

(709)

Jesse M. Smith,	)	
	)	
Complainant,	)	
	)	
Vs.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY,
	)	
Winston Jones, et als.,	)	ALABAMA.
	)	
Respondents.	)	IN EQUITY. NO.

Objections to the Fourth Interrogatory.

The complainant objects to each of the questions propounded in the Fourth Interrogatory upon the following grounds:

First. Because it is illegal, irrelevant and immaterial.

Second. The respondents have fully answered the bill of complaint, and have set forth their claim to said lands.

Third. Respondents are presumed to know what lands they own or claim, and by what instruments their right, title or interest in, or incumbrance upon said lands are derived.

Complainant's answers to Interrogatories propounded  
by the Respondents.

FIRST. Answering the first interrogatory complainant says that he purchased Sub-division "A" and Sub-division "C" Fractional Section 7, Township 2 North, Range 2 East, from Carrie L. Clemmons, Lillie Bellanger, Charles A. Bolman and Tunstall Lumsden. This deed has not yet been recorded. I can not state exactly where said land is located is located in Baldwin County, because I have not had it surveyed. Sub-division "A" and Sub-division "C" do not lie side by side. Neither do I know how many acres are contained in sub-divisions "A" and "C", but the Government Township map shows that there are 134 acres in sub-division "C" and 132½ acres in sub-division "A".

Second. Answering the second Interrogatory complainant says, I am informed and believe that sub-division "A" and subdivision "C" are shown on the United States Government Township map in the United States Land Office. So far as I know this map is not recorded in Baldwin County. Said subdivisions are shown on said Government Township map, being bounded on one xxxx side by the Alabama River. I do not know what land bounds sub-divisions "A" and "C" except is as shown on the Government Township map, which is a public record, and of which the Court takes judicial notice, and which is as available to the respondents as it is to complainant. I do not know of any legal sub-division known as Section 47, Township 2 North, Range 2 East.

THIRD. Answering the third interrogatory, complainant says that he went into possession of said lands upon the 6th day of April, 1921. Said lands are not fenced. Complainant is not cultivating any of said lands, neither is any one living thereon. Since the 6th day of April, 1921, complainant has been in possession of each of said tracts of land, has kept off trespassers, and has been in constant supervision and control of it. Complainant has been going over the lands constantly by himself, or his agents, to keep off trespassers and to prevent depredations thereon.

FOURTH. The complainant is now informed by his solicitor that the questions propounded in the fourth interrogatory are illegal, irrelevant and immaterial, and that he need not answer the same, it also appearing that the respondents have filed an answer in said cause and have fully set up their claims to the lands described in the suit.

FIFTH. Answering the fifth Interrogatory complainant says that his claim to said lands does not grow out of a tax title.

Jesse M. Smith

Subscribed and sworn to before me on  
this the 3rd day of March, 1922.

M. C. Ruckert  
Notary Public, Mobile County, Alabama.

TO THE HONORABLE JOHN <sup>D</sup> LEIGH  
JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,  
SITTING IN EQUITY.

Comes now Jesse M. Smith, who is a resident of Baldwin County, Alabama, and over the age of twenty one yars, and exhibits this his bill of complaint against Winston Jones and Pattie Jones Williams, who are residents of Mobile County, Alabama, and each of whom is over the age of twenty one years, respectfully showing:

FIRST: That your orator owns, and is in possession of, the following piece, parcel or tract of land situate, lying and being in the county of Baldwin, state of Alabama, and more particularly described as follows: Subdivision A. and Subdivision C. of fractional Section seven, township two North, range two East, St. Stephens meridian, Alabama.

Your orator further shows that he is in peaceable possession of said lands above described, claiming to own the same.

SECOND: Your orator further shows unto your Honor that the defendants claim, or are reputed to claim, some right, title or interest in or encumbrance upon said lands. Your orator further shows that there is no suit pending to enforce or test the validity of such title, claim or encumbrance; and your orator now calls upon said defendants to set forth and specify their title, claim, interest or encumbrance upon said lands and how and by what instrument the same is derived and created.

