1451

STATE OF ALABAMA,)
)
BALDWIN COUNTY.)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon C. J. Yancey and Ethel Yancey to appear within thirty days from the service of this writ in the Circuit Court to be held for said county at the place for holding the same, then and there to answer the Complaint of the Merchants National Bank of Mobile, a National Banking Association, as Trustee, George E. Fuller and Patrice B. Fuller.

WITNESS my hand this 31st day of December, 1949.

Clerk of the Circuit Court of Baldwin County, Alabama.

* * * * * * * * * * * * * * * * * *

MERCHANTS NATIONAL BANK OF MOBILE, A National Banking Association, as Trustee, George E. Fuller and Patrice B. Fuller, Plaintiffs,	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
VS.	AT LAW.
C. J. YANCEY and ETHEL YANCEY, Defendants.	

The Plaintiffs sue to recover possession of the following tract of land in Baldwin County, Alabama, to-wit:

From the Northwest Corner of Fractional Section 30, Township 4 South, Range 2 East, run North 854.5 feet for a point of beginning, run North 16 degrees 30 minutes East 420 feet to a point, run thence South 83 degrees 30' West 420 feet, more or less, to East margin of Bay Minette Creek, run thence South 16 degrees West 420 feet to a point, run thence North 83 degrees 30' East 420 feet to beginning, being Troulette Grant, Section 39, Township 4 South, Range 2 East; Section 19, Township 4 South, Range 2 East, and Section 24, Township 4 South, Range 1 East, containing four (4) acres, more or less.

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 Five Hundred Dollars ($500.00) for the detention thereof.

J. B. Blackburn

Attorney for Plaintiffs.

Received in Sheriff's Office
this 31 day of Dec., 1949
TAYLOR WILKINS, Sheriff

Executed Jan 9 1950
by serving copy of within Summons and Complaint on

C. J. Yancey
Ethel Yancey

Taylor Wilkins Sheriff
By W. F. Hall Deputy Sheriff

1451

SUMMONS AND COMPLAINT.

MERCHANTS NATIONAL BANK OF MOBILE
a National Banking Association,
as Trustee, George E. Fuller and
Patrice B. Fuller,
Plaintiffs,

VS.

C. J. YANCEY and ETHEL YANCEY,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
AT LAW.

Defendants live at
Spanish Fort.

FILED
DEC 31 1949
ALICE J. DUCK Clerk

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

MERCHANTS NATIONAL BANK OF MOBILE, a National Banking Association, as Trustee, George E. Fuller and Patrice B. Fuller,	)	
Plaintiffs,	)	IN THE CIRCUIT COURT OF
Vs.	)	BALDWIN COUNTY, ALABAMA
C. J. YANCEY and ETHEL YANCEY,	)	AT LAW
Defendants.	)	

PARTIAL DISCLAIMANT

Comes now the Defendants in the above styled cause by their Attorney and disclaims any right, title, interest or claim in and to the land sued for except the following portion:

> The East fractional Section 24, Township 4 South, Range 1 East, Baldwin County, Alabama, as the same is described in that Patent from the United States Government to Thomas Willson, which said Patent is recorded in the office of the Probate Judge of Baldwin County, Alabama, in Deed Book 209, page 13. And that part of the Lefroy Trouillett grant which extends into Township 4 South, Range 1 East as the same is shown on a plat of Township 4 South, Ranges 1 and 2 East, based on a survey made in 1821 and recorded in the office of the Probate Judge of Baldwin County, Alabama, in Map Book 4, page 3; And to this tract they plead not guilty.

WILTERS & BRANTLEY

BY: Gilbert M Brantley
Attorney for Defendants

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

SUPREME COURT OF ALABAMA

OCTOBER TERM 1965-66

1 Div. 211

Merchants Na[illegible] nk [illegible] as Trustee,
George [illegible] ler [illegible] er,

v.

C. J. Yancey and Ethel Yance[illegible]

Appeal from Baldwin Circuit Court

LIVINGSTON, CHIEF JUSTICE.

This suit was filed in the Circuit Court of Baldwin County, Alabama, on the 31st day of December 1949, and is a statutory ejectmen[illegible] Orig[illegible] suit was filed by the Merchants [illegible] of M[illegible] nal Banking Association, as [illegible] George [illegible] Patrice B. Fuller, as pl[illegible] ns [illegible] d Ethel Yancey, def[illegible] th s[illegible] fore it was trie[illegible] ti nal [illegible] Trustee, was [illegible] ul er and Pa[illegible] r were app[illegible] stees. They c[illegible] prosecute this [illegible] stees [illegible] 81, Code of 19[illegible] t, as last [illegible] contained

two counts: Count 1 embracing about 4 acres of land, Count 2 embracing about 60 acres of land. We will hereafter refer to the parties as plaintiffs and defendants as they appeared in the court below.

The defendants disclaimed as to a part of the land sued for in the complaint. The trial court entered a judgment as to the land disclaimed and it is no longer involved. As to the balance of the land sued for, the defendants entered a plea of the general issue. The case was tried before a jury who rendered a verdict for defendants, and upon which the trial court entered judgment. Plaintiffs here seek review of certain alleged errors, as pointed out by appropriate assignments of error occurring in the trial of the cause.

As somewhat of a background to the present litigation, we note that on October 10, 1927, the equity court of Baldwin County, Alabama, rendered a decree quieting title in Old Spanish Fort Development Company to certain-described lands in Baldwin County, Alabama. This decree is referred to in both briefs as being rendered in Case No. 666 (the case number given to the case by the equity court of Baldwin County, Alabama). We will hereafter sometimes refer to this as Case No. 666. The decree in Case No. 666 has been before this Court on several prior occasions. Merchants National Bank of Mobile v. Morris, 252 Ala. 566, [illegible] So. 2d 246; Morris v. Merchants National Bank of Mobile, 267 Ala. 542, 543, 103 So. 2d 310; Merchants National Bank of Mobile v. Morris, 273 Ala. 117, 136 So. 2d 193. See also Morris v. Yancey, 266 Ala. 54, 94 So. 2d 195; Morris v. Yancey, 267 Ala. 657, 104 So. 2d 553.

As above stated, the defendants in the court below entered a plea of the general issue, which admitted possession by the defendants when suit was filed of the area described in the two counts of the complaint as amended; it denied title and plaintiffs' right of possession. Secs. 938-941, Title 7, Code 1940; Wetzel v. Hobbs, 247 Ala. 659, 25 So. 2d 850.

