

THE STATE OF ALABAMA }  
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the .....  
12th. day .....  
Monday in September, 1946, in a cer-  
tain cause in said Court wherein J. D. MORRIS

Plaintiff, and CLAUDE YANCEY  
Defendant, a judgment was rendered against said  
J.D. MORRIS

to reverse which JUDGEMENT, the said J.D. MORRIS

applied for and obtained from this office an APPEAL, returnable to the NEXT

Term of our SUPREME Court of the State of Alabama, to be held at Montgomery,  
on the ..... day of ....., 1946 next, and the necessary bond

having been given by the said (C. LENOIR THOMPSON) J.D. MORRIS

with C. LENOIR THOMPSON, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said

CLAUDE YANCEY or WILTERS & BRANTLEY

....., attorney, to appear at the NEXT Term of our

said Supreme Court, to defend against the said Appeal, if THEY think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 9th  
day of November, A. D., 1946.

Attest:

*Alice J. Duck*, Clerk.

ORDER

J. D. MORRIS

PLAINTIFF

VS

CLAUDE YANCEY

DEFENDANT

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

It appearing to the court from the records in this cause that the Defendant's Motion requiring the Plaintiff to furnish him an abstract of title is well grounded.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff in this cause, J. D. Morris, deliver over to the Defendant in this cause an abstract in writing of the title or titles on which he will rely for recovery. The Plaintiff is given until the 10 day of September, 1956, to furnish the Defendant this said abstract.

*Hubert M. Hall*

JUDGE

THE STATE OF ALABAMA }  
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the  
September 10, ~~Monday~~, 195~~6~~ 7, in a cer-  
tain cause in said Court wherein J.D. MORRIS

Plaintiff, and  
CLAUDE YANCEY Defendant, a judgement was rendered against said

J.D. Morris  
to reverse which Plaintiffs, the said

J.D. Morris

applied for and obtained from this office an APPEAL, returnable to the Next  
Term of our Supreme Court of the State of Alabama, to be held at Montgomery,  
on the day of , 195 next, and the necessary bond  
having been given by the said J.D. Morris

with C. LeNoir Thompson, sureties,

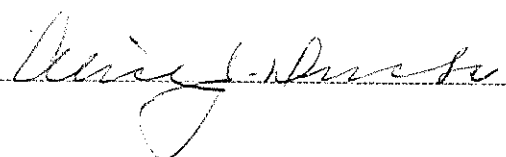
Now, You Are Hereby Commanded, without delay, to cite the said

Claude Yancey or Wilters & Brantley

, attorney, to appear at the Next Term of our  
said Supreme Court, to defend against the said Appeal, if They think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 19th  
day of February, A. D., 195 8

Attest:

 Clerk.

## MOTION

J. D. MORRIS  
 PLAINTIFF  
 VS  
 CLAUDE YANCEY  
 DEFENDANT

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

Comes now the Defendant in the above styled cause and shows unto the Court that a demand in writing was made upon the Plaintiff in this cause to furnish the Defendant an abstract, in writing, of the title or titles on which the Plaintiff will rely for recovery in this cause. That this demand was made on the 10th day of January, 1956. That the Plaintiff has failed to furnish the Defendant this abstract. Now the Defendant moves the court to issue an order requiring the Plaintiff to furnish an abstract of title to the Defendant within the time fixed by such order.

Respectfully submitted

Walters & Brantley

BY: Robert M. Brantley  
 Attorney for the Defendant

J. D. MORRIS

PLAINTIFF

VS

CLAUDE YANCEY

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW.

CASE NO. \_\_\_\_\_

Comes J. D. Morris, Plaintiff in the above styled cause and gives notice of Appeal from the judgment of the Circuit Court rendered on the 12th day of September, 1956, and also from the judgment of said court denying his motion for a new trial entered on the 26th day of October, 1956, to the Supreme Court of Alabama.

*C. LeNoir Thompson*

*Jeffrey Maschberg*  
Attorney for Plaintiff.

I, C. LeNOIR THOMPSON, Attorney At Law in the above styled cause hereby acknowledge myself security for cost in the foregoing appeal.

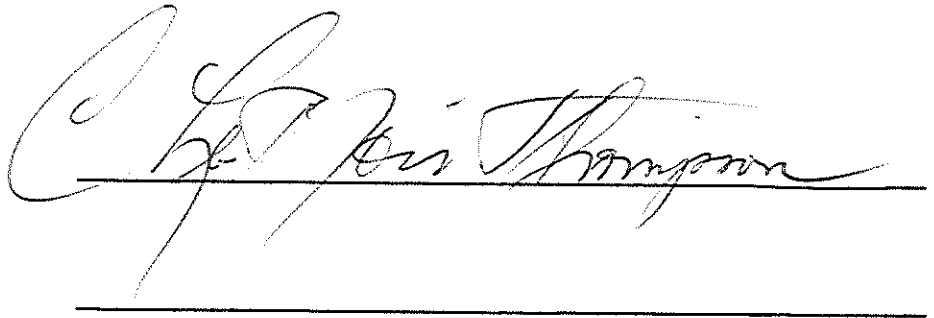
*C. LeNoir Thompson*  
Attorney for Plaintiff.

FILED  
NOV - 8 1956  
ALICE J. DUCK, Clerk.

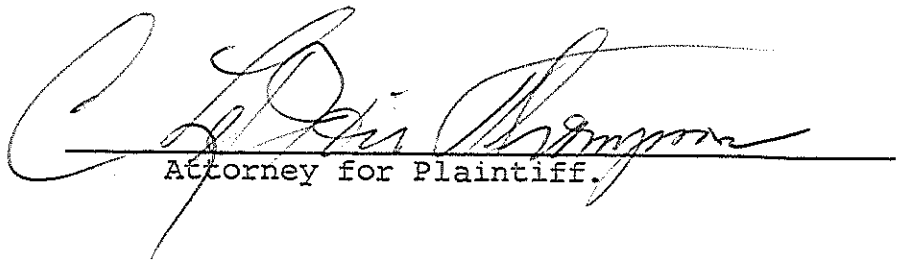
J. D. MORRIS  
PLAINTIFF  
VS  
CLAUDE YANCEY  
DEFENDANT

\* IN THE CIRCUIT COURT OF  
\*  
\* BALDWIN COUNTY, ALABAMA.  
\*  
\* AT LAW.  
\*  
\* CASE NO. \_\_\_\_\_  
\*  
\*

Comes J. D. Morris, Plaintiff in the above styled cause and gives notice of Appeal from the judgment of the Circuit Court rendered on the 10th day of September, 1957, and also from the judgment of said court denying his motion for a new trial entered on the 14th day of January, 1958, to the Supreme Court of Alabama.

  
\_\_\_\_\_

I. C. LENOIR THOMPSON, Attorney At Law in the above styled cause hereby acknowledge myself security for cost in the foregoing appeal.

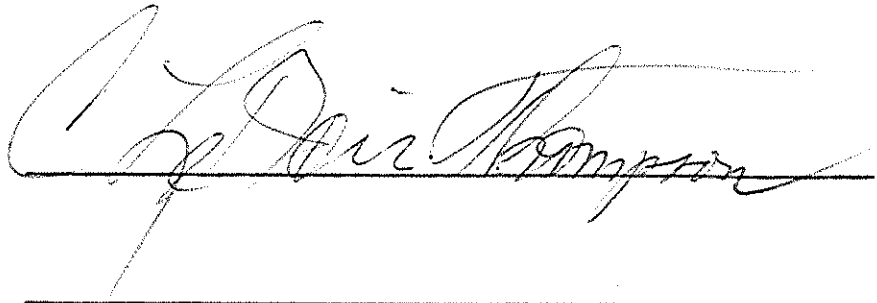
  
\_\_\_\_\_  
Attorney for Plaintiff.