And may it please your Honor upon the final hearing to adjudge and decree that said defendants have no estate or interest in or encumbrance on said lands or any part thereof, but that your orator is the owner of said lands and that your Honor will by a decree of this court quiet the title of your orator in and to said lands.

And may it please your Honor to decree to your orator all such other and further relief in the premises as he may be entitled to receive.

Wherefore considering the premises your orator prays your Honor to take jurisdiction of this, his bill of complaint,

and that the writ of subpoena of the state of Alabama issue out of this Honorable Court directed to, and commanding the said defendants to appear in this Honorable Court and plead, answer or demur to your orator's said bill and as in duty bound, etc.

Jesse F. Hagan

Solicitor for Complainant.

FOOTNOTE: The defendants are required to answer each section of the foregoing bill, numbered one and two respectively, but not under oath, oath to answer being hereby expressly waived.

Jesse F. Hagan

Solicitor for Complainant.

JESSE M. SMITH,  
Complainant,

-VS-

WINSTON JONES AND  
PATTIE JONES WILLIAMS,  
Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY.  
IN EQUITY.

Now come the Respondents in the above entitled cause, their demurrers to the Bill of Complaint having been overruled, and for answer to the said Bill of Complaint say as follows:-

That the allegations of the first paragraph of said Bill of Complaint are untrue, that is, that the Complainant does not own, neither was he in possession of, the land described in said paragraph at the time of the filing of this suit.

That in answer to the second paragraph your Respondents allege that they did claim title, and do yet claim title, to the lands described in the first paragraph of said Bill of Complaint, and that they claim such title as the legal heirs of Joel W. Jones under a deed executed by E. W. Pettus and W. O. Winston, As Executors, to Martha C. Jones, As Executrix of the Estate of Joel W. Jones, deceased, the heirs of the said Joel W. Jones at the time being your Respondents, their mother and one brother, the said mother and brother having died many years ago and without issue, your Respondents being their only legal heirs. The said Winston and Pettus, As Executors, selling all of the interest of John A. Winston & Company, a partnership composed of Joel W. Jones and John A. Winston, both of which said deeds are of record in the Probate Court of Baldwin County, the said John A. Winston & Company purchasing same by a deed at a sale of said property as belonging to the Estate of J. D. Godbold, the said sale being ordered by the Probate Judge of Baldwin County, and the said deed executed during the year 1871; also, under a Patent issued by the United States Government to the said J. D. Godbold.

For further answer to paragraph two of said Bill of Complaint, your Respondents aver that they are the owners of and claim legal title to the lands described in said paragraph, for that they, and their predecessors in title, have had adverse possession of the said lands for a period of more than thirty years, claiming to own

RECORDED

same, that they have been paying taxes and assessing the property on the Records of Baldwin County for said period of time, and there has been recorded in the Probate Court of Baldwin County a deed executed by W. O. Winston and E. W. Pettus, As Executors, to Martha C. Jones, As Executrix of Joel W. Jones, the heirs of said Joel W. Jones being Martha C. Jones and your two Respondents, and one other brother, the said brother and Martha C. Jones, their Mother, both dying without any other legal heirs except your Respondents; your Respondents thereby inheriting all of said property and which said deed has been recorded on the Records of Baldwin County, covering the said land, for a period of more than twenty years next prior to the filing of the Bill of Complaint in this cause.

Wherefore your Respondents, having fully answered and set-up their title in and to said property, pray that the said complaint may be dismissed and the said Complainant be taxed with the Costs.

*Charles J. Lane*  
*Howard A. Edgington*  
SOLICITORS FOR RESPONDENTS.

Jesse M. Smith,

Complainant,

-vs-

Pattie Jones Williams and Cordelia  
Vass Jones and Frank Norton  
Williams, as Executrix and Executor,  
respectively, of the last will and  
testament of Winston Jones, deceased,  
and as Trustees under the last will  
and testament of Winston Jones,  
deceased,

Respondents.

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

ANSWER AND CROSS-BILL.