The trial court, in its oral charge to the jury, instructed the jury that plaintiffs had connected their title to the land, the subject matter of this suit, with the final decree rendered in Case No. 666. The trial court instructed the jury that plaintiffs had traced their title "back to that final decree, which decree quieted title in the Old Spanish Fort Development Company. In that connection, there is a legal presumption of possession, which follows that title, which is based on conveyances to the present owner. You have heard all the testimony to the Plaintiffs' title, and I submit to you that he has met the burden of proof that the law casts upon him in introducing all of the deeds of records connecting himself with this decree referred to -- the final decree quieting the title in the Old Spanish Fort Development Company."

There was no exception to that portion of the oral charge quoted above and no cross assignments of error challenging the correctness of the oral charge. We conclude, therefore, that the trial court was free from error in so charging the jury as to the legal status of plaintiffs' alleged title.

As we view the record here on appeal, the jury was called on to determine, from the pleading and evidence, whether or not defendants acquired title to the land by possession of the same for a prescriptive period, namely 20 years or longer.

As we view the record, defendants in no way connected themselves with any documentary title or color of title since the final decree in 1927, before mentioned. The defendants contend that since said decree they have possessively occupied the land described in the complaint, and by such occupancy for more than 20 years have acquired title to the area here in litigation; and, as we view the record, that is the only issue involved on this appeal.

We have held that when the land has never been occupied in the true sense, the possession is constructive and follows the title, since no one was in actual possession. Tensaw Land and Timber Co. v. Rivers, 244 Ala. 657, 15 So. 2d 411.

Part of the land here involved, the 4 acres described in Count 1, is a high spot and suitable for limited cultivation and physical occupancy. The evidence as to the actual possession by defendants was quite lengthy. The high part of the land, namely the 4 acres, was used as a home place by defendants, with a garden and some buildings. The remainder of the land described in Count 2, as above stated, was wild, and in part subject to overflow.

Evidence was offered on behalf of the defendants that they had placed signs throughout the entire area warning against trespassing and hunting; that they cut timber and pilings on occasions, from 1927 to date of the suit 1949, or authorized the same to be done on all parts of the acreage here involved; that Claude Yancey had given hunting permits, and he and his wife endeavored to keep persons off the property who had not

secured hunting permits. The evidence also shows that defendants had kept cows and hogs on the area of the land described in both Counts of the complaint; that they collected rents for buildings on the home-4 acres, or high lands. But we do not attempt to detail all of the acts of the defendants tending to prove possession of the 60 acres, as well as the 4 acres, for the prescriptive period of 20 years. Suffice it to say, it appears from defendants' evidence that for more than 20 years (1927-1949) defendants have been in possession continuously of both tracts without any recognition of either the plaintiffs' rights or title or that of their predecessors' in title, or, at least, there is evidence tending to fully support that contention.

As was said in Kidd v. Borum, 181 Ala. 144, 61 So. 100, 106:

> "* * * This court has repeatedly held that the lapse of 20 years, without recognition of adversary right, or admission of liability, operates an absolute rule of repose. * * *"

We also held in Morris v. Yancey, 267 Ala. 657, 104 So. 2d 553:

> "* * * We observe here that § 828 (Adverse Possession), Title 7, Code 1940, does not apply to the prescriptive period of twenty years. Walker v. Coley, 264 Ala. 492, 88 So. 2d 868."

In Morris v. Yancey, supra, we quoted with approval from Stearnes v. Woodall, 218 Ala. 128, 117 So. 643, where it is said:

"'In this respect the elements on which the doctrine of prescription is applied differ from those of adverse possession. In the first there must be an individual, continuous possession of user, without the recognition of adverse rights, for a period of 20 years, and upon the establishment of such claim and user, the law presumes the existence of all the necessary elements of adverse possession of title without fuller proof, while under a mere claim of adverse possession through the period prescribed by the statute of limitations no such presumption prevails, and all the elements must be established by him who asserts such possession or title.'" (citing cases.)

We also observed in Morris v. Yancey, supra:

"In regard to the evidence of the defendant going to show possession of the entire section, we observe that the kind of possession is determined by the condition of the land, not with reference to its being changed into another state, but its then present state. Openness, notoriety and exclusiveness are shown by acts which at the time, considering the state of the land, comport with ownership such as would ordinarily be done by an owner for his own use and for the exclusion of others. Kidd v. Browne, supra."

The kind of possession, as we have observed, is determined by the condition of the land, not with reference to its being changed into another state, but its then present state. Here, a large part was swamp and overflow land unsuitable for cultivation, and unavailable to possessory acts that would apply to lands of a different character and surface conditions, or of a different topography. Kidd v. Browne, 200 Ala. 299, 76 So. 65.

It appears from the evidence that defendants treated the land in every respect as the owners thereof, or at least the jury could have so found from the evidence. This evidence tended to show openness, notoriety, and exclusiveness by acts which at the time, between 1927-49, could, considering the state of land, comport with ownership, such as would ordinarily be done by an owner for his own use to the exclusion of others.

Assignment of Error No. 1 is based on the trial court's refusal to give the affirmative charge with hypothesis as to Count 2 of the complaint. From what we have already said, Assignment of Error No. 1 is without merit.

Assignment of Error No. 2 has been waived.

Assignment of Error No. 3 charges that the trial court committed prejudicial error in permitting defendants, over plaintiffs' objection, to introduce a supplemental plat of Section 44, Township 4 South, Ranges 1 and 2 East, recorded in the office of the Probate Judge of Baldwin County, Alabama, in December 1951, which was two years after the instant suit was filed. The contention of plaintiffs is that they have demanded an abstract of title to the lands here involved upon which the

defendants would rely to sustain their title. The defendants answered that they would not offer any paper title to support their claim, but would rely on adverse possession, prescription and repose in establishing their title.

Plaintiffs complain that the introduction in evidence of said plat (1) tended to confuse the jury as to the location of the land sued for; (2) defendants did not furnish an aastract of title; (3) that the plat tended to show title in the third party by defendants who did not have color of title, citing Lathem v. Lee, 249 Ala. 532, 32 So. 2d 211.