FILED  
FEB 12 1958  
ALICE J. DUCK, Clerk

J. D. MORRIS  
PLAINTIFF  
VS  
CLAUDE YANCEY  
DEFENDANT

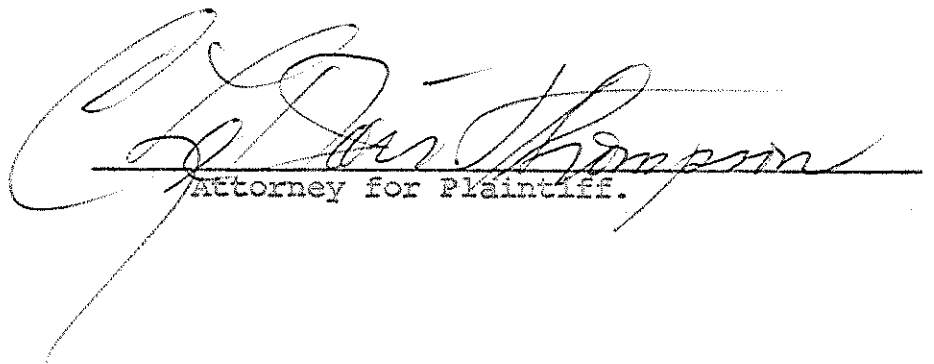
\* IN THE CIRCUIT COURT OF  
\*  
\* BALDWIN COUNTY, ALABAMA.  
\*  
\* AT LAW.  
\*  
\* CASE NO. \_\_\_\_\_  
\*  
\*

Comes J. D. Morris, Plaintiff in the above styled cause and gives notice of Appeal from the judgment of the Circuit Court rendered on the 10th day of September, 1957, and also from the judgment of said court denying his motion for a new trial entered on the 14th day of January, 1958, to the Supreme Court of Alabama.



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I. C. LeNORE THOMPSON, Attorney At Law in the above styled cause hereby acknowledge myself security for cost in the foregoing appeal.



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Attorney for Plaintiff.

FILED

FEB 12 1958

ALICE L. DUCK, Clerk

J. D. MORRIS

PLAINTIFF

VS

CLAUDE YANCEY

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

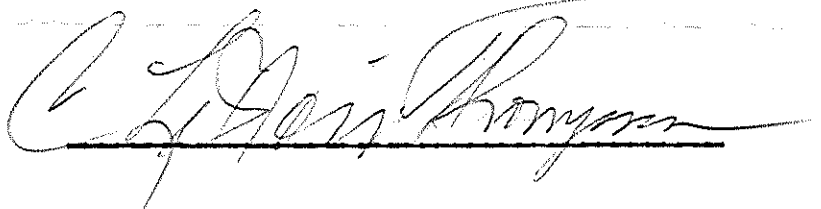
NOTICE

NOTICE OF TAKING OF DEPOSITION UPON ORAL EXAMINATION TO HONORABLE WILTERS AND BRANTLEY, ATTORNEYS AT LAW, COUNCIL FOR DEFENDANT, BAY MINETTE, ALABAMA:

Please take notice that at 2:00 o'clock P. M., Central Standard Time, on Tuesday the 12th day of June, 1956, the said J. D. Morris, Plaintiff in the above entitled cause, will take the testimony of Fred Wilson, a surveyor, whose address is Fairhope, Alabama; in the Baldwin County Court House at Bay Minette, upon oral examination pursuant to an Act of the Legislature of the State of Alabama, designated as Act No. 375, Regular Session, 1955, approved September 8, 1955. The oral examination will continue from day to day until completed and you are invited to attend and cross-examine.

  
J. D. Morris  
Attorneys for Plaintiff.

I, C. LeNoir Thompson, one of the attorneys for the said J. D. Morris, Plaintiff in the above entitled cause, do hereby certify that I served the above and foregoing notice to take the deposition of Fred Wilson, a surveyor, Fairhope, Alabama; upon oral examination, by mailing a copy thereof to Wilters & Brantley, Attorneys at Law, Counsel for Defendant, Bay Minette, Alabama, their office address, by United States Mail, postage prepaid, on the 26 day of May, 1956.

  
C. LeNoir Thompson



J. D. MORRIS

PLAINTIFF

VS

CLAUDE YANCEY

DEFENDANT

IN THE CIRCUIT COURT OF

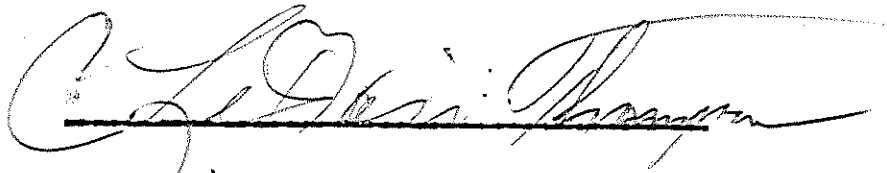
BALDWIN COUNTY, ALABAMA

AT LAW.

NOTICE

NOTICE OF TAKING OF DEPOSITION UPON ORAL EXAMINATION TO HONORABLE WILTERS  
AND BRANTLEY, ATTORNEYS AT LAW, COUNCIL FOR DEFENDANT, BAY MINETTE, ALABAMA:

Please take notice that at 9:00 o'clock A. M., Central Standard Time,  
on Thursday the 16th day of August, 1956, the said J. D. Morris, Plaintiff  
in the above entitled cause, will take the testimony of Fred Wilson, a  
surveyor, whose address is Fairhope, Alabama; in the Baldwin County Court  
House at Bay Minette, upon oral examination pursuant to an Act of the Legislature  
of the State of Alabama, designated as Act No. 375, Regular Session, 1955,  
approved September 8, 1955. The oral examination will continue from day to  
day until completed and you are invited to attend and cross-examine.

  
\_\_\_\_\_  
C. LeNoir Thompson  
Attorneys for Plaintiff.

I, C. LeNoir Thompson, one of the attorneys for the said J. D. Morris,  
Plaintiff in the above entitled cause, do hereby certify that I served the  
above and foregoing notice to take the deposition of Fred Wilson, a surveyor,  
Fairhope, Alabama; upon oral examination, by mailing a copy thereof to  
Wilters & Brantley, Attorneys at Law, Counsel for Defendant, Bay Minette,  
Alabama, their office address, by United States Mail, postage prepaid, on  
the \_\_\_\_\_ day of August, 1956.

STATE OF ALABAMA  
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Claude Yancey to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in the Circuit Court of Baldwin County, State of Alabama at Bay Minette, against Claude Yancey, Defendant, by J. D. Morris, Plaintiff.

WITNESS my hand this 27<sup>th</sup> day of December, 1955.

*Alice J. Duck*

J. D. MORRIS  
PLAINTIFF  
VS  
CLAUDE YANCEY  
DEFENDANT

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW.  
CASE NO. \_\_\_\_\_

The Plaintiff sues to recover possession of the following lands in Baldwin County, Alabama, to-wit:

All East Fraction of Section 24 Township 4 South Range 1 East situate in Baldwin County, Alabama, less the following described parcel claimed by the said Respondent herein to-wit: From Southeast corner Fractional Section 24-4-1, run North on RG line 654.5 feet for point of beginning, thence North 426.5 S 83 degrees 30' West 289.3 feet, E.O.L. to East margin El Creek Thence South 16 degrees 30' West along East margin, said Creek 444 feet North 83 degrees 30' East 405.5 feet to point beginning section 24-4S-1.

of which he was in possession and upon which, pending such possession, and before the commencement of this suit, the Defendant entered and unlawfully withhold, together with One Thousand Dollars (\$1,000.00) for the detention thereof.

