



of the district of lands, subject to sale at St. Stevens, Alabama; deed from George E. Sherwin and wife to F. J. McCoy, dated April 7th, 1858, recorded in Deed Book G pages 415-416, Probate Records of Baldwin County, Alabama, conveying the southwest quarter of Section 10, Township 7 South, of Range 2 East, Baldwin County, Alabama; Warranty deed made by F. J. McCoy to Allen and James R. Grist, dated June 28th, 1858, recorded in Deed Book H., pages 195-196; warranty deed made by Grist and Hughes to Isaac W. Hughes dated April 14, 1868, recorded in Book I page 116; Power of Attorney from Isaac W. Hughes to Theo J. Hughes, dated February 27, 1871, recorded in Deed Book I. page 504; mortgage by Isaac W. Hughes to Marshall J. Smith & Company dated March 11, 1871, recorded in Book I. pages 506-7; Mortgage by James R. Grist to Zophar Mills, dated February 3, 1868, recorded in Book I, page 221; Official deed James Gillette, Register in Chancery, to Isaac W. Hughes, dated October 18th, 1870, recorded in Book K., pages 45-47; Statutory warranty deed by Isaac W. Hughes to Zophar Mills, dated May 3rd, 1873, recorded in Book J., pages, 705-707; Release of dower by Annie M. Hughes, wife of Isaac W. Hughes, to Zophar Mills, dated May 3rd, 1873, recorded in Book J., pages 707-8; quit-claim deed by Zophar Mills and wife to John Bowen, dated December 31st, 1881, recorded in Book M., pages 542-3; Will of John Bowen, recorded in Will Book 6, pages 284, Mobile County Records; Statutory warranty deed by Executor of John Bowen to George C. Black, dated January 2, 1903, recorded in Deed Book 5 N. S. pages 635-6; Warranty deed dated April 26th, 1904, by George C. Black and wife to Joseph Keller, recorded in Deed Book 7 N. S. page 244; Warranty deed by Joseph Keller and wife to Oscar O. Kimmel, dated December 19th, 1904, recorded in Deed Book 8 N. S. page 103; that cross complainant also claims said lands under the following conveyances, viz: T. S. McCaleb by C. E. Rubanks, Sheriff, to D. P. Bestor, Jr., dated February 12th, 1917, recorded in Deed Book 26 N. S. page 103; statutory warranty deed by D. P. Bestor, Jr., and wife to T. S. McCaleb, dated March 2nd, 1917, recorded in Deed Book 28 N. S. page 99.

That the title to said lands, as shown by said cross-bill, stands in the name of Thomas S. McCaleb on the Records of the Probate Court of Baldwin County; that, as shown by said cross-bill, Thomas S. McCaleb has paid the State and County taxes on said lands, continuously, for the ten years next preceding the filing of said cross-bill, and no one else other than the said Thomas S. McCaleb has paid taxes on said lands during said period, and that, as shown by said cross-bill said Thomas S. McCaleb has been in possession of said lands continuously during the ten years next preceding the filing of the cross bill; or, if, this be true, then no one has been in possession of said lands at any time within the ten years next preceding the filing of the cross-bill.

J. W. Richardson

Lis Pendens

THE STATE OF ALABAMA } PROBATE COURT  
BALDWIN COUNTY }

Filed in office this 23 day of May 1930 3:10 Pm  
and duly recorded in Lis Pendens 1  
pages 106-7

~~License or privilege tax, paid as required by an Act of  
the Legislature, approved September 14, 1922, and  
the License or privilege tax, paid as re-  
quired by an Act of the Legislature, approved August  
20, 1923.~~

J. W. Humphries  
J. K. Kessler, Clerk

Filed May 23/1930  
J. W. Humphries  
Register

J. W. Richards

5/23/30  
3:10 Pm



Jesse F. Hogan  
Attorney and Counselor at Law  
VAN ANTWERP BUILDING  
Mobile, Ala.

May 14, 1930

Hon. T. W. Richerson,  
Clerk Circuit Court,  
Bay Minette, Ala.

Dear Mr. Richerson:

In re Worcester vs. McCaleb

I am enclosing herewith two notices in the above styled cause. Both should be signed by you. You will notice that one has appended a certificate to be signed by you. This notice with the certificate should be filed in the Probate Court for record in the Lis Pendens record. The other notice should be given to the newspaper for publication. Hold both notices until the order is signed by the Judge.

I have prepared an order to be signed by Judge Hare, and directing you to publish this notice in the Baldwin County Times. As soon as you receive this notice I shall be glad for you to have it published at once. I am very anxious to get this case at issue by the next Chancery term. These notices were made in accordance with sections 9915 and 9916, Code of 1923.

The case will be at issue at the expiration of sixty days from the first publication of the notice and the filing of the certified copy of said notice in the Probate Court. The statute seems to contemplate that the publication and the filing of the notice in the Probate Court should be contemporaneous. See section 9918.

Very truly yours,

*Jesse F. Hogan*

Jesse F. Hogan  
Attorney and Counselor at Law  
~~XXXXXXXXXXXXXXXXXX~~  
Mobile, Ala.

May 24, 1930

Hon. T. W. Richerson,  
Clerk Circuit Court,  
Bay Minette, Ala.

Dear Mr. Richerson:

In re Worcester vs. McCaleb

I have your letter of the 21st instant in regard to this matter, enclosing receipt from Judge Humphries for fee for recording the lis pendens notice in the above suit. Please get the bill for the newspaper advertising, and I will have Major McCaleb to pay these costs at once.

very truly yours,

*Jesse F. Hogan*

After five days return to  
G. W. HUMPHRIES  
PROBATE JUDGE, BALDWIN COUNTY  
BAY MINETTE, ALA.

238  
McLach  
T. W. Richerson,  
City



To Honorable John D. Leigh,

Judge of the Circuit Court of Baldwin County, Alabama,

Sitting in Equity.

The Bill of Complaint of William W. Crawford, exhibited against Minnie M. Church and Freddie Elizabeth Church, respectfully shows unto Your Honor the following facts:

First: Complainant is over the age of 21 years and resides in the city of Chicago, State of Illinois.

Second: The Defendant, Minnie M. Church, is over the age of 21 years, and resides in the town of Bay Minette, Baldwin County, Alabama, and the Defendant, Freddie Elizabeth Church, is an infant under 14 years of age, and is the daughter of Minnie M. Church, and resides with her said mother, in the town of Bay Minette, Baldwin County, Alabama.

Third: Complainant is in the peaceable possession of the following described lands, situated, lying and being in the County of Baldwin, State of Alabama, claiming to own the same, viz: The Southeast quarter of the Northwest quarter, and the South half of the Northeast quarter of the Northwest quarter of Section Thirty-two (32) of Township Two (2) South of Range Three (3) East.

Fourth: The said Minnie M. Church and Freddie Elizabeth Church deny or dispute the title of Complainant to the land hereinabove described, or some portion thereof, and claim or are reputed to claim or to own said land or some portion thereof, or some right, title or interest therein or to hold some lien or encumbrance thereon.