Defendants' answer is that "the plat was admissible to show that the land here involved is not a part of the land included in the bill to quiet title in Case No. 666, and was admitted for that purpose."

We think that in view of the trial court's oral charge to the jury that the land embraced in the amended complaint was included in the bill to quiet title in Case No. 666, the admission of the plat, if error, which we do not decide, was error without injury. Amended Supreme Court Rule 45, Title 7, Appendix.

Assignment of Error No. 4. Plaintiffs complain that the trial court erred in overruling plaintiffs' objection to the introduction in evidence of defendants' Exhibit No. 4, a certified copy of the plat of Township - South, Ranges 1 and 2 East, recorded in the Probate Office of Baldwin County.

Admittedly, Assignment of Error No. 4 is based on the same objections made to Assignment of Error No. 3, and what we

have said above in disposing of Assignment of Error No. 3 also applies to Assignment of Error No. 4, and there is no merit in Assignment of Error No. 4.

Assignment of Error No. 5 is based on plaintiffs' objection to the following question:

> "Since that time has Claude Yancey or anyone else gone on the land except by Claude Yancey's permission?"

The question called for a statement of fact and not a mental operation. There was no error in overruling the objection of plaintiffs.

Assignments of Error 6 to 16, inclusive. We have carefully examined each of these assignments of error and are clear to the conslusion that no reversible error appears in either of them, and feel that separate responses thereto would unduly extend this opinion.

As to Assignment of Error No. 16, supra, see Kidd v. Browne, supra.

Assignment of Error No. 17. As we see the issues in this case, and as above indicated, the defendants did not rely upon statutory adverse possession (Title 7, Sec. 828, Code 1940), but upon the rule of repose for a period of 20 years or more. Assignment of Error No. 17 is based on the giving of Charge 9, which is as follows:

> "9. Adverse possession for statutory period ripens into title, divesting title of former owner, and, when once perfected, lapse of possession does not defect (sic) such title."

The giving of this charge, although unnecessary to the issues in the case, was not prejudicial to the plaintiffs and did not constitute reversible error. Rule 45, Amended Rules of the Supreme Court, Title 7, Code 1940, Appendix.

Assignment of Error No. 18 is based on the giving of Charge No. 10, as follows:

> "10. Under the doctrine of prescription, if there is an individual, continuous possession of user, without recognition of adverse rights, for a period of twenty years the law presumes all the existence of all the necessary elements of adverse possession."

We think Charge No. 10, stated, in the abstract, a correct principle of law and was not so misleading as to constitute reversible error. The trial court did not err to a reversal in giving this charge. Marbury Lumber Co. v. Westbrook, 121 Ala. 179, 25 So. 914; Morris v. Yancey, 267 Ala. 657, 104 So. 2d 553.

Assignment of Error No. 19 is based on the giving of Charge No. 17, as follows:

> "17. The Court charges the jury that if you believe that Claude Yancey has been in the continuous possession of the land sued for without recognition of adverse rights for a period of twenty years prior to the time this suit was filed against him, this establishes title in him and you must find for the defendant."

Complaint is made of the omission of the words "from the evidence" in said charge.

This omission did not constitute error to reverse. Johnson v. State, 257 Ala. 644, 60 So. 2d 818, and cases therein cited.

Assignment of Error No. 20 is based on the giving of written Charge 21, as follows:

> "21. Where parties have been in the actual, open, notorious, adverse possession of realty for more than 20 years, the court under the doctrine of prescription will presume for the repose of society any state of the title in order to maintain a status of parties and property so long allowed to remain undisturbed."

While the charge does not modify the word "possession," with the adjective "continuous," such omission, in the light of written Charge No. 17, given at defendants' request, and of the oral charge of the trial court, does not render the charge so prejudicial as to make the same error to reverse. Rule 45 Amended Rules of the Supreme Court, Title 7, Code 1940, Appendix.

A motion for a new trial was overruled. Plaintiffs do not assign this ruling as error. However, we have held on numerous appeals that verdicts are presumed to be correct and no ground of new trial is more carefully scrutinized, or more rigidly limited than that a verdict is against the evidence, and where the presiding judge refuses to grant a new trial, the presumption in favor of the correctness of the verdict is

strengthened. Smith v. Smith, 254 Ala. 404, 48 So. 2d 546; 2a Ala. Dig., Appeal and Error, Key No. 1005. Here, the evidence adduced as to the defendants' possession of the tracts described in both counts of the complaint, for a period of 20 years, presented a jury question that was decided adversely to plaintiffs.

We are clear to the conclusion that the verdict of the jury and the judgment rendered thereon should be sustained as against all of the assignments of error argued in briefs.

AFFIRMED.

Goodwyn, Merrill and Harwood, JJ., concur.

_____DIV. NO._____ CERTIFICATE OF APPEAL. (Civil Cases.)

No. 1451

THE STATE OF ALABAMA

Baldwin County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein GEORGE E. FULLER & PATRICE B. FULLER, et al was plaintiffs and C.J. YANCEY & ETHEL YANCEY was Defendants as fully and completely as the same appears of record in said Court.

And I further certify that the said Plaintiffs did on the 6th day of March, 1964, pray for and obtain an appeal from the judgment of said Court to the Supreme Court of Alabama to reverse said judgment of said Court upon entering into bond with Hon. J.B. Blackburn, Attorney for Plaintiffs as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of ~~16th~~ Baldwin County is hereto affixed, this the 16th day of March, 1964

Alice J. Duck

Clerk of the Circuit Court of

Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)

MERCHANTS NATIONAL BANK OF MOBILE, a National Banking Association, as Trustee, GEORGE E. FULLER and PATRICE B. FULLER,	X	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
Plaintiffs,	X	AT LAW
Vs.	X	CASE NO. 1451
C. J. YANCEY and ETHEL YANCEY,	X	
Defendants.	X	

Comes now the Defendants in the above styled cause, and demurs to the Plaintiffs' Amended Complaint and for grounds therefore says:

1.

For ought appearing the property described in the Amended Bill of Complaint is not the same land as described in the original Complaint.

2.

The property described in the Amended Complaint lies in a different Section from that described in the original Complaint.

WILTERS & BRANTLEY

BY: Selber M Brantley
Attorney for the Defendants

Notice is hereby given, and the demand made upon the Plaintiffs, Merchants National Bank of Mobile, a National Banking Association, as Trustee, George E. Fuller and Patrice B. Fuller, and upon their attorney of record, J. B. Blackburn, for an abstract in writing of the titles on which the Plaintiffs will rely and recover in this suit.

