

TO THE HONORABLE JOHN D. LEIGH, JUDGE OF THE CIRCUIT COURT OF
BALDWIN COUNTY, STATE OF ALABAMA, SITTING IN EQUITY:

Emily Scott, Emily Scott, As Administratrix of
the Estate of A.D. Scott, deceased, and Ella M. Anderson present
this bill of complaint against H.M. Hall and Frank L. Ballenger,
and respectfully show unto your Honor as follows:

That the said H.M. Hall filed a bill of complaint
in this Honorable Court on the 3rd day of July, 1918, naming A.D.
Scott and W.G. Taylor as Respondents therein, and alleging in
said bill of complaint that the said A.D. Scott and W.G. Taylor were
non-residents of the State of Alabama and "That their particular
place of residence and post-office address is unknown to complainant;
that complainant has made diligent inquiry and has been unable to
ascertain same". That the complainant further alleged in said
bill of complaint that he "H.M. Hall, a resident of Baldwin County,
Alabama, over the age of twenty-one years;" that in said bill of
complaint it was averred that the defendants claimed or were reputed
to claim some right, title or interest in, or incumbrance upon cer-
tain lands located in Baldwin County, to-wit: The East Half of
the Southeast Quarter of Section 25, Township 5 South, Range 4 East,
Baldwin County, Alabama; and that said bill of complaint was verified
by affidavit made by the said H.M. Hall before W.C. Beebe, a Notary
Public, in and for Baldwin County, Alabama; your complainants fur-
ther represent that upon the said affidavit as to non-residence of
the respondents that an order of publication was granted and that
notice was published in the Baldwin Times in conformity with said
order; that on the 10th day of September, 1918, that a decree pro
confesso was rendered against said defendants upon service had
upon them by publication, pursuant to said affidavit; that on the
13th day of September, 1918 and in vacation, that the Honorable
A.E. Gamble, who was then and there Judge of said Court rendered
a decree final in said cause, granting the relief prayed for and
declaring that the said A.D. Scott and W.G. Taylor had no Estate or
interest in, or incumbrance upon the above said lands.

3
Your complainant, Emily Scott, alleges that she is the widow of the said A.D. Scott, and that she is the Administratrix of the Estate of said A.D. Scott, deceased, and that Ella M. Anderson is the only child of the said A.D. Scott, and that they are the only heirs of the said A.D. Scott, deceased; your complainants further allege that no notice of the pendency of such a suit was ever had upon the said A.D. Scott during his life time, that the said A.D. Scott was a bona fide resident of the County of Baldwin, State of Alabama, at the time of the filing of the said bill, and had been such resident for a number of years prior thereto, and was the owner of lands in said County, and that he was a tax payer of said County; that the said A.D. Scott left Baldwin County on a visit during the month of June, 1918, and just prior to the filing of the said bill of complaint, and that he returned to the County of Baldwin, State of Alabama, during the month of October or November, 1918, and that he was ill, was then brought to the City of Mobile, State of Alabama, placed in an Infirmary there and died during the month of November, 1918.

4
Your complainants further allege that at the time of the filing of the said bill of complaint that the said H.M. Hall was not twenty-one years of age, as is alleged in the said bill of complaint, and sworn to by him, but was a minor, and that subsequent to the filing of the said bill of complaint he was relieved of the disabilities of non-age, as is evidenced by the Records of the Court in said Baldwin County.

5
Complainants further allege that the said H.M. Hall did not make diligent inquiry and was not unable to ascertain the place of residence and post-office address of A.D. Scott, for he was well known in Baldwin County, and especially well known at Robertsdale, Baldwin County, Alabama, where he resided and where his Daughter was living and where he had an agent who was taking care of his property during his absence; that the said H.M. Hall made no effort whatsoever to ascertain the residence and post-office address of the said A.D. Scott, the said A.D. Scott being

at the time of the filing of the said bill of complaint a resident of Baldwin County, State of Alabama, a tax payer in Baldwin County and had been residing there for a long time prior thereto.

6 Your complainants further allege that the said H.M. Hall did not mail to the said A.D. Scott, nor did he attempt to do so, any copy of the bill of complaint, as is required by the Laws of 1915.

7 Complainants further allege that since the rendering of the decree in the above said cause that the said H.M. Hall has sold the lands above described and involved in the foregoing bill of complaint to Frank L. Ballenger, who is a resident of Baldwin County, State of Alabama, and who is thereby interested in the result of this litigation, and is therefore a necessary party to this suit.

8 And complainants further allege that they are each over the age of twenty-one years and are bona fide residents of Baldwin County, State of Alabama, and that the respondents are both over the age of twenty-one years and are residents of Baldwin County, State of Alabama.

9 And your complainant further allege that at the time of the rendering of the decree pro confesso and at the time of the rendering of the decree final that the said A.D. Scott had a meritorious defense to the said cause of action, that he was vested with a good legal title to the lands alleged in the bill of complaint, and that the title thereto vested in your complainants as the widow and as the Administratrix of the Estate of the said A.D. Scott, deceased, and as the Daughter of the said A.D. Scott, deceased, and that they are now prepared to show to this Court that they are vested with an absolute legal title to the said property, and that the said H.M. Hall is vested with no title whatsoever, unless it be an alleged tax-deed.

The premises considered, your complainants pray that your Honor will take jurisdiction of this matter,

will cause notice to be served upon the said H.M. Hall and Frank L. Ballenger, making them parties respondent to this cause, and requiring them to answer, plead or demur to this bill of complaint within the time required by law; that upon the final hearing of this cause, that your Honor will enter a decree setting aside the decree as rendered by the Honorable A.E. Gamble on the 13th day of September, 1918, and heretofore described, and will give your complainants a right to come in and to defend said suit upon its merits, and will grant unto your complainants such other and further relief as they may be entitled to, the premises considered. And your complainants will ever pray, etc.

Gordon & Edington
Charles Hall
SOLICITORS FOR COMPLAINANTS.

FOOT-NOTE: The Respondents, and each of them, are required to answer each and every paragraph of the foregoing bill of complaint, but not under oath, their oaths thereto being hereby expressly waived.

Gordon & Edington
Charles Hall
SOLICITORS FOR COMPLAINANTS.

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 Chas E. Canright and Alice P. Ballinger, as executors of the estate of Frank L. Ballinger, deceased,

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

Emily Scott, Emily Scott as administratrix of the estate of A. D. Scott deceased, and Ella M. Anderson,

against said Charles E. Canright, Alice P. Ballinger as executors of the estate of Frank L. Ballinger deceased, and H. M. Hall.

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 23rd day of May 1927.

T. W. Richerson Register.

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

Original

THE STATE OF ALABAMA,
BALDWIN COUNTY.

SERVE ON.....

Circuit Court of Baldwin County
In Equity.

Received in office this *May 23rd,*
day of 192*7*

No.

SUMMONS

Sheriff.

Emily Scott and Emily

~~Scott as executor~~ Administratrix
of the estate of A.D. Scott,
and ~~Alice~~ Ella M Anderson.

Executed this *30. th* day of

May 192*7*

by leaving a copy of the within Summons with

Chas. E. Canright and a
copy for Alice P. Ballinger
with Chas. E. Canright
for Alice P. Ballinger
Defendant.

vs.

Alice P. Ballinger and

Chas. E. Canright as executors

L. Armit

Sheriff.

of the estate of Frank L. Ballinger,
deceased and H.M. Hall.

By *Robert Adams*
Deputy Sheriff

Chas. Hall.

Solicitor for Complainant

Recorded in Vol. Page

Serve copy on
Alice P. Ballinger
and Chas E. Canright
near Robert Adams
area

EMILY SCOTT, ET AL,
Complainants,

-VS-

H. M. HALL, ET AL,
Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY,
IN EQUITY.

BRIEF OF COMPLAINANT, CONTENDING THAT
DEMURRERS OF RESPONDENTS ARE NOT WELL TAKEN.

This Brief and Argument is to be applied to the demurrers of both Respondents, both raising the proposition that there is no equity in the bill. Upon reading the bill of complaint it will be readily seen that the prayer of the bill is that the decree in question be set aside and that the Complainant be given an opportunity to come in and defend against the original bill, which seeks to quiet title to the land involved. It will be noted that the bill specifically alleges that in the original bill Hall swore that he had made diligent inquiry and was unable to ascertain the post-office address or residence of A. D. Scott and W. G. Taylor; that he further alleged that he, H. M. Hall, was a resident of Baldwin County and over the age of twenty-one years. It will also be observed that in this petition it is alleged that the said H. M. Hall was not twenty-one years of age, and that subsequent to the filing of the bill of complaint he was relieved of the disabilities of non-age, as is evidenced by the Records of the Court in Baldwin County; it is also averred in the petition that the said Hall did not make diligent inquiry and was not unable to ascertain the place of residence and post-office address of A. D. Scott, and that it was well known that the said Scott was a resident citizen of Baldwin County and resided at Robertsdale at the time of the filing of the original bill of complaint by the said Hall; it will be further noted that the said Hall made no effort to ascertain the residence and post-office address of the said A. D. Scott; it is further alleged that the said Hall did not mail to the said Scott, nor did he attempt to do so, any copy of the bill of complaint, as is required by the Laws of 1915; it is further averred that since the

decree, which Complainant is now seeking to set aside, was rendered that the said Hall had sold the lands in question to Frank L. Bal-
lenger, the other Respondent.

It will be observed, therefore, from the above allegations that a fraud has been committed upon the Court in the securing of the decree, which is now in question, and we think and respectfully submit that where fraud enters into the securing of any decree that said decree should be set aside and the said party so injured be given the right to defend their title. It is an old truism created, maintained and perpetuated by our highest courts that a party seeking equity relief must come into Court with clean hands and where a party complainant specifically swears that he is twenty-one years of age, when he is not, and where the Records of the Court in which he has made such an affidavit show that subsequent to such affidavit he filed a petition, asking the Court to relieve him of the disabilities of non-age, then certainly he did not come into Court with clean hands. And when he further makes affidavit that he had made diligent search and inquiry to ascertain the residence and address of Mr. Scott, and when the petition shows that Mr. Scott was a resident of Baldwin County, was well known in Baldwin County, was a tax payer in Baldwin County, and owned property in Baldwin County, located at Robertsdale, then we respectfully submit that again has the complainant in the original cause perpetrated fraud upon the Court in securing the decree now in question, that he did not come into Court with clean hands, and that this Court should set aside such decree and give the party injured by such fraud a right to protect their property interest.

It will be noted that in this petition it is averred that the said Scott, during his life time, and at the time that Hall filed the bill to quiet title, was a resident of Baldwin County, when the bill showed upon its face, under affidavit, that he was a non-resident of the State of Alabama, and certainly with this state of affairs he was never given an opportunity to come in and defend, and if the decree in question should be allowed to stand, and these petitioners should not be given the right to have this

decree set aside, and to come in and establish their titles or rights, then would the Laws of Alabama sanction the taking away of ones property right without his day in Court.

