter of the Northeast quarter and the North Half of the Northeast quarter of the Northeast quarter and the North half of the South half of the Northeast quarter of the Northeast quarter all in Section 26, Township 5 South, Range 3 East, and the Southeast Quarter of the Southwest quarter of the Southeast quarter in Section 23, Township 5 South, Range 3 East, and Northeast quarter of the Northeast quarter of the Northwest quarter of Section 26, Township 5 South, Range 3 East. TO HAVE AND TO HOLD, with the appurtenances thereunto belonging unto the Grantee, his heirs and assigns forever.

IN WITNESS WHEREOF the CENTRAL BALDWIN BANK, a corporation has caused these presents to be executed by O. A. Ellis, as its President and attested by C. B. Ellis, as its cashier, and its corporate seal to be hereto affixed on this the 28th day of January, 1949.

CENTRAL BALDWIN BANK
By O A Ellis
As its President

Attested:

By (Signature illegible)
As its Cashier

STATE OF ALABAMA

BALDWIN COUNTY

I, Vera V. Lewis, a Notary Public in said County, and said State, certify that O. A. Ellis and C. B. Ellis, whose names as President and Cashier, respectively, of the Central Baldwin Bank, a corporation, are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day that being informed of the contents of the conveyance, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 28 day, January, 1949.

/s/ Vera V. Lewis

Notary Public

MR. HALL: Q. Mr. Milstead, how long have you been living down on this land which you own?

A. Since the fall of 1942, about October.

Q. At that time you bought under contract?

A. Yes sir, I did.

Q. Did you move on this land owned by you and being a part of that land that you have under fence, was it under fence?

A. Yes sir.

Q. Soon after you moved there did you see Mr. Devine here?

A. Didn't see Mr. Devine until 1947.

Q. Where did you see him?

A. Loxley.

Q. Was anything mentioned about the land?

A. He asked me to carry him home and I started with him going the wrong way, he said he lived back this way (indicating). I told him I bought the Charley Kruzich place, and he also said he was the fellow who owned that land, have a line run-

Q. Did he say anything about running a true line?

A. That's what we did.

Q. Across the forty did you run east and west there?

A. Half.

Q. The line between you and the land he said he owned?

A. North and south.

Q. After that time did you have a survey made?

A. Well, he talked to me again.

- Q. When did he talk to you the next time?
- A. About the 20th of December, 1947.
- Q. What was the conversation between you and Mr. Devine?
- A. The fence wasn't any good, he had cows and he had oats planted on his part. He said if the cows got on his side, go on his side, he would run them back and if his got over on mine I could run them back and I told him I didn't have time to run the cows back and forth, we would patch up the fence for the time being and me and him and his boys, but he told me then he was going to have a fellow in there doing some surveying in January or February and would run a line, would I pay half of it, and in June he still hadn't run the line and my cows got in his field and I went and got a surveyor.
- Q. Who?
- A. Mr. Fred Wilson.
- Q. And that's when it was surveyed?
- A. Yes.
- Q. Did you assist him?
- A. Yes sir.
- Q. At the time of the survey did Mr. Wilson definitely locate several corners of your land?
- A. Yes sir.
- Q. Did you build a fence according to these lines?
- A. Yes sir.
- Q. At the time you built the fence was any crop growing on it either way, either side?
- A. Yes sir. He put a stob down around the first of June and around the seventh of August it was gone. The stob was gone, and I called Mr. Wilson about that and he said he would put another down.
- Q. Did he come back?
- A. Yes sir, and he said he didn't see any reason why we couldn't fence it.
- MR. CHASON: No object to what Mr. Wilson said.
- THE COURT: Sustain the objection.
- Q. Subsequent to that time did you have a conversation with Mr. Devine here?
- A. You mean before we fenced it? No sir.
- Q. Was Mr. Devine there when you ran the line?
- A. Right. He was there.
- Q. Did he point out any lines?
- A. Well, no sir.

Q. What did he say when Mr. Wilson ran the line there?

A. He said it was wrong.

Q. Did he say anything about the crop on the land?

A. He asked if he could gather the corn and I told him he could.

Q. Was that corn mentioned west of the line Mr. Wilson ran?

A. Yes sir.

Q. You let him gather the corn?

A. Right.

Q. Did he say anything more to you about claiming the land?

A. No sir.

ON CROSS EXAMINATION

By Mr. Chason

Q. Mr. Milstead, when did you come to Baldwin County?

A. In 1942.

Q. Been living in this area since 1942?

A. Yes sir.

Q. When did you first know this land you later bought, and Mr. Devine's land there?

A. Bought in 1942.

Q. You didn't buy this. You made a contract to buy and got a deed in 1949, is that right?

A. I had the place paid for, paid for before, when the fellow at the bank messed me up.

Q. You had a contract back in 1942?

A. Yes.

Q. When you first moved on the land in 1942, was there an old fence running between the Southwest Quarter and the Southeast Quarter and the Southeast Quarter of the Southeast Quarter, running north and south the full length of the forty?