Fifth: No suit is pending to enforce or test the validity of such aforesaid titles, claims, incumbrances or any of them.

Sixth: Complainant calls upon each of the said claimants above named, to set forth or specify her title, claim, interest or

incumbrance and how and by what instrument the same is derived and created.

Prayer for Relief.

The premises considered, Complainant prays that Your Honor will take jurisdiction of the subject matter of this bill of complaint, and will require each of the defendants to set forth and specify her title, claim, interest or incumbrance in or upon the land above described, or any part thereof, and how or by what instrument the same is derived or created. And that upon the hearing of this Cause, Your Honor will decree that neither of the defendants has any right, title, claim, interest or incumbrance in or upon the said land or any part thereof, and that the right and title of Complainant in and to said land is valid and absolute as against the said Minnie M. Church and Freddie Elizabeth Church.

Prayer for Process.

Complainant prays that the State's writ of subpoena be issued, directed to the said Minnie M. Church and Freddie Elizabeth Church, in accordance with law and the practice of this Court, and that each of said defendants be required to plead, answer or demur to this bill of complaint within the time and under the penalties prescribed by law.

R. H. M. Smith & Middleton

Solicitor for Complainant.

Foot Note.

Each of the defendants is required to answer to the allegations of each of the paragraphs of the foregoing Bill of Complaint, from one to <sup>six</sup> ~~five~~, both inclusive, but not under oath, oath to the answer of each defendant being hereby expressly waived.

R. H. M. Smith & Middleton

Solicitors for Complainant.

THE STATE OF ALABAMA,  
BALDWIN COUNTY.

CIRCUIT COURT OF BALDWIN COUNTY,  
IN EQUITY.

To any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon Minnie M Church and Freddie Elizabeth Church,

of Baldwin County, to be and appear before the Judge of the Circuit Court of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by

William W. Crawford,

against said

Minnie M Church and Freddie Elizabeth Church,

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defendant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T. W. Richerson, Register of said Circuit Court, this 10th day of June,

1920

*T. W. Richerson*

Register.

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

*Original*

*2nd*

Serve on \_\_\_\_\_

THE STATE OF ALABAMA  
BALDWIN COUNTY

Circuit Court of Baldwin County  
In Equity

Received in office this 10th  
day of June, 1920

No. 238

SUMMONS

W.R. Stuart Sheriff

William W Crawford,

Executed this 10th day of  
June 1920

by leaving a copy of the within summons with

*Minnie M Church. And served copy on Freddie Elizabeth Church by leaving  
said copy with Minnie M Church mother and  
custodian of Freddie Elizabeth Church  
a minor under 14 years of age.*

Sheriff

vs.

By B. D. Wiggins  
Deputy Sheriff

Minnie M Church and Freddie  
Elizabeth Church,

R.H. & R.M. Smith, & Middleton,

Solicitor for Complainant

**RECORDED**

Recorded in Vol. \_\_\_\_\_ Page \_\_\_\_\_

THE STATE OF ALABAMA,

No. 238.

Baldwin, County.

CIRCUIT COURT, IN EQUITY.

William W Crawford,

Complainant.

vs.

Minnie M Church, and Freddie Elizabeth Church,

Defendant's

In this cause it is made to appear to the Register by the Bill of Complaint

that the Defendant Freddie Elizabeth Church,

in the belief of affiant, infant is under the age of 14 years; and that a summons on the Bill of Complaint in this cause was served upon the Minnie M Church, Mother and custodian,

said infant, on the 10th, day of June, 1920, and that as Guardian ad litem, one has been nominated by the said Register

to act as Guardian ad Litem for said infant; and it further appearing that W.H. Hawkins is in all respects a suitable person to act as Guardian ad Litem for said infant; and having filed his consent in writing to act as such, it is now ordered by the Register that he is hereby appointed Guardian ad Litem in this cause for the said infant Defendant

Witness my hand, this 15th, day of June, 1920.

[Signature of D. W. Richardson] Register.

ACCEPTANCE.

I, W.H. Hawkins, hereby accept the above appointment as Guardian ad Litem, and consent to act as such in the above cause.

Witness my hand, this 15th, day of June, 1920

[Signature of W. H. Hawkins] Guardian ad Litem.

4

No. .... Page .....

THE STATE OF ALABAMA,

..... County.

CIRCUIT COURT, IN EQUITY.

William C. Crawford,

vs.

Minnie M. Church, et al

APPOINTMENT AND ACCEPTANCE  
OF GUARDIAN AD LITEM.

Filed June 15 1909

T. W. Ricerson

Register.



Recorded in ..... Record.

Vol. .... Page .....

Register.

*Mr. Ricerson*

*Miss Church*

4

No. .... Page .....

THE STATE OF ALABAMA,

County.

CIRCUIT COURT, IN EQUITY.

William C. Crawford,

vs.

Minnie McClure et al

APPOINTMENT AND ACCEPTANCE  
OF GUARDIAN AD LITEM.

Filed

June 15th 1920

T. W. Riccerson

Register.

HAY

Recorded in ..... Record,

Vol. .... Page .....

Register.

*Faint vertical handwriting on the right side of the page, possibly a date or reference number.*

William W Crawford, Complainant )

vs )

Minnie M Church and Freddie Elizabeth  
Church )

In Circuit Court of  
Baldwin County in Equity

individually and for Freddie Elizabeth Church, minor,  
Comes Minnie M Church / ~~one--of-~~ the respondents in the above cause  
and demurs to the Bill of Complaint therein filed and as ground  
therefor says :

1st . There is no equity in the Bill

*S. C. Jenkins*

Solicitor for Respondent Minnie M Church  
and Freddi Elizabeth Church.





WARREN W. WORCESTER,                    0  
  Complainant,                    | IN THE CIRCUIT COURT  
  vs                                    0  
THOMAS N. MCCALED, et al.,            | OF BALDWIN COUNTY,  
  Respondent                        | ALABAMA.  
  0 IN EQUITY.

This day came Edward Worcester, Joseph T. Worcester, Warren O. Worcester, George H. Worcester, Rosa Worcester and Olive M. Worcester and moved the Court to make them parties complainant in lieu of Warren W. Worcester, as Executor of the estate of George H. Hoyle, deceased; and it being made to appear by the affidavit of *Gas. H. Worcester*, that the said movants are the sole parties in interest as to the real estate involved in this cause, so far as the undivided interest of the estate of George H. Hoyle, or of Warren W. Worcester, are concerned, and that they are the sole heirs at law now living of said George H. Hoyle and Warren W. Worcester; it is now ordered that said movants be made parties complainant to the original bill filed in this cause. Dated this 8 day of October, 1930.