*C. G. W. Thompson*  
Attorney for Plaintiff.

Plaintiff demands a trial of this cause by jury.

*C. G. W. Thompson*  
Attorney for Plaintiff.

## DEMURRERS

J. D. MORRIS

PLAINTIFF

VS

CLAUDE YANCEY

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

Comes now the Defendant in the above styled cause and demurs to the Plaintiff's Motion to Retax cost and for grounds therefor says as follows:

To Section One of the Plaintiff's Motion the Defendant files the following demurrers:

1.

The fact that a Defendant summoned 19 witnesses is no grounds for retaxing cost.

2.

The Plaintiff fails to assign sufficient grounds for the retaxing of cost.

For Section 2 of the Plaintiff's motion the Defendant files the following grounds.

3.

The Plaintiff fails to show who subpoenaed the 17 witnesses mentioned in this section.

4.

The fact that 17 witnesses proved up and collected witness fees is not grounds for retaxing cost.

5.

The Plaintiff fails to state sufficient grounds to grant a motion to retax the cost.

To Section 3 of the Plaintiff's Motion, the Defendant assigns the following demurrers.

6.

The matters alleged therein are but a conclusion of the Pleader.

7.

The matters alleged therein are not sufficient grounds for retaxing cost.

The Defendant assigns the following demurrers to Section 4 of the Plaintiff's Motion.

8.

The matters alleged in this section do not state sufficient grounds for retaxing the cost.

To Section 5 of the Plaintiff's Motion, the Defendant files the following demurrers:

9.

The Fact that the Cost of 17 witnesses totals \$102.75 and the Sheriff and Clerk cost for these witnesses totals \$80.80 is not grounds for retaxing the cost.

10.

The Plaintiff fails to allege facts sufficient to grant his motion to retax the cost.

The Defendant files the following demurrers to Section 6 of the Plaintiff motion.

11.

The Plaintiff fails to allege sufficient facts to grant his motion to retax the cost.

Comes now the Defendant in the above styled cause and files the following demurrers to the Plaintiff's Motion as they hold and each and every count and section thereof separately and severally.

12.

Sufficient grounds for retaxing cost have not been stated.

13.

For Aught appearing the Defendant did not subpoena more than two witnesses for each fact to be proven.

14.

For aught appearing the Plaintiff does not have a motion before the court for his consideration.

Wiltens & Brantley

By:

*Albert M Brantley*  
Attorneys for the Defendant

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 56-57

To the CLERK of the CIRCUIT Court of  
BALDWIN County, Greeting:

Whereas, the Record and Proceedings of the CIRCUIT Court  
of said county, in a certain cause lately pending in said Court between  
J. D. MORRIS, Appellant,  
and  
CLAUDE YANCEY, Appellee,

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

Now, it is hereby certified, That it was thereupon considered, ordered, and adjudged by our Su-  
preme Court on the 4th day of APRIL, 19 57 that said JUDGMENT  
of said CIRCUIT Court be reversed and annulled, and the cause remanded to said court  
for further proceedings therein; and that it was further considered, ordered, and adjudged that the  
appellee - ~~pay~~ CLAUDE YANCEY, PAY \* \* \* \* \*

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

Witness, J. Render Thomas, Clerk of the Supreme  
Court of Alabama, at the Judicial Department  
Building, this the 4th day of  
APRIL 19 57  
*J. Render Thomas*  
Clerk of the Supreme Court of Alabama.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

Special Term 1957-58  
~~October Term, 1958~~

To the CLERK of the CIRCUIT Court,  
BALDWIN County--Greeting:

Whereas, the Record and Proceedings of the CIRCUIT Court  
of said county, in a certain cause lately pending in said Court between

J. D. MORRIS, Appellant,

and

CLAUDE YANCEY, Appellee,

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

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by  
our Supreme Court, on the 24th day of JULY, 1958, that said

JUDGMENT of said CIRCUIT Court be in all things  
affirmed, and that it was further considered, ordered, and adjudged that the appellant, ~~and~~:-

J. D. MORRIS,

and

C. LENOIR THOMPSON, SURETY ON

THE APPEAL BOND,

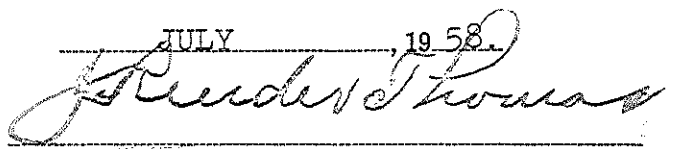
pay.

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

Witness, J. Render Thomas, Clerk of the Supreme  
Court of Alabama, at the Judicial Department  
Building, this the 24th day of

JULY

, 1958.



Clerk of the Supreme Court of Alabama.

J. D. MORRIS

PLAINTIFF

VS

CLAUDE YARROW

DEFENDANT

IN THE CIRCUIT COURT OF

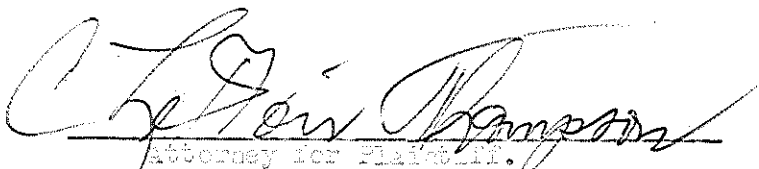
BALDWIN COUNTY, ALABAMA

AT LIT.

CASE NO. \_\_\_\_\_

INTERROGATORIES PROFOUNDED TO THE DEFENDANT, AS PROVIDED BY  
TITLE 7, SECTION 477 OF THE 1940 CODE OF ALABAMA.

1. Are you in undisputed possession of any part of the property described in the complaint that has been filed in this cause?
2. If your answer is yes to interrogatory number one, describe the property that you claim to have in your possession.
3. Do you claim title to any part of the property described in the complaint in this cause and if so state how long you have claimed such title?
4. If your answer to interrogatory number three is yes, describe the property you claim title to and state whether you claim such title individually and solely or with other persons.
5. If you claim title to the property or any part of that described in the complaint in this cause state whether you acquired title through a deed and if so attached a true and correct copy of that deed and of all other deeds or written instrument through which you claim title of said property to the answer to these interrogatories.
6. Have you assessed any part of the property described in the complaint of this cause for taxation? if so list the tax years when the property was assessed by you and give a correct description of the property so assessed by you for each tax year.
7. Have you paid taxes on all or any part of the property described in the complaint in this cause if so, attach to your answer to these interrogatories true and correct copies of all tax receipts issued to you evidencing such payments.

  
Attorney for Plaintiff.

STATE OF ALABAMA  
BALDWIN COUNTY

Before me, the undersigned authority, within and for said county in said State, personally appeared C. Leflore Thompson, who, after being by me first duly and legally sworn, deposes and says: That he is the Attorney for the Plaintiff in the above named cause, that the answers to the foregoing interrogatories, if well and truly made, will be material testimony for the Plaintiff in the said cause.

*C. Leflore Thompson*

Sworn to and subscribed before me on this the 23 day of September, 1955.

*Frank P. Probst*  
Notary Public, Baldwin County, Alabama.



J. D. MORRIS

PLAINTIFF

VS

CLAUDE YANCEY

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

Comes now the Defendant in the above styled cause and files the following Plea to the Plaintiff's Complaint.

1.

Not guilty.