WILTERS & BRANTLEY

BY: Selber M Brantley
Attorney for the Defendants

FILED
FEB 28 1962
ALICE J. DUCK, CLERK REGISTER

1451

civil

FILED
FEB 28 1962
ALICE J. DUCK, CLERK
REGISTER

MERCHANTS NATIONAL BANK OF MOBILE, A National Banking Association, as Trustee, George E. Fuller and Patrice B. Fuller, Plaintiffs,	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
VS.	AT LAW. NO. 1451
C. J. YANCEY and ETHEL YANCEY, Defendants.	

MOTION TO STRIKE.

Now comes each of the Plaintiffs in the above styled cause and moves the Court to strike all of the Defendants' pleas second, third and fourth, and for grounds of said motion assigns the following, separately and severally:

1. Said pleading is unnecessarily prolix.
2. Said pleading is irrelevant.
3. Said pleading is frivolous.
4. Said pleading is unnecessarily repeated.
5. Said pleading sets up a defense that can be shown under the plea of the general issue and is therefore immaterial.

J. B. Blackburn

Attorney for Plaintiffs.

Filed
2-20-50

MOTION TO STRIKE.

MERCHANTS NATIONAL BANK OF MOBILE,
A National Banking Association,
as Trustee, George E. Fuller and
Patrice B. Fuller,

Plaintiffs,

VS.

C. J. YANCEY and ETHEL YANCEY,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW. NO. 1451.

FILED
FEB 20 1950
ALICE J. DUCK, Clerk

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

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER, Plaintiffs,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 1451
VS.	)	
C. J. YANCEY and ETHEL YANCEY, Defendants.	)	

APPEAL BY PLAINTIFFS

Now come the plaintiffs and appeal to the Supreme Court of the State of Alabama from the final judgment for the defendants rendered in this cause in and by the Circuit Court of Baldwin County, Alabama, Law Side, on, to-wit, the 13th day of September, 1963, and in which cause the plaintiffs' motion for a new trial was overruled by the trial court on, to-wit, the 29th day of October, 1963.

Dated this the 6th day of March, 1964.

J. B. Blackburn

Attorney for Plaintiffs

SECURITY FOR COSTS

I hereby acknowledge myself as security for the costs of this appeal.

J. B. Blackburn

Attorney for Plaintiffs

Filed, and security for costs approved, on this the 6th day of March, 1964.

Alice D. Dunk

Clerk of the Circuit Court

APPEAL BY PLAINTIFFS

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

C. J. YANCEY and ETHEL YANCEY,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 1451

MERCHANTS NATIONAL BANK OF MOBILE, a National Banking Association, as Trustee, GEORGE E. FULLER and PATRICE B. FULLER, Plaintiffs,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 1451
VS.	)	
C. J. YANCEY and ETHEL YANCEY, Defendants.	)	

AMENDMENT TO COMPLAINT

Now come the plaintiffs and amend the complaint heretofore filed in this cause so that, as amended, it will read as follows:

AMENDED COMPLAINT

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER, Plaintiffs,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 1451
VS.	)	
C. J. YANCEY and ETHEL YANCEY, Defendants.	)	

The plaintiffs sue to recover possession of the following described tract of land in Baldwin County, Alabama, to-wit:

> Begin at the Southwest corner of the Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4 South, Ranges 1 and 2 East, which said grant contains 652.43 acres, as described in the bill of complaint in the case of Old Spanish Fort Development Company, a corporation, vs. Sections 38 and 39, Township 4 South, Ranges 1 and 2 East, Case No. 666, filed in the Circuit Court of Baldwin County, Alabama, in Equity, on May 19, 1927 (which point is also the Northwest corner of the Alexis Trouillette Spanish Grant, Section 38, Township 4 South, Ranges 1 and 2 East, containing 236.86 acres), and run thence East along the line dividing the two said Spanish Grants to the point where the said line intersects the South line of the said Lefroy Trouillette and Idane Chastang Spanish Grant, and run thence North 52° East along the South line of the said Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4 South, Ranges 1 and 2 East, to the point where the said line intersects the range line dividing Ranges 1 and 2

East in Township 4 South, thence North along the said range line to Bay Minette Basin or Creek, thence Westwardly, Northwardly, Westwardly and Southwardly along the said water's edge and following the meanders thereof to the point or place of beginning, which said property is otherwise described as all of that part of the said Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4 South, Ranges 1 and 2 East, which contains 652.43 acres, which lies in Township 4 South, Range 1 East,

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 Three Thousand Dollars ($3,000.00) for the detention thereof.

J. B. Blackburn

Attorney for Plaintiffs

Plaintiffs demand a trial of this cause by jury.

J. B. Blackburn

Attorney for Plaintiffs

FILED

DEC 7 1961

ALICE J. DUCK, CLERK REGISTER

AMENDED COMPLAINT

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

C. J. YANCEY and ETHEL YANCEY,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 1451

I, Gilbert M Bromley, as Attorney for C. J. Yancey and Ethel Yancey, hereby accept service of this Amended Bill of Complaint this the 7th day of December 1961

Gilbert M Bromley
Attorney for C J Yancey and Ethel Yancey.

MERCHANTS NATIONAL BANK OF MOBILE, a National Banking Association, as Trustee, George E. Fuller and Patrice B. Fuller, Plaintiffs, VS. C. J. YANCEY AND ETHEL YANCEY, Defendants.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. AT LAW. NO. 1451.

SUGGESTION OF THREE YEARS ADVERSE POSSESSION

The defendants, separately and severally, say, and suggest upon the record, that they and those whose possession they have, have for more than three years next before the commencement of this suit, had the adverse possession of the lands described in the complaint.

Hubert M. Hall

Walter F. Gaillard

Filed
3-21-50

Merchants National
Bank, as Trustee,
vs.
Yancey & Yancey.

Filed: March 21, 1950.
Delfair J. Mashburn
Judge.

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER, Plaintiffs,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 1451
VS.	)	
C. J. YANCEY and ETHEL YANCEY, Defendants.	)	

ORDER EXTENDING TIME FOR FILING OF TRANSCRIPT OF EVIDENCE

On motion of the appellants and for good cause shown, the time for filing the transcript of the evidence in this cause shall be and it is hereby extended until the 23 day of May, 1964.