*J. W. Ware*  
\_\_\_\_\_  
Register.  
*Judge*



copy of Register's deed to Isaac W. Hughes dated the 18th day of October, 1870; Certified copy of deed from T. J. Hughes and James R. Grist to Isaac W. Hughes dated the 14th day of April, 1868, and recorded in Deed Book "I" page 116; Certified copy of power of attorney from Isaac W. Hughes to Theodore J. Hughes to execute a mortgage to M. J. Smith & Co., dated the 27th day of February, 1871, and recorded in Deed Book "I" at page 504, Probate Records of Baldwin County, Alabama; Certified copy of mortgage from James R. Grist and T. J. Hughes in favor of Zophar Mills dated the 3rd day of February, 1868, and recorded in Deed Book "I" page 221; Certified copy of deed ~~from Isaac W. Hughes to Zophar Mills~~ executed by Isaac W. Hughes in favor of Zophar Mills dated the 3rd day of May, 1873, and recorded in Deed Book "J" pages 705-707, Probate Records of Baldwin County, Alabama; certified copy of mortgage from Isaac W. Hughes to Marshall J. Smith & Co. dated the 11th day of March, 1871, and recorded in Deed Book "I" at pages 506-507, Probate Records of Baldwin County, Alabama; Certified copy of Release of Dower executed by Annie M. Hughes, wife of Isaac W. Hughes in favor of Zophar Mills, dated the 3rd day of May, 1873, and recorded in Deed Book "J" pages 707-708, Probate Records of Baldwin County, Alabama; Certified copy of deed from Zophar Mills and wife to John Bowen dated the 31st day of December, 1881, and recorded in Deed Book "M" pages 542-543, Probate Records of Baldwin County, Alabama; Certified copy of deed from Charles Torrey, as Executor, to George G. Black dated the 2nd day of January, 1903, and recorded in Deed Book 5 N. S. pages 635-636, Probate Records of Baldwin County, Alabama; certified copy of deed from George G. Black and wife to Joseph Keller, Sr., dated the 26th day of April, 1904, and recorded in Deed Book 7 N.S. pages 244, Probate Records of Baldwin County, Alabama; Certified copy of deed from Joseph Keller and wife to Oscar O. Kimmell dated the 19th day of December, 1904, and recorded in Deed Book 8 N.S. page 103, Probate Records of Baldwin County, Alabama; Certified copy of deed from Oscar O. Kimmell and wife to Thomas S. McCaleb dated the 30th day of April, 1912, and recorded in Deed Book 19 N.S. page 198, Probate Records of Baldwin County, Alabama; Mortgage from Thomas S. McCaleb to Oscar O. Kimmell dated the 9th day of May, 1912, and recorded in Book 12

of Mortgages page 375, Probate Records of Baldwin County, Alabama; together with the note secured by said mortgage; Mortgage release executed by O. O. Kimmell in favor of Thomas S. McCaleb dated the 14th day of February, 1914, and recorded in Book 14 of Mortgages page 255, Probate Records of Baldwin County, Alabama; Sheriff's deed to D. P. Bestor, Jr., dated the 12th day of February, 1917, and recorded in Deed Book 26 N.S. pages 103-4, Probate Records of Baldwin County, Alabama; Deed from D. P. Bestor and wife to T. S. McCaleb, dated the 2nd day of March, 1917, and recorded in Deed Book 28 N.S. page 99, Probate Records of Baldwin County, Alabama; Certified copy of Will of John Bowen, probated January 7th, 1888, and recorded in Probate Records of Mobile County, Alabama; Will Book 6 page 284, et seq., /Certified copy of Order of Court admitting said Will to probate; Certified copy of Letters Testamentary issued to Charles Torrey, as Executor, and certified copy of tax assessment records relating to the Southwest quarter of Section 10, Township 7 South, Range 2 East, Baldwin County, Alabama, for the years 1900 to 1925, inclusive.

We shall also introduce in evidence certified copy of a patent from the United States to John C. Darling for the southeast quarter of the Southeast quarter of said Section 10; also certified copy of patent from the United States to John Brown for the Northeast quarter of the Southeast quarter of said Section 10; also certified copy of a patent from the United States to Benjamin Grist for the West half of the Southeast quarter of said Section 10.

We shall also introduce in evidence Transcript of the Bill of Complaint, service on Respondents, Final decree, Report of Register, Confirmation of Register, <sup>report</sup> in the suit of Isaac W. Hughes vs Grist, Hughes & Co., No. 2997, of the Docket of the Chancery Court of Mobile County, Alabama; also duplicate tax receipts for the year 1925 to 1929, inclusive.

*abstract & title to southeast quarter of sec 10, Twp 7 S. R 2 E Baldwin Co.*

*Isaac W. Hughes*  
Solicitor for Respondent.

We accept service of the foregoing notice on this \_\_\_\_\_ day of September, 1930.

*A. F. Kimmell*  
Solicitor for Warren W. Worcester, et al.,  
*Garland Mahon* *Garland*  
Solicitor for V. L. Pickens

~~Decree WW Worcester to J S McCall~~  
~~Mtg McCall to O O Kinnell~~  
~~" Release " to McCall~~

~~Disclaimer of D P Burt Jr.~~  
~~Court order about Worcester heirs~~

~~Orig Bell~~

~~Amended Bell~~

~~Decree Elizabeth Lee~~

~~Decree WW Worcester to McCall~~

~~Cross Bell~~

Mtg Release, O O Kinnell to McCall,

Received Nov 1 1934

Harry H Parker, Licensed  
Abstracter,

\$ 800<sup>00</sup>

Prichard

Ala., May 9<sup>th</sup> 1902.

On or before the 9<sup>th</sup> day of May 1903 (fixed) I promise to pay

to the order of C. C. Kinsalee

Eight Hundred (\$ 800<sup>00</sup>)

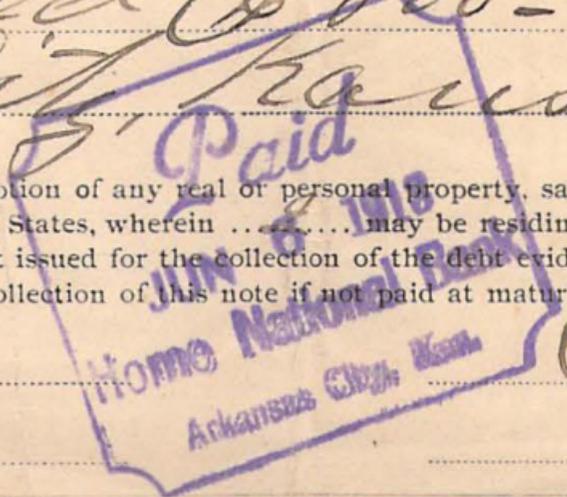
DOLLARS,

at Arkansas City, Arkansas with interest @ 6%

Value Received.

And I do hereby waive my claim for the exemption of any real or personal property, salary or wages, which is now or may hereafter be due under the Constitution and Laws of this, or any other State of the United States, wherein I may be residing at or after the maturity of this note, exempted from levy and sale or condemnation, on execution or other process of any Court issued for the collection of the debt evidenced by the foregoing promissory note. And I further agree to pay a reasonable Attorney's fee and all costs for the collection of this note if not paid at maturity.