Wilters & Brantley

BY: James M Brantley  
Attorneys for the Defendant

Notice is hereby given and demand made upon J. D. Morris and upon his attorney of record, C. LeNoir Thompson, for an abstract in writing of the title or titles on which the Plaintiff will rely for recovery in this suit.

Wilters & Brantley

BY: James M Brantley  
Attorneys for the Defendant

J. D. MORRIS

PLAINTIFF

VS

CLAUDE YANCEY

DEFENDANT

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

ANSWERS TO INTERROGATORIES

Comes now the Defendant Claude Yancey and files his answers to the interrogatories heretofore propounded to him:

1.

Yes.

2.

All of it.

3.

For more than 20 years.

4.

All the lands described in the complaint; I claimed individually.

5.

This is a fishing expedition and the Defendant does not think he should be compelled to answer this question.

6.

The answer to this question is of public record and accessible to the Plaintiff.

7.

See Six.

Claude Yancey,

STATE OF ALABAMA

BALDWIN COUNTY

Before me the undersigned authority personally appeared Claude Yancey who being by me first duly and legally sworn deposes and says: that the answers to the above and foregoing interrogatories have been read by me and are true.

Claude Yancey,

Sworn to and subscribed before me this 23 day of January, 1956.

Willie M. Brantley  
Notary Public, Baldwin County, Alabama

J. D. MORRIS  
PLAINTIFF  
VS  
CLAUDE YANCEY  
DEFENDANT

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA,  
AT LAW. -2806

Comes Plaintiff, J. D. Morris, and moves to strike the answer filed  
in the above cause by the Defendant as follows:

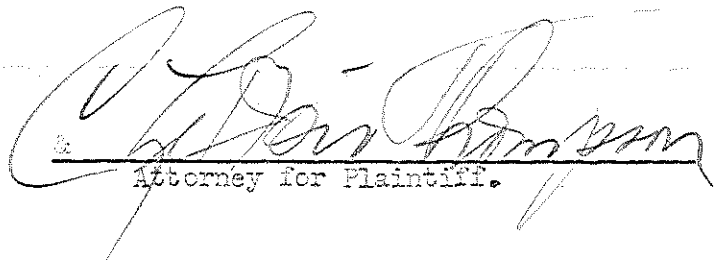
1.

In so far as answers to number five, six and seven are given, as being  
incomplete and in pertinent to the questions.

2.

As further basis for this motion Plaintiff says that the answers to the  
said questions are material at the disposition of this cause and should be  
answered.

WHEREFORE, this motion,

  
Attorney for Plaintiff.

J. D. MORRIS

PLAINTIFF

VS

CLAUDE YANCEY

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

ANSWER TO INTERROGATORIES

Comes now the Defendant, Claude Yancey, and files his answer to Interrogatory No. 5:

5. I claim and have claimed title to this property for more than twenty years. Attached is a true and correct copy of a deed to this property made by Thomas Wilson to me. I do not claim title to this land solely through this deed but had it executed to me to strengthen my title.

Claude J. Yancey

STATE OF ALABAMA

BALDWIN COUNTY

Before me the undersigned authority personally appeared Claude Yancey who being by me first duly and legally sworn, deposes and says: that the answer to the foregoing interrogatories has been read to me and is true and correct.

Claude J. Yancey

Sworn to and subscribed before me this 2 day of March, 1936.

Salmon M. Brantly  
Notary Public, Baldwin County, Alabama

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, That I, THOMAS WILSON, a single man, Grantor, for and in consideration of the sum of ONE (\$1.00) DOLLAR and other good and valuable consideration to me in hand paid by CLAUDE JAMES YANCEY, Grantee, the receipt of which is hereby acknowledged, do hereby GRANT, BARGAIN, SELL AND CONVEY unto the said Grantee, the following described real property in Baldwin County, Alabama; to-wit:

All of Section 24, Township 4 South, Range 1 East, lying East of Bay Minette Creek containing 67.85 acres, more or less.

TOGETHER WITH ALL AND SINGULAR the rights, members, privileges, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD unto the said Grantee, his heirs and assigns forever. And I do covenant with the said Grantee that I am lawfully seized in fee simple of the said premises; that I am in the quiet and peaceable possession of the same; that I have a good right to sell and convey the same as aforesaid; that said premises are free from all liens and encumbrances; and that I will and my heirs, executors, administrators shall forever warrant and defend the title to and the possession of the same unto the said Grantee, his heirs and assigns against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 15 day of April, 1955.

Thos. Wilson (Seal)

STATE OF ALABAMA  
BALDWIN COUNTY

I, G. E. Perkins, a Notary Public, in and for said County, in said State, hereby certify that Thomas Wilson, a single man, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 15 day of April, 1955.

G. E. Perkins  
Notary Public, Baldwin County, Alabama

J. D. MORRIS

PLAINTIFF

VS

CLAUDE YANCEY

DEFENDANT

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW.  
CASE NO. \_\_\_\_\_

NOTICE OF TAKING OF DEPOSITION UPON ORAL EXAMINATION TO HONORABLE WILTERS  
AND BRANTLEY, ATTORNEYS AT LAW, COUNCIL FOR DEFENDANT, BAY MINETTE, ALABAMA:

Please take notice that at 2:00 o'clock P.M., Central Standard Time, on Friday the 18th day of May, 1956, the said J. D. Morris, Plaintiff in the above entitled cause, will take the testimony of Thomas Wilson, whose address is Fairhope, Alabama; Litch Wilson, Stapleton, Alabama; Mary Etta Wilson Davison, Daphne, Alabama; Andrew Davison, Daphne, Alabama; in the Baldwin County Court House at Bay Minette, upon oral examination pursuant to an Act of the Legislature of the State of Alabama, designated as Act No. 375, Regular Session, 1955, approved September 8, 1955. The oral examination will continue from day to day until completed and you are invited to attend and cross-examine.

*C. LeNoir Thompson*

*William P. Madhury*  
Attorneys for Plaintiff.

I, C. LeNoir Thompson, one of the attorneys for the said J. D. Morris, Plaintiff in the above entitled cause, do hereby certify that I served the above and foregoing notice to take the deposition of Thomas Wilson, Fairhope, Alabama; Litch Wilson, Stapleton, Alabama; Mary Etta Wilson Davison, Daphne, Alabama; Andrew Davison, Daphne, Alabama; upon oral examination, by mailing a copy thereof to Wilters & Brantley, Attorneys at Law, Counsel for Defendant, Bay Minette, Alabama, their office address, by United States mail, postage prepaid, on the 3 day of May, 1956.

*C. LeNoir Thompson*

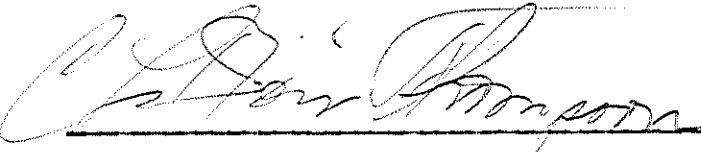
J. D. MORRIS  
PLAINTIFF  
VS  
CLAUDE YANCEY  
DEFENDANT

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW. - 2806

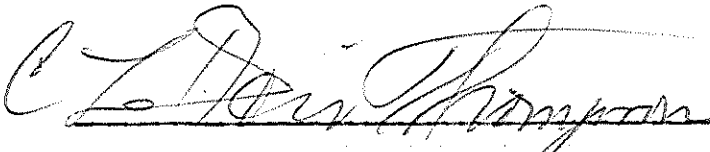
NOTICE

NOTICE OF TAKING OF DEPOSITION UPON ORAL EXAMINATION TO HONORABLE WILTERS  
AND BRANTLEY, ATTORNEYS AT LAW, COUNCIL FOR DEFENDANT, BAY MINETTE, ALABAMA:

Please take notice that at 9:30 A. M., Central Standard Time, on  
Tuesday the 3rd day of July, 1956, the said J. D. Morris, Plaintiff in  
the above entitled cause, will take the testimony of Claude Yancey, Defendant  
in said matter and whose address is Daphne, Alabama, and the testimony of  
Fred Wilson, a surveyor, whose address is Fairhope, Alabama; in the Baldwin  
County Court House at Bay Minette, upon oral examination pursuant to an Act  
of the Legislature of the State of Alabama, designated as Act No. 375,  
Regular Session, 1955, approved September 8, 1955. The oral examination  
will continue from day to day until completed and you are invited to attend  
and cross-examine.