Come the respondents, Cordelia Vass Jones and Frank Norton Williams, as Executrix and Executor, respectively, of the last will and testament of Winston Jones, deceased, and as Trustees under the last will and testament of Winston Jones, deceased, and for answer to the bill of complaint filed by Jesse M. Smith, answering say:

1. Answering the first paragraph or section of complainant's bill of complaint, these respondents deny that the complainant owns that piece, parcel or tract of land in Baldwin County, Alabama, described as Subdivision A and Subdivision B of Fractional Section Seven, Township Two North, Range Two East, St. Stephens Meridian, Alabama, and also deny that the complainant was, at the time of the filing of his bill of complaint, in possession of said piece, parcel or tract of land.

2. Answering the second paragraph or section of the complainant's bill of complaint, these respondents admit that they claim to own an undivided one-half interest in and to said lands, and aver that they, together with the respondent Pattie Jones Williams, claim to own, and do own, the entire title in and to said lands; that the southeast Subdivision A of Fractional Section Seven, in Township Two of Range Two East, in Baldwin County, Alabama, was conveyed by a patent from the United States to James D. Godbold on May 30th, 1833; that the west division C of Fractional Section Seven, in Township Two, Range Two East, in Baldwin County, Alabama, was conveyed by patent that John C. Knight was the son and heir at law of said James Knight; from the United States to James Knight on May 30th, 1833; that said west division C was conveyed by John C. Cuthbert, as administrator of the estate of John C. Knight, to the said James D. Godbold by deed.

dated January 4th, 1847; that title to the lands described in the complainant's bill of complaint was conveyed by John A. Winston, as administrator de bonis non of the estate of the said James D. Godbold, deceased, to John A. Winston & Company, a mercantile firm composed of John A. Winston and Joel W. Jones, by deed dated October 30th, 1871, and recorded in Book "I", at pages 631 and 632 of the records in the office of the Probate Judge of Baldwin County, Alabama, said lands, with other lands, being described in said deed as "Fractional Section No. (47) Forty-seven in Township Two (2) North, Ranges One and Two (1 & 2) East"; that William O. Winston and E. W. Pettus, as Executors, conveyed said lands to Martha C. Jones, as Executrix of the estate of Joel W. Jones, deceased, by deed dated December 15th, 1883, and of record in Book "N", pages 299 and 300 of the records in the office of the Probate Judge of Baldwin County, Alabama; that the title of the said Joel W. Jones to the said lands descended at his death to his widow, two sons and one daughter; that the said widow and one of said sons died leaving as their sole heirs at law the other son, Winston Jones and the daughter, who is the respondent Pattie Jones Williams; that the said Winston Jones died subsequent to the filing of the bill of complaint herein, leaving a will by the terms of which he devised his interest in the said lands to these respondents; that these respondents claim title to an undivided one-half interest in the said lands by virtue of the conveyances hereinabove mentioned, and also by adverse possession; that these respondents, together with respondent Pattie Jones Williams and their predecessors in title, have annually listed the said lands for taxation in the proper County for more than ten years prior to the commencement of this action; that these respondents derive their title by devise from Winston Jones, a predecessor in title who was in possession of the said lands; and that the said Winston Jones and the said Pattie Jones Williams, together owning the entire title to said lands, had actual, open, notorious, exclusive and continuous possession of the said lands under color of title for a period of more than twenty years prior to the commencement of this action.

PRAYER FOR PROCESS.

These respondents pray that the foregoing answer be taken

and treated as a cross-bill; that the said complainant, Jesse M. Smith, be made party defendant to the said cross-bill, and that the usual process of subpoena be directed to the said Jesse M. Smith and that he be required to answer, plead or demur to the foregoing cross-bill within the time and according to the rules of this Honorable Court; and that he be required to set forth and specify his title, claim, interest or encumbrance in or upon the said lands, and how and by what instrument or instruments the same is derived or created.

PRAYER FOR RELIEF.