Attest:



Handwritten signature of the issuer, appearing to be 'A. M. [unclear]'.

[I. S.]

[I. S.]

The State of Alabama, }

Montgomery County. }

Baldwin

**Know all Men by These Presents,**

That Whereas, *Thomas S. McCole* *Guarantied*  
*am* ..... indebted

to *O. O. Kimmell*  
in the sum of *Eight hundred (\$800.00)* ..... Dollars,

as evidenced by *my* promissory note bearing even date herewith, and payable as follows, to-wit:  
*on or before the 9th day of May 1913*

Now, In order to secure the prompt payment of said note when due *2* the said  
*Thomas S. McCole*

for and in consideration of the premises, and the sum of Five Dollars to *me* this day in hand paid by the  
said *O. O. Kimmell*

the receipt whereof is hereby acknowledged, do ..... hereby Grant, Bargain, Sell and Convey unto the said  
*O. O. Kimmell*

..... the following described real estate, lying and being situated  
in *Baldwin County* ..... State of Alabama, to-wit:

*The South West Quarter (1/4) of  
Section Ten (10), Township Seven  
(7) South, Range Two (2) East*



21

To have and to hold the aforegranted premises, together with the improvements and appurtenances thereunto belonging, unto the said O. O. Kinnuell, his heirs and assigns, forever.

And I the said Thomas S. McColet

do hereby covenant with the said O. O. Kinnuell, his heirs and assigns,

that I am lawfully seized in fee of said premises; that they are free of and from all incumbrances; and that I will warrant and forever defend the same against the lawful claims and demands of all persons.

But this Conveyance is made upon the following Conditions, nevertheless, that is to say: If I shall well and truly pay, or cause to be paid, the said note and interest thereon, when due, then this conveyance shall become null and void. But should I fail to pay said note, or either of them, with interest thereon, at its maturity, then ~~all of said notes shall become due and payable at once, whereupon~~ the said O. O. Kinnuell, his heirs, assigns, personal representatives, agents or attorneys, are hereby authorized and empowered to sell the said property hereby conveyed, at auction, for cash, at The Court House in the City of Bay Minette Alabama, first having given notice thereof for four weeks by publication once a week in any newspaper then published in said City, and execute proper conveyance to the purchaser; and out of the proceeds of said sale he shall first pay all expenses incident thereto, together with a reasonable attorney's fee; then retain enough to pay said note and interest thereon, and the balance, if any, pay over to me, Thomas S. McColet.

In the event of such sale, the said O. O. Kinnuell, his heirs, assigns, personal representatives, agents and attorneys, are hereby authorized and empowered to purchase the said property the same as if they were strangers to this conveyance, and the auctioneer or person making the sale is hereby empowered and directed to make and execute a deed to the purchaser in my name.

And it is also agreed that in case the mortgagee herein, his heirs, assigns or personal representatives, see fit to foreclose this mortgage in a court having jurisdiction thereof, I will pay a reasonable attorney's fee therefor, which fee shall be and constitute a part of the debt hereby secured.

I further represent and declare to said O. O. Kinnuell that the titles to said real estate are in my own right, and that the representations herein made as to titles and incumbrances are so made with the intent and for the purpose of obtaining this loan.

I further specially waive all exemptions which I have or to which I may be entitled under the Constitution and laws of Alabama in regard to the collection of the above debt.

~~further agree to keep said property insured in good and responsible companies for not less than \_\_\_\_\_ Dollars, and have the policies payable to said \_\_\_\_\_ interest may appear in said property, and deliver the same to \_\_\_\_\_; and should \_\_\_\_\_ fail to insure said property, then \_\_\_\_\_ authorize said \_\_\_\_\_ to do so, and the premiums so paid by \_\_\_\_\_ shall be and constitute a part of the debt secured hereby.~~

The grantor... herein agree<sup>s</sup> to pay all taxes and assessments, general or special, levied upon the said real estate herein conveyed before the same become delinquent.

And it is further understood that should the grantor... fail to pay said taxes and assessments, ~~or insure the property~~, as herein above stipulated, the mortgagee... may pay the same, and, without notice, declare the whole debt secured by this mortgage to be due and payable, and proceed to foreclose at once. All taxes and assessments paid by the mortgagee... shall constitute a part of the debt secured by this mortgage.

In Testimony Whereof, The said Thomas S. McCaleb

has 3 hereunto set his hand and affixed his seal, this the 9<sup>th</sup> day of May A. D. 1912.

ATTEST:

Thomas S. McCaleb L. S.  
L. S.  
L. S.  
L. S.

THE STATE OF ALABAMA, Mobile County.  
I, J. M. C. McConey, Jr. a Notary Public in and for said County and State, hereby certify that Thomas S. McCaleb

whose name is signed to the foregoing mortgage, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the mortgage, has executed the same voluntarily, on the day the same bears date.

Given under my hand, this ninth day of May A. D. 1912  
J. M. C. McConey, Jr.  
Notary Public

THE STATE OF ALABAMA, Mobile County.  
I, J. M. C. McConey, Jr. in and for said County and State, do hereby certify that on the 9<sup>th</sup> day of May 1912, came before me the within named Thomas S. McCaleb known to me to be the wife of the within named Thomas S. McCaleb who, being examined separate and apart from the husband touching her signature to the within mortgage, acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of the husband.

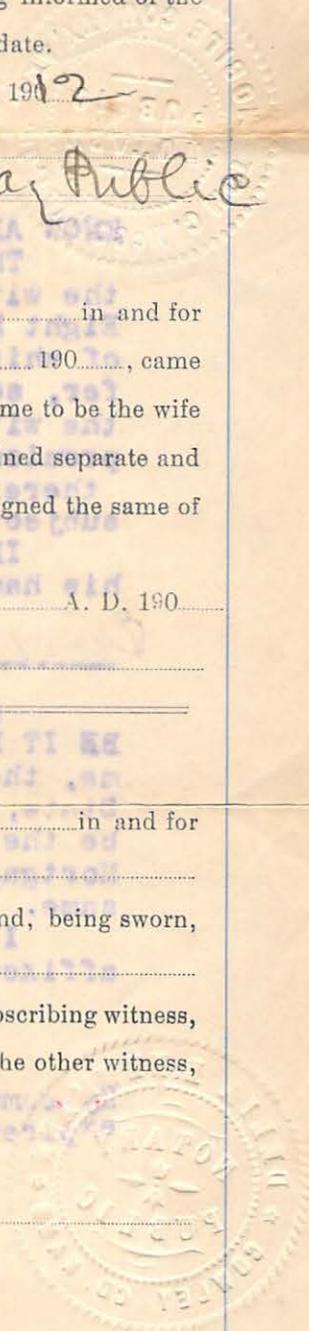
In Witness Whereof, I hereto set my hand, this 9<sup>th</sup> day of May A. D. 1912.