A. It was there.

Q. The fence had big pine trees where the wire was grown in the trees?

A. I didn't learn about the wire until today.

Q. There were some pine trees in the old fence line?

A. Yes sir.

Q. Eight or ten big pines?

A. Six on my part.

Q. That fence gave evidence of having been there a long period of time?

A. I couldn't say about that.

- Q. It didn't look like a new fence in 1942, did it?
- A. It wasn't new. I don't know how long it has been there. I farmed it. Never looked at the fences very much. I don't know much about the fence.
- Q. Would you say it was there five years?
- A. It was there. I don't know just how long.
- Q. You wouldn't say it hadn't been there better than twenty years?
- A. No sir.
- Q. It was an old fence?
- A. It was there when I bought it.
- Q. An old fence when you bought it?
- A. How old do you want me to say? I wouldn't say over eight years.
- Q. At the time you bought you would say it was eight years old then, and you have been there seven years, that would make it fifteen years. In your judgment it's been there about fifteen years?
- A. Yes sir.
- Q. When you bought that in '42 just west of this old fence, did you farm it?
- A. Yes sir.
- Q. Did you farm up to the old fence?
- A. Right.
- Q. Never did farm east of the old fence?
- A. No sir.
- Q. Mr. Devine farmed up on the east side to the old fence?
- A. Right.
- Q. During 1942 and 1943, did you clear up, at that time you tore the old fence down?
- A. Yes sir.
- Q. You kept your crop up west of the fence and he came up from the east side up to the fence?
- A. Right.
- Q. Each of you gathered your own crops?
- A. Right.
- Q. You paid taxes on your land and he paid on his?
- A. Yes sir.
- Q. You say Mr. Devine told you: "Let's go and survey it"?
- A. Yes.
- Q. Never did do anything about it?
- A. That's right.

- Q. You went over and got your surveyor?
- A. Yes.
- Q. You sent for Mr. Devine while your surveyor was there?
- A. I went and got him.
- Q. Carried him out there?
- A. Yes.
- Q. You showed him you were moving the fence one hundred and sixty-seven feet?
- A. He could see.
- Q. Right out in the middle of his corn patch when he got there?
- A. Surveying in mine, his afterwards.
- Q. When he got there he wasn't surveying across his corn patch?
- A. Surveying there, going across the corn patch.
- Q. One hundred and sixty-seven feet east of where the old fence was?
- A. Right.
- Q. And the first thing he told you was that it was wrong?
- A. Yes sir.
- Q. You didn't stop surveying?
- A. No. Kept on surveying.
- Q. When you completed you built a fence when he wasn't there and you took off a strip of his land one hundred and sixty-seven feet wide twenty acres long?
- A. Taken what was surveyed.
- Q. You still own or claim to own, or hold possession of that piece in between those two fences?
- A. Yes.
- Q. You never had claimed it or had possession of it until you went and tore his fence down?
- A. That's right.
- Q. And Mr. Devine told you there when you were making the survey that the old fence was his west line, didn't he?
- A. No sir. He told me it was further on, seven feet too far on him, to back up seven feet.
- Q. Trees seven feet over?
- A. No, the trees were about on that old fence row.
- Q. From 1942 until the survey in 1948 you say, you didn't attempt to take possession of anything east of the old fence?
- A. Suited me until he got -

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Q. That was recognized as the true dividing line?

A. Right.

ON RE DIRECT EXAMINATION

By Mr. Hall

Q. In that conversation did he say anything about claiming to the true line between the Government subdivisions? What land did he claim when you were talking with him?

A. Claimed seven feet on that fence. I was seven feet to far on him. I needed to back up seven feet.

Q. He came to you to make a survey of the true line?

A. Yes.

Q. You did make the survey?

A. Yes.

ON RE CROSS EXAMINATION

By Mr. Chason

Q. You mean to say that if you would move seven feet he would be agreeable? Are you telling this jury that you moved back one hundred and sixty-seven feet?

A. Not the new fence. He said the old fence, wanted to back it up seven feet.

Q. And you moved up one hundred and sixty-seven feet?

A. Yes, but I had it surveyed before I did.

Mr. A. G. Miles, one of the defendants, having been first duly sworn, testified as follows:

ON DIRECT EXAMINATION

By Mr. Hall

MR. HALL: We want to offer in evidence the original deed to A. G. Miles and Ethel Barginear Miles, dated March 2, 1948 and recorded in Deed Book 128 at page 407, conveying: The North Half of the Southwest Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East, with other lands, and ask that it be marked Defendant, A. G. Miles' Exhibit "2".

THE COURT: Deed admitted.

Defendant, A. G. Miles'

Exhibit "2"

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS:

That, for and in consideration of the sum of One Hundred Dollars (\$100.00) together with other good and valuable consideration to the undersigned Grantors, Jaroslav Dobrovolny and wife Marie Dobrovolny, in hand paid by A. G. Miles and wife Ethel Barginear Miles, Grantees herein, and also including the retention by the said Grantors of a Vendors Lien and the execution by the said Grantees to the said Grantors of a purchase money mortgage of even date in the sum of Fifteen Thousand Dollars (\$15,000.00) on the hereinafter described property, the said Grantors do hereby Grant, Bargain, Sell and convey unto the said Grantees, for their joint lives, and, upon the death of either of them, then to the survivor of them and to the heirs and assigns of such survivor, the following described personal property and real estate in Baldwin County, Alabama, to-wit:

The North Half ($N\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$)
 The Southwest Quarter ($SW\frac{1}{4}$) of the Northeast Quarter ($NE\frac{1}{4}$),
 The East Thirty acres of the Northeast Quarter ($NE\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$),
 The North Half ($N\frac{1}{2}$) of the Southeast Quarter of the Southwest Quarter ($SW\frac{1}{4}$), and
 The North Half ($N\frac{1}{2}$) of the Southwest Quarter of the Southeast Quarter ($SE\frac{1}{4}$) all in Section Twenty-three, Township Five (5) South, Range Three (3) East, save and except all mineral rights in and to said property.

Together with all personal property located on said premises including a tractor, plow, disc, cultivator, grinder, corn sheller, duster, wagon, corn planter, lime spreader, hay mower, seventeen head of stock and increase, and 200 chickens more or less excepting from said personal property however all household goods and furniture and certain garden tools.