The premises considered, these respondents and cross-complainants pray that the complainant's bill of complaint be dismissed and that a decree be entered by the Court adjudging and decreeing that the complainant has no estate, title or interest in or to, or encumbrance upon, the lands described in the bill of complaint.

And these respondents and cross-complainants pray for such other, further and general relief as they may be entitled to. And these respondents and cross-complainants will ever pray, etc.

*Smith, Young, Leigh & Johnston*

*J. Stevens, W. C. Conroy, W. L. Leach & S. Goode*

Solicitors for Respondents and Cross-Complainants Pattie Jones Williams and Cordelia Vass Jones and Frank Norton Williams, as Executrix and Executor, respectively, of the last will and testament of Winston Jones, deceased, and as Trustees under the last will and testament of Winston Jones, deceased.

FOOT NOTE:

The cross-respondent, Jesse M. Smith, is required to answer each paragraph of the foregoing cross-bill numbered one and two, respectively, but not under oath, oath to such answer being hereby expressly waived.

*Smith, Young, Leigh & Johnston*

*J. Stevens, W. C. Conroy, W. L. Leach & S. Goode*

Solicitors for Respondents and Cross-Complainants Pattie Jones Williams and Cordelia Vass Jones and Frank Norton Williams, as Executrix and Executor, respectively, of the last will and testament of Winston Jones, deceased, and as Trustees under the last will and testament of Winston Jones, deceased.

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 Jesse M Smith,

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 <sup>a cross</sup> Bill of Complaint lately exhibited by

Pattie Jones Williams and Cordelia Vass Jones and Frank Norton

Williams, as Executrix and Executor, respectively, of the last will and testament of Winston Jones, deceased, and as Trustees under the last will and testament of Winston Jones, deceased.

against said Jesse M Smith,

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 27th day of April

1923.

*T. W. Richerson*

Register.

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

*Original*

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

Circuit Court of Baldwin County  
In Equity

No. \_\_\_\_\_

SUMMONS

Jesse M Smith,

vs.

Pattie Jones Williams et als.

Smiths, Young, Leigh and  
Johnston.

Stevens, Mc Corvey, McLeod &  
Goode.

Solicitor for Complainant

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

THE STATE OF ALABAMA  
BALDWIN COUNTY

Received in office this April 27th,  
day of \_\_\_\_\_ 1923

Sheriff

Executed this 27th day of  
April 1923

by leaving a copy of the within summons with

Jesse M Smith

*Complainant*

*Defendant*

W R Stuart

Sheriff

By \_\_\_\_\_  
Deputy Sheriff

JESSE M. SMITH,

Complainant,

-vs-

PATTIE JONES WILLIAMS,  
CORDELIA VASS JONES, and  
FRANK NORTON WILLIAMS, as  
Executrix and Executor,  
respectively, of the last  
Will and Testament of  
Winston Jones, deceased, and  
as Trustees under the last  
Will and Testament of  
Winston Jones, deceased,

Respondents.

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

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

ANSWER TO CROSS BILL.

1. Answering the first paragraph of said Cross Bill cross-respondent says that he owns those certain tracts or parcels of land in Baldwin County, Alabama, and more particularly described as Subdivision A, ~~Sub-division B~~ and Sub-division C, of Fractional Section 7, Township 2 North Range 2 East, St. Stephens Meridian, Alabama, and was in the possession of said tracts or parcels of land at the time of the filing of said bill, and also at the time of the filing of said cross-bill. The cross-respondent, however, disclaims any estate, title or interest in or incumbrance upon Sub-division B of said Fractional Section 7.