THE STATE OF ALABAMA, Mobile County.  
I, J. M. C. McConey, Jr. in and for the State and County aforesaid, hereby certify that Thomas S. McCaleb a subscribing witness to the foregoing mortgage, known to me, appeared before me this day, and, being sworn, stated that Thomas S. McCaleb the grantor..., voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor... and of the other witness, and that such other witness subscribed his name as a witness, in his presence.

Given under my hand, this 9<sup>th</sup> day of May 1912.

STATE OF ALABAMA,  
BALDWIN COUNTY,  
I, J. H. SMITH, JUDGE  
OF PROBATE FOR SAID COUNTY, HEREBY CERTIFY THAT  
THE FOLLOWING PRIVILEGE TAX HAS BEEN PAID ON THE  
WITHIN INSTRUMENT AS REQUIRED BY ACTS 1902 & 1903  
VIZ: - \$ 1 CTS. 20

J. H. Smith  
JUDGE OF PROBATE  
by S. S. Roney, clerk



*O. O. Kimmell*

Received of Thomas S. McCalab, the within named mortgagor, the sum of EIGHT HUNDRED DOLLARS (\$800.00) in full satisfaction of the within mortgage.

Arkansas City, Kans. July 5, 1913. \$800.00

**MORTGAGE**

FROM

*Thomas S. McCalab*

TO

*O. O. Kimmell*

STATE OF ALABAMA, }  
COWLEY COUNTY.

*Delia E. Neumann*  
Office of Judge of Probate.

I hereby certify that the within Mortgage was filed in this office for record on the 13<sup>th</sup> day of May A. D. 1912 at 12 o'clock P. M., and duly recorded in Book 12 of Mortgages, Page 273 and examined.

*J. H. H. Smith*  
Judge of Probate.

Geo. D. Barnard & Co., Printers, St. Louis.

**KNOW ALL MEN BY THESE PRESENTS:**

~~That O. O. Kimmell of Cowley County, in the State of Kansas the within named mortgagee in consideration of the sum of Eight Hundred and no/100 Dollars, to him in hand paid, the receipt of which is hereby acknowledged, does hereby sell, assign, transfer, set over and convey unto A. H. Denton, his heirs and assigns, the within mortgage deed, the real estate conveyed, and the promissory note, debts and claims thereby secured, and covenants therein contained; TO HAVE AND TO HOLD the same, forever; subject, nevertheless to the conditions therein contained.~~

~~IN WITNESS WHEREOF, The said mortgagee has hereunto set his hand this 27th day of August, 1912.~~

~~*Thomas S. McCalab*~~

~~*O. O. Kimmell*~~

STATE OF KANSAS, COWLEY COUNTY, SS:

~~BE IT REMEMBERED, That on this 27th day of August, 1912, before me, the undersigned, a Notary Public in and for said County and State, came O. O. Kimmell who is personally known to me to be the same person who executed the foregoing Assignment of Mortgage and such person duly acknowledged the execution of the same.~~

~~IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.~~

~~*Delia E. Neumann*  
NOTARY PUBLIC.~~

~~My commission expires Nov. 7-1914.~~



MAR 17 1932

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1931-32.

1 Div. 653.

Thomas S. McCaleb

v.

Warren W. Worcester, et als,  
Appeal from Baldwin Circuit Court,  
In Equity.

Statement.

The original bill was filed by Warren W. Worcester as the executor of the last will and testament of George H. Hoyle, deceased, against the appellant Thomas S. McCaleb and D. P. Bestor, Jr., under §9905 of the Code of 1923, to quiet title to the southwest quarter of section 10, township 7 south, range 2 east, in Baldwin County, alleging that the complainant is the owner of said land and in the peaceable possession thereof; that the respondents claim some right,

2.

title, or interest in said land or some incumbrance thereon, and that no suit is pending wherein such title, claim or interest may be tested.

The respondent Bestor answered, disclaiming any interest or title in said property. The respondent McCaleb answered, denying complainant's title and peaceable possession, avowed title in himself through warranty deed from F. J. McCoy and mesne conveyances, which are specifically set forth, and alleging that he and those under whom he claims had been in the actual, continuous, peaceable possession of said land under claim of right, assessing and paying the taxes thereon, for more than ten years prior to the filing of the bill, and praying that his answer be made a cross-bill and that his title be established and quieted.

The complainant answered the cross-bill, avowing title in himself, claiming through said F. J. McCoy, and specifying the conveyances through whom he claimed.

The original bill was thereupon amended, by joining Warren W. Worcester and V. L. Pickens as complainants with Worcester as executor, and alleging that complainants "are in the actual, peaceable possession, claiming to own" the lands in controversy.

The respondent McCaleb thereupon filed an answer to the amended bill, denying that complainants were in the actual, peaceable possession of the lands, or that they had any title thereto, avowing title in himself, derailing title from the United States, through mesne conveyances to himself.

The respondent McCaleb thereupon filed an original bill in the nature of a cross-bill, which he denominates

3.

"cross-bill and answer," purporting to be brought under Article 2 of Chapter 336 of the Code, authorizing proceedings in rem to establish title to land, alleging peaceable possession and avowing title under the same conveyances as are specified in his answer to the original bill as amended, and alleging that no suit is pending wherein his title can be tested; and making the complainants named in the bill as amended defendants to said bill, and praying that his title be settled and quieted.

To this last mentioned bill, Veva L. Pickens, who by amendment was made a party to the bill first filed, Edward Worcester, Joseph T. Worcester, Warren O. Worcester, George H. Worcester, Rosa Worcester and Olive M. Worcester, filed an answer, stating "with leave of the court make themselves parties respondent to the cross-bill filed by the original respondent, Thomas S. McCaleb," and answer said cross-bill alleging that Warren W. Worcester was an heir at law of George H. Hoyle, deceased, who at the time of his death owned a four-fifth interest in the land in controversy, and described in the original bill, and that said Warren H. Worcester has died since filing the original bill, and that said respondents who come in voluntarily and make themselves parties are the heirs and devisees of said Warren W. Worcester, succeeding to his four-fifth interest in said land, and that said Veva L. Pickens owns the other one-fifth interest, re-asserting their title under the same line of conveyances as specifically set forth in the answer to the first cross-bill, and denying the title and possession of said Thomas S. McCaleb.

4.

Some months after filing the answer last above mentioned, Edward Worcester and his co-heirs and devisees filed a motion before the register of the circuit court for an order allowing themselves to be made parties complainant to the bill first filed, and on September 22nd, 1930, the register entered an order reciting that "the parties to said cause having agreed to a revivor," allowed a revivor in the original bill as amended, in the name of said Edward Worcester, et als, along with Veva L. Pickens, as complainants.

On the same date - September 22nd, 1930- McCaleb moved to revive the cross-bill against the said Edward Worcester et als as the heirs of Warren W. Worcester, deceased.

And on September 23rd, 1930, McCaleb filed a motion to dismiss the original bill as amended because of an entire change of parties complainant.

Thereafter, on October 8th, 1930, motion was made by said Edward Worcester and his co-heirs, that they be made parties complainant to the original bill. This motion was granted, by the court, on the day it was filed, apparently without objection.