The demurrers of Mr. Hall raise the additional ground that it is not shown in said bill that the tax deed did not vest a good title in the said Hall. We do not think that this ground of demurrer is well taken, for if the Court will read the prayer of the petition in question, it simply asks that this Court set aside the decree, as rendered heretofore, and give these Complainants the right to come in and establish their claim. It is not the purpose, nor the prayer, of this petition that this Court will render a decree upon the merits in establishing the rights of the parties litigant, to the land in question, but it simply seeks to have this Court give these petitioners the right to a day in Court, and not to allow them to be deprived of their property rights by false averments in an original bill of complaint and upon the perpetration of fraud upon the Court. The question as to what title the tax deed vests in the said Hall and Ballenger will be a question of evidence after this petition shall be granted and said decree set aside, if such should be done, and it plays no part in this particular question. We feel sure that Counsel for Mr. Hall has misapprehended the intention of this particular petition, and that they have read it as asking that your Honor will adjudicate the right of property instead of giving our clients their day in Court.

Have these parties petitioner, or the decedent, Mr. Scott, been given their day in Court? We respectfully submit that they have not. It is impossible to secure service upon a resident citizen of this State by publication, as this publication is a statutory provision and is applicable only when affidavit as to the non-residence of the party Respondent is filed. The duty is upon the Complainant, before he can secure service by publication, to make an honest, faithful and diligent search and inquiry as to the residence of the party sought to be made Respondent, and if this Complainant had have complied with this law we cannot see how he could have failed to have ascertained that Mr. Scott resided in

Baldwin County, at Robertsdale, owning property in said County,
paying taxes in said County, and being well known in said County.

We do not feel that it is necessary for us to cite
and quote, at length, authorities supporting the above proposition,
and we will, therefore, only refer your Honor to Decisions which
we deem applicable to the question in hand, and which we feel sure
your Honor will read, and these Decisions are as follows:-

McDonald, et al, versus Pearson, 114th Ala., Page 630,
and especially Page 643.

Curry versus Peebles, 83rd Alabama, Page 225.

Gill versus Moore, 200 Alabama, Page 511.

Sweeney et al. versus. Tritzsch, 44 So.Rep. Page 184.

We respectfully submit that the demurrers are not
well taken and same should be overruled.

Gordon Edington

Charles Hall
SOLICITORS FOR PETITIONER.

EMMA SCOTT ET AL., ::
 ::
 Complainants, :: In the Circuit Court of
 ::
 vs. :: Baldwin County, Alabama.
 ::
H. M. HALL ET AL., :: In Equity.
 ::
 Respondents. ::

*Original
Bill
of
Complaint*

This cause being submitted by agreement between the parties on the demurrer of the Respondents to the original bill of complaint, and the same being understood and considered by the Court, it is ORDERED, ADJUDGED AND DECREED by the Court that said demurrer be, and the same is, hereby overruled.

DONE, on this the 10th day of July, 1922.

John D Leigh
Judge of the Twenty-First Judicial
Circuit of Alabama.

EMILY SCOTT, EMILY SCOTT, as
Adm'r of Estate of A. D. Scott,
dec., and Ella M. Anderson
Complainants.

-vs-

H. M. HALL, and FRANK L. BALL-
ENGER., Defendants.

CIRCUIT COURT-EQUITY SIDE
STATE OF ALABAMA
BALDWIN COUNTY

No. 272

Comes the defendant, Frank L. Ballaneger, one of the defendants
in the above entitled cause and files this his demurrer to the bill of
complainat in this cause filed by the complainants and for grounds there-
of says;

F I R S T .

That there is not equity in said bill.

WHEREFORE, the defendant, Frank L. Ballenger demurs to the said bill
and to each paragraph thereof and prays the judgment of this court whether
he shall be required to answer further and prays to be dismissed with his
reasonable costs in this be half sustained.

Wm. J. Hall
Wm. J. Hall
SOLICITORS FOR DEFENDANT FRANK
L. BALLENGER.

EMILY SCOTT, EMILY SCOTT :
AS ADMINISTRATOR OF THE :
ESTATE OF A. D. SCOTT, :
DECEASED AND ELLA M. :
ANDERSON, COMPLAINANTS :

-vs-

H. M. HALL AND FRANK L. :
BALLENGER, DEFENDANTS. :

No. 272.

IN CIRCUIT COURT OF
BALDWIN COUNTY. IN
EQUITY.

It is hereby agreed by and between the attorneys for
the complainants and the defendants in the above stated cause
that the sealed envelope containing the testimony or depositions
of Oscar Johnson, M. B. Wilters, Joe Reding and Ella M. Anderson

filed in court in said cause on the 17th day of November, 1922, may
be opened ~~and the testimony published.~~ *but without prejudice to either parties rights*

to have further testimony and without other prejudice
Chas. Hall and Gordon Edington
Attorneys for Complainants.

B. E. [Signature]
Attorney for H. M. Hall, Defendant

Stearns [Signature]
Attorney for Frank L. Ballenger,
Defendant.

EMILY SCOTT, EMILY SCOTT AS
ADMINISTRATRIX OF THE ESTATE
OF A. D. SCOTT, DECEASED, AND
ELLA M. ANDERSON,

Complainants,

-vs-

H. M. HALL AND FRANK L.
BALLINGER,

Respondents.

NO. 272.
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.

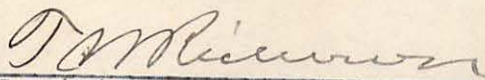
TO ANY SHERIFF OF THE STATE OF ALABAMA--GREETINGS:

Whereas, on February 14, 1927, on a Non-Jury term of the Circuit Court of Baldwin County, Alabama, held in February, 1927, an order was made by the Court and entered in said cause upon suggestion by Plaintiff of the death of the Defendant, Frank L. Ballinger, granting leave to the Plaintiff to revive said cause against Alice P. Ballinger and Charles E. Canright as executors of the estate of said Frank L. Ballinger.

Now, by authority of the order aforesaid, it is hereby ordered that Citation to the said Alice Ballinger and Charles E. Canright, as executors of the estate of Frank L. Ballinger, deceased, requiring them to appear and defend this cause within thirty days after service of this Citation.

Now, therefore, you are hereby commanded to summon the said Alice P. Ballinger, Charles E. Canright, executors of Frank L. Ballinger, and H. M. Hall, as parties defendant to this suit to appear in this cause and defend the said suit within thirty days for service upon them of this writ.

Witness my hand this 23rd day of January, 1931.


As Register of the Circuit
Court, Baldwin County, Ala.
Equity Side.

Executed 1/24/31
by serving copies
of within notice
on H, M, Hall

W. R. Stuart
Sheriff

C. E. Cowright (Dead)
Alice P. Ballinger (Dead)

W. R. Stuart
Sheriff

1/30/31

by a.p.f.

Original

No. 272.

EMILY SCOTT, EMILY SCOTT AS ADMIN-
ISTRATRIX OF THE ESTATE OF A. D.
SCOTT, DECEASED, AND ELLA M.
ANDERSON,

Complainants,

-vs-

ALICE P. BALLINGER AND CHARLES E.
CANRIGHT, EXECUTORS OF THE ESTATE
OF FRANK L. BALLINGER, and H. M.
HALL,

Respondents.

CITATION

ISSUED January 23, 1931.

J. M. [Signature]
Register.

Serve Copy on
Alice P. Ballinger (Robt'd)
Chas E. Canright (Dead)
and H. M. Hall (Baym...)

Faint, mostly illegible text, likely the body of the citation or legal notice.

Handwritten mark or signature

EMILY SCOTT, EMILY SCOTT AS
ADMINISTRATRIX OF THE ESTATE
OF A. D. SCOTT, DECEASED, AND
ELLA M. ANDERSON,

Complainants,

-vs-

H. M. HALL AND FRANK L.
BALLINGER,

Respondents.

NO. 272.
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.

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

Whereas, on February 14, 1927, on a Non-Jury term
of the Circuit Court of Baldwin County, Alabama, held in
February, 1927, an order was made by the Court and entered
in said cause upon suggestion by Plaintiff of the death of
the Defendant, Frank L. Ballinger, granting leave to the
Plaintiff to revive said cause against Alice P. Ballinger
and Charles E. Canright as executors of the estate of said
Frank L. Ballinger.

Now, by authority of the order aforesaid, it is
hereby ordered that Citation to the said Alice Ballinger
and Charles E. Canright, as executors of the estate of Frank
L. Ballinger, deceased, requiring them to appear and defend
this cause within thirty days after service of this Citation.

Now, therefore, you are hereby commanded to summon
the said Alice P. Ballinger, Charles E. Canright, executors
of Frank L. Ballinger, and H. M. Hall, as parties defendant
to this suit to appear in this cause and defend the said suit
within thirty days for service upon them of this writ.

Witness my hand this 23rd day of January, 1931.

D. W. Rice
As Register of the Circuit
Court, Baldwin County, Ala.
Equity Side.

ESTATE OF
FRANK I. BULLINGER, DECEASED,
AS ADMINISTRATOR OF THE ESTATE

[Handwritten signature]

...of this will...
...in this cause...
...of Frank I. Bullinger, and H. M. Hill, as parties defendant...
...the said Alice P. Bullinger, Charles E. Carrington, executors...
...nominees of defendant...
...this cause within thirty days after date of this citation...
...Frank I. Bullinger, deceased, together with the said H. M. Hill...
...and Charles E. Carrington, as executors of the estate of Frank...
...regarding said will and of matters that depend thereon...
...of defendant to the contrary or otherwise.

No. 272.

EMILY SCOTT, EMILY SCOTT AS ADMINISTRATRIX OF THE ESTATE OF A. D. SCOTT, DECEASED, AND ELLIOTT ANDERSON,

Complainants,

vs.
ALICE P. BULLINGER AND CHARLES E. CARRINGTON, EXECUTORS OF THE ESTATE OF FRANK I. BULLINGER, and H. M. HILL,

Respondents.

CITATION

ISSUED January 23, 1951.

Register.

H. M. HILL AND FRANK I. BULLINGER

-42-

EMILY A. ANDERSON,
OF A. D. SCOTT, DECEASED, AND
ADMINISTRATRIX OF THE ESTATE
EMILY SCOTT, EMILY SCOTT VS

IN WITNESS WHEREOF I HAVE SIGNED
IN THE SINGAPORE COURT OF
NO. 272

EMILY SCOTT, EMILY SCOTT AS
ADMINISTRATRIX OF THE ESTATE
OF A. D. SCOTT, DECEASED, AND
ELIA M. ANDERSON,

Complainants,

-vs-

H. M. HALL AND FRANK L.
BALLINGER,

Respondents.

NO. 272.
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.

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

Whereas, on February 14, 1927, on a Non-Jury term
of the Circuit Court of Baldwin County, Alabama, held in
February, 1927, an order was made by the Court and entered
in said cause upon suggestion by Plaintiff of the death of
the Defendant, Frank L. Ballinger, granting leave to the
Plaintiff to revive said cause against Alice P. Ballinger
and Charles E. Canright as executors of the estate of said
Frank L. Ballinger.