2. Answering the second paragraph of said Cross-Bill the cross-respondent says that it is true that the Southeast sub-division A of Fractional Section 7 in Township 2 of Range 2 East in Baldwin County, Alabama, was conveyed by a patent from the United States to James D. Godbold, on the 30th day of May, 1833; and that the West division C of Fractional Section 7, in Township 2 North, Range 2 East, in Baldwin County, Alabama, was conveyed by patent from the United States to James Knight on May 30th, 1833. That the said James Knight had three children, one of whom

was known as John C. Knight, one was known as Olivia, who intermarried with James D. Godbold, and Tansy, who inter-married with Harris C. Bingo; that the said Tansy died subsequent to John C. Knight, and her interest in and to said West division C was inherited by her sister, the said Olivia Godbold. Cross respondent denies that said West Division C was conveyed by John C. Cuthbert, as Administrator of the estate of John C. Knight, to the said James D. Godbold, by deed dated January 4th, 1847. Cross-respondent further denies that the foregoing tracts of land were conveyed by John A. Winston, as Administrator de bonis non of the estate of the said James D. Godbold, deceased, to John A. Winston & Company, a mercantile firm composed of John A. Winston and Joel W. Jones, by deed dated October 30th, 1871, and recorded in Book "I" pages 631 and 632 of the records in the office of the Probate Judge of Baldwin County, Alabama.. Cross-respondent denies that said lands were described in said deed as Fractional section No.(47) Forty-seven in Township 2 North, Ranges 1 and 2 East. Cross-respondent further denies that William C. Winston and E. W. Pettus, as Executors, conveyed said lands to Martha C. Jones, as Executrix of the estate of Joel W. Jones, deceased. Cross-respondent denies that said Joel W. Jones had any title, claim, interest in or incumbrance upon the said lands at the time of his death. Cross-respondent also denies that any title in and to said lands descended at the death of Joel W. Jones to his widow, two sons and one daughter. Cross-respondent denies that these respondents, or Pattie Jones Williams, or their <sup>prs</sup> successors in title have annually listed the said lands for taxes in Baldwin County, or any other county, for more than ten years prior to the commencement of this action, and denies that these respondents derived any title to said lands by devise from Winston Jones. Cross-respondent also denies that the said Winston Jones or the said Pattie Jones Williams, or either of them had actual, open, notorious, exclusive and continuous possession of said lands under color of title for a period of more than twenty years prior to the commencement of this suit, or for any other period of time.

3. In answer to the demand that cross-respondent should set forth his title, claim, interest in or incumbrance upon the said lands, and how and by what instrument or instruments the said is derived or created; the cross-respondent admits that he claims to own, and does own the title in and to said lands; that the southeast sub-division A of Fractional Section 7 in Township 2 North, Range 2 East, in Baldwin County, Alabama, was conveyed by a patent from the United States to James D. Godbold on May 30th, 1833, and that West division C Fractional Section 7, in Township 2 North, Range 2 East, Baldwin County, Alabama, was conveyed by patent from the United States to James Knight on May 30th, 1833; that the said James Knight died many years ago and was survived by his three children Olivia Godbold, who was the wife of James D. Godbold, John C. Knight and Tansy Bingo, who had inter-married with Harris C. Bingo; that the said John C. Knight died many years ago, unmarried and without issue; that the said Olivia inherited from the said James Knight an undivided one-third interest in and to said West Sub-division C of said Fractional Section 7, and the undivided one-third interest of her brother, the said John C. Knight, and the undivided one-third interest of the said Tansy Bingo; that the said James D. Godbold and Olivia Godbold died many years ago, and that they had only one child, Caroline, who intermarried with General Earl Van Dorn, and who was known as Caroline Van Dorn, and who, survived the said James D. Godbold and Olivia Godbold; that the said Olivia Van Dorn inherited from her father, the said James D. Godbold, the entire title in and to the Southeast sub-division A of Fractional section 7, and also inherited from her mother, the said Olivia Godbold, the entire title which the said Olivia had in and to said West sub-division C of said Fractional section 7; that the said Caroline Van Dorn had only two children, Earl Van Dorn, Jr., who died unmarried, and without issue, and Olivia Van Dorn, who became the wife of Frank A. Lumsden, and who was known as Olivia Lumsden; that the said Olivia Lumsden

inherited the entire interest of her mother, the said Caroline as well as the interest of her brother, Earl Van Dorn, Jr. Van Dorn, in and to said parcels or tracts of land; that the said Olivia Lumsden and Frank A. Lumsden are both deceased, and that she had only four children, viz: Mrs. Carrie L. Clemmons, Mrs. Lillie Bellinger, Frank Aubrey Lumsden, who is known as Charles A. Bollman, and Tunstall Lumsden; that the said Carrie L. Clemmons, Lillie Bellinger, Charles A. Bollman and Tunstall Lumsden have conveyed their entire title in and to said tracts or parcels of land to cross-respondent by a deed dated the 22nd day of May, 1922, which has not been recorded, and also by deed dated the 6th day of April, 1921, and which is recorded in Deed Book 32 N.S. page 247, Probate records of Baldwin County, Alabama.