To Have And To Hold the same unto the said A. G. Miles and wife Ethel Barginear Miles for their joint lives, and, upon the death of either of them, then to the survivor of them and to the heirs and assigns of such survivor forever.

And we do covenant with the said A. G. Miles and wife Ethel Barginear Miles, their heirs and assigns; that we are seized in fee simple of the above described premises; that the same are free from all encumbrances; that we have a good and lawful title to sell and convey the same as aforesaid; that we will and our heirs, executors and administrators, shall forever

Warrant and Defend the same to the said Grantees, their heirs and assigns forever against the lawful claims of all persons whomsoever.

In Witness Whereof we have hereunto set our hands and seals this 2 day of March, 1948.

/s/ Jaroslav Dobrovolny L. S.

/s/ Marie Dobrovolny L. S.

STATE OF ALABAMA, BALDWIN COUNTY

I Robert M. Mundine, a Notary Public in and for said County and State, hereby certify that Jaroslav Dobrovolny and wife Marie Dobrovolny whose names 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 instrument they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 2 day of March, A. D. 1948.

/s/ Robert M. Mundine N. P.

STATE OF ALABAMA, BALDWIN COUNTY

I, Robert M. Mundine, a Notary Public in and for said County and State, do hereby certify that on the 2 day of March 1948 came before me the within named Marie Dobrovolny known to me to be the wife of the within named Jaroslav Dobrovolny who, being examined separate and apart from her husband, touching her signature to the within instrument, acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of her husband.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 2 day of March, 1948.

/s/ Robert M. Mundine N. P.

MR. HALL: Q. Mr. Miles, how long have you been living down there on this land where you live?

A. This past March was a year ago.

Q. Do you know Mr. Devine, Mr. H. C. Devine?

A. Know him when I see him.

Q. At the time, or about the time you bought the land, did you have any conversation with Mr. Devine with reference to the land?

A. Yes sir.

Q. What was that, Mr. Miles?

A. He come to me and told me to let's get these lines straightened up and get the fence on the line, the north line, said you are six or eight

feet on me back on the west seven feet on me, let's get the lines run and get a fence built, and wanted to know if I would pay half.

Q. He wanted to get the line run between the old fence on the line?

A. Yes sir.

Q. Did he make a survey of that line?

A. No sir.

Q. You make the survey?

A. Yes sir.

Q. At the time you were making the survey was Mr. Devine there?

A. No sir. I notified him but he wouldn't come.

Q. Whom did you have run the line?

A. Mr. Wilson.

Q. Fred Wilson?

A. Yes sir.

Q. Were you there when he ran the line?

A. Yes sir.

Q. Was he able to locate the southeast corner of the section?

A. Yes sir.

Q. What line did he run, Mr. Miles?

A. Run ten acres and the forty between me and him.

Q. Run the west line of the Southeast of the Southeast?

A. Yes sir.

Q. Did he stake it out?

A. Yes sir.

Q. Did you build a fence partly on that line?

A. Yes sir.

Q. Did you join with Mr. Miles?

A. Milstead. Yes sir.

Q. You and Mr. Milstead built across the entire quarter section?

A. Yes sir.

Q. Did you talk with Mr. Devine after that time about the fence?

A. No sir.

Q. Did Mr. Devine come and talk to you about it?

A. No sir.

Q. Was anything said to you about putting the fence over his line?

A. No sir.

Q. What was the first time you heard he was claiming the fence was on the wrong line?

A. Never did tell me to my-

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- Q. Remember where you were at the time he came to you and asked about making a survey?
- A. Yes sir, plowing corn in my field. He was planting.
- Q. He came to you?
- A. Yes sir.
- Q. Did he tell you whether there was some question as to where the line was?
- A. Said to let's get an engineer and get it straight.
- Q. He wanted to straighten out the line?
- A. Yes sir.

ON CROSS EXAMINATION

By Mr. Chason

- Q. Mr. Miles, you say you bought the land on March 2, 1948?
- A. Right.
- Q. You say soon after you bought the land Mr. Devine came to you and told you the old fence was about seven feet too far east of him?
- A. Yes sir.
- Q. You say he told you he claimed to own everything all the way across the tract of land up to the old fence and seven feet more, past the fence?
- A. Yes sir.
- Q. He told you let's get it surveyed and let's place the fence on the line?
- A. Yes sir.
- Q. That was the last time you discussed it with him?
- A. Yes sir.
- Q. From that one conversation when you were out in the field, both working, you say he was planting crops up to the old fence, you didn't tell him not to plant up to the fence?
- A. No sir.
- Q. You made no objection and you knew he claimed title up to the old fence?
- A. No sir.
- Q. You saw him plant up to the old fence and didn't attempt to stop him?
- A. Right.
- Q. You were planting the other side of the fence up to the old fence?
- A. He didn't stop me, only he said I was seven feet over.
- Q. He took the old fence and gathered all going west and you gathered all going east?
- A. Right.
- Q. That was the situation you were in when you bought it?
- A. Right.

Q. Soon after you bought it and after his crop got to growing you went and got a surveyor, is that right?

A. Right.

Q. And you come in his absence and run a line one hundred and sixty-seven feet east of the old fence running north and south?

A. Right.

Q. And you fenced off one hundred sixty-seven feet of his corn crop for his half of the forty?

A. Right.

Q. Then you tore down the old fence that had been there a long time and built you a new fence one hundred and sixty-seven feet east?