Now, by authority of the order aforesaid, it is
hereby ordered that Citation to the said Alice Ballinger
and Charles E. Canright, as executors of the estate of Frank
L. Ballinger, deceased, requiring them to appear and defend
this cause within thirty days after service of this Citation.

Now, therefore, you are hereby commanded to summon
the said Alice P. Ballinger, Charles E. Canright, executors
of Frank L. Ballinger, and H. M. Hall, as parties defendant
to this suit to appear in this cause and defend the said suit
within thirty days for service upon them of this writ.

Witness my hand this 23rd day of January, 1931.

D. W. Richardson
As Register of the Circuit
Court, Baldwin County, Ala.
Equity Side.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
No. 272.

EMILY SCOTT, EMILY SCOTT AS
ADMINISTRATRIX OF THE ESTATE
OF A. D. SCOTT, DECEASED, AND
ANDERSON,

Complainants,

-vs-

FRANK L. BALLENGER, JR.,
Respondents.

ISSUED January 25, 1931.

W. M. Anderson
Register.

EMILY SCOTT, EMILY SCOTT AS ADMINISTRATRIX OF THE ESTATE OF A. D. SCOTT, DECEASED, AND ANDERSON, Complainants,
vs.
FRANK L. BALLENGER, JR., Respondents.
Whereas Sheriff P. C. Carrington, in February 14, 1927, on a Non-Return taken out of Baldwin County, Alabama, held in order was made by the Court and a return was made by the Sheriff of the date of the return by Plaintiff of the date of the return against Alice P. Ballinger, granting leave to the executor of the estate of said Alice P. Ballinger and Charles E. Carrington, and H. M. Hall, to execute the same.

Now, by authority of the order aforesaid, it is hereby ordered that citation to the said Alice Ballinger and Charles E. Carrington, as executors of the estate of Frank L. Ballinger, deceased, requiring them to appear and defend this cause within thirty days after service of this citation. Now, therefore, you are hereby commanded to summon the said Alice P. Ballinger, Charles E. Carrington, executors of Frank L. Ballinger, and H. M. Hall, as parties defendant to this suit to appear in this cause and defend the said suit within thirty days for service upon them of this writ. Witness my hand this 25th day of January, 1931.

W. M. Anderson
Register of the Circuit Court, Baldwin County, Ala.
Deputy

No. 272.

W. M. Anderson

EMILY SCOTT, ET ALS.,
Complainants,
-vs-
H. M. HALL, ET ALS.,
Respondents.

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

It is mutually agreed by and between Charles Hall and Gordon & Edington, as Solicitors of Record for the complainants in the above said cause, and B. F. McMillan, and Stone & Stone, as Solicitors of Record for the respondents in said cause that Ella M. Anderson, a witness examined on behalf of the complainants in the above said cause, and whose testimony was reduced to writing by T. W. Richerson, as Commissioner, need not be signed by the said Ella M. Anderson but that said testimony may be ^{offered in evidence} introduced in evidence just as if same had have been signed by her before said Commissioner.

In Witness Whereof, we have hereunto set our hands on this the 26th day of May, 1925.

Charles Hall & Gordon & Edington
SOLICITORS FOR COMPLAINANTS

B. F. McMillan & Stone & Stone
SOLICITORS FOR RESPONDENTS.

EMILY SCOTT, ET AL.,
COMPLAINANTS.
v.
H. M. HALL, ET AL.,
RESPONDENTS.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY ALABAMA,
IN EQUITY. No. 272.

And now comes the respondent, H. M. Hall and demurs to the bill of complaint in this cause on the following grounds, each of which is severally and separately assigned:

One.

There is no equity in the bill.

TWO.

For aught that appears the tax deed referred to in the bill of complaint vested a perfect title in the respondent, H. M. Hall.

THREE.

It is not shown wherein the tax deed referred to was insufficient to vest in the respondent, H. M. Hall, a perfect legal title.

ANSWER OF H. M. HALL.

ONE.

The said respondent, H. M. Hall without waiving the foregoing demurrers but insisting thereon says that he admits that he filed the bill against these complainants as alleged in this bill of complaint and avers that all of the material allegations made by this respondent in said bill were true and that he secured a decree pro confesso and final decree in said cause as alleged in this bill of complaint and he avers that all right, title and interest of these complainants in and to the land described, if they had any, was by said decree extinguished.

TWO.

This respondent has no personal knowledge of the relationship between these complainants and the said A. D. Scott and therefore he denies the allegations of this bill of complaint setting up said relationship and demands strict proof thereof; he further denies that these complainants had no knowledge of the pendency of the said

2.

suit and that the said A. D. Scott was a bona fide resident of Baldwin County, Alabama at the time of filing same and that the said A. D. Scott for a number of years prior thereto was the owner of the lands in said County and was ^a tax payer in said County at that time and avers that said A. D. Scott was a non-resident of the State of Alabama at the time the said bill was filed and decree rendered.

THREE.

This respondent further denies that he willfully made misrepresentations as to his age in his said bill hereinabove referred to and further denies the allegations that he did not make diligent inquiry and was unable to ascertain the place of residence and post-office address of the said A. D. Scott and further denies that the said A. D. Scott was well known in Baldwin County but this respondent alleges on the contrary that he did use all due and diligent inquiry to ascertain the residence and post-office address of the said A. D. Scott by making inquiries of all persons who he was advised should have known the facts and alleges that after making such inquiries he was unable to locate the post-office address and residence of the said A. D. Scott and that this was done before he filed his bill and made affidavit to that effect.

FOUR.

This respondent also denies that he did not mail to the said A. D. Scott a copy of the bill of complaint as required by the laws of 1915 but he admits that he has sold the land to Frank L. Ballenger who is a resident of Baldwin County, Alabama and he alleges that by said sale the said Ballenger acquired and now has a perfect title to the land described in the bill of complaint.

FIVE.

This respondent has no knowledge of the ages ^{and residences} of these complainants and therefore he denies the allegations of the bill of complaint in these respects and demands strict proof thereof; he also denies that the said A. D. Scott had a meritorious defense to said cause and that he was vested with a good and legal title to the lands and further denies that the complainants as his widow and administratrix

and as his daughter are vested with the legal title and this respondent avers that he has acquired a good title to the land and that the said Ballenger has a good title by virtue of his purchase from this respondent.

And this respondent having fully answered prays that this bill be dismissed.

Bryan & McMillan

Solicitors for Respondent, H. M. Hall.

RECORDED

*Received for copy
of this bill
at the office of
the Clerk of the
Court*

- - - - - X
 EMILY SCOTT, ET AL.,)
 COMPLAINANTS.)
 -vs-)
 H. M. HALL and FRANK)
 L. BALLENGER,)
 RESPONDENTS.)
 - - - - - X

IN THE CIRCUIT COURT-EQUITY SIDE.
 STATE OF ALABAMA.
 BALDWIN COUNTY.

ANSWER OF FRANK L. BALLENEGER, ONE OF THE
RESPONDENTS, TO THE BILL OF COMPLAINT.

Comes the Respondent, Frank L. Ballenger, and for answer to the bill of complaint in this cause filed, says:-

1. That he has no personal knowledge of the facts and matters contained in the first page of said bill in paragraph number two except that he admits a decree was rendered declaring that A. D. Scott and W. G. Taylor had no estate or interest in or encumbrance upon the lands described therein but as to the other facts and matters alleged and averred he ^{denies and} demands strict proof thereof.
2. That he has no personal knowledge of the matter alleged in the third paragraph ^{therefore denies them and} ~~and~~ demands strict proof thereof.
3. That he has no personal knowledge as the matters and things alleged and set out in the fourth, fifth, [&] sixth, ~~seventh and eighth~~ paragraphs of said bill ^{denies them} and demands strict proof thereof.
4. That this respondent admits the allegation of the seventh paragraph of said bill to the effect that he has purchased said lands from the said H. M. Hall since the rendering of said decree and that this respondent is a resident of this county.
5. This respondent admits that he is over the age of twenty one years but has no knowledge ^{to} as the ages of the other parties named.
6. This respondent denies the allegations contained in the ninth paragraph of said bill and alleges and avers that he now has a good title to said lands by reason of his purchase thereof from said H. M. Hall.

Wherefore, this respondent having fully answered, prays that said bill be dismissed.

STONE & STONE.
 Solicitors for Respondent
 Frank L. Ballenger.

EMILY SCOTT, ET AL,
Complainants,

-VS-

H. M. HALL, ET AL,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY,
IN EQUITY.

It is agreed by and between Solicitors of
Record for the parties Complainant and the parties Respondent
that said cause may be submitted during vacation, and within
ten days after the execution of this agreement, upon the de-
murrers that are now filed and upon Briefs to be submitted by
said Solicitors, ~~provided said Briefs are furnished within the~~
~~said ten-day period.~~

Sept 26th, 1921

George Edinger
Chas. Huss
SOLICITORS FOR COMPLAINANTS.

Brooks & Miller
SOLICITORS FOR H. M. HALL.

Starr & Starr
SOLICITORS FOR FRANK L. BALLENGER.

IN THE CIRCUIT COURT OF BALDWIN COUNTY,
IN EQUITY, NO. 272.

Emily Scott, Emily Scott as Administra-
trix of the estate of A.D.Scott, dec'd,
and Ella M. Anderson, Complainants.

Vs.

H. M. Hall and Frank L. Ballenger,
Defendants.

Comes the complainants in the above stated cause, and makes known to the Court that on to-wit, the 13th, day of October 1920, they filed a bill of complaint in this Honorable Court against said defendants; and that the cause in which said bill was filed is pending and undetermined; that said defendant Frank L. Ballenger has died since the commencement of this suit, and that Alice P. Ballenger and Charles E. Canright of Robertsdale, Alabama, have been appointed and qualified as executors of the estate of said Frank L. Ballenger, deceased:

Wherefore the complainants moves the Court to revive this suit against the said Alice P. Ballenger and the said Charles E. Canright as executors of the estate of said Frank L. Ballenger and make them parties defendants to this cause; and make such orders and decrees as may be necessary to make the said Alice P. Ballenger and the said Charles E. Canright, executors as parties defendants to this suit with the said H. M. Hall.

*Gordon Edington &
Charles Hall*
Solicitors for Complainants.

THE STATE OF ALABAMA,

Baldwin County.

Emily Scott, Emily Scott as administratrix of estate of A. D. Scott, decd, and Ella M. Anderson Complainant.....

vs.

H. M. Hall & Frank L. Pellegrini Defendant(s).

No.

CIRCUIT COURT, IN EQUITY.

Term, 1927

To Messrs Brooks McMillan, & Stone and Stone

Solicitors of Record.

Please take notice that in the above stated cause pending in the Circuit Court of Baldwin

County, in Equity, we will proceed at 11:30 AM, o'clock on the 15th day of November 1927,

at the office of T. W. Richardson, Register of the Circuit Court of Baldwin County,

in Bay Minette, Alabama, before

said T. W. Richardson, Register to take the oral examination of the witnesses

subpoenaed on part of the complainant in said cause, namely: Mrs. Ella M. Anderson, Mrs. Emily M. Scott, J. B. Wilton, Joe Redding and W. A. Hammond of Robertsdale, Oscar Johnson of Silverhill and W. A. Stoddard, of Foley, all of said County.