Done on this the 20 day of May, 1964.

Wm. D. Lindsey
Judge

FILED
MAY 20 1964
ALICE L. DUCK CLERK REGISTER

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

C. J. YANCEY and ETHEL YANCEY,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 1451

CITATION OF APPEAL

Baldwin Times - 200-3-62

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 13th day of September, 1963 ~~Monday in~~ ....., 196..., in a certain cause in said Court wherein ~~XXX~~ GEORGE E. FULLER & PATRICE B. FULLER, as Successor Trustees to the Merchants National Bank of Mobile, as Trustee under the Trust Atreement made July 18, 1944; GEORGE E. FULLER & PATRICE B. Fuller Plaintiff, and C.J. YANCEY & ETHEL YANCEY Defendant~~s~~ a judgement was rendered against said Plaintiffs

to reverse which ~~Judgment~~ Judgment, the said Plaintiffs

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 ....., 196... next, and the necessary bond having been given by the said J.B. Blackburn, Attorney for Plaintiffs ~~with~~ ....., ~~sureties,~~

Now, You Are Hereby Commanded, without delay, to cite the said C.J. Yancey ~~Wilters & Brantley~~ and Ethel Yancey or Wilters and Brantley, 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 16th day of March, A. D., 1964.

Attest:

Alice J. Duck, Clerk.

ceived 17 day of Mar 1964
d on 18 day of May 1964
served a copy of the within Citation
Wilters & Brantley
service on Wilters

TAYLOR WILKINS, Sheriff
By W. G. Collier D. S.

No. 1451

CIRCUIT COURT
Baldwin County, Alabama

George E. Fulger et ux

Vs. } Citation in Appeal

C. J. Yancy et ux

Issued ..... day of ....., 196....,

MERCHANTS NATIONAL BANK OF MOBILE, a National Banking Association, as Trustee, George E. Fuller and Patrice B. Fuller	*	IN THE CIRCUIT COURT
	*	OF
	*	BALDWIN COUNTY, ALABAMA
Plaintiffs		
-vs-	*	
C. J. YANCEY and ETHEL YANCEY,	*	
Defendants	*	AT LAW NO. 1451

Now come the defendants, C. J. Yancey and Ethel Yancey, separately and severally, and present the following separate and several pleas in answer to said suit and by way of defense to each count thereof, separately and severally:

FIRST PLEA

For answer to the complaint and each count thereof, defendants say they are not guilty.

SECOND PLEA

For further answer, the defendants, separately and severally, say, and suggest upon the record, that they and those whose possession they have, have for more than three years next before the commencement of this suit, had the adverse possession of the lands described in the complaint.

THIRD PLEA

For further answer, the defendants, separately and severally, say that they and those through whom they claim, have been in the actual, open, notorious, continuous and hostile possession of the lands described in the complaint, for more than twenty years next preceding the filing of this action, and that the same is barred by the statute of limitations.

FOURTH PLEA

And for further answer the defendants, separately and severally, say that they have been in the actual, open, notorious, continuous and hostile possession of the lands described in the complaint for more than ten years next preceding the filing of this suit; that they, or either of them, derives his or their title to said property by descent cast, or devise from a predecessor in title who was in possession of said lands.

Hubert M. Hall

Walter F. Gaillard

(Attorneys for Defendants) Walter F. Gaillard

Defendants demand a trial by jury.

Hubert M. Hall

Walter F. Gaillard

Walter F. Gaillard

Attorneys for Defendants.

Filed
2-7-32

FILED
FEB 7 1950
ALICE J. DUCK, Clerk

MERCHANTS NATIONAL BANK OF MOBILE, a National Banking Association, as Trustee, GEORGE E. FULLER and PATRICE B. FULLER,	X	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
Plaintiffs,	X	AT LAW
Vs.	X	CASE NO. 1451
C. J. YANCEY and ETHEL YANCEY,	X	
Defendants.	X	

Comes now the Defendants in the above styled cause and moves the Court to strike so much of the Complainants' Complaint relating to the description set out therein which reads as follows:

"As described in the Bill of Complaint in the case of Old Spanish Fort Development Company, a corporation, Vs. Sections 38 and 39, Township 4 South, Ranges 1 and 2 East, Case No. 666, filed in the Circuit Court of Baldwin County, Alabama, In Equity, on May 19, 1927", and as grounds therefore shows unto the Court as follows:

1.

That this is an attempt to inject irrelevant matters into the pleading.

2.

It is not necessary to the description of the land.

3.

That this is pleading evidence.

WILTERS & BRANTLEY

BY: Gallier M Brantley
Attorney for the Defendants

FILED
APR 17 1962
ALICE J. DUCK, CLERK
REGISTER

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

C. J. YANCEY and ETHEL YANCEY,

Defendants.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

AT LAW NO. 1451

AMENDED COMPLAINT

COUNT ONE

The plaintiffs sue to recover possession of the following described tract of land in Baldwin County, Alabama, to-wit:

From the Northwest corner of Fractional Section 30, Township 4 South, Range 2 East, run North along the range line 854.5 feet for a point or place of beginning; run thence North 16° 30' East 420 feet to a point; run thence South 83° 30' West 420 feet, more or less, to a corner on the water's edge; run thence South 16° West along the water's edge 420 feet to a corner; run thence North 83° 30' East 420 feet, more or less, to the point or place of beginning, containing four (4) acres, more or less, being a part of the Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4 South, Ranges 1 and 2 East, which grant contains 652.43 acres as described in the bill of complaint in the case of Old Spanish Fort Development Company, a corporation, vs. Sections 38 and 39, Township 4 South, Ranges 1 and 2 East, Case No. 666, filed in the Circuit Court of Baldwin County, Alabama, in Equity, on May 19, 1927,

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 Five Hundred Dollars ($500.00) for the detention thereof.