A. Right.

Q. Without his permission or knowledge?

A. Right.

ON RE DIRECT EXAMINATION

By Mr. Hall

Q. That was at his suggestion wasn't it?

A. Yes sir.

Mr. Fred Wilson, a witness for the Defendants,
having been first duly sworn, testified as follows:

ON DIRECT EXAMINATION

By Mr. Hall

Q. This Mr. Fred M. Wilson?

A. Yes sir.

Q. What is your profession?

A. Land surveyor.

Q. How long have you been a surveyor?

A. In the neighborhood of fifteen years.

Q. You are a licensed surveyor in Baldwin County, State of Alabama?

A. Yes.

Q. How long have you been surveying lands in Baldwin County?

A. Since 1938.

Q. Do you recall surveying some land for Mr. Milstead and Mr. Miles near Loxley?

A. Yes sir.

Q. In making that survey in the Southeast corner of Section Twenty-three Township Five South Range Three East?

A. That's right, yes sir.

Q. Mr. Wilson, in making the survey did you find a definitely established corner?

A. Yes, definitely proved section corner and half section corner

Q. The Southeast Quarter of that section?

A. Right.

Q. Did you run west from there?

A. West a half mile.

Q. Did you prove the half section corner?

A. I did.

Q. Did you establish the boundary of the Southeast of the Southeast and the Southwest Quarter?

A. I did.

Q. Was any corner there, Mr. Wilson?

A. Not where I established. I established the corner.

Q. Did, how did you arrive at the location?

A. By an equal division of the section line between the two government corners.

Q. Can you refer to your notes and tell how far it was from the Southeast Corner of the section to the Half Section corner between the two proven corners?

A. Two thousand six hundred ninety-eight and five-tenths feet.

Q. Then in order to arrive at the quarter section corner what did you do?

A. Divided it equally.

Q. How far would that be from the Southeast corner?

A. One thousand three hundred forty-nine and twenty-five hundredths feet.

Q. Did you set a stake there?

A. Yes sir.

Q. Have you been back since that time?

A. Yes sir.

Q. Is the fence there now?

A. Just where do you mean?

Q. Running north from the quarter section corner?

A. Yes sir.

Q. Is there a new fence there?

A. Yes.

Q. Which way does it run?

A. North and south.

Q. What is the true line, Mr. Wilson, between the Southeast Quarter of

the Southeast Quarter and the Southwest Quarter of the Southeast Quarter of Section Twenty-five, Township Five South Range Three East with reference to that fence as you found it?

A. The true line? I believe the fence is on the true line. It takes off from my corner stake.

Q. Is the fence on the corner?

A. That's right, the new fence is there now.

Q. Do you know whether Mr. Devine was there when you made the survey?

A. Yes sir. He was there when I proved the corner of the section.

Q. When you ran the south line of the subdivision?

A. Yes, he was there part of the time. He wasn't there continually, there when the stake was set.

Q. Did he make any objection or complaint?

A. Yes. He said it was too far east, as I recall.

Q. From that point did you run north, that line?

A. I did.

Q. All the way through or only half way for Mr. Milstead?

A. Later for Mr. Miles.

Q. Later for Mr. Miles? You ran for Mr. Miles an extension of that line?

A. Continuous extension.

Q. That was the line, the true line as you determined it between the two government subdivisions?

A. Yes.

ON CROSS EXAMINATION

By Mr. Chason

Q. Mr. Wilson, you were employed to run the Southeast of the Southeast of Section Twenty-three, Five, Three?

A. I was employed to run the south line.

Q. You told Mr. Hall you surveyed the Southeast of the Southeast of Section Twenty-three, Township Five South Range Three East?

A. I didn't understand the question.

Q. How much line did you run?

A. Ran the dividing line between Twenty-three and Twenty-six, that would be the entire south line of Twenty-three and the entire - just for half a mile.

Q. How much land is contained in the South Half of the Southeast Quarter of Section Twenty-three?

A. As I determined, ran the division line, it would amount to forty-one and one-half acres.

Q. According to government field notes?

A. Government field notes compare favorably.

Q. Forty-one and a half. You would say then, in the entire South Half of the Southeast Quarter, according to the government field notes, there would be eighty-three acres?

A. Let's see, just a minute. The government field notes call for certain distances between the corners, the two corners, which is eighty and twenty-four hundredths chains.

Q. How many chains?

A. Eighty and twenty-four hundredths chains on the south line.

Q. Between the government subdivision for half mile?

A. Along the south line.

Q. The South Half of the Southeast Quarter, from the Southeast corner to the center of the section?

A. Right.

Q. Tell us how much land would be in the Southeast of the Southeast of that section?

A. I can't tell you from running that line there.

Q. Assume that, have you ever looked at the field notes and know how much land was in that tract?

A. Made a copy.

Q. I will ask you, Mr. Wilson, is it not a fact that there is eighty-six and fifty-eights hundredths acres in the South Half of the Southeast Quarter? I show you here a certified copy of the U. S. Patent (handing witness paper). Tell us just how much land is in that patent?