Witness, this the 3rd day of November 1927,

Chas. Hall & Gordon Edington Solicitors for Complainants

To Register of the Circuit Court, in Equity:

Please summon the witnesses named in the above notice to appear before

for an oral examination, in pursuance with the foregoing notice.

Solicitors for

No.

THE STATE OF ALABAMA,

Faldwin County.

CIRCUIT COURT, IN EQUITY.

Emily Scott
et al
Complainant.....

vs.

H.M. Haege et al
Defendant.....

Defendant.....

NOTICE OF TIME AND PLACE OF
ORAL EXAMINATION.

Issued *Nov 3* 19 *22*

*We hereby accept service
of within notice for
Frank L. Ballenger
one of the defendants, this
Nov 4-1922*

*Henry Stone
By William
Ballenger for Ballenger*

*I accept service
for H.M. Haege
Brose Haege
et al for H.M. Haege*

The State of Alabama, ^{Baldwin} Mobile County

Emily Scott, Emily Scott
Adm'rs et al Complainant

^{Baldwin}
Circuit Court of ~~Mobile~~ County

No. vs.

H. M. Hae & Frank K. Baccuser
Defendant

IN EQUITY.

The Complainants

requests the oral examination of the following named witness

on ^{Complainants} behalf, viz.: Mrs Ella M. Anderson, Mrs
Emily M. Scott, J. B. Wilkins, Joe Reding
W. A. Hammond, Geo. Robertson
Oscar Johnson, Silverhill and W. A.
Stoddard, Foley.

said witnesses reside in the County of ^{Baldwin}

State of Alabama.

who reside at

J. W. Richardson
Baldwin County ^{Justice} Circuit Court of

is suggested as a suitable person to be appointed Commissioner to take deposition of said witness on such oral examination

Wm. Hae &
Frank Edington
Solicitor for Complainant

act for
15-22

No.

Reed
Circuit Court of Mobile County

Mobile, Alabama.

IN EQUITY.

Emily Scott et al

vs.

H. M. Hall et al

DEMAND FOR ORAL EXAMINATION

Filed *Nov 3* 192*2*

J. W. Reardon
Register.

*Return amount
for Nov 15-*

Vertical text on the right margin, possibly bleed-through from the reverse side of the page.

Emily Scott, Emily Scott as
Administratrix of the estate of
A.D. Scott, deceased, and Ella
M. Anderson,

Complainants,
vs.

H.M Hall and Frank L. Ballenger
Respondents.

No. 272.

In the Circuit Court of
Baldwin County, Alabama,
In Equity.

In this cause the defendant, Frank L. Ballenger, having died and Alice P. Ballenger and Charles E. Canright having been appointed executors of the estate of said Frank L. Ballenger, deceased, comes the complainants in the above styled cause and by leave of the Court first had and obtained, revives this suit against the said Alice P. Ballenger and Charles E. Canright as executors of the estate of the said Frank L. Ballenger, deceased, and against the said H. M. Hall,

And the complainants prays the Court that a summons be issued to the said Alice P. Ballenger and the said Charles E. Canright, as executors of the estate of said Frank L. Ballenger, deceased, notifying the said Alice P. Ballenger and said Charles E. Canright of the revival of this suit against them, and that the said H. M. Hall be notified of the revival of this suit against the said executors, and himself.

Chas. Hall & Gordon & Edinger
Solicitors for Complainants.

Oral Examination

The State of Alabama, Baldwin, County.

CIRCUIT COURT, IN EQUITY.

Emily Scott,
/ Emily Scott as Administratrix of the Estate of A.D. Scott
deceased, and Ella M Anderson, Complainant 's
vs.

H.M.Hall and Frank L Ballenger, Defendant 's

Deposition of *Ella M Anderson, J.B. Williams, Joe Beckley, Oscar Johnson*
Oral Examination

By virtue of the appointment to take the Deposition, indorsed in writing, on the Interrogatories by the

Solicitor filing the same, in the above stated cause pending in said Court of said County, I,

T.W. Richerson, Register of said Court of said County, have called and

caused to come before me *Ella M Anderson, J.B. Williams, Joe Beckley*
and Oscar Johnson,

the witness ^{es} named in the Interrogatories, and having first sworn the said witness ^{es} to speak the truth, the whole truth and nothing but the truth, the said witness deposes and says as follows:

Oscar Johnson witness for Complainant testified as follows:

My name is Oscar Johnson & live at Silver Hill Alabama,
and have lived there for about twenty five years. I knew Mr A.D. Scott during his life time, he lived at Robertsdale Baldwin County Alabama and has lived there since about 1906. I saw Mr A.D. Scott make his assessment for taxes prior to 1910 and after that time I made the assessment for him myself, I made the assessment for Mr. A.D. Scott during the year 1917, some years he paid the taxes himself personally and other years I paid them for him.

The Post Office address of Mr. A.D. Scott during the year 1918 was Robertsdale, Alabama, I knew his wife Mrs. Emily Scott and she lived at Robertsdale with him, during his life time he farmed at Robertsdale, Mr Scott was staying constantly at Robertsdale until some in June 1918 he went North and he came back from the North, november 6th, 1918, During the Months of June, July, August, and September 1918, No- one asked where Mr A D. Scott was, I was in and around Robertsdale nearly every day during that time, I know of my own personal knowledge that Mr A.D. Scott was well and generally known in and around Robertsdale

during the year 1918 and prior to that time,.

I met Mr. H.M.Hall during the early part of 1918, in the Assessors Office when I was paying taxes, during the time he asked me where A.D.Scott was and I told him that he was at Robertsdale at the present time, it was in January or ~~February~~ that he asked me the question. It would have been ^{easy} to have found out where Mr Scott was by inquiry as everybody knew him. Mr. Scott called Robertsdale home and he spent 6 Or 8 months there every year, he had a farm there and he farmed it himself,.

Cross By Hon. B.F.Mc Millan Atty for H.M.Hall.

It was when I went to assess my taxes that Mr Hall asked me where ~~Mr. Scott~~ Mr. Scott was, this was in the year 1918, I assessed Mr Scotts taxes every year since the year 1910,

Q. When you assessed Mr Scotts ^{Taxes} did you not swear that Mr Scott was a non resident of Alabama, : Ans. I did not.

Q. Did not Mr Hall, ask you about the land involved in this suit and what it was worth per acre and did you not answer that you knew nothing about this land. Ans. He didn't ask me.

Q. Are you a subscriber to the Baldwin Times and how long have you been such: Ans. Most of the time for about 20 years last past.

I have been a subscriber to the Baldwin Times,

I was such subscriber during the year 1918, and 1919,

I was Mr Scotts agent during those years.

I read ~~the~~ the Baldwin Times part of the time during those years. I dont know whether I read the issues July 4th, July 11th.

July, 18th, of that year. The land as ^{described} described in this bill

was assessed to Mr Scott during the years 1911 to 1918

inclusive except as to Township which was moved 6 miles East by

some one ~~named~~. I, learned of Mr Belengers claim to this land

from Mr Stoddard at the time when Mr. Ballenger first moved down here, I do not remember when that was.

George Johnson

E.B. Wilters witness for Complainant testified as follows:

My name is J^d. Wilters, am 47 years of age and have lived at Robertsdale Baldwin County Alabama the past 12 years, I was personally acquainted with A.D. Scott, I knew him for - 10 or 11 years before he died, I was personally acquainted with Mr Scotts wife she lived on his farm with him near Robertsdale, I am personally acquainted with Mrs Ella Anderson she is Mr Scotts daughter, Mr Scott lived on his farm when he happened to be there, He made Robertsdale his home I cant tell you definitely how many months he spent around his home at Robertsdale.

I met the trains when Mr Scott would come home and take him out to the farm, and bring him from his farm in to the Railroad Station at Robertsdale Mr Scott was a well known character in and around Robertsdale, and would spend a good deal of his time in the Town of Robertsdale, prior to his death. I knew him well.

Recross by H.M. Hall one the Respondents.

- It is a fact that for six months prior to his death he did spend a good part of his time around Robertsdale, I carried him to the train from Dick Anderson's place when he went to the Infirmary at Mobile where he died, Mr Scott spent a part of each year in Baldwin County, how much I do not know, I do not know whether he had property up North or not but he would go there from time to time each year.

This place of Dick Andersons from where I carried him on his last trip was not where he lived and it was not his home,

Re direct. Dick Anderson was Mr Scotts Son in Law, and it was from Dick Andersons farm that I carried Mr Scott to the Depot at Robertsdale, Dick Andersons Farm is about one half mile or three fourths mile from Scotts Farm at Robertsdale.

J B Wilters

Joe Redding Witness for Complainant testified as follows:

My name is Joe Redding, I have been living at Robertsdale Baldwin County Alabama the last past twelve years.

I ~~am~~ am 53 years of age, I am well acquainted ^{with} A.D. Scott, whose name is involved in this suit, I got acquainted with A.D.

Scott between 10 and 11 years ago, he was known by everybody in and around Robertsdale, Mr. Scott would sometimes come into my place of business every day, this was for a period of 10 or 11 years prior to his death, MR. A.D. Scott was living near Robertsdale in Baldwin County, Alabama, during the years 1917 and 1918, and was there the most of his time during said years. he lived at Robertsdale prior to 1917 and 1918, . Mr Scott spent all the way from 8 to 9 months of a year on this farm near Robertsdale some time he would spend more time there than others, Mr. A.D. Scott was on his farm near Robertsdale Alabama, residing thereon, during the years 1918, until some time the early part of June, 1918, .

Re cross By Respondent H.M.Hall.

Most of the time ^{that} he was at Robertsdale ^{he was} around my place,

I do not know the years that he went North and those that he did not go North except that I do remember that he went North in 1918,

where he ^{staid} from June until November, as much as I know

Mr. Scott had property in Alabama and in the North, from the time he left in June 1918, he was in the ~~North~~ North continuously until Nov

I know the land involved in this cause, which is now claimed by Mr.

Ballinger, I first learned of his claim a little over a year ago,

The time spent by Scott in Alabama each year was continuous and the time spent out of Alabama, each year was continuous, .

It was generally known ~~in~~ in and around Robertsdale, that Mr.

Johnson, was Mr Scotts Agent and assessed his property, for him,

RE--direct. Mr Scott had a wife and she lived with him on his farm most of the time, while he was there, and the rest of the time she was in the North. I dont know just how long she would stay in the North

Joe Redding

My name is Ella M. Anderson. I am a bona fide resident of Baldwin County, and was such a resident at the time of the filing of the bill of complaint in this cause and was over the age of twenty-one years at the time of the filing of said bill of complaint. I knew Mr. A. D. Scott, who is now dead. Mr. A. D. Scott died at an Infirmary in Mobile, Ala., during the Month of November, 1918. Mr. A. D. Scott left a widow, whose name was Emily Scott, and he left one child, which is me. I am the only child of the said A. D. Scott. My father left no other legal heirs excepting my mother, Emily Scott, who is his widow, and myself. At the time of my father's death, his home was at Robertsdale, Baldwin County, Alabama. He has been living in Baldwin County since 1905, spending the winters here and going North in the summer.