COUNT TWO

The plaintiffs sue to recover possession of the following described tract of land in Baldwin County, Alabama, to-wit:

Begin at the Northwest corner of the Alexis Trouillette Spanish Grant, Section 38, Township 4 South, Ranges 1 and 2 East, containing 236.86 acres, as described in the bill of complaint in the case of Old Spanish Fort Development Company, a corporation, vs. Sections 38 and 39, Township 4 South, Ranges 1 and 2 East, Case No. 666, filed in the Circuit Court of Baldwin County, Alabama, in Equity, on May 19, 1927, and run thence East along the North line of the said Alexis Trouillette Spanish Grant to the point where the said line intersects the South line of the Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4

South, Ranges 1 and 2 East, which said grant contains 652.43 acres, as described in the said case of Old Spanish Fort Development Company, a corporation, vs. the said Sections 38 and 39; run thence North 52° East along the South line of the said Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4 South, Ranges 1 and 2 East, to the point where the said line intersects the range line dividing Ranges 1 and 2 East in Township 4 South; thence North along the said range line to Bay Minette Basin or Creek; thence Westwardly, Northwardly, Westwardly and Southwardly along the said water's edge and following the meanders thereof to the point or place of beginning, which said property is otherwise described as all of that part of the said Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4 South, Ranges 1 and 2 East, which contains 652.43 acres, which lies in Township 4 South, Range 1 East, EXCEPT the following described property:

From the Northwest corner of Fractional Section 30, Township 4 South, Range 2 East, run North along the range line 854.5 feet for a point or place of beginning; run thence North 16° 30' East 420 feet to a corner; run thence South 83° 30' West 420 feet, more or less, to a corner on the water's edge; run thence South 16° West along the water's edge 420 feet to a corner; run thence North 83° 30' East 420 feet, more or less, to the point or place of beginning, containing four (4) acres, more or less, being a part of the Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4 South, Ranges 1 and 2 East, which grant contains 652.43 acres as described in the bill of complaint in the case of Old Spanish Fort Development Company, a corporation, vs. Sections 38 and 39, Township 4 South, Ranges 1 and 2 East, Case No. 666, filed in the Circuit Court of Baldwin County, Alabama, in Equity, on May 19, 1927,

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 Five Hundred Dollars ($500.00) for the detention thereof.

J. B. Blackburn
Attorney for Plaintiffs

Plaintiffs demand a trial of this cause by jury.

J. B. Blackburn
Attorney for Plaintiffs

Filed
8-14-63

AMENDED COMPLAINT

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustees under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

C. J. YANCEY and ETHEL YANCEY,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 1451

Filed 8-14-1963.
Wm. H. Lindsey.
Special Judge.

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

January 6, 1964

Mrs. Alice J. Duck
Clerk of Circuit Court
Bay Minette, Alabama

Dear Mrs. Duck:

I will shortly file notice of appeal in the case of George E. Fuller, et al., as Trustees, vs. C. J. and Ethel Yancey, Case No. 1451.

I will appreciate your commencing work on the transcript as soon as you can do so, and when you make the transcript I would like for you to make an original and three copies.

I hand you herewith the original motion for a new trial which was filed in this cause, and the original of Judge Lindsey's order dated October 29, 1963, overruling the motion for a new trial.

I also hand you herewith an envelope containing the charges which were given for the defendants on the trial of this case.

Very truly yours,

J. B. Blackburn

J. B. BLACKBURN

JBB:mlb

20145 1

Merchants Nat Bank vs. C. J. Yancey

JURY LIST - FALL SESSION - SEPTEMBER 9, 1963

1. Koch, William, Ideal Cement cost Controler, Spanish Ft.
2. Cooper, John L., Laborer, Bay Minette
3. Cox, Y.A., Jr., Farmer, Stockton
4. Garrett, Malcolm, Farmer, Belforest
5. Gates, Carl B., Farmer, Robertsdale
6. Gee, Luther, State Employee, Bay Minette
7. Hall, John, Sr., Carpenter, Loxley
8. Hayles, J. Otis, Farmer, Perdido
9. Hedge, Langston, Chemist, Bay Minette
10. Helms, Kenneth B., Civil Service, Elberta
11. Hinterlighter, Daniel G., Clerk, Bay Minette
12. Hoffman, Winfred C., Gov't Emp., Bay Minette
13. Landcaster, Eartis, Paperwood, Robertsdale
14. Larson, Arthur, Farmer, Rosinton
15. Lipscomb, Frederick A., Farmer, Mag. Spgs.
16. Little, Bernie, Mechanic, Bay Minette
17. Long, Fred, Brookley Field, Fairhope
18. Lowery, Robert, Dairyman, Fairhope
19. Mascaro, Edward, Corp. Secretary, Spanish Fort,
20. Mason, Arnold K., Farmer, Mag. Spgs.
21. McKenzie, J.D., Farmer, Robertsdale
22. Page, Glenn A., Jr., Ins. , Bay Minette
23. Urbanch, Robert C., Brookley Field, Fairhope
24. Weeks, Ellis, Laborer, Mag. Spgs.
25. Wilcox, Roy E., Trk. Driver, Elberta
26. Kaiser, Paul, Jr., Farmer, Gulf Shores
27. Allegri, Angelo, Carpenter, Fairhope
28. Armstrong, William, Civil Service, Elberta
29. Baker, Lewis E., Foley Fert. Co., Foley
30. Bernhill, Charles W., Oil Dealer, Robertsdale
31. Bell, Bill, Brookley Field, Rosinton
32. Blackwell, Earl, Merchant, Foley
33. Boeschen, Arthur, Farmer, Bay Minette
34. Boone, DeWitt, Ideal Cement Cost Controler, Spanish Ft.
35. Bryant, Roy Woolf, Farmer, Bay Minette
36. Bryars, Charles Henry, Jr., Farmer, Stockton
37. Buck, Eddie, Shipyard, Robertsdale
38. Chafin, J. Horace, Trk. Driver, Perdido
39. Chesnick, Joe, Farmer, Robertsdale
40. Childress, Kenneth, Barber, Foley
41. Childress, Rube, Farmer, Loxley
42. Cocke, James, Jewler, Fairhope
43. Conway, James, Mobile Construction, Daphne
44. Lipscomb, Ira, Farmer, Mag. Spgs.
45. Inge, McKinley, Clerk, Bay Minette
46. Smith, Samuel, Sr., Brookley Field, Daphne
47. Stephens, W. Henry, Millman, Stockton
48. Styron, Theo, Farmer, Foley
49. Graham, John C., Brookley Field, Bay Minette
50. Nassar, Emile J., Merchant, Bay Minette
51. Waters, Orville Clyde, Merchant, Bay Minette
52. Yarbrough, George C., Jr., Interpational Paper Co., Bay Minette
53. Taylor, Tom, Forester, Bay Minette
54. Durant, Earl, Brookley Field, Bay Minette
55. Jones, Clifford, Oil & Gas Distribution, Bay Minette
56. Snowden, Forney N., Clerk, Bay Minette
57. Hall, Tomas B., Newport, Bay Minette
58. Kennedy, J.C., Ins. Agent, Bay Minette