  
C. LeNoir Thompson  
Attorneys for Plaintiff.

I, C. LeNoir Thompson, one of the Attorneys for the said J. D. Morris,  
Plaintiff in the above entitled cause, do hereby certify that I served the  
above and foregoing notice to take the deposition of Claude Yancey, Defendant  
in said matter and whose address is Daphne, Alabama; and Fred Wilson, a  
surveyor, Fairhope, Alabama; upon oral examination, by mailing a copy thereof  
to Wilters & Brantley, Attorneys at Law, Counsel for Defendant, Bay Minette,  
Alabama, their office address, by United States Mail, postage prepaid, on  
the 19 day of June, 1956.

  
C. LeNoir Thompson

JUL 24 1958

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1958

1 Div. 774

J. D. Morris

v.

Claude Yancey

Appeal from Baldwin Circuit Court

LAWSON, JUSTICE.

This is a statutory ejectment suit. The complaint was filed in the circuit court of Baldwin County on December 23, 1955, by J. D. Morris against Claude Yancey. The defendant pleaded the general issue. When the cause was first tried the court at the conclusion of plaintiff's evidence gave the general affirmative charge with hypothesis in favor of the defendant. There was jury verdict in favor of the defendant, on



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which the court rendered judgment. The plaintiff appealed to this court. We reversed the judgment of the trial court and remanded the cause for further proceedings. - Morris v. Yancey, 266 Ala. 54, 94 So. 2d 195. We held in effect that although neither of the parties had shown title to the property, the trial court erred in giving the affirmative charge in favor of the defendant for the reason that the plaintiff's evidence tended to show possession by him for a number of years prior to the possession of the defendant.

There was no change in the pleadings after remandment. On the second trial, where evidence was offered by both parties, the jury returned a verdict in favor of the defendant. The plaintiff's motion for a new trial was overruled. He has again appealed to this court.

The plaintiff sued to recover possession of "All East Fraction of Section 24 Township 4 South Range 1 East situated in Baldwin County, Alabama," except four acres described in the complaint by metes and bounds, which four acres we will sometimes refer to hereafter as the Yancey home place.

The opinion on former appeal did not describe the property in the way it is described in the complaint, although the property there described is in fact the same as that for which the plaintiff sued to recover possession.

We will refer to the lands described in the complaint, including the Yancey home place, as the section. The section is a long narrow strip of land. Its width at some points is said to be two acres, which we understand to be approximately 420 feet.

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It is not that wide at other points. Its exact length is not shown, but there is testimony to the effect that it is between a mile and a half and two miles in length. It is bounded on the west by Bay Minette Creek and on the north by Bay Minette Bay. The northernmost part of the section is bounded on the east by Bay Minette Bay. The remainder of the eastern boundary of the section is a high bluff or ridge. The southern boundary is described as being "the Woochester lands." The northern part of the section is called Cedar Point.

The section is described by one witness as being "nothing but swamp lands" suitable only for pasture and timber and the operation of fishing camps on the southern part. Another witness said that the whole section is "low, marshy, swamp lands" which are not suitable for cultivation. The section is "full of bayous" and most of it is covered by water at high tide. At flood tide all of the section is covered by water except a few mounds situated at Cedar Point and on the Yancey home place, where the defendant maintains his home.

The southern boundary of the Yancey home place is approximately 850 feet north of the southern boundary of the section. The Yancey home place extends northward at some points as much as 444 feet.

In ejectment, to authorize the recovery by the plaintiff, it must be made to appear by the evidence that plaintiff, at the commencement of the suit, had the legal title to the land sued for and the right to the immediate possession. A

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further cardinal rule, applicable to this character of action, is that the plaintiff must recover on the strength of his own title, without regard to the weakness of his adversary. -

Carpenter v. Joiner, 151 Ala. 454, 44 So. 424; Watson v. Spence, 258 Ala. 371, 62 So. 2d 919.

The plaintiff, to establish legal title in himself, offered evidence substantially as follows: He came to Baldwin County in 1938. During the year 1939 while he was cutting timber for the Spanish Fort Development Company, he inadvertently cut timber on the section and in that way he "found out about the land." Apparently the plaintiff was cutting timber on the Woochester land which, as we have heretofore indicated, forms the southern boundary of the section, if we understand this record correctly. At that time the defendant was living on the four-acre tract, which we have called the Yancey home place. There were several fishing shacks on that place, including the one in which Yancey, the defendant, lived.

Yancey maintained a garden near his home. In 1940 the plaintiff says that he began claiming the section as his property but he did not post "no trespassing" signs. In that year he built a "shotgun house," which consisted of one long room, at a point "just north of the south line of Section 24." He operated a sawmill, which we understand the record to show was located about 413 feet south of the southern boundary line of the section. In regard to the use to which the one-room house was put, the plaintiff stated: "As long as we were in the mill business we had tenants in it and prior to that we had

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tenants and when we had no tenant, we had timber stacked." As going to show his possession of that part of the section north of the Yancey home place, the plaintiff testified that in 1940 and 1941 he cut timber and in 1943 and 1944 he kept a boat "tied up" at Cedar Point, which boat was used daily. He permitted a man by the name of Willie Green to cut ten or twelve cedar posts from the part of the section north of the Yancey home place. He "burnt" that part of the section and he gave four persons permits to hunt on that land.

In regard to that part of the section which lies south of the Yancey home place, witness testified that he not only built the one-room house thereon, but that he cleared the swamp and underbrush and cut many trees and hardwood logs from that land. He further testified that he hauled sand from the southeast corner of the section and stacked logs all over the land between his mill and the fence which was around the Yancey home place.

According to plaintiff, he began assessing the section for taxation in 1948, although he had no paper title thereto.

The plaintiff offered in evidence quitclaim deeds made by Litch Wilson and wife and Mary Etta (Wilson) Davison and husband, who claim title under the statute of descent and distribution through the process of devolution as the heirs at law of one Thomas Willson. The deed from Litch Wilson and wife was dated January 18, 1950, and that from Mary Etta (Wilson) Davison and husband was dated June 1, 1955. The plaintiff also introduced in evidence a certified copy of a patent issued by

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the United States to said Thomas Willson. The transcript on this appeal shows the date of the issuance to have been October 1, 1856, while the opinion and transcript on former appeal fixed the date of issuance as October 1, 1846. This variance as to date of issuance is of no importance and is mentioned here only to explain why our two opinions in this case differ in regard to the date of issuance of the patent. We also take note of the fact that the opinion on former appeal inadvertently referred to the patentee as Thomas Wilson rather than Thomas Willson.

The plaintiff also offered evidence going to show that Thomas Willson died intestate and that one of his heirs at law was his son, Henry Thornton Wilson, who also died intestate. There was evidence offered by the plaintiff to the effect that among the heirs at law of Henry Thornton Wilson were his son, Litch Wilson, and his daughter, Mary Etta (Wilson) Davison, from whom plaintiff secured the quitclaim deeds mentioned above.