The case was thereafter, on November 26th, 1930, submitted for final decree on the motion of McCaleb to dismiss, and upon the pleadings and proof, as noted by the register.

On January 13th, 1931, the court entered a final decree overruling and disallowing the respondent's motion to dismiss, granting relief to the complainants and dismissing the cross-bills, and from that decree the respondent prosecutes this appeal.

5.

BROWN, J. (after stating the facts as above)

We are not of opinion that the court erred in overruling the motion to dismiss the bill. The statute and rule of practice authorize a revivor, on motion before the register or the court, by and in the name of the complainant's "successor or party in interest," without a bill of revivor. - Code 1923, §6552; Rule 101, Chancery Practice, Vol. 4, Code of 1923, page 938. - [Italics Supplied]

The matter in controversy here is the title to the property, and the party in interest within the meaning of the statute and rule of practice, was the party alleged to have the title. - Sims Ch. Pr. §620; Rhea v. Tucker, 56 Ala. 450.

The statute, §9905, Code of 1923, authorized the filing of the bill by the original complainant in his representative capacity, yet by so doing he was asserting and seeking to protect the title that resided in the testator up to the time of his death, and the parties in whose names and behalf the bill was revived, taking the averments of the bill as true, succeeded by the death of the original complainant to the title which he was seeking to protect in his representative capacity.

The fact that the original complainant had statutory authority for proceeding in his representative capacity, differentiates this case from that of Bowie v. Minter, 2 Ala. 412.

The complainant made no effort to show that Warren W. Worcester in his representative capacity, his co-complainants, or his successors, ever had actual possession of the land. They rest their case solely on the contention that they have established a good paper title to the land which draws to it constructive possession,



6.

and that they have shown that no one was in actual possession.

One fault in this contention is that the bill as last amended alleges that complainants "are in the actual peaceable possession claiming to own" said land. In Montgomery v. Spears et al, 218 Ala. 160, 117 So. 753, cited by appellee, and Whitmire v. Spears et al, 212 Ala. 583, 103 So. 668, upon which the first cited case is rested, the complainant merely alleged peaceable possession and ownership, not actual possession, - pedis possessio.

In Coat v. Teague et al, 215 Ala. 111, 110 So. 17, the complainant alleged and proved actual possession in himself and those under whom he claimed.

King Lumber Co. et al v. Spragner et al, 176 Ala. 564, 58 So. 920, was not a statutory bill, but was a bill to remove a cloud from title, and alleged that complainants owned and were in possession of the property.

Another fault in the appellees' contention is that they failed to show that no one was in the actual possession of the property. The evidence goes to show that the land in question was unfenced, cut-over land; that the respondent and those under whom he claimed had at least color of title; had been exercising acts of ownership over the property for some time before the bill was filed, by building a tent or shack on the property, sinking a well, keeping off trespassers, occupying the same by tenant or agent, and clearing part of the land, and assessing and paying taxes thereon. The evidence further shows that the complainants and those

7.

under whom they claim, had not assessed the land for taxes for more than twenty years, and that the most they had ever done, - assuming that this was done by them or their authority, - was to put up signs of warning against trespassers, and these were immediately taken down by the respondent's agent. In short, the complainants have failed to prove the averments of the bill essential to its equity and to give the court jurisdiction to settle and determine the title. - Buchmann Abstract & Investment Co. v. Roberts, 213 Ala. 520, 105 So. 675; Southern Railway Co. v. Hall, 145 Ala. 224, 41 So. 135.

In George E. Wood Lumber Co. v. Williams, 157 Ala. 73, 47 So. 202, dealing with the question of peaceable possession, it was observed: "So long as his possession is so clear that no one is denying the fact of his actual or constructive possession, it is peaceable, although some other person may be denying his right to possession. Consequently the cases above cited (in that case) and others, have held that the possession must be peaceable, as contradistinguished from a contested, disputed, or scrambling possession. In a case in which the complainants showed that they were the heirs of one S., who had the title to certain wild lands, and consequently had the constructive possession, and the respondent showed (adduced) testimony tending to prove that she had a tax deed for taxes delinquent by said S., that she had paid taxes, kept trespassers off, cut tan bark on the land, and posted notices warning people not to trespass, and objected to persons cutting creosotes, on the land, this court said that these acts 'were sufficient to show that complainants (complainants) did not have the peaceable possession of the land,'" citing Randle et al v. Daughdrill, et al, 142 Ala. 490, 492, 39 South. 162 (typographical error corrected in Southern Reporter). See, also, Lyon v. Arndt, 142 Ala. 466, 38 South. 242.

Under the evidence in this case, if we disregard the averment of actual possession, the complainants have failed to meet the burden of showing peaceable possession, and their bill is due to be dismissed.

The law as settled in the later decisions of this court is, that where the controversy between the parties in bills to quiet titles is one of ownership and title, a bill and answer conforming to the requirements of the statute, and the complainant proves possession at the filing of the bill, and that no suit is pending in which the title or claim of the respondent can be tested, every issue necessary to a settlement of the controversy is presented. It is only where one of the parties seeks relief not within the scope of the statutory proceedings, that a cross-bill is proper or necessary. - Gravson v. Muckleroy, 220 Ala. 182, 124 So. 217; Lamar v. Lincoln Reserve Life Ins. Co., 222 Ala. 60, 131 So. 223.

The decree of the circuit court, in so far as it grants relief to the complainants, is therefore reversed, and a decree will be here rendered dismissing the original bill as last amended. - Scott v. Scott, 211 Ala. 424, 100 So. 755. The decree, in so far as it dismisses the cross-bill, is modified so as to dismiss said cross-bill, without prejudice, and, as modified, is affirmed. The appellees are taxed with the costs of the case accruing in the circuit court, and with the costs of the appeal.

Reversed and rendered in part, and in part modified and affirmed.

Anderson, C.J., Bouldin and Knight, JJ., concur.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 653  
Thomas S. McCall, Appellant,  
vs.  
Warren W. Worcester et als, Appellee,  
From Baldwin Circuit Court.

The State of Alabama, }  
City and County of Montgomery. }

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to 8 inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the

14 day of March, 1932  
Robert F. Ligon  
Clerk of the Supreme Court of Alabama.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT  
THE SUPREME COURT OF ALABAMA

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THE SUPREME COURT OF ALABAMA

October Term, 19<sup>31-2</sup>

1 Div., No. 653,

Thomas S. McCall

Appellant,

vs.

Worcester et als

Appellee.

From Baldwin Circuit Court.  
In Eq.

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COPY OF OPINION

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BROWN PRINTING CO., MONTGOMERY, 1931

Filed March 21, 1932  
D. M. Williamson  
Register

WARREN W. WORCESTER,                   |  
  |    Complainant,                   |    IN THE CIRCUIT COURT  
  |  
  |    vs                                   |  
  |    OF BALDWIN COUNTY,  
THOMAS N. MCCALED, et al.,           |    ALABAMA.  
  |    Respondent                     |  
  |    IN EQUITY.