A. This says eighty-six and fifty-eight hundredths acres.

Q. Is that not certified to by the Probate Judge as being the true and exact copy of the United States Patent?

A. Right.

Q. And it says eighty-six and fifty-eight hundredths acres?

A. Yes sir, right.

Q. Then there is quite a bit more measurement than what you were just telling us?

A. Appears to be. Determined by measurements -

Q. It would be considerably, would run a little more west from the Southeast corner?

A. I believe the law says between two proven corners -

Q. By this survey you paid no attention to the government field notes and

the government plat. What you said was you recognized the corner and had these men set up a fence and you-

A. No sir, I didn't say that.

Q. You set up the corner by which the fence was set up?

A. I used the field notes to determine the corner.

Q. You ran only eighty and twenty-four hundredths chains from the Southeast corner?

A. I ran two thousand six hundred ninety-eight and five-tenths feet.

Q. That would be thirteen hundred forty-nine and twenty-five hundredths feet on each side?

A. That's right.

Q. You assumed that the Southeast corner was right?

A. That's the true line between them.

Q. You don't know that of your own personal knowledge?

A. I do.

Q. You going by the notes you took?

A. Going by government field notes.

Q. You were employed and working in behalf of these defendants?

A. Right.

Q. The first time Mr. Devine looked at the line he told you it was too far east?

A. Right.

Q. And regardless of that you set a stake there where they built the fence?

A. Right.

Q. You didn't help build the fence?

A. I didn't help with the fence. I set the stakes and showed them how the line-

Q. He had a corn crop growing on that field?

A. Right.

Q. The fence cut off one hundred and sixty-seven feet of that corn field?

A. Approximately.

Q. And you told them they had a right to build the fence?

A. I don't know that I told them that. The dividing line was equally proven by government field notes. According to abstract Mr. Devine had, it called for the Southeast of the Southeast regardless of how many acres which means an equal division of that quarter section and I was trying to divide the line.

Q. Between the quarter sections you divided it into four parts dis- regarding the land the government patented in the Southeast Quarter?

A. I don't follow you, Mr. Chason.

Q. Didn't you say you divided the Quarter?

A. Divided it in half is what I meant.

Q. And gave each one, I believe you stated, forty-one and five-tenths acres apiece?

A. I believe. I'm sure -

Q. That's eighty-three acres instead of eighty-six and a half isn't it?

A. In actual distance between the line or what the acres are, I don't know. Somebody could have been in error.

Q. You didn't check your survey with those government patents?

A. The government might have patented something it didn't have, I don't know.

Q. You saw the old fence there?

A. Right.

Q. And big old pine trees?

A. Yes sir.

Q. Fence been there a long time?

A. I would say it had been there quite some time.

Q. About thirty years?

A. I wouldn't say.

Q. Close to it?

A. Quite sometime.

Q. Twenty or thirty years?

A. I wouldn't make any definite statement. In the neighborhood of twenty years.

Q. Pine trees there you could hardly reach around?

A. Right.

Q. Wire in the middle?

A. I don't know about the middle, it was grown into them.

Q. And that's the line you upset?

A. That's the line I upset.

Mr. Childress, a witness for the Defendants, having been first duly sworn, testified as follows:

ON DIRECT EXAMINATION

By Mr. Hall

Q. Mr. Childress, you know the land in dispute here between Mr. Devine and Mr. Milstead and Mr. Miles?

A. Yes sir.

Q. You know Mr. H. C. Devine?

A. Yes sir.

Q. Do you remember about the time the survey was made of that land, Mr. Childress?

A. I remember when it was. I don't remember the date.

Q. Along about that time did you have a conversation with Mr. Devine's son about the line?

A. No sir.

Q. About the fence?

A. No sir.

Q. You didn't have a conversation relative to the dispute of the line?

A. No sir.

Q. Did Mr. Devine here come to either of these gentlemen at the time they were gathering corn and you have a conversation with them?

A. Two or three boys, his son and some other boys.

MR. CHASON: We object to what the son said.

THE COURT: Sustain the objection.

MR. HALL: May it please the Court, we don't have the original but we want to offer in evidence the original record of Warranty Deed from H. C. Devine and Ella V. Devine, husband and wife to H. C. Devine, Jr., conveying the Southeast Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East, which appears of record in Book 109 at pages 403-4. (Reading from record book).

MR. CHASON: Let me finish reading it. (Reading) - The Grantors, H. C. Devine and Ella V. Devine, husband and wife, reserve herewith a life estate in the above described property.

MR. HALL: They have alleged the title was in H. C. Devine and not H. C. Devine, Jr. I am offering that, I do not have the original, with the understanding that I can secure a certified copy.

THE COURT: I will admit the deed.

MR. HALL: We ask that it be identified as Respondents' Exhibit "3".

"Respondents' Exhibit '3'":

Know all Men By These Presents, that H. C. DeVine and Ella V. DeVine, husband and wife, the grantors, in consideration of ONE & 00/100 (\$1.00) and love and affection hereby acknowledged to have been paid to us by H. C. DeVine, Jr., the grantee, do hereby grant, bargain, sell and convey unto the said grantee, his heirs and assigns, all the following described Real property located in the County of Baldwin, State of Alabama, to-wit:-

50.

The Southeast Quarter of the Southeast Quarter of Section 23,
Township Five (5) South, Range Three (3) East of St. Stephens
Meridian, containing 43.29 acres, according to the official plat
of the Government Survey thereof.

"The grantors, H. C. DeVine and Ella V. DeVine, husband and wife
reserve herewith a life estate in above described property".

Together with all and singular the rights, members, privileges and
appurtenances thereunto belonging, or in any wise appertaining; to have
and to hold the same unto the grantee his heirs and assigns forever.

And, except as to taxes hereafter falling due, which are assumed by
the grantee, the said grantors for their heirs, executors and adminis-
trators, hereby covenant with the grantee, his heirs and assigns, that
they are seized of an indefeasible estate in fee simple in said property,
that said property is free from all encumbrances and that they hereby
warrant and will forever defend the title to said property unto the
grantee, heirs and assigns, against the lawful claims of all persons.

IN WITNESS WHEREOF, the grantors have hereunto set their hands and
seal this 19th day of July, 1946.

/s/ H. C. Devine (Seal)
/s/ Ella V. Devine (Seal)

STATE OF ALABAMA,
BALDWIN COUNTY.