The two quitclaim deeds were admitted in evidence as going to show muniment of title in plaintiff, as well as color of title. On the first trial those deeds were admitted only to show color of title and it was for that reason, perhaps, that the author of the opinion on first appeal said in part as follows: "As we understand the record, neither of the parties to this suit showed title to the property . . ."

The plaintiff further testified that from the time he received his deed from Litch Wilson and wife in January of 1950

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until a short time prior to the commencement of this suit, he was in possession of all of the section except the Yancey home place; that the defendant Yancey had not been in possession of any of the section except his homeplace prior to the time he entered and dispossessed the plaintiff a short time before this suit was filed. Neither Litch Wilson nor Mary Etta (Wilson) Davison was ever in possession of any part of the land. Litch Wilson testified that his father was never in possession but said that he thought his grandfather, Thomas Willson, had lived on it.

The evidence outlined above, in view of our holding on the first appeal, made it incumbent upon the defendant to show a better right to the possession of the suit property than that shown by plaintiff. He undertook to do so by presenting evidence which he contends showed that he had acquired title to the entire section by prescription long before the plaintiff acquired his quitclaim deeds and by showing that the plaintiff had never been in possession of any part of the section except with the defendant's permission.

The defendant offered evidence tending to show that his father in 1897 or 1898 constructed a fishing camp on the four-acre tract which we have called the Yancey home place, where he lived until his death in 1933. In his youth the defendant lived there with his father, but later moved to Mobile. He returned in 1928. He was married in 1932 and he and his wife have continued to occupy a home on the Yancey home place since their marriage. The defendant has continuously claimed to own the entire section since the death of his father in 1933.



Evidence was offered on behalf of the defendant tending to show that he had placed signs throughout the entire section warning against trespassing and hunting. He had cut timber and pilings from all parts of the section. He has given hunting permits and he and his wife have endeavored to keep persons off the property who had not secured permits. The evidence further shows that the defendant has kept cows and hogs on the land in the section north of his home place as well as on that south of the home place.

The defendant admitted that Morris had done some burning on the north end of the section and testified that he and certain state officials had tried to catch him in the act. Defendant also admitted that Morris attempted to fence some parts of the property but the fences were destroyed by the defendant.

The defendant never paid any taxes on any part of the section until about 1946 when he acquired a deed from the state to the four-acre tract, that is, the Yancey home place. At that time he began to assess the four-acre tract in his name. The circumstances leading to the sale of the land for taxes are not shown. The defendant did not claim that either he or his father had any paper title to any part of the section prior to the time plaintiff acquired his quitclaim deed in January of 1950 except as to the Yancey home place.

The defendant admitted that the plaintiff had constructed the so-called "shotgun" house near the southern boundary of the section, but said that he did so with defendant's permission and stated further that the plaintiff had never cut

any timber or pilings from any part of the section except when paid to do so by the defendant.

Within a few years prior to the time this suit was filed the defendant had constructed a fence on the north, east and south sides of the Yancey home place. There were no other fences constructed by the defendant on the section. However, the evidence tends to show that no other fencing would have been feasible.

The plaintiff was not entitled to the affirmative charge on the theory that he had acquired title by adverse possession. Section 828, Title 7, Code 1940, provides in part as follows:

"Adverse possession cannot confer or defeat title to land unless the party setting it up shall show that a deed or other color of title purporting to convey title to him has been duly recorded in the office of the judge of probate of the county in which the land lies for ten years before the commencement of the action; or unless he and those through whom he claims shall have annually listed the land for taxation in the proper county for ten years prior to the commencement of the action, if the land is subject to taxation; or, unless he derives title by descent cast, or devise from a predecessor in the title who was in possession of the land. . . ."

Aside from the fact that the evidence falls far short of showing without dispute that plaintiff was in actual adverse possession of the suit property for the required ten-year period, there is no evidence going to show that any of the other requirements of § 828, Title 7, were met.

It may be that the patent to Thomas Willson and the deeds from Litch Wilson and Mary Etta (Wilson) Davison to the plaintiff, together with the evidence tending to show that their father died intestate, as did his father, Thomas Willson, made a prima facie case for the plaintiff. See Doe ex dem. Slaughter v. Roe ex dem. W. M. Carney Mill Co., 221 Ala. 121, 127 So. 671; Landers v. Hayes, 196 Ala. 533, 72 So. 106; Wetzel v. Toston, 248 Ala. 382, 27 So. 2d 629. But a quitclaim deed can convey no more interest in the property than the grantor has at the time of conveyance. - Houston v. Burke, 253 Ala. 359, 44 So. 2d 741. We are of the opinion that the jury would have been justified in finding that neither Litch Wilson nor Mary Etta (Wilson) Davison had any interest in the property at the time they executed their quitclaim deeds to the plaintiff in that the defendant had previously acquired an exclusive title to the land under the doctrine of prescription and repose. We observe here that § 828 (Adverse Possession), Title 7, Code 1940, does not apply to the prescriptive period of twenty years. - Walker v. Coley, 264 Ala. 492, 88 So. 2d 868.

This court has adhered with uniform tenacity to the doctrine of prescription and has repeatedly held that the lapse

of twenty years, without recognition of right or admission of liability, operates as an absolute rule of repose. - Walker v. Coley, supra; Kidd v. Browne, 200 Ala. 299, 76 So. 65; Case v. Conservation & Land Co., 256 Ala. 46, 53 So. 2d 562; Staten v. Shumate, 243 Ala. 261, 9 So. 2d 751; Kidd v. Borum, 181 Ala. 144, 61 So. 100; Vidmer v. Lloyd, 184 Ala. 153, 63 So. 943. In Stearnes v. Woodall, 218 Ala. 128, 117 So. 643, after quoting from Kidd v. Borum, supra, we said:

"In this respect the elements on which the doctrine of prescription is applied differ from those of adverse possession. In the first there must be an individual, continuous possession of user, without the recognition of adverse rights, for a period of 20 years, and upon the establishment of such claim and user, the law presumes the existence of all the necessary elements of adverse possession of title without fuller proof, while under a mere claim of adverse possession through the period prescribed by the statute of limitations no such presumption prevails, and all the elements must be established by him who asserts such possession or title. See Locklin v. Tucker, 208 Ala. 155, 93 So. 896, and cases cited in the last paragraph of the opinion in the case of Jackson v. Elliott, 100 Ala. 669, 13 So. 690." (218 Ala., 130)

There is evidence from which the jury could find that the defendant had the open, notorious, exclusive possession of the entire section for a period of twenty years or more prior to the time plaintiff obtained his quitclaim deed from Litch Wilson in 1950; and that neither Thomas Willson nor any of his children or grandchildren, including plaintiff's grantors, Litch Wilson and Mary Etta (Wilson) Davison, ever asserted any claim or right to any part of the section or paid taxes on it or sought possession of it or benefits from it during that twenty-year period.

If the jury found those to be the facts, then Litch Wilson and Mary Etta (Wilson) Davison had no title to convey to plaintiff, for the defendant had acquired title under the doctrine of prescription.

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

We are of the opinion that the trial court committed no error in submitting the material issues of fact to the jury and in declining to give plaintiff's requested affirmative charge.

Under the rule that obtains, there was no error in the court's declining to grant the motion for a new trial on the ground to the effect that the verdict was not sustained by the great preponderance of the evidence. - Rountree v. Jackson, 242 Ala. 190, 4 So. 2d 743; Cobb v. Malone, 92 Ala. 630, 9 So. 738; Nashville, C. & St. L. Ry. Co. v. Crosby, 194 Ala. 33, 70 So. 7.