Q. Did your father own any land in Baldwin County during the year 1918, at the time of his death?

The respondent, H. M. Hall, objects to the question as calling for the conclusion of the witness, and separately because it isn't the proper way or legal way to prove ownership of land.

A. He owned a piece near Robertsdale, and he owned other pieces in different parts of the County.

I think I could go to the land described in the bill of complaint from Robertsdale.

The respondent, H. M. Hall, moves to exclude the answer of the witness because it isn't shown that she knows the land referred to, or could go to the land referred to.

My father was a tax-payer in Baldwin County prior to the time of his death, and at the time of his death. I know that at the time of my father's death, and prior thereto, that he had property assessed to him in Baldwin County, most of it being lands. I know of my own personal knowledge that he has been a tax-payer in Baldwin County since 1905. To my own personal knowledge, I know that he has been assessing land in Baldwin County since 1906. Mr. Scott's post office during the years 1917 and 1918 was at Robertsdale, Alabama, and he received mail addressed to him at that Post Office. He was farming on his little farm about one mile from Robertsdale, and had been so farming since 1907. He had his home on the farm just a mile from Robertsdale, and he and his wife, who is my mother, lived there and had been living there since the fall of 1906. I never did come to the Court House with Mr. Scott. Mr. A. D. Scott left Baldwin County for the North on June 6, 1918, and started back November 6, 1918, and he came to my home, which is near Robertsdale, Baldwin County, Alabama. He staid at my home about a week, and then went to the hospital at Mobile, and died, as testified to before. He died on November 15, 1918.

Q. State whether or not Mr. Scott was well known in and around Robertsdale at the time he lived there.

The respondent, H. M. Hall, objects to the question, because it calls for the conclusion of the witness.

Robertsdale is about twenty-five miles from Bay Minette. I did not live in the same house with my father, Mr. A. D. Scott, excepting the time

3

he staid with me when he came back sick. I did not know that Mr. H. M. Hall filed a bill of complaint in the Circuit Court of Baldwin County during the year 1918, naming A. D. Scott and W. G. Taylor. I did not know that Mr. H. M. Hall made any claim to the land described in the bill of complaint. My father had been in Baldwin County constantly from November 1917 until June 6, 1918, having been on his farm at Robertsdale during the whole of said period of time. I don't know of my own personal knowledge whether my father came to Bay Minette during that period of time, excepting when he came through going to Robertsdale in November previous. I have lived constantly in Baldwin County since 1906, with the exception that in 1907 I made a visit North and another short visit in 1917. I was married when I came to live in Baldwin County. My Mother, Emily Scott, usually came and went with my father when he went North and then returned to Baldwin County. I know of my own personal knowledge that during the years 1917 and the year 1918 that A. D. Scott had property assessed to him on the assessor's book in Baldwin County, Alabama. I did not know that Mr. H. M. Hall had filed a bill in the Circuit Court touching the land described in the complaint until I had heard he had sold the land to Mr. Ballinger. I had been in Baldwin County constantly for more than a year prior to the time that I heard Mr. Ballinger had bought this land.

Q. Will you please state whether or not you know of your own personal knowledge whether or not your Father received any notice of suit filed against him and W. G. Taylor by H. M. Hall, during your Father's life time, in the Circuit Court of Baldwin County?

The respondent, H. M. Hall, objects to the question because it calls for the conclusion of the witness.

A. He never did receive any such notice I am sure, as I took the mail to him.

The respondent, H. M. Hall, moves to exclude the answer of the witness on the same ground as assigned to objection to the question.

Q. Do you know of your own personal knowledge whether or not the sheriff of Baldwin County served any papers on your father out of the Circuit Court during the year 1918?

Same objection and same motion by respondent.

A. I know that he didn't receive any.

I did not see any notice in the Baldwin Times during the year 1918 notifying my father or anyone that H. M. Hall had filed a bill of complaint in the Circuit Court against him and the said Taylor.

Q. At that time would a letter addressed to your father at Robertsdale, Alabama, have reached him?

The respondent, H. M. Hall, objects to the question because it calls for the conclusion of the witness.

A. Yes sir, any letter would have reached him.

The respondent moves to exclude the answer on the same ground assigned as an objection to the question.

Q. Did any letters come to Robertsdale, addressed to your father, during the months of July, August, September or October, 1918, and if so, what became of those letters?

The respondent, H. M. Hall, objects to the question because it calls for a conclusion of the witness.

A. I got the letters out of the mail at Robertsdale addressed to him, and mailed them to him.

Cross examination by B. F. McMillan of counsel for respondent, H. M. Hall.

My father, A. D. Scott, was absent from Baldwin County and the State of Alabama, from June 6th to November 6th, of 1918, in Elgin, Illinois. After my father came here in 1906 to stay, he would spend from about June 1st to November 1st in Elgin, Illinois. My father was a registered citizen of Baldwin County, and voted in Baldwin County. I can't say when he first voted in Baldwin County, nor can I say when he last voted in Baldwin County.

Q. When did he register in Baldwin County?

Complainant objects on the ground that it calls for secondary evidence, the registration list being the best evidence.

Q. Do you know of your own personal knowledge that he was registered?

A. Well, I was not with him, and didn't see him register.

Q. You do not know of your own personal knowledge he was registered in Baldwin County?

A. No, I wasn't with him, and didn't see him register.

I did not take the Baldwin Times during the months of June to November inclusive of the year 1918, but my father did take that paper during that time. I had my father's paper during the months of June to November inclusive of 1918, and expect I read it regularly. I never saw my father assess his property in Baldwin County and never saw his assessment at the Court House.

The respondent, H. M. Hall moves to exclude the testimony of the witness that her father assessed his property in Baldwin County because her subsequent testimony shows that she does not know this as a fact.

I heard that someone had bought the land in the spring after my father's death. When I speak of my father's living and farming near Robertsdale, I do not mean that he lived or farmed on the land involved in this suit. As a matter of fact, he neither lived or farmed on this land.

Q. Your father never had any possession of this land at all, did he?

The complainant objects to the question on the ground that it is irrelevant, incompetent and illegal testimony and calls for the opinion of the witness.

A. My father only went and looked at the land occasionally. He owned it.

The respondent, H. M. Hall, moves to exclude that part of the answer of the witness to the effect that her father owned the land, because it is not responsive to the question and because it is a mere conclusion of the witness.

I received every letter that came for my father while he was in the North, most of them I opened, but once in a while one might have come that I just forwarded. He had a mail box at Robertsdale. If a letter had been sent to him directed to Elgin, Illinois, and not through the Robertsdale box, I probably would not have heard of it. In 1918, his Elgin, Illinois, address was 228 Hamilton Ave. Mr. Oscar Johnson, of Silverhill, Alabama, was my father's agent to look after his land, and started to do so soon after 1906.

during the year 1918 and prior to that time,.

I met Mr. H.M.Hall during the early part of 1918, in the Assessors Office when I was paying taxes, during the time he asked me where A.D.Scott was and I told him that he was at Robertsdale at the present time, it was in January or ~~February~~ ^{early} that he asked me the question. It would have been ^{easy} to have found out where Mr Scott was by inquiry as everybody knew him. Mr. Scott called Robertsdale home and he spent 6 Or 8 months there every year, he had a farm there and he farmed it himself.

Cross By Hon. B.F.Mc Millan Atty for H.M.Hall.

It was when I went to assess my taxes that Mr Hall asked me where ~~Mr. Scott was~~, this was in the year 1918, I assessed Mr Scotts taxes every year since the year 1910;

Q. When you assessed Mr Scotts Taxes did you not swear that Mr Scott was a non resident of Alabama,; Ans. I did not.

Q. Did not Mr Hall, ask you about the land involved in this suit and what it was worth per acre and did you not answer that you knew nothing about this land. Ans. He didn't ask me.

Q. Are you a subscriber to the Baldwin Times and how long have you been such; Ans. Most of the time for about 20 years last past.

I have been a subscriber to the Baldwin Times,

I was such subscriber during the year 1918, and 1919,

I was Mr Scotts agent during those years.

I read ~~the~~ the Baldwin Times part of the time during those years. I dont know whether I read the issues July 4th, July 11th.

July, 18th, of that year. The land as ~~described~~ described in this bill

was assessed to Mr Scott during the years 1911 to 1918

inclusive except as to Township which was moved 6 miles East by

some one ~~named~~. I, learned of Mr Balengers claim to this land

from Mr Stoddard at the time when Mr. Ballenger first moved down here, I do not remember when that was.

Oscar Johnson

The State of Alabama,

Baldwin COUNTY.

IN CIRCUIT COURT, IN EQUITY.

Emily Scott et al.,

vs. Complainant,

W. H. Hall et al.

Defendant.

Deposition Taken Before Register on ^{oral examination} Interrogatories.

Deposition of Witnesses

for Complainant

Filed 17 day of Nov, 1922

Published by order of the Court

, 191

D. W. Cannon
Register.

ROBERT L. KEMLER
ATTORNEY
501-2 COURIER-NEWS BUILDING
RIALTO THEATRE BUILDING
ELGIN, ILL.

November 1, 1927.

in account with

T. W. Richerson, Register,
Circuit Court of Baldwin County,
Bay Minette, Alabama.

Services as Commissioner in the matter of Emily Scott, et al, vs. H. M. Hall, et al,	\$20.00
Cost of stenographic record	15.00
	<hr/>
	35.00

CIVIL SUBPOENA.

In case the witness shall wish to charge for attendance he will please produce to the clerk in term this copy of his Subpoena, or within five days after adjournment of court, else he will be barred.

The State of Alabama, }
Baldwin County.

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

YOU ARE HEREBY COMMANDED TO SUMMON

Joe Redding

J. B. Wilcox

if to be found in your county, at the instance of the

Complainant

to appear before the honorable Circuit Court of Baldwin County at the Court House thereof, on the

25th

day of

May

1921, then and there to testify, and the truth to say, in a certain case pend-

ing wherein

Emiley Scott et al

Plaintiff,

Frank L. Ballenger et al

Defendant,

and there remain during said Court until discharged by due course of law.

Herein fail not, and have you then and there this Writ.

Witness my hand this

14th

May

A. D., 1921.

ATTEST:

T. W. Dickerson

Clerk.

Executed May
18, 1921 by sewing
a copy on the
within names
W. R. Stewart
Sheriff
by B. S. Wiggins
D.S.

Original

No.

THE STATE OF ALABAMA.
BALDWIN COUNTY.

Emily Scott et al

VS. | SUBPOENA FOR

Frank L. Ballinger

CIRCUIT COURT

WITNESSES:

J. L. McElroy
J. B. Wilcox

Robert doll

SET FOR TRIAL

26 day of May 1921

Baldwin Times Print.

Eef

CIVIL SUBPOENA. *in Equity*

In case the witness shall wish to charge for attendance he will please produce to the clerk in term this copy of his Subpoena, or within five days after adjournment of court, else he will be barred.