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P XXXX XXXX XXX

D XXXXX XXXXX XX

1457

MERCHANTS NATIONAL BANK OF MOBILE a National Banking Association, as Trustee, George E. Fuller and Patrice B. Fuller,	X	
Plaintiffs,	X	IN THE CIRCUIT COURT OF
Vs.	X	BALDWIN COUNTY, ALABAMA
C. J. YANCEY and ETHEL YANCEY,	X	AT LAW
Defendants.	X	

Comes now the Defendants in the above styled cause and demurs to the Plaintiffs' last amended Complaint and each and every count thereof, separately and severally, and for grounds therefor says:

1.

That there is a complete departure from the original suit.

2.

That the property described in the amended Complaint lies in a different section than that described in the original Complaint.

3.

For aught appearing, the property described in the amended Bill of Complaint is not the same land as that described in the original Complaint.

WILTERS & BRANTLEY

BY: Delbert M Brantley
Attorney for Defendants

Filed
Sept. 12, 1963.
Wm. G. Lindsey.
Special Judge.

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER, Plaintiffs,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW NO. 1451
C. J. YANCEY and ETHEL YANCEY, Defendants.	)	

AMENDED COMPLAINT

COUNT ONE

The plaintiffs sue to recover possession of the following described tract of land in Baldwin County, Alabama, to-wit:

> From the Northwest corner of Fractional Section 30, Township 4 South, Range 2 East, run North along the range line 826.75 feet to an iron pipe for the point of beginning of the property herein described; thence continue North along the range line 416.85 feet to a point, which is marked by a concrete monument; run thence West 422.65 feet, more or less, to a cypress stake set at the water's edge; run thence Southwardly along the said water's edge and following the meanders thereof to an iron pipe which bears South 88° 40' West 426.30 feet from the point of beginning; run thence North 88° 40' East 426.30 feet, more or less, to the point or place of beginning,

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 Five Hundred Dollars ($500.00) for the detention thereof.

COUNT TWO

The plaintiffs sue to recover possession of the following described tract of land in Baldwin County, Alabama, to-wit:

> Begin at the Northwest corner of the Alexis Trouillette Spanish Grant, Section 38, Township 4 South, Ranges 1 and 2 East, containing 236.86 acres, as described in the bill of complaint in the case of Old Spanish Fort Development Company, a corporation, vs. Sections 38 and 39, Township 4 South, Ranges 1 and 2 East, Case No. 666, filed in the Circuit Court of Baldwin County, Alabama, in Equity, on May 19, 1927, and run thence East along the North line of the said Alexis Trouillette Spanish Grant to the point where the said line intersects the South line of the Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4 South, Ranges 1 and 2 East, which said grant contains 652.43 acres, as described in the said case of Old Spanish Fort Development Company, a corporation, vs.

the said Sections 38 and 39; run thence North 52° East along the South line of the said Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4 South, Ranges 1 and 2 East, to the point where the said line intersects the range line dividing Ranges 1 and 2 East in Township 4 South; thence North along the said range line to Bay Minette Basin or Creek; thence Westwardly, Northwardly, Westwardly and Southwardly along the said water's edge and following the meanders thereof to the point or place of beginning, which said property is otherwise described as all of that part of the said Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4 South, Ranges 1 and 2 East, which contains 652.43 acres, which lies in Township 4 South, Range 1 East, EXCEPT the following described property:

From the Northwest corner of Fractional Section 30, Township 4 South, Range 2 East, run North along the range line 826.75 feet to an iron pipe for the point of beginning of the property herein described; thence continue North along the range line 416.85 feet to a point, which is marked by a concrete monument; run thence West 422.65 feet, more or less, to a cypress stake set at the water's edge; run thence Southwardly along the said water's edge and following the meanders thereof to an iron pipe which bears South 88° 40' West 426.30 feet from the point of beginning; run thence North 88° 40' East 426.30 feet, more or less, to the point or place of beginning,

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 Five Hundred Dollars ($500.00) for the detention thereof.

J. B. Blackburn
Attorney for Plaintiffs

Plaintiffs demand a trial of this cause by jury.

J. B. Blackburn
Attorney for Plaintiffs

Filed
Sept. 12, 1963.
Wm. G. Lindsey.
Special Judge

We the jury find for the defendant.
William S. Dell
Foreman

AMENDED COMPLAINT

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

C. J. YANCEY and ETHEL YANCEY,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 1451.

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER, Plaintiffs,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 1451
VS.	)	
C. J. YANCEY and ETHEL YANCEY, Defendants.	)	

TO THE DEFENDANTS, CLAUDE J. YANCEY and ETHEL YANCEY, OR TO WILTERS AND BRANTLEY, AS THEIR ATTORNEYS:

Pursuant to the provisions of Title 7, Section 940 of the Code of Alabama, the plaintiffs hereby make demand upon you for an abstract in writing of the title or titles on which the defendants will rely for a defense of this suit.

Dated this 23rd day of August, 1963.

J. B. Blackburn

Attorney for Plaintiffs

I, the undersigned Tolbert M. Brantley, attorney for the defendants, do hereby accept service of the above and foregoing instrument on this the 23rd day of August, 1963.