The trial court did not err to a reversal in overruling the objection interposed by plaintiff to the introduction in evidence by the defendant of a warranty deed executed on April 15, 1955, by one Thomas Wilson to the defendant, which deed purports to convey the entire section. The deed was admitted only for the purpose of showing color of title. The sole objection interposed when the deed was offered "as color of title" was: "We object because it is not shown that the defendant took possession under this deed." Why the defendant saw fit to introduce this deed we do not know but we do not think its offer in evidence as color of title was subject to the only objection interposed.

One of the assignments of error is based on the fact that the trial court replied, "No, he didn't" to the following statement made by one of plaintiff's counsel: "May it please the court, the witness testified that was what he was claiming until he got his deed from Thomas Wilson." No objection or exception was made to this remark of the court, nor was there a motion for mistrial. Moreover, we do not think the remark prejudicial. We hold the assignment of error to be without merit. - Tucker v. Tucker, 248 Ala. 602, 28 So. 2d 637.

Assignment of error 26 reads: "For that the court erred in overruling the objection of the Plaintiff to questions and testimony as to 'how long the defendant had been laying claim to the land.'" This assignment of error is too general. - Jones v. Adkins, 151 Ala. 316, 44 So. 53; Cable Co. v. Shelby, 203 Ala. 28, 81 So. 818; Hall v. Pearce, 209 Ala. 397, 96 So. 608; Wootten v. Austin, 218 Ala. 156, 117 So. 652; Kern v. Friedrich, 220 Ala. 581, 126 So. 857.

An objection after a responsive answer to a question which indicated the nature of the evidence sought to be elicited is not timely. - Scott v. Parker, 216 Ala. 321, 113 So. 495; Alabama Power Co. v. Edwards, 219 Ala. 162, 121 So. 543; Huntsville Knitting Mills v. Butner, 200 Ala. 288, 76 So. 54. Because of this rule assignment of error 29 does not show reversible error.

Assignments of error 1-14, 19-24, 27 and 28 present nothing for review. They do not allege error for failure to grant the motion for new trial, nor do they allege error by the trial court in any respect. This court has repeatedly held that only adverse rulings of the trial court are subject to an assignment of error on appeal from a judgment in a civil case based on a jury verdict. - Bertolla et al. v. Kaiser, Sup. Ct. MS, 1 Div. 640; Thompson v. State (Ala.), 99 So. 2d 198; Mulkin v. McDonough Construction Co. of Ga., 266 Ala. 281, 95 So. 2d 921; King v. Jackson, 264 Ala. 339, 87 So. 2d 623; Central of Ga. Ry. Co. v. McDaniel, 262 Ala. 227, 78 So. 2d 290; Life & Casualty Ins. Co. of Tenn. v. Womack, 228 Ala. 70, 151 So. 880.

15.

Assignment of error 30 is concerned with a question which was not answered by the witness. There is, therefore, no reversible error shown by this assignment. - Dorsey Trailers, Inc., v. Foreman, 260 Ala. 141, 69 So. 2d 459; Allison v. Owens, 248 Ala. 412, 27 So. 2d 785.

Charge 17 requested by the plaintiff was refused without error. If not otherwise bad, it was properly refused for the reason that it tends to ignore the defendant's claim of title by prescription.

We have given consideration to all of the assignments of error which are in proper form and which have been sufficiently argued in brief. We find no error to reverse in any of those assignments. It follows that the judgment of the trial court is due to be affirmed. It is so ordered.

**AFFIRMED.**

Livingston, C. J., Simpson, Goodwyn, Merrill and Coleman, JJ., concur.



THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 774,

J. D. MORRIS, Appellant

vs.

CLAUDE YANCEY, Appellee,

From BALDWIN Circuit Court.

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

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

Witness, J. Render Thomas, Clerk of the Supreme  
Court of Alabama, this the 24th day of

JULY, 1958

J. Render Thomas  
Clerk of the Supreme Court of Alabama

'APR 4 1957

THE STATE OF ALABAMA- - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPRING TERM, 1957

1 Div. 697

J. D. Morris,

v.

Claude Yancey,

Appeal from Baldwin Circuit Court.

STAKELY, JUSTICE.

J. D. Morris (appellant) brought this statutory action of ejectment against Claude Yancey (appellee) to recover possession of 67.85 acres of land situated in Baldwin County, Alabama, more particularly described as all of Section 24, Township 4 South, Range 1 East, lying east of Bay Minette Creek. The case was tried on the complaint of appellant and upon the plea of the general issue filed by appellee. Under § 941, Title 7, Code of 1940, the plea of the general issue is an admission that the defendant is in possession of the premises sued for. At the conclusion of the appellant's case,

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when the appellant had rested, the appellee without offering any evidence moved the court to exclude the appellant's evidence and requested in writing that the general charge with hypothesis be given in his favor. The court gave the general charge with hypothesis for the appellee. There was a verdict by the jury on which the court rendered judgment for the appellee. This appeal followed.

On the trial of the case J. D. Morris (appellant) introduced in evidence a certified copy of a patent from the United States Government to Thomas Wilson of Sumter County, Alabama, dated October 1, 1846, conveying the property involved in this suit. J. D. Morris, the appellant, also introduced in evidence a quit claim deed to the real estate here involved from Litch Wilson and wife to J. D. Morris dated January 18, 1950, and recorded January 19, 1954 and also introduced in evidence a quit claim deed to the real estate here involved from Etta Wilson Davison and husband to J. D. Morris dated June 1, 1955 and recorded June 17, 1955.

Mary Etta Wilson Davison, an aged woman, testified that her grandfather was "old man Henry Thomas Wilson". He came from Sumter County up on the Tombigbee River and further that he had lived on the property involved in this suit and that she had been on the property with him and that he had showed her where he lived by some fig trees that were still standing at the time she was there. According to her testimony when she was a small girl her grandfather had showed her this piece of property and had pointed out the place where his old home had stood by some fig trees that were still standing at that time. She further testified that the place pointed out to her by her grandfather was the same property which J. D. Morris now claims.

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J. D. Morris (appellant) examined Lucious B. Wilson, who testified that he was a brother to Mrs. Mary Etta Wilson Davison and Mr. Litch Wilson who testified in the cause and that Claude Yancey told him the following: "He told me one time in a beer tavern that they had a suit over the land all right and he wanted me to come up here; that my brother had an interest in some land and was fixing to sell it to Mr. Morris and I investigated it and found it was."

W. P. Green, a witness for J. D. Morris, identified the land in question and identified its location, testifying further that J. D. Morris was in possession of this land as far back as 1941, that he had a house on this land and had cut and removed timber from this land. According to his testimony, Claude Yancey had never claimed the property which is the subject of this suit.

Fred Wilson, a witness for the appellant and a licensed Civil Engineer and Surveyor, testified that he had been hired by Claude Yancey on February 3rd through February 6th, 1950, to survey four acres which Claude Yancey claimed to own in § 24, T. 4 S., R. 1 E. The plat which Fred Wilson made at that time was introduced in evidence by the plaintiff. Fred Wilson further testified that Claude Yancey did not at the time of the survey claim any part of Section 24 except the four acres noted in the plat mentioned above.

Julius Cooper, a witness for J. D. Morris (appellant), testified that J. D. Morris built a house on the property involved in this action and cleared underbrush from the land and that he also used the land for unloading logs.