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This day came Edward Worcester, Joseph T. Worcester, Warren O. Worcester, George H. Worcester, Rosa Worcester and Olive M. Worcester and moved the Register to make them parties complainant in lieu of Warren W. Worcester, as Executor of the estate of George H. Hoyle, deceased; and it being made to appear by the affidavit of *J. S. Worcester*, that the said movants are the sole parties in interest as to the real estate involved in this cause, so far as the undivided interests of the estate of George H. Hoyle, or of Warren W. Worcester, are concerned, and that they are the sole heirs at law now living of said George H. Hoyle and Warren W. Worcester; it is now ordered that said movants be made parties complainant to the original bill filed in this cause.

*sep 1st 1930*

*J. W. Richardson*  
\_\_\_\_\_  
Register.

WARREN W. WORCESTER, |  
 Complainant | IN THE CIRCUIT COURT  
 vs | OF BALDWIN COUNTY,  
 THOMAS N. MCCALED, et al., |  
 Respondent | ALABAMA.  
 IN EQUITY.

STATE OF ALABAMA |  
 COUNTY OF MOBILE |

Before me, *J. N. Richardson* *clerk of circuit court*, ~~Notary~~

*court*

~~Public~~ in and for said State and County, personally appeared *Geo T. Worcester*, who being first duly sworn on says that there are no debts outstanding against the estate of George H. Hoyle; that Warren W. Worcester who was named as the executor of the will of said Hoyle, was, as to the real property involved in the above stated cause both sole devisee and next of kin of said Hoyle; that said Warren W. Worcester has, since the filing of the bill of complaint in this cause, died leaving a last will by which he bequeathed all his real property to Edward Worcester, Joseph T. Worcester, Warren O. Worcester, George H. Worcester, Rosa Worcester and Olive M. Worcester and that said devisees were also his sole heirs and next of kin; that all debts of the said deceased have been paid and that the said named heirs of Warren W. Worcester are now the sole parties in interest as to the real estate involved in this cause so far as the undivided interest of the estate of said Hoyle or of said W. W. Worcester are concerned.

Sworn to and subscribed before me, this August 1930.

*J. T. Worcester*

*J. N. Richardson*

~~Notary Public, Mobile County, Alabama.~~  
*Clerk Circuit Court Baldwin*

WARREN W. WORCESTER,  
Complainant,

vs

THOMAS N. MCGALEB, et al.,  
Respondent

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

---

Now comes Edward Worcester, Joseph T. Worcester, Warren O. Worcester, George H. Worcester, Rosa Worcester and Olive M. Worcester and moves the Register in Vacation to make them parties complainant in the original cause in lieu of the original complainant, Warren W. Worcester, Executor of the estate of George H. Hoyle, deceased, and show by affidavit accompanying this motion that they are the sole parties in interest as to the real estate involved in this cause, in so far as the estates of George H. Hoyle and Warren W. Worcester are concerned.

*Stuonell*  
Solicitors for Complainants.



W.W.Worcester et al,  
Complainants.  
vs.  
Thomas Mc Caleb et al  
RESPONDENTS.

DECREE FOR COMPLAINANTS AND  
QUIETING TITLE AS AGAINST  
DEFENDANT AND CROSS COMPLAINANT.

This cause having been regularly submitted for final decree on the pleadings and evidence, as shown by the note of evidence on file, and on motion of cross-complainant to dismiss complainant's bill of complaint, and having been duly considered by the Court, the Court is of opinion that complainants are entitled to the relief prayed for in their bill of complaint, as amended:

It is further ordered, Adjudged and decreed that motion of cross complainant, Thomas S. Mc Caleb be and is overruled and disallowed.

It is further ordered, Adjudged and Decreed that the respondent and cross complainant, Thomas S. Mc Caleb, has no right, title or interest in or encumbrance upon the Southwest quarter of Section Ten (10) Township Seven (7) South, Range Two (2), East, and lying in Baldwin County, Alabama,

It is further Ordered, Adjudged and Decreed that cross-complainant, Thomas S. Mc Caleb is not entitled to the relief prayed for in his cross-bill, and that his prayer for relief be and is denied.

It is further ordered, Adjudged and Decreed that defendant and cross-complainant be and is taxed with all costs incurred in this cause, for which let execution issue.

This January 13th, 1931

F.W.Hare  
-----  
Judge.

State of Alabama,  
Baldwin County.

Circuit Court, in Equity.

I. T. W. Richerson, Register of said Circuit Court of said County, Alabama, do hereby certify that the above is a full, true and correct copy of the decree rendered by said Court on the 13th, day of January 1931, in the cause of W. W. Worcester et al, Complainants vs. Thomas McCaleb, Respondent and Cross Complainant, as appears of record in said Court.

Witness my hand and the seal of said Court,  
this the 27th day of January, 1931.

*I. T. W. Richerson*  
-----Register.

CERTIFIED COPY OF  
DECREE

-----  
W.W.Worcester et al  
vs Complainant.  
Thomas S. Mc Caleb  
Respondent &  
Cross Complainant.

Filed January 15th, 1931  
T.W. Richerson, Register.

*Done*

THOMAS S. McCALEB,  
Cross-Complainant,  
-vs-  
WARREN W. WORCESTER,  
individually, and as Executor, and  
V. L. PICKENS,  
Cross-Respondents.

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

Comes now Thomas S. McCaleb, cross-complainant, and exhibits this his cross-bill against the southwest quarter of Section 10, Township 7 South, Range 2 East, Baldwin County, Alabama, and against Warren W. Worcester, individually, and as Executor of the last will and testament of George H. Hoyle, deceased, and V. L. Pickens, respectfully showing as follows:

FIRST. That the said Warren W. Worcester, individually, and as Executor, and V. L. Pickens have heretofore filed in this court a bill and amended bill, wherein they are the complainants, against this cross-complainant, Thomas S. McCaleb, and D. P. Bestor, Jr., seeking to quiet their title to the southwest quarter of Section 10, Township 7 South, Range 2 East, Baldwin County, Alabama, under sections 5543 et seq., of the Code of 1907; that the said D. P. Bestor, Jr., has filed a disclaimer in said suit, and that this cross-complainant has filed an answer to the original bill of complaint, denying that said Warren W. Worcester and V. L. Pickens, or either of them, were in the peaceable possession of said lands when said bill was filed, or at any time, and setting out his claim of title to said lands as hereinafter set out.

SECOND. This cross-complainant further shows that he is in the actual peaceable possession of said lands, or if he be mistaken in this, then neither he nor any other person is in the actual possession of said lands, and he and those through whom he claims have held color of title to the lands so claimed, for a period of twenty or more consecutive years next preceding the filing of this cross-bill and have paid the taxes on said lands during

whole of said period.