All of which matters this cross-respondent is ready and willing to aver, maintain and prove as This Honorable Court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

*Jerre F. Hogan*  
Solicitor for Cross-Respondent.

110	132
112	66
13200	198
660	
1980	

Jesse M. Smith,  
Complainant,

v.

Winston Jones and  
Pattie Jones Williams  
Respondents

In the Circuit Court of Baldwin County,  
Alabama.

In Equity.

This cause was submitted to the Court by consent between  
counsel <sup>on</sup> of the original Bill and the Demurrers thereto. This  
Court <sup>has</sup> ~~having~~ carefully considered the Bill and the Demurrers as  
to the sufficiency of the description of the property in contro-  
versy and particularly described in the Bill of Complaint. The  
Respondents in this cause attack ~~at~~ the sufficiency of the descrip-  
tion, insisting that the description of the lands set out in the  
Bill of Complaint is so vague and indefinite that Respondents  
are not charged with notice as to what lands they are called upon  
to set up their title, interest or encumbrance. The Respondents,  
in submitting their Demurrers, are insisting that the description  
is <sup>in</sup> ~~quite~~ sufficient as set forth in the Bill of Complaint and  
urge that Complainant should have added after the description—  
"According to the official Plat of the Survey of said Lands  
Returned to the General Land Office of the Surveyer General."  
A casual perusal of <sup>all</sup> ~~their~~ patent issued by the United States  
Government contains this identical clause, and <sup>attorneys for respondents are convinced</sup> ~~certainly~~ it could  
be insisted with <sup>equal</sup> force that this particular clause in the patent  
should follow each sub-division of a section of land. This Court  
judicially takes notice of the fact that the <sup>are</sup> ~~re~~ many fractional  
sections of land in the State of Alabama, some of which fraction-  
al sections contain less than eighty (80) acres, and it has been  
the universal rule and practice, and generally recognized as such,  
to describe the fractional section by its given number or to  
describe a portion of such by a definite description without  
stating clause that Respondents insist should follow the particu-  
lar description contained in the Complaint in this cause.

The Court is of the opinion that if there is a subdivision  
A and subdivision C of fractional section 7, Township 2 North of  
Range 2 East, St. Stephens Meridian in Alabama, all of said lands

2.

lying and being in the County of Baldwin in the State of Alabama,  
that the same is a perfect description and to have added the  
clause referred to in the Respondents' brief would not have  
~~strengthened the~~  
~~added any material~~ allegation as to the property described in  
the Complaint:

IT IS THEREFORE ORDERED, ADJUDGED and DECREED <sup>by the Court</sup> That  
Respondents' Demurrers to the Bill of Complaint in this cause *are not*  
*will taken and they-*  
be and they are hereby over-ruled.

Done at Brewton, Alabama, this the 1st day of February,  
1922.

*John D. Leigh*  
Judge of 21st Judicial Circuit

JESSE M. SMITH,  
Complainant,

-VS-

WINSTON JONES, et al.,  
Respondent.

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

Now comes Gordon & Edington, and Charles Hall,  
and moves the Court for permission to withdraw their appearance  
in said cause as Solicitors for the respondents, said petitioners  
showing unto your Honors that the said Winston Jones has recently  
died and that his Estate is being represented by other counsel,  
and who will take charge of this case at the request of these  
Solicitors.

Respectfully submitted,

Gordon & Edington &  
Charles Hall  
SOLICITORS FOR RESPONDENT.