I, Alyce C. Bill, a Notary Public in and for said
County in said State, do hereby certify that H. C.
DeVine and Ella V. DeVine, husband and wife, whose names are signed to the
foregoing conveyance, and who are known to me, acknowledged before me on
this day, that, being informed of the contents of the conveyance, they
executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 19th day of July, 1946.

/s/ Alyce C. Bill
Notary Public
State of Alabama-at-large

(Seal affixed)

STATE OF ALABAMA,
BALDWIN COUNTY.

I, Alice C. Bill, a Notary Public in and for
said County in said State, do hereby certify
that on the 19th day of July, 1946, came before me the within named
Ella V. DeVine, known to me to be the wife of the within named H. C.
DeVine, who, being examined separate and apart from the husband,
touching her signature to the within conveyance, acknowledged that she

signed the same of her own free will and accord, and without fear, constraints, or threats on the part of the husband.

In witness whereof, I hereto set my hand and seal this 19th day of July, 1946.

/s/ Alyce C. Bill
Notary Public,
State of Alabama-at-Large

STATE OF ALABAMA,
Baldwin County.

PROBATE COURT

I, W. R. STUART, Judge of the Probate Court in and for said State and County, hereby certify that the within and foregoing Deed pages contain a full, true and complete copy of the Deed from H. C. DeVine and Ella V. DeVine to H. C. DeVine, Jr. as the same appears of record in my office in Deed Book No. 109 Page 403-404.

Given under my hand and seal of office, this 6 day of January, 1950.

/s/ W. R. Stuart
Judge of Probate

(Seal of Probate Court)

By: Lila Skinner, chief clerk "

MR. HALL: Q. Mr. DeVine, I asked you yesterday whether or not you had a conversation with Mr. Milstead and Mr. Miles relative to your boundary line. You recall that, you recall me asking the question?

A. I don't remember exactly what you asked.

Q. Mr. DeVine, did you go to these gentlemen, Mr. Miles and Mr. Milstead, and ask them to join with you in a survey of your respective boundaries and the establishment of your lines?

A. No sir, I didn't go to them.

Q. Did Mr. Milstead and Mr. Miles have a survey made of their property?

A. They had a surveyor over there. Mr. Milstead had one over there to my knowing, as to Mr. Miles-

Q. Do you own the land to the south of Mr. Milstead, own the land to the south of your forty there?

A. Mr. Milstead owns a piece of property on the south side.

Q. Mr. Miles own a piece of land to the north of your land?

A. Yes sir, he is in possession of it.

Q. At the time this south line of your forty which had been the north line of Mr. Milstead ran, or was run, it was found that Mr. Milstead was over on your land?

MR. CHASON: We object. We are establishing the west boundary.

THE COURT: Sustain the objection. I don't think it has anything to do with it.

MR. HALL: I except.

MR. CHASON: We move to exclude Mr. Hall's statement from the record, about the south line.

MR. HALL: I think the jury heard me explain.

No ruling by the Court.

Q. Mr. DeVine, you stated you had been assessing the property a number of years, is that right?

A. Yes.

Q. Did you assess it in 1948?

A. I don't remember where I assessed it that year or my wife or son.

Q. Have you been turning in the same assessment over the years that you did in 1948?

A. I don't remember.

MR. HALL: (Showing witness open assessment book) Mr. Devine, did you sign that assessment?

A. Probably, was re-listed.

Q. Is that your signature?

A. I can't see to tell.

Q. You got some glasses? You can't see that, Mr. Devine?

A. I can't see to tell what it is.

Q. Anybody know your signature if they see it?

MR. CHASON: We can admit that it is the original assessment for 1947

and in regard to Section Twenty-three, that it assesses only the

Southeast Quarter of the Southeast Quarter of Section Twenty-three.

MR. HALL: (Dictates into the record) It is admitted between the attorneys, for the year 1947 the Plaintiff, H. C. Devine, assessed in Section Twenty-three, Township Five South Range Three East, only the Southeast Quarter of the Southeast Quarter containing forty acres.

MR. CHASON: We would like the record to show that it is agreed that Mr. George W. Milstead assessed the Southeast Quarter of the Southwest Quarter of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East, as ten acres, and that Mr. and Mrs. Miles assessed the North Half of the North Half of the Southwest Quarter of the Southeast Quarter as ten acres.

Mrs. George W. Milstead, a witness for the Defendants, having been first duly sworn, testified as follows:

ON DIRECT EXAMINATION

By Mr. Hall

Q. This is Mrs. George W. Milstead?

A. That's right.

Q. Mrs. Milstead, do you remember a conversation between Mr. Devine and Mr. Milstead either up in Loxley near the shipping shed a short time before the question arose as to the dividing line, Mr. Devine here, Mr. H. C. Devine, Sr?

A. Yes sir.

Q. Were you present at that time, the time of the conversation?

A. I was just in the car.

Q. What did Mr. Devine say with reference to the survey?

A. Told him he wanted to have a line to put the fence on, line and fence that would hold, hog wire.

Q. Did he mention which line he was talking about?

A. No sir, said wanted to have line run between them.

ON CROSS EXAMINATION

By Mr. Chason

Q. He didn't state the old dividing line was six or seven feet too far east and he wanted a good fence to put on the correct line on the west?

A. Told George that George was on him, and he wanted the fence on the line.

MR. HALL: That is Defendants' case.