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The testimony of J. D. Morris was that he took possession of the property in the summer of 1940 and further that in 1940 he moved a house to the property and later tore the house down and erected another at the same place. He further testified that he cleared underbrush on the land, that he permitted sand to be hauled from the property and that he burned underbrush on the north end of the property and gave hunting permits on all the property and that during that period until last fall (1955), no objections were made. J. D. Morris further testified that sand was hauled from the property five to eight years ago or possibly longer. The testimony of J. D. Morris showed without denial that he was in possession without interference from 1940 until the fall of 1955 when Claude Yancey took possession of the land and laid claim to the property in dispute and posted "no trespassing" signs on the property while J. D. Morris was in possession.

As stated the defendant (appellee) rested without presenting any evidence. Tendencies of the evidence showed that J. D. Morris, the appellant, had had possession of the land sued for in 1940. As we understand the record, neither of the parties to this suit showed title to the property, but this court in a number of cases has ruled that bare possession with nothing more is sufficient to sustain an action of ejectment as against a bare trespasser or one claiming only under a later possession.

In the case of Bundy v. Echols, 239 Ala. 421, 195 So. 439, which was an action of ejectment, the plaintiff failed to introduce any proof of record title to the strip of land involved in the suit but did show possession of the land in question for a

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number of years prior to the possession of the defendant. In this case this court, speaking through Mr. Chief Justice Anderson, said:

"We, of course, recognize the general rule that ordinarily in an action of ejectment the plaintiff must recover upon the strength of his own title and not the weakness of that of the defendant, but there is another well recognized exception or rule that when neither party establishes title, the plaintiff may recover under an actual, previous possession as against a mere trespasser on the land or one claiming only under a later possession. \* \* \*."

Hood v. Johnston, 210 Ala. 617, 99 So. 75; Smith v. Orr, 242 Ala. 566, 7 So.2d 294; 28 C. J. S. p. 862, et seq.

Tendencies of the evidence show that the plaintiff went into possession of the land involved in this suit in 1940. This is evidenced by cutting and removing underbrush from the land, by stacking saw logs on the land, by giving various hunting permits to hunt on the land, by placing a house on the land and by removing sand from the land. Possession as evidenced by these acts appears to have been for a number of years prior to the possession of the defendant. We, therefore, think that under the principle stated in the foregoing cases, the defendant was not entitled to the affirmative charge.

It results from what we have said that the judgment of the lower court must be reversed and the cause remanded.

Reversed and remanded.

Livingston, C. J., Lawson and Merrill, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 697

J. D. MORRIS, Appellant

vs.

CLAUDE YANCEY, Appellee,

From BALDWIN Circuit Court.  
No. 2806

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

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

Witness, J. Render Thomas, Clerk of the Supreme  
Court of Alabama, this the 4th day of

April, 19 57

J. Render Thomas  
Clerk of the Supreme Court of Alabama

10/26/56  
AMENDED MOTION

J. D. MORRIS	*	IN THE CIRCUIT COURT OF
PLAINTIFF	*	BALDWIN COUNTY, ALABAMA,
VS	*	AT LAW.
CLAUDE YANCEY	*	
DEFENDANT	*	

Comes the Plaintiff in the above styled cause and amends his motion heretofre filed in said cause to read as follows:

J. D. MORRIS	*	IN THE CIRCUIT COURT OF
PLAINTIFF	*	BALDWIN COUNTY, ALABAMA,
VS	*	AT LAW.
CLAUDE YANCEY	*	
DEFENDANT	*	

Comes the Plaintiff in the above styled cause, and moves the Court to make an order directing the Clerk of this Court to retax the costs in this cause assessed or charged against the Plaintiff, and for grounds of said motion, assigns the following, separately and severally:

1.

That the defendant subpoenaed 19 witnesses.

2.

That 17 witnesses proved up and collected witness fees.

3.

That under the pleading filed by the defendant only one matter of fact was available for proof by these witnesses, being that of possession.

4.

That of the said 19 witnesses: 17 proved up their attendance and the defendant did not examine any of these witnesses as provided under Title 11 Section 50 and Section 77.

5.

That the costs of the 17 witnesses total \$102.75 and the Sheriff and Clerk cost for these witnesses total \$80.80.

6.

That the defendant caused a total of \$183.55 as witness fees and costs of which it is submitted the cost of all but 4 of such



should be retaxed.

WHEREFORE, Plaintiff prays this Court to make an order directing the Clerk to retax the costs in this case by omitting or striking therefrom said item of:

a.	William Horton	\$ 6.50
✓b.	Fred Smith	8.20
✓c.	Thomas Wilson	5.00
✓d.	Fred Wilson	7.45
e.	Pete Dolive	4.80
f.	Jim Jones	5.20
g.	Walter Foster	5.00
h.	Ernest Andrade	5.50
i.	Willie Mastin	5.40
j.	Harry Durant	7.20
✓k.	Luke Wilson	5.00
l.	C. J. Harrud	6.50
m.	Johnny Harrud	6.50
n.	Odie Wallace	5.00
o.	Emmitt Brewster	6.50
p.	James Roberts	6.50
q.	C. T. Blalack	6.50

CLERK'S FEES \$34.60

SHERIFF'S FEES \$46.20

  
ATTORNEY FOR PLAINTIFF.

9/16/59 Motion to re-tax Costs denied  
Harold M. Coley  
Judy

DEMURRERS

J. D. MORRIS	Ø	IN THE CIRCUIT COURT OF
PLAINTIFF	Ø	BALDWIN COUNTY, ALABAMA,
VS	Ø	AT LAW
CLAUDE YANCEY	Ø	
DEFENDANT	Ø	

Comes now the Defendant in the above styled cause and demurs to the Plaintiff's Motion to Retax cost and for grounds therefor says as follows:

To Section One of the Plaintiff's Motion the Defendant files the following demurrers:

1.

The fact that a Defendant summoned 19 witnesses is no grounds for retaxing cost.

2.

The Plaintiff fails to assign sufficient grounds for the retaxing of cost.

For Section 2 of the Plaintiff's motion the Defendant files the following grounds.

3.

The Plaintiff fails to show who subpoenaed the 17 witnesses mentioned in this section.

4.

The fact that 17 witnesses proved up and collected witness fees is not grounds for retaxing cost.

5.

The Plaintiff fails to state sufficient grounds to grant a motion to retax the cost.

To Section 3 of the Plaintiff's Motion, the Defendant assigns the following demurrers.

6.

The matters alleged therein are but a conclusion of the Pleader.

7.

The matters alleged therein are not sufficient grounds for retaxing cost.

The Defendant assigns the following demurrers to Section 4 of the Plaintiff's Motion.

8.

The matters alleged in this section do not state sufficient grounds for retaxing the cost.

To Section 5 of the Plaintiff's Motion, the Defendant files the following demurrers:

9.

The Fact that the Cost of 17 witnesses totals \$102.75 and the Sheriff and Clerk cost for these witnesses totals \$80.80 is not grounds for retaxing the cost.

10.

The Plaintiff fails to allege facts sufficient to grant his motion to retax the cost.

The Defendant files the following demurrers to Section 6 of the Plaintiff motion.

11.

The Plaintiff fails to allege sufficient facts to grant his motion to retax the cost.

Comes now the Defendant in the above styled cause and files the following demurrers to the Plaintiff's Motion as they hold and each and every count and section thereof separately and severally.

12.

Sufficient grounds for retaxing cost have not been stated.

13.

For Aught appearing the Defendant did not subpoena more than two witnesses for each fact to be proven.

14.

For aught appearing the Plaintiff does not have a motion before the court for his consideration.

Wilters & Brantley

By: \_\_\_\_\_  
Attorneys for the Defendant