The State of Alabama, }
Baldwin County. }

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

YOU ARE HEREBY COMMANDED TO SUMMON

Wm Blodden,
Wm Hammond, Ascor Johnson.

if to be found in your county, at the instance of the

Complainant

to appear before the honorable Circuit Court of Baldwin County at the Court House thereof, on the

25

day of

May 192*1*

, then and there to testify, and the truth to say, in a certain case pend-

ing wherein

Emily Scott et al, Plaintiff,
A. B. Adams et al, Defendant,

and there remain during said Court until discharged by due course of law.

Herein fail not, and have you then and there this Writ.

Witness my hand this *17th* day of *May* A. D., 192*1*

ATTEST:

J. W. McInnis, Clerk.

Original

No.

THE STATE OF ALABAMA.
BALDWIN COUNTY.

Eurey Cott et al

VS. | SUBPOENA FOR

F. L. Ballinger
et al

CIRCUIT COURT
in Equity

WITNESSES:

+ *Wm Stoddard*
Wm Hammond
x *Esco Johnson*
Robt Hall
Stice

Robert Hall *at*

SET FOR TRIAL

25 day of *May* 192*1*

Baldwin Times Print.

Ex

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

Frank L Ballinger,

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

Emily Scott, Emily Scott as administrator of the estate of
of A.D. Scott, deceased, and Ella M Anderson,

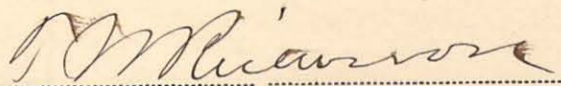
against said

Frank L Ballinger,

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 November

1920



Register.

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

3rd Circuit

Serve on _____

Circuit Court of Baldwin County
In Equity

No. _____

SUMMONS

*Erubby Scott
et al*

RECORDED

vs.

J. Frank L. Ballinger

Solicitor for Complainant

Recorded in Vol. _____ Page _____

THE STATE OF ALABAMA
BALDWIN COUNTY

Received in office this *Nov*
day of *10th* 192*0*

W.R. Stuart
Sheriff

Executed this *10th* day of
November 192*0*

by leaving a copy of the within summons with

F. J. Ballinger
Defendant

W.R. Stuart
Sheriff

By _____
Deputy Sheriff

G. W. ...

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 H.M.Hall and Frank L Ballenger,


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 Emily Scott, Emily Scott as Administratrix of the Estate of A.D.Scott, deceased, and Ella M Anderson,

against said H.M.Hall and Frank L Ballenger,

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 13th, day of Oct. 1920,

192.....



Register.

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

2nd Original

Serve on _____

Circuit Court of Baldwin County
In Equity

No. _____

SUMMONS

~~Every best at al~~

vs.

Wm Hall
at al

Gordon & Edgington
Chas Hall,

Solicitor for Complainant

Recorded in Vol. _____ Page _____

THE STATE OF ALABAMA
BALDWIN COUNTY

Received in office this 13th
day of October 1920
W.R. Stuart
Sheriff

Executed this 16th day of
October 1920
by leaving a copy of the within summons with
~~Frank S. B...~~
Wm Hall
Defendant

W.R. Stuart
Sheriff

By L.R. White
Deputy Sheriff

RECORDED

~~X~~
B...

10/15/20

EMILY SCOTT, ET AL
Complainants.

-VS-

H. M. HALL, ET AL
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY
IN EQUITY.

BRIEF OF FRANK L. BALLENGER, ONE OF THE RESPONDENTS, IN SUPPORT
OF DEMURRER FILED BY HIM TO THE BILL OF COMPLAINANT.

This respondent is made party to this cause by reason of being the purchaser from the other respondent, H. M. Hall, of the lands described in said bill and is in no way connected with the former action to quiet title by the other respondent, H. M. Hall, in which a decree was rendered which this bill seeks to set aside.

Relief in this cause is sought by the complainants on the ground of fraud on the court, and complainants in their bill allege and aver many acts and omissions on the part of the other respondent, H. M. Hall, in an effort to show such fraud as they allege was perpetrated upon the court by Hall in the former suit to quiet title as to the lands in question.

This respondent notes from an examination of the brief of the complainants contending that the demurrer of this respondent is not well taken, that great stress is laid upon the particularity and preciseness of the averments in complainant's bill which are alleged to constitute fraud.

As to the sufficiency of the allegations which they contend show fraud this respondent is not concerned for it is not upon the inadequacy of this feature of complainant's alleged grounds for relief that this respondent, Frank L. Ballenger, relies in asking this court to sustain the demurrer filed by him. This respondent does rely, however in support of his demurrer, on the failure of the bill of complaint to set forth and aver facts constituting that other essential element so necessary to be shown in conjunction with or as result of fraud; namely-damage or injury.

Whether facts constituting fraud are shown or not, we are

not concerned but this respondent does most earnestly insist that this bill wholly fails to set forth and allege any facts which show that complainants have been injured or damaged by reason of said alleged fraud, either in connection therewith or as a result thereof.

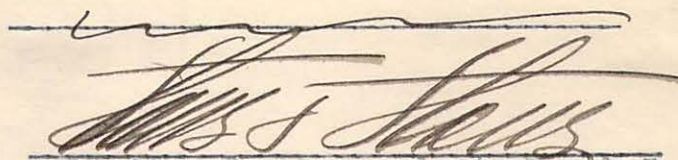
The original cause in which respondent Hall was complainant and in which there was rendered a decree quieting title to lands in question and against the testator of complainant, is alleged to have been instituted and carried on and a decree secured in a manner which complainants allege was a fraud on the court. The allegations of facts constituting fraud contained in this bill may be sufficient, but fraud in itself is not sufficient a ground for the Court of Equity to step in and grant relief. The principle that fraud without damage is not a ground of relief in equity, is one that has been followed by the courts of this state always and it has not been confined to equity alone for our Supreme Court has said that fraud without damage is not a cause of action at law or a ground of relief in equity, but it is only when the two meet and concur that our courts will intervene.

It will be noted from the bill of complaint in this cause that the complainants show that H. M. Hall was the holder of a Tax Deed; but they do not show that such tax deed did not vest a perfect title in the said H. M. Hall, who was the complainant in the original suit that quieted the title as to the lands. They fail utterly to show that such tax deed in the said Hall did not vest in him a superior title to the lands at the time said decree was rendered. These allegations and averments failing to appear, then this court is not in a position to say that the Bill of Complaint couples with the alleged fraud any damage or injury whatsoever. For if the alleged tax deed did vest in the said Hall a perfect title or did vest in the said Hall a title that would support such decree then no injury or damage has been done to the complainant, be the fraud what it may.

The principle upon which this respondent relies has very recently been ~~again sounded~~ *reiterated* by the Supreme Court in the very late case of McDonald, et al, vs McAlily et al 89 Southern Reporter pages 198-200 (Advance Sheets-Southern Reporter Vol 89 No. 2.) In this case relief was sought in a court of equity upon the ground that a fraud was committed on the court and the lower court denying this relief was sustained by the Supreme court on appeal by reason of the fact that damage or injury was not coupled with the alleged fraud and in this case the court cited the case of Bishop, vs Wood 59 Alabama, pages 253-4 as follows: "Fraud without damage is not a cause of action at law or a ground of relief in equity. It is only when the two meet and concur that court intervene".

It is therefore insisted by this respondent that the bill of the complainant does not contain equity by reason of its failure to show any damage or injury coupled with the alleged fraud.

Respectfully submitted,


Solicitor for Respondent, Frank L. Ballenger.

Robert L. Kemler,
WILLIAM E. PERCE

ATTORNEY AT LAW

Railto Building

Elgin - - - Illinois



*Recd July 2 1927
T. W. Richerson*

Mr. T. W. Richerson,

Register and Clerk of the Circuit Court,

Baldwin County,

Bay Minette, Alabama

*Special July 2 1927
on account of
same not being
properly examined
by Commissioner
which caused
them one of the
of the Commission
would have
the opening of
T. W. Richerson*

Emily Scott, Emily Scott as
Administratrix of the estate of
A. D. Scott, deceased, and Ella
M. Anderson,

Complainants,

vs.

H. M. Hall and Frank L. Ballenger,
Respondents.

In the Circuit Court
of Baldwin County,
Alabama.
In Equity.

And now comes Robert L. Kemler, Commissioner appointed by said Court in the above entitled cause to examine Charles Muirhead, Harry D. Barnes, and James Sherwood, of Elgin, Illinois, according to certain direct and cross interrogatories submitted to him, and said Commissioner hereby certifies that at Elgin, Illinois, on the 25th day of June, 1927, he examined the said Charles Muirhead, ^{alone,} and that the said Charles Muirhead, being first duly sworn, testified as follows:

DIRECT INTERROGATORIES

Q. Did you know A. D. Scott during his life time?

A. Yes.

Q. Did you know him throughout the years 1911 to 1919, inclusive?

A. Yes.

Q. State how intimately you knew him.

A. He lived across the street from me part of the time.

I saw him often.

Q. Do you know where the said A. D. Scott lived during the years 1911 to 1919, inclusive?

A. Yes.

Q. State where he lived during those years.

A. From 1911 until about 1918 he lived on a farm near Udina, in Kane County, Illinois. About 1918 he moved into town, into Elgin to live. That is, during the summer time anyway.

Q. State your means of knowing this.

A. I was personally acquainted with him; I saw him often.

Q. Do you know where he voted during those years?

A. I couldn't swear that he voted at all. Probably in Plato Center, Illinois.

Q. State your means of knowing this.

A. I don't know for sure.

Q. Do you know what place he claimed as his permanent residence during those years?

A. Either on the farm near Udina or in Elgin.

Q. State your means of knowing this.

A. Only from what I saw and heard.

Q. Do you know what his Post Office address was during those years?

A. Elgin, Illinois.

Q. State your means of knowing this.

A. There was no rural route through Udina part of that time, and the rural route now is from Elgin.

Q. Do you know anything about A. D. Scott going to Alabama each year?

A. Yes. He went each winter and came back in the Spring.

Q. About how long did he remain there each year?

A. He'd leave about Thanksgiving time and return about the last of April.

Q. State, if you know, whether or not the said A. D. Scott made visits to Alabama during the years 1911 to 1919, inclusive?

A. Yes.

Q. State about when he would leave Elgin and when he would return.

A. He would leave about Thanksgiving time and come back the last part of April.

Q. When was the first year he came to Alabama?

A. I don't know.

Q. So far as you know, did he come regularly each year?

A. Yes.

Q. State about what was the age of A. D. Scott at the time

of his death.

A. About 74 or 75, I don't know just exactly.

Q. State whether or not he was in feeble health.

A. Not any more feeble than any normal man of that age.

Q. Do you know whether or not A. D. Scott left any children surviving him?

A. Yes. One daughter.

Q. How many?

A. One, a daughter.

Q. Name her and tell where she lives at present, if you know.

A. She lives in Alabama. I don't remember her name.

Q. Did A. D. Scott leave a widow surviving him?

A. Yes.

Q. Please state her name and address, if you know.

A. Mrs. Emily Scott. She lives on Hamilton Avenue in Elgin.

- - -
CROSS INTERROGATORIES
- - -

Q. State your name age, residence and occupation, and also state your residence and occupation during the years 1917 and 1918.