THIRD. Cross-complainant further shows that he claims to own said lands in fee simple, and that cross-complainant's title to said lands was obtained from Oscar O. Kimmell and wife, who conveyed said lands to this cross-complainant by warranty deed dated April 30th, 1912, and recorded in Deed Book 19 N.S., page 198 of the Probate Records of Baldwin County, Alabama; that the title of the said Oscar O. Kimmell to said lands was derived from the following conveyances, viz: Certificate of entry No.15012, dated March 5th, 1858, and recorded in Tract Book No.1 page 902, Probate Records of Baldwin County, in behalf of George E. Sherwin; certificate of entry No.138, Dated July 20th, 1858, recorded in Tract Book No.1 page 209, Probate Records of Baldwin County, Alabama, in behalf of George E. Sherwin; Patent from the United States of America to George E. Sherwin, dated the 1st day of February, 1860, conveying the East half of the southwest quarter of Section 10, in Township 7 South of Range 2 East in the District of Lands, subject to sale at St. Stevens, Alabama; Patent from the United States of America to George E. Sherwin, dated the 15th day of August, 1860, conveying the west half of the southwest quarter of Section 10, Township 7 South of Range 2 East, of the District of Lands, subject to sale at St. Stevens, Alabama; Deed from George E. Sherwin and wife to F. J. McCoy, dated April 7th, 1858, recorded in Deed Book G, pages 415-416, Probate Records of Baldwin County, Alabama, conveying the southwest quarter of Section 10, Township 7 South of Range 2 East, Baldwin County, Alabama, Warranty deed made by F. J. McCoy to Allen and James R. Grist, dated June 28, 1858, recorded in Book H. pages 195-196; Warranty deed made by Grist and Hughes to Isaac<sup>W.</sup>/Hughes dated April 14, 1868, recorded in Book I page 116; Power of Attorney from Isaac W. Hughes to Theo. J. Hughes, dated February 27, 1871, recorded in Deed Book I, page 504; Mortgage by Isaac W. Hughes to Marshall J. Smith & Company, dated March 11, 1871, recorded in Book I pages 506-7; Mortgage by James R. Grist to Zophar Mills, dated February 3, 1868, recorded in Book I page 221; Official deed James Gillette, Register

in Chancery, to Isaac W. Hughes, dated October 18th, 1870, recorded in Book K. pages 45-47; Statutory warranty deed by Isaac W. Hughes to Zophar Mills, dated May 3rd, 1873, recorded in Book J., pages 705-707; Release to dower by Annie M. Hughes, wife of Isaac W. Hughes to Zophar Mills, Dated May 3rd, 1873, recorded in Book Book J., pages 707-8; Quit-claim deed by Zophar Mills and wife to John Bowen, dated December 31st, 1881, recorded in Book M., pages 542-3; Will of John Bowen, recorded in Will Book 6 pages 284, Mobile County Records; Statutory Warranty deed by Executor of John Bowen to George C. Black, dated January 2nd, 1903, recorded in Deed Book 5, N. S., pages 635-6; Warranty deed dated April 26th, 1904, by George C. Black and wife to Joseph Keller, recorded in Deed Book 7. N. S., page 244; Warranty deed by Joseph Keller and wife to Oscar Kimmel, dated December 19th, 1904, recorded in Deed Book 8. N. S., page 103; that cross-complainant also claims under the following deeds, viz: T. S. McCaleb, by C. E. Eubanks, Sheriff, to D. P. Bestor, Jr., dated February 12th, 1917, recorded in Deed Book 26 N. S., page 103; Statutory warranty deed by D. P. Bestor, Jr., and wife to T. S. McCaleb, dated March 2nd, 1917, recorded in Deed Book 28. N. S., page 99.

FOURTH. Cross-complainant further shows that, the title to said lands stands in the name of this cross-complainant upon the records of the Probate Court of Baldwin County, Alabama.

FIFTH. This cross-complainant further shows that, neither the cross-respondents, nor either of them, nor any one through whom they claim, at any time within twenty years next

preceding the filing of this cross-bill ever paid any taxes on said lands, or any interest therein. Cross-complainant further shows that he, <sup>they</sup> and through whom he claims, alone, have had possession of said lands, or any part of said lands within twenty years next preceding the filing of this cross-bill.

SIXTH. This cross-complainant further shows that Warren W. Worcester, individually, and as Executor of the last will and testament of George H. Hoyle, deceased, and V. L. Pickens, claim said lands, or some part thereof or interest therein, and that the residence and address of each of said persons is in the town of Fairhope, Baldwin County, Alabama.

SEVENTH. Cross-complainant further shows that no suit is pending to test his title to, interest in or his right to the possession of said lands.

The cross-complainant prays that your Honor will decree the title to said property to be in cross-complainant, and if cross-complainant has not asked for proper relief, he further prays that he may have such other and further relief in the premises as the nature of his case shall require, and as to your Honor may seem meet. And cross-complainant submits himself to the jurisdiction of this court and offers to do whatever the court may consider necessary to be done on his part towards making the decree which he seeks, just and equitable with regard to the other parties to the suit.

And may it please your Honor to grant to cross-complainant the writ of summons of the State of Alabama, to be directed to the said Warren W. Worcester, individually, and as executor of, and under the last will and testament of George H. Hoyle, deceased, and V. L. Pickens, thereby commanding them, and every one of them, personally to appear before your Honor in this Honorable Court within thirty days from service thereof, and then and there to answer all and singular, the premises, and to stand to and abide such order and decree as to this Honorable Court shall seem meet;

and that your Honor will order the Register of this Court to draw and sign a notice of the pendency of this cross-bill, and that such notice be published once a week for four consecutive weeks in some newspaper having general circulation, and published in Baldwin County, Alabama, and that a copy of said notice be served on each of the cross Respondents in the same manner that process is served on defendants in suits in equity, and that a copy of said notice, certified by the Register as being correct, shall also be recorded as a lis pendens in the office of the Probate Judge of Baldwin County, Alabama, all as required by Sections 9914, 9915 and 9916, Code of Alabama, 1923.

And your orator shall ever pray, etc.

*Hogan Mitchell*  
 By *Joseph F. Hogan*  
 Solicitors for Cross-Complainant.

STATE OF MISSISSIPPI,  
 COUNTY OF HARRISON.

Before me, *G. J. Smith* a Notary Public in and for said County in said State, personally appeared Thomas S. McCaleb, who is known to me, who being by me first duly sworn deposes and says on oath, that the allegations of fact contained in the foregoing cross-bill from paragraph one to paragraph seven, both inclusive, are true.

*Thomas S. McCaleb*

Subscribed and sworn to before me on this 23<sup>rd</sup> day of June, 1925; in witness whereof I hereto set my hand and official seal.

*G. J. Smith*  
 Notary Public, Harrison County, Mississippi.

FOOT NOTE:

Cross respondents, Warren W. Worcester, individually, and as executor of, and under the last will and testament of George H. Hoyle, deceased, and V. L. Pickens, and each of them, are hereby required to answer the allegations of the above cross-bill from paragraph one to paragraph seven, inclusive, but not under oath, oath to the answer being expressly waived.

*Hogan Mitchell*  
 Solicitors for Cross-Complainant.