MR. CHASON: We would like to offer in evidence in rebuttal a certified copy of United States Patent dated July 2, 1904, to Joseph C. Middleton, for the South Half of the Southeast Quarter of Section Twenty-three, Township Five South Range Three East, of St. Stephens Meridian, in Alabama, containing eighty-six acres and fifty-eight hundredths of an acre, according to the official plat of the survey of said land returned to the General Land Office by the Surveyor General, which patent is recorded in the office of the Judge of Probate of Baldwin County, Alabama in Deed Book 8, page 218, and ask that it be marked Plaintiff's Exhibit "2".

Plaintiff's Exhibit "2"

Homestead Certificate No. 19598

Application 32177

THE UNITED STATES OF AMERICA, To all to whom these presents shall come, Greeting:

Whereas there has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Montgomery, Alabama, whereby it appears that, pursuant to the Act of Congress approved 20th May, 1862, "To secure Homesteads to Actual Settlers

on the Public Domain," and the Acts supplemental thereto, the claim of Joseph C. Middleton has been established and duly consummated in conformity to law, for the south half of the southeast quarter of section twenty-three in township five south of range three east of St. Stephens Meridian in Alabama, containing eighty-six acres and fifty eight hundredths of an acre; according to the Official Plat of the Survey of the said Land, returned to the General Land Office by the Surveyor General:

Now know ye, that there is, therefore, granted by the United States unto the said Joseph C. Middleton the tract of land above described; to have and to hold the said tract of land, with the appurtenances thereof, unto the said Joseph C. Middleton and to his heirs and assigns forever.

In testimony whereof, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the second day of July, in the year of our Lord one thousand nine hundred and four, and the Independence of the United States the one hundred and twenty eighth.

(Seal) By the President: T. Roosevelt,
By F. M. McKean, Secretary,
C. H. Brush, Recorder of the
General Land Office

Recorded Alabama, Vol. 515, Page 350.

Filed for record Jan. 24, 1905, at 1 P. M.

Recorded Jan. 28, 1905.

J. H. H. Smith

Judge of Probate

STATE OF ALABAMA:
BALDWIN COUNTY :

I, W. R. STUART, JUDGE OF THE PROBATE COURT and Custodian of the records and files thereof, in and for said State and County, hereby certify that the above and foregoing is a true, correct and complete copy of Deed as the same appears of record, now on file in the office of Judge of Probate of Baldwin County, Alabama, Book 8 Page 218.

Witness my hand and seal of said Court, this 28 day of October, 1949.

/s/ W. R. Stuart

W. R. STUART, JUDGE OF PROBATE

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THE COURT'S ORAL CHARGE

Now, Gentlemen, you heard the facts in this case and it is usually the custom at this time for the Court to instruct you as to the law to be applied, and the law, due to the fact that the Court is convinced under the evidence he could not let a verdict for the Defendants stand, I am giving, at the request of the Plaintiffs, what is known as the general charge. If you believe the evidence in this case your verdict will be: "We the Jury find for the Plaintiff and fix the true boundary line as that line set forth in the Plaintiff's Replication". That will be your only verdict under the general charge. If you don't believe the evidence, then the Court will declare a mistrial.

CERTIFICATE

I hereby certify that the foregoing transcript correctly sets forth a true and correct copy of the evidence in the cases of H. C. Devine and Ella V. Devine, Plaintiffs, versus George W. Milstead, Defendant, and H. C. Devine and Ella V. Devine versus A. C. Miles and Ethel Barginear Miles, Defendants, being cases numbered 1236 and 1237 respectively, tried in the Circuit Court of Baldwin County, Alabama on the 2nd and 3rd days of November, 1949.

I further certify that I have this day notified Messrs. Hybart, Chason & Stone, attorneys for Plaintiffs, and H. M. Wall, attorney for the Defendants, that I have filed with the Clerk of the Circuit Court of Baldwin County, Alabama, this transcript of the evidence.

This 5th day of January, 1950.

Olga S. Nelson

Court Reporter, Twenty-eighth Judicial
Circuit.

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GIVEN CHARGES

1. The Court charges the jury that if you believe the evidence in this case you must find for the Plaintiffs.

Given
Telfair J. Mashburn, Jr.
Judge

A. The Court charges the jury that if you believe the evidence in this case you must find for the Plaintiffs.

Given
Telfair J. Mashburn, Jr.
Judge.

REFUSED CHARGE

A. I charge you Gentlemen of the jury that in a conveyance of land by Government subdivisions, the acreage given is merely descriptive and does not determine amount sold.

Refused
Telfair J. Mashburn, Jr.
Judge

JUDGMENT ENTRY

11-2-49 By Agreement, of the parties, this case is combined with case No. 1256-B. C. Devine and Ella V. Devine VS. George W. Milstead.

Telfair J. Mashburn, Jr.
Judge

JUDGMENT ENTRY

11-3-49 Came the parties by their attorneys, came also a jury of good and lawful men, to-wit: A. W. PAULK, and eleven others, who being impanelled and duly sworn according to law, on their oaths say, We, the Jury, find the issue in favor of the Plaintiff, and true boundary line fixed as set forth in Plaintiffs Replication. And the same being considered by the Court:

It is ordered and adjudged by the Court that true boundary line be fixed as set forth in Plaintiffs Replication, and recover of the Defendant and costs in this behalf expended, for which execution may issue.

MOTION FOR NEW TRIAL

Now come the Defendants and moves the court to grant them a new trial in this cause, and for grounds thereof, say:

1.

The verdict is contrary to law.

2.

The verdict is contrary to the evidence.

3.

The verdict is contrary to the law and evidence.

4.

The court erred in giving, at the request of the Plaintiffs, the following charge: "The court charges the jury that if you believe the evidence in this case you must find for the Plaintiffs".

5.