A. Charles Muirhead, 63 years, 250 Hamilton Avenue, Elgin, Illinois, retired farmer. Up until the Fall of 1917 I was farming on a farm near Plato Center, Illinois. Since then I have lived in Elgin.

Q. State whether or not you resided in Elgin, Illinois, continuously during the years 1917 and 1918.

A. Until the Fall of 1917 I lived on the farm near Plato Center. Since then I have lived in Elgin.

Q. State how often you would come in contact with the said A. D. Scott during said years.

A. At least two or three times a week.

Q. State whether or not you were personally acquainted with the said A. D. Scott.

A. Yes.

Q. State whether or not you knew him personally during the years 1917 and 1918.

A. Yes.

Q. Do you know whether or not A. D. Scott ever lived at or near Robertsdale, in Baldwin County, Alabama?

A. Only what I've heard. I don't know for sure.

Q. State the period of time he lived there and name the years he was living at or near Robertsdale, Alabama.

A. I don't know for sure that he lived near Robertsdale, Alabama.

Q. State, if you know, where said A. D. Scott voted during the years of 1917 and 1918.

A. I don't know for sure that he voted.

Q. Please state, if you know, where A. D. Scott was during the months of July and August, 1918.

A. I think he was on the farm near Udina.

Q. Do you know whether or not A. D. Scott had any children?

A. Yes. He had two girls and one died.

Q. Give the names of each one of them and the Post Office address of the one living and her age as near as you can.

A. I don't know their names, and I don't know the address or age of the one living.

Q. Please state whether or not you made it your business to keep up with the movements and whereabouts of said A. D. Scott during the years 1916, 1917 and 1918.

A. I didn't make it my business but I saw him frequently.

Q. If you say that A. D. Scott was in the State of Alabama any time during the years 1916, 1917 and 1918 then name the year or years and time of year and month or months he was in Alabama.

A. I don't know where he went, except that I heard he went to Alabama. I know he was gone during the winter months.

Q. If you say A. D. Scott would leave Elgin, Illinois, and would return to Elgin then state what period of time he would

be absent from Elgin, Illinois.

A. He would leave about Thanksgiving time and come back the last part of April.

Q. State just how you would keep up with the time Scott was away from Elgin.

A. I knew because of our close acquaintanceship.

Q. If you say you know the first year A. D. Scott came to Alabama then state how you know this and state whether or not you would make a note of the time A. D. Scott left Elgin for Alabama.

A. I don't know for sure. I didn't make any note.

Q. Please state where you were residing during the months of April, May, June and July 1917 and 1918.

A. In 1917, until the Fall, I was on the farm. In those months in 1918 I lived in Elgin.

Q. If you say A. D. Scott came to Alabama regularly each year then state how you kept up with his movements and whereabouts and the time of year he would come to Alabama.

A. I don't know for sure that he went to Alabama, only what he told me.

Said Commissioner further certifies that at Elgin, Illinois, on the 25th day of June, 1927, he examined the said Harry D. Barnes, alone, and that the said Harry D. Barnes, being first duly sworn, testified as follows:

DIRECT INTEROGATORIES

Q. Did you know A. D. Scott during his life time?

A. Yes.

Q. Did you know him throughout the years 1911 to 1919, inclusive?

A. Yes.

Q. State how intimately you knew him.

A. He was a patron of ours at the canning factory. Sold us corn. Later he lived across the street from me in Elgin.

Q. Do you know where the said A. D. Scott lived during the years 1911 to 1919, inclusive?

A. Yes.

Q. Please state where he lived during those years.

A. In Plato Township. I don't know just when he moved to town. I think about 1918.

Q. State your means of knowing this.

A. I saw him at his home frequently.

Q. Do you know where he voted during those years?

A. While he lived on the farm I think he voted in Plato Township. I don't think he voted after he moved to Elgin.

Q. State your means of knowing this.

A. I don't know for sure. My farm is in the same Township, and his name was on the list of voters in Plato Township. He was registered there.

Q. Do you know what place he claimed as his permanent residence during those years?

A. I don't know what he claimed. He lived in Plato thirty or forty years before he moved to Elgin.

Q. State your means of knowing this.

A. I saw him often in his home.

Q. Do you know what was his Post Office address during those years?

A. Yes. I think it was one of the R.F.D. from Elgin.

Q. State your means of knowing this.

A. We used to mail notices to him.

Q. Do you know anything about A. D. Scott going to Alabama each year?

A. Yes. He used to tell me that he was going to Alabama. That is what I understood.

Q. About how long did he remain there each year?

A. Five or six months.

Q. State, if you know, whether or not the said A. D. Scott made visits to Alabama during the years 1911 to 1918, inclusive?

A. Yes.

Q. Please state about when he would leave Elgin, and when he would return.

A. He left in November, and would return about the First of May. We always looked for him about the First of May.

Q. When was the first year he came to Alabama?

A. I couldn't say. A good many years ago.

Q. So far as you know did he come regularly each year?

A. Yes.

Q. Please state about what was the age of A. D. Scott at the time of his death.

A. I should say upwards of Seventy.

Q. Please state whether or not he was in feeble health.

A. I wouldn't call him in the best of health. Still he was wiry. He was a small man.

Q. Do you know whether or not A. D. Scott left any children surviving him?

A. Yes.

Q. How many?

A. One daughter.

Q. Name her and tell where she lives at present, if you know.

A. I couldn't say her name. I think she lives in Robertsdale, Alabama; that is what I understand.

Q. Did A. D. Scott leave a widow surviving him?

A. Yes.

Q. Please state her name and address, if you know.

A. I think her given name is Emily, Mrs. Emily Scott. She lives at 228 Hamilton Avenue, Elgin, Illinois.

CROSS INTERROGATORIES

- - -

Q. State your name, age, residence and occupation, and also state whether or not you were personally acquainted with A.D. Scott whose name is mentioned in the first direct interrogatory.

A. Harry D. Barnes, Age 63, 225 Hamilton Avenue, Elgin, Illinois, farmer. I was personally acquainted with A.D. Scott.

Q. State the period of time you knew him.

A. For thirty or forty years up until the time he died.

Q. State whether or not you resided in and made Elgin, Illinois your home during the whole of the years of 1916, 1917, and 1918.

A. Yes.

Q. State how you ascertained the information as to his post office address during the years 1916, 1917, and 1918.

A. From the mail correspondence I had with him. I knew where he lived.

Q. If you say A.D. Scott would come to and leave Elgin, Illinois, every year then state whether or not you would make it your business to watch his movements and keep up with his whereabouts during the years 1916, 1917, and 1918.

A. I didn't watch him. I saw him frequently.

Q. Do you know whether or not said A.D. Scott ever resided in the State of Alabama.

A. I don't think so, except to spend his winters there.

Q. State how you obtained this information.

A. From what he said, I used to see him leave, and he would say he was going to Alabama for the winter.

Q. Please state if you know the period of time Charles Muirhead and James Sherwood resided at Elgin in the State of Illinois.

A. Yes. Charles Muirhead moved to Elgin about ten years ago, and has resided here since. Sherwood moved to Elgin about twelve years ago and lived here until his death about a year ago.

Q. State whether or not said Muirhead and Sherwood were residing

in Elgin during the years 1915, 1916, 1917, and 1918.

A. Muirhead has lived in Elgin since about 1917. I don't know exactly. Sherwood came about 1915.

Q. Name the years that they resided and made Elgin, Illinois, their homes.

A. Well, Muirhead has been here since along in 1917, and Sherwood was here from 1915 until he died.

Q. Please state what length of time Scott would be absent from Elgin and the months and years he would be absent.

A. He would be gone from the First part of November to the later part of April or the First of May. He had been going away for a good many years, I don't know just how many.

Q. Did you keep up with the movements and whereabouts of said

A. D. Scott during the years 1915, 1916, 1917, and 1918?

A. Only as I observed him going and coming.

Q. State what induced you to keep up with his movements and whereabouts and also state what method you pursued to keep up with his movements and whereabouts.

A. Nothing induced me. I had business dealings with him when he was on the farm, and when he moved to town we were close neighbors. I didn't use any method to keep up with him.

Q. Please state where said A. D. Scott was during the months of April, May, June, and July, 1918.

A. I would say that in May, June, and July of every year at home in Elgin. I couldn't say as to 1918 particularly.

Q. State how you obtained this information.

A. Just from my general observation.

Q. Give the date of A.D. Scott's death and state where he was at the time of his death.

A. I don't know the date of his death, or where he died.

I think he died in Alabama; I don't remember of his funeral being held around here.

Q. How do you know it to be a fact that A.D. Scott left surviving him children?

A. From what I have heard. Mrs. Scott has told me about the daughter. I used to see the daughter with her father when she was young.

Q. Please state whether or not you are personally acquainted with Ella M. Anderson and Emily Scott, the complainants in this suit.

A. I am personally acquainted with Emily Scott. I don't know as I know Ella M. Anderson.

Q. Were you ever in or near Robertsdale and Silverhill in Baldwin County, Alabama?

A. No.

- - - -

Said Commissioner further certifies that the said James Sherwood is now deceased, this fact being within the personal knowledge of said Commissioner.

Witness my hand at Elgin, Illinois, this 29th day of June, A.D. 1927.

Robert L. Kemler
Commissioner

Emily Scott, Emily Scott as
 Administratrix of the estate of
 A. D. Scott, deceased, and Ella
 M. Anderson,
 Complainants,
 vs.
 H. M. Hall and Frank L. Ballenger,
 Respondents.

In the Circuit Court
 of Baldwin County,
 Alabama.
 In Equity.

And now comes Robert L. Kemler, Commissioner appointed by said Court in the above entitled cause to examine Charles Muirhead, Harry D. Barnes, and James Sherwood, of Elgin, Illinois, according to certain direct and cross interrogatories submitted to him, and said Commissioner hereby certifies that at Elgin, Illinois, on the 25th day of June, 1927, he examined the said Charles Muirhead, ^{alone,} and that the said Charles Muirhead, being first duly sworn, testified as follows:

DIRECT INTERROGATORIES

Q. Did you know A. D. Scott during his life time?

A. Yes.

Q. Did you know him throughout the years 1911 to 1919, inclusive?

A. Yes.

Q. State how intimately you knew him.

A. He lived across the street from me part of the time. I saw him often.

Q. Do you know where the said A. D. Scott lived during the years 1911 to 1919, inclusive?

A. Yes.

Q. State where he lived during those years.

A. From 1911 until about 1918 he lived on a farm near Udina, in Kane County, Illinois. About 1918 he moved into town, into Elgin to live. That is, during the summer time anyway.