Tolbert M Brantley

Attorney for Defendants

FILED

AUG 23 1963

ALICE I. DOCK, CLERK REGISTER

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees; GEORGE E. FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

C. J. YANCEY and ETHEL YANCEY,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 1451

FILED

AUG 2[illegible] 1983

ALICE J. DUCK, CLERK REGISTER

MERCHANTS NATIONAL BANK OF MOBILE, a National Banking Association, as Trustee, GEORGE E. FULLER and PATRICE B. FULLER,	)	
Plaintiffs,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
C. J. YANCEY and ETHEL YANCEY,	)	AT LAW NO. 1451
Defendants.	)	

AMENDMENT TO COMPLAINT

Now come the plaintiffs and amend the complaint heretofore filed in this cause so that, as amended, it will read as follows:

AMENDED COMPLAINT

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER,	)	IN THE CIRCUIT COURT OF
Plaintiffs,	)	BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW NO. 1451
C. J. YANCEY and ETHEL YANCEY,	)	
Defendants.	)	

The plaintiffs sue to recover possession of the following described tract of land in Baldwin County, Alabama, to-wit:

Begin at the Southwest corner of the Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4 South, Ranges 1 and 2 East, which said grant contains 652.43 acres, as described in the bill of complaint in the case of Old Spanish Fort Development Company, a corporation, vs. Sections 38 and 39, Township 4 South, Ranges 1 and 2 East, Case No. 666, filed in the Circuit Court of Baldwin County, Alabama, in Equity, on May 19, 1927 (which point is also the Northwest corner of the Alexis Trouillette Spanish Grant, Section 38, Township 4 South, Ranges 1 and 2 East, containing 236.86 acres), and run thence East along the line dividing the two said Spanish Grants to the point where the said line intersects the South line of the said Lefroy Trouillette and Idane Chastang Spanish Grant, and run thence North 52° East along the South line of the said Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4 South, Ranges 1 and 2 East, to the point where the said line intersects the range line dividing Ranges 1 and 2 East in Township 4 South, thence North along the said range line to Bay Minette Basin or Creek, thence Westwardly, Northwardly, Westwardly and Southwardly along the said water's edge and following the meanders thereof to the point or place of

beginning, which said property is otherwise described as all of that part of the said Lefroy Trouillette and Idane Chastang Spanish Grant, Section 39, Township 4 South, Ranges 1 and 2 East, which contains 652.43 acres, which lies in Township 4 South, Range 1 East,

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 Three Thousand Dollars ($3,000.00) for the detention thereof.

J. B. Blackburn
Attorney for Plaintiffs

Plaintiffs demand a trial of this cause by jury.

J. B. Blackburn
Attorney for Plaintiffs

It being made to appear to the court that the original of the above and foregoing amended complaint, which was filed in this cause on December 7, 1961, has been lost or misplaced, the above and foregoing instrument is, by agreement of the parties acting by and through their respective attorneys, substituted for the original of the said amended complaint which was filed on December 7, 1961.

Dated this 14 day of August, 1963.

Wm. H. Lindsey
Judge

AMENDED COMPLAINT

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

C. J. YANCEY and ETHEL YANCEY,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 1451

MERCHANTS NATIONAL BANK OF MOBILE, a National Banking Association, as Trustee, GEORGE E. FULLER and PATRICE B. FULLER,	)	IN THE CIRCUIT COURT OF
Plaintiffs,	)	BALDWIN COUNTY, ALABAMA
Vs.	)	AT LAW
C. J. YANCEY and ETHEL YANCEY,	)	CASE NO. 1451
Defendants.	)	

Comes now the Defendants in the above styled cause and demands the Plaintiffs to furnish them an abstract of the title on which they intend to base their claim.

WILTERS & BRANTLEY

BY: Robert M. Brantley
Attorneys for Defendants

FILED
MAY 9 1963
ALICE J. DUCK, CLERK
REGISTER

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER, Plaintiffs,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 1451
VS.	)	
C. J. YANCEY and ETHEL YANCEY, Defendants.	)	

MOTION

Now come the plaintiffs, by their attorney, and show unto the court that when the original complaint in this case was filed the Honorable Hubert M. Hall, who is now Judge of the Twenty-eighth Judicial Circuit of Alabama, appeared as one of the attorneys for the defendants in this case.

WHEREFORE, plaintiffs move that the said Hubert M. Hall, Judge of the Twenty-eighth Judicial Circuit of Alabama, recuse himself in this cause.

Respectfully submitted,

J. B. Blackburn

Attorney for Plaintiffs

STATE OF ALABAMA)
*
BALDWIN COUNTY)

The above motion having been presented on this date and being considered by me, I hereby recuse myself in this case and direct the Clerk of this court to notify the Chief Justice of the State of Alabama that I have recused myself and request that he appoint a judge for the trial of this case.

Done on this the 7 day of May, 1963.

Hubert M. Hall

Judge, Twenty-eighth Judicial Circuit of Alabama

FILED
MAY 7 1963
ALICE J. DUCK, CLERK REGISTER

MOTION

GEORGE E. FULLER and PATRICE B. FULLER, as Successor Trustees to The Merchants National Bank of Mobile, as Trustee under the Trust Agreement made July 18, 1944; GEORGE E. FULLER and PATRICE B. FULLER,

Plaintiffs,

VS.

C. J. YANCEY and ETHEL YANCEY,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 1451

1451

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 65-66

To the Clerk *of the* Circuit *Court,*

Baldwin *County—Greeting:*

Whereas, the Record and Proceedings of the Circuit *Court*

of said county, in a certain cause lately pending in said Court between

Merchants National Bank of Mobile, etc., as Trustee, *Appellants*,
George E. Fuller & Patrice B. Fuller
and

C. J. Yancey and Ethel Yancey, *Appellee*,

wherein by said Court it was considered adversely to said appellants, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellants:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by our Supreme Court, on the 16th *day of* June, 19 66, *that said*

Judgment *of said* Circuit *Court be in all things affirmed, and that it was further considered, ordered, and adjudged that the appellants, ~~and~~*

George E. Fuller and Patrice B. Fuller, Individually and George E. Fuller and Patrice B. Fuller, as Successor Trustees to the Merchants National Bank of Mobile and J. B. Blackburn, as surety on the appeal bond, pay

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

Richard W. Neal Deputy
Witness, ~~Lafender Thomas~~, *Clerk of the Supreme Court of Alabama, at the Judicial Department Building, this the* 16th *day of*

June, 19 66

Richard W. Neal

Deputy *Clerk of the Supreme Court of Alabama.*

THE SUPREME COURT OF ALABAMA

October Term, 19 65-66

1st *Div., No.* 211

Merchants National Bank of Mobile, etc., as Trustee, et al

Appellant, s

vs.

C. J. Yancey and Ethel Yancey

Appellee. s

From Baldwin Circuit *Court.*

No. 1451

CERTIFICATE OF AFFIRMANCE

The State of Alabama,

County. } *Filed*

this *day of* 19

BROWN PRINTING CO., MONTGOMERY