The Court erred in refusing to give the following charge at the request of the Defendants: "I charge you Gentlemen of the jury that in a conveyance of land by Government subdivision, the acreage given is merely descriptive and does not determine amounts sold."

H. M. HALL
Attorney for the Defendants.

Filed Nov. 25, 1949
Alice J. Buck, Clerk.

MINUTE ENTRY

11-26-49 Came the parties and submitted to the Court the Defendant's motion for a new trial in this cause on this 25th day of November, and the Court having heard argument of counsel on said motion, and considered and understood the same, is of the opinion that the same is not well taken and should be overruled: It is therefore ordered and adjudged by the Court that said motion be and the same hereby is overruled and denied.

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NOTICE OF APPEAL

Now come the Defendants, A. G. Miles and Ethel Barginear Miles, and give notice of Appeal from the judgment and verdict of the Circuit Court of Baldwin County, Alabama, rendered on the 3 day of November, 1949, in the above styled cause to the Supreme Court of the State of Alabama.

Filed Dec. 8, 1949
ALICE J. DUCK, CLERK

H. M. HALL
Attorney for the Defendants.

SECURITY FOR COSTS

We, A. G. Miles, Ethel Barginear Miles and H. M. Hall, acknowledge ourselves security for all the costs of the appeal taken to the Supreme Court by the said A. G. Miles and Ethel Barginear Miles, from the said judgment in said cause.

A. G. MILES

ETHEL BARGINEAR MILES

H. M. HALL

Approved
12-8-49
ALICE J. DUCK,
Clerk.

CITATION OF APPEAL

THE STATE OF ALABAMA
BALDWIN COUNTY - CIRCUIT COURT

TO ANY SHERIFF OF THE STATE OF ALABAMA -- GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the First Monday in Nov., 1949, in a certain cause in said Court wherein H. C. DEVINE ET AL. Plaintiff, and A. G. MILES ET AL. Defendant, a judgment was rendered against said to reverse which Judgment, the said A. G. MILES ET AL. applied for and obtained from this office an APPEAL, returnable to the Next Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the day of , 1949 next, and the necessary bond having been given by the said A. G. MILES ET AL. with H. M. HALL, sureties,

Now, You Are Hereby Commanded without delay, to cite the said H. C. DEVINE ET AL. or HIRSH & CHASON, attorneys, to appear at the Next Term of our said Supreme Court, to defend against the said Appeal, if They think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 13th day of December, A.D., 1949.

Attest:

ALICE J. DUCK,
Clerk.

Executed 12-13-49
By serving copy of
the within on
JOHN CHASON

TAYLOR WILKINS, Sheriff
D. B. JAYE- D.S.

CERTIFICATE OF APPEAL

I, ALICE J. DUCK, Clerk of Circuit Court, of Baldwin County, Alabama, hereby certify that in the cause of H. C. DEVINE ET AL. Plaintiff, vs. A. G. MILES ET AL. Defendant, which was tried and determined in this Court, on the 3rd day of Nov. 1949, in which there was a judgment for New Boundary Line in favor of the Plaintiff, the Defendant on the 8th day of Dec. 1949 took an appeal to the Supreme Court of Alabama to be holden of and for said State.

I further certify that A. G. Miles et al filed security for cost of appeal, to the Supreme Court, on the 8th day of Dec., 1949, and that H. M. Hall are surities on the appeal bond.

I further certify that notice of said appeal was, on the 13th day of Dec. 1949, served on HIRSH & CHASON as attorneys of record for said appellee, and that the amount sued for was New Boundary Line (or certain lands) (or personal property)

Witness my hand and seal of this Court, this the 13th day of Dec. 1949.

ALICE J. DUCK
Clerk of the Circuit Court of
Baldwin County, Alabama.

CLERK'S CERTIFICATE

I, ALICE J. DUCK, Clerk of the Circuit Court of Baldwin County, Alabama, At Law, hereby certify that the foregoing pages, numbering from 1 to , both inclusive, contain a true and correct transcript of the proceedings had in this Court, in the cause of H. C. DEVINE ET AL. VS. GEORGE W. MILSTEAD, No. 1236 and H. C. DEVINE & ELLA V. DEVINE VS. A. G. MILES & ETHEL BARGINEAR MILES, No. 1237 as the same appears on record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Court, this
day of , 1950

Clerk of Circuit Court, At Law,
Baldwin County, Alabama

CLERK'S CERTIFICATE

I, ALICE J. DUCK, Clerk of the Circuit Court of Baldwin County, Alabama, At Law, hereby certify that the foregoing pages, numbering from 1 to , both inclusive, contain a true and correct transcript of the proceedings had in this Court, in the cause of E. C. DEVINE ET AL. VS. GEORGE W. MILSTEAD, No. 1236 and E. C. DEVINE & ELLA V. DEVINE VS. A. G. MILES & ETHEL BARGINEAR MILES, No. 1237 as the same appears on record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Court, this
day of , 1950

Clerk of Circuit Court, At Law,
Baldwin County, Alabama

CLERK'S CERTIFICATE

I, ALICE J. DUCK, Clerk of the Circuit Court of Baldwin County, Alabama, At Law, hereby certify that the foregoing pages, numbering from 1 to , both inclusive, contain a true and correct transcript of the proceedings had in this Court, in the cause of R. C. DEVINE ET AL. VS. GEORGE W. MILSTEAD, No. 1236 and R. C. DEVINE & ELIA V. DEVINE VS. A. G. MILES & ETHEL BARGINEAR MILES, No. 1237 as the same appears on record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Court, this
day of _____, 1950

Clerk of Circuit Court, At Law,
Baldwin County, Alabama