Q. State your means of knowing this.

A. I was personally acquainted with him; I saw him often.

Q. Do you know where he voted during those years?

A. I couldn't swear that he voted at all. Probably in Plato Center, Illinois.

Q. State your means of knowing this.

A. I don't know for sure.

Q. Do you know what place he claimed as his permanent residence during those years?

A. Either on the farm near Udina or in Elgin.

Q. State your means of knowing this.

A. Only from what I saw and heard.

Q. Do you know what his Post Office address was during those years?

A. **Elgin**, Illinois.

Q. State your means of knowing this.

A. There was no rural route through Udina part of that time, and the rural route now is from Elgin.

Q. Do you know anything about A. D. Scott going to Alabama each year?

A. Yes. He went each winter and came back in the Spring.

Q. About how long did he remain there each year?

A. He'd leave about Thanksgiving time and return about the last of April.

Q. State, if you know, whether or not the said A. D. Scott made visits to Alabama during the years 1911 to 1919, inclusive?

A. Yes.

Q. State about when he would leave Elgin and when he would return.

A. He would leave about Thanksgiving time and come back the last part of April.

Q. When was the first year he came to Alabama?

A. I don't know.

Q. So far as you know, did he come regularly each year?

A. Yes.

Q. State about what was the age of A. D. Scott at the time

of his death.

A. About 74 or 75, I don't know just exactly.

Q. State whether or not he was in feeble health.

A. Not any more feeble than any normal man of that age.

Q. Do you know whether or not A. D. Scott left any children surviving him?

A. Yes. One daughter.

Q. How many?

A. One, a daughter.

Q. Name her and tell where she lives at present, if you know.

A. She lives in Alabama. I don't remember her name.

Q. Did A. D. Scott leave a widow surviving him?

A. Yes.

Q. Please state her name and address, if you know.

A. Mrs. Emily Scott. She lives on Hamilton Avenue in Elgin.

- - -
CROSS INTERROGATORIES
- - -

Q. State your name age, residence and occupation, and also state your residence and occupation during the years 1917 and 1918.

A. Charles Muirhead, 63 years, 250 Hamilton Avenue, Elgin, Illinois, retired farmer. Up until the Fall of 1917 I was farming on a farm near Plato Center, Illinois. Since then I have lived in Elgin.

Q. State whether or not you resided in Elgin, Illinois, continuously during the years 1917 and 1918.

A. Until the Fall of 1917 I lived on the farm near Plato Center. Since then I have lived in Elgin.

Q. State how often you would come in contact with the said A. D. Scott during said years.

A. At least two or three times a week.

Q. State whether or not you were personally acquainted with the said A. D. Scott.

A. Yes.

Q. State whether or not you knew him personally during the years 1917 and 1918.

A. Yes.

Q. Do you know whether or not A. D. Scott ever lived at or near Robertsdale, in Baldwin County, Alabama?

A. Only what I've heard. I don't know for sure.

Q. State the period of time he lived there and name the years he was living at or near Robertsdale, Alabama.

A. I don't know for sure that he lived near Robertsdale, Alabama.

Q. State, if you know, where said A. D. Scott voted during the years of 1917 and 1918.

A. I don't know for sure that he voted.

Q. Please state, if you know, where A. D. Scott was during the months of July and August, 1918.

A. I think he was on the farm near Udina.

Q. Do you know whether or not A. D. Scott had any children?

A. Yes. He had two girls and one died.

Q. Give the names of each one of them and the Post Office address of the one living and her age as near as you can.

A. I don't know their names, and I don't know the address or age of the one living.

Q. Please state whether or not you made it your business to keep up with the movements and whereabouts of said A. D. Scott during the years 1916, 1917 and 1918.

A. I didn't make it my business, but I saw him frequently.

Q. If you say that A. D. Scott was in the State of Alabama any time during the years 1916, 1917 and 1918 then name the year or years and time of year and month or months he was in Alabama.

A. I don't know where he went, except that I heard he went to Alabama. I know he was gone during the winter months.

Q. If you say A. D. Scott would leave Elgin, Illinois, and would return to Elgin then state what period of time he would

be absent from Elgin, Illinois.

A. He would leave about Thanksgiving time and come back the last part of April.

Q. State just how you would keep up with the time Scott was away from Elgin.

A. I knew because of our close acquaintanceship.

Q. If you say you know the first year A. D. Scott came to Alabama then state how you know this and state whether or not you would make a note of the time A. D. Scott left Elgin for Alabama.

A. I don't know for sure. I didn't make any note.

Q. Please state where you were residing during the months of April, May, June and July 1917 and 1918.

A. In 1917, until the Fall, I was on the farm. In those months in 1918 I lived in Elgin.

Q. If you say A. D. Scott came to Alabama regularly each year then state how you kept up with his movements and whereabouts and the time of year he would come to Alabama.

A. I don't know for sure that he went to Alabama, only what he told me.

Said Commissioner further certifies that at Elgin, Illinois, on the 25th day of June, 1927, he examined the said Harry D. Barnes, alone, and that the said Harry D. Barnes, being first duly sworn, testified as follows:

DIRECT INTEROGATORIES

Q. Did you know A. D. Scott during his life time?

A. Yes.

Q. Did you know him throughout the years 1911 to 1919, inclusive?

A. Yes.

Q. State how intimately you knew him.

A. He was a patron of ours at the canning factory, Sold us corn. Later he lived across the street from me in Elgin.

Q. Do you know where the said A. D. Scott lived during the years 1911 to 1919, inclusive?

A. Yes.

Q. Please state where he lived during those years.

A. In Plato Township. I don't know just when he moved to town. I think about 1918.

Q. State your means of knowing this.

A. I saw him at his home frequently.

Q. Do you know where he voted during those years?

A. While he lived on the farm I think he voted in Plato Township. I don't think he voted after he moved to Elgin.

Q. State your means of knowing this.

A. I don't know for sure. My farm is in the same Township, and his name was on the list of voters in Plato Township. He was registered there.

Q. Do you know what place he claimed as his permanent residence during those years?

A. I don't know what he claimed. He lived in Plato thirty or forty years before he moved to Elgin.

Q. State your means of knowing this.

A. I saw him often in his home.

Q. Do you know what was his Post Office address during those years?

A. Yes. I think it was one of the R.F.D. from Elgin.

Q. State your means of knowing this.

A. We used to mail notices to him.

Q. Do you know anything about A. D. Scott going to Alabama each year ?

A. Yes. He used to tell me that he was going to Alabama. That is what I understood.

Q. About how long did he remain there each year?

A. Five or six months.

Q. State, if you know, whether or not the said A. D. Scott made visits to Alabama during the years 1911 to 1918, inclusive?

A. Yes.

Q. Please state about when he would leave Elgin, and when he would return.

A. He left in November, and would return about the First of May. We always looked for him about the First of May.

Q. When was the first year he came to Alabama?

A. I couldn't say. A good many years ago.

Q. So far as you know did he come regularly each year?

A. Yes.

Q. Please state about what was the age of A. D. Scott at the time of his death.

A. I should say upwards of Seventy.

Q. Please state whether or not he was in feeble health.

A. I wouldn't call him in the best of health. Still he was wiry. He was a small man.

Q. Do you know whether or not A. D. Scott left any children surviving him?

A. Yes.

Q. How many?

A. One daughter.

Q. Name her and tell where she lives at present, if you know.

A. I couldn't say her name. I think she lives in Robertsdale, Alabama; that is what I understand.

Q. Did A. D. Scott leave a widow surviving him?

A. Yes.

Q. Please state her name and address, if you know.

A. I think her given name is Emily, Mrs. Emily Scott. She lives at 228 Hamilton Avenue, Elgin, Illinois.

CROSS INTERROGATORIES

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Q. State your name, age, residence and occupation, and also state whether or not you were personally acquainted with A.D. Scott whose name is mentioned in the first direct interrogatory.

A. Harry D. Barnes, Age 63, 225 Hamilton Avenue, Elgin, Illinois, farmer. I was personally acquainted with A.D. Scott.

Q. State the period of time you knew him.

A. For thirty or forty years up until the time he died.

Q. State whether or not you resided in and made Elgin, Illinois your home during the whole of the years of 1916, 1917, and 1918.

A. Yes.

Q. State how you ascertained the information as to his post office address during the years 1916, 1917, and 1918.

A. From the mail correspondence I had with him. I knew where he lived.

Q. If you say A.D. Scott would come to and leave Elgin, Illinois, every year then state whether or not you would make it your business to watch his movements and keep up with his whereabouts during the years 1916, 1917, and 1918.

A. I didn't watch him. I saw him frequently.

Q. Do you know whether or not said A.D. Scott ever resided in the State of Alabama.

A. I don't think so, except to spend his winters there.

Q. State how you obtained this information.

A. From what he said, I used to see him leave, and he would say he was going to Alabama for the winter.

Q. Please state if you know the period of time Charles Muirhead and James Sherwood resided at Elgin in the State of Illinois.

A. Yes. Charles Muirhead moved to Elgin about ten years ago, and has resided here since. Sherwood moved to Elgin about twelve years ago and lived here until his death about a year ago.

Q. State whether or not said Muirhead and Sherwood were residing

in Elgin during the years 1915, 1916, 1917, and 1918.

A. Muirhead has lived in Elgin since about 1917. I don't know exactly. Sherwood came about 1915.

Q. Name the years that they resided and made Elgin, Illinois, their homes.

A. Well, Muirhead has been here since along in 1917, and Sherwood was here from 1915 until he died.

Q. Please state what length of time Scott would be absent from Elgin and the months and years he would be absent.

A. He would be gone from the First part of November to the later part of April or the First of May. He had been going away for a good many years, I don't know just how many.

Q. Did you keep up with the movements and whereabouts of said A. D. Scott during the years 1915, 1916, 1917, and 1918?

A. Only as I observed him going and coming.

Q. State what induced you to keep up with his movements and whereabouts and also state what method you pursued to keep up with his movements and whereabouts.

A. Nothing induced me. I had business dealings with him when he was on the farm, and when he moved to town we were close neighbors. I didn't use any method to keep up with him.

Q. Please state where said A. D. Scott was during the months of April, May, June, and July, 1918.

A. I would say that in May, June, and July of every year at home in Elgin. I couldn't say as to 1918 particularly.

Q. State how you obtained this information.

A. Just from my general observation.

Q. Give the date of A.D. Scott's death and state where he was at the time of his death.

A. I don't know the date of his death, or where he died.

I think he died in Alabama; I don't remember of his funeral being held around here.

Q. How do you know it to be a fact that A.D. Scott left surviving him children?

A. From what I have heard. Mrs. Scott has told me about the daughter. I used to see the daughter with her father when she was young.

Q. Please state whether or not you are personally acquainted with Ella M. Anderson and Emily Scott, the complainants in this suit.

A. I am personally acquainted with Emily Scott. I don't know as I know Ella M. Anderson,

Q. Were you ever in or near Robertsdale and Silverhill in Baldwin County, Alabama?

A. No.

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Said Commissioner further certifies that the said James Sherwood is now deceased, this fact being within the personal knowledge of said Commissioner.

Witness my hand at Elgin, Illinois, this 29th day of June, A.D. 1927.

Robert L. Kemler
Commissioner