The State of Alabama, }  
Baldwin County

CIRCUIT COURT.

To K.C. Kuthbert,

KNOW YE, That we, having full faith in your prudence and competency, have appointed you Commissioner, and by these presents do authorize you, at such time and place as you may appoint, to call before you and examine Mrs. Carrie L Clemmons, Mrs. Julia S Bullock,

as witnesses in behalf of Complainant, in a cause pending in our Circuit Court of Baldwin County, of said State, wherein

Jesse M Smith,

is Complainant

and

Winston Jones and Patti Jones Williams

are Defendant, S

on oath to be by you administered, upon interrogatories filed by Complainant, to take and certify the deposition of the witness S and return the same to our Court, with all convenient speed, under your hand.

Witness 3rd, day of November, 1922.

T. W. Ricemson  
 Register.

Commissioners Fee \$ 10.00

Witness Fee's \$

No. 309.

THE STATE OF ALABAMA,

Baldwin County.

CIRCUIT COURT.

Jesse M Smith,

Complainant.....

vs.

Winston Jones and Patti Jones

Williams,

Defendant.....

COMMISSION TO TAKE DEPOSITION  
ON INTERROGATORIES.

COMMISSIONER:

K.C. Cuthbert.

WITNESSES:

Carrie L Clemmons

Julia Bullock

JESSE M. SMITH,

Complainant,

-vs-

WINSTON JONES, et als.,

Respondents.

IN THE CIRCUIT COURT OF BALDWIN  
COUNTY, ALABAMA.

IN EQUITY.

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

INTERROGATORIES PROPOUNDED TO MRS. CARRIE L. CLEMMONS,  
a witness for complainant.

FIRST INTERROGATORY. What is your name? Are you identical with the Carrie L. Clemmons named in the deed executed by Carrie L. Clemmons, Mrs. Lilly Bellanger and John Bellanger, husband and wife, Charles Bolman and Eugenia Bolman, husband and wife, and Tunstall Lumsden, in favor of Jesse M. Smith, dated the 6th day of April, 1921, and purporting to convey to the said Jesse M. Smith Division "A" and Division "C" of Fractional Section 7, Township 2 North of Range 2 East, in Baldwin County, Alabama? Have you been married, if so, what was your name before marriage, and where do you live? If you state that you are living in Mobile County, then state how long you have lived in Mobile County.

SECOND INTERROGATORY. Please state the names of your great grand parents. Are they living or dead? If they are dead, please state when they died, respectively. Please state where they resided. If your answers to the foregoing questions are based on family reputation, please specify them. If they are based on declarations made by other members of your family, please specify them, giving the names of the declarants, and whether or not said declarants, or any of them, are dead. If you have stated that your great grand parents were James D. Godbold and Olivia, his wife, then please state how many children they had, and their names. If you have stated that their only child was Caroline, then state whether or not the said Caroline was ever married, and if so, to whom. Please

state whether or not she was married to General Earl Van Dorn. Please state whether or not the said Caroline had any children, and if so, whether the names of the children of the said Caroline were Earl Van Dorn, Jr. and Olivia Van Dorn. Is the said Caroline living or dead, and if dead, when did she die? If you have answered any of the foregoing questions from family reputation, specify them, and if they are based on declarations made by other members of your family, please specify them, stating the names of the declarants, and whether they are living or dead. If you have stated that the names of the children of the said Olivia Van Dorn are Earl Van Dorn, Jr., and Olivia Van Dorn, then please state whether either of them died without issue. Please state whether the said Olivia Van Dorn was married, and if so, to whom. Please state whether or not she was married to Frank A. Lumsden. If you have stated that she was married to Frank A. Lumsden, please state whether or not the said Olivia Van Dorn Lumsden had any children, and if so, their names and places of residence. Are you one of the children of the said Olivia Van Dorn Lumsden? Is the said Olivia Van Dorn Lumsden living or dead, and if dead, when did she die. Is the said Frank A. Lumsden living or dead, and if dead, when did he die? Please state whether or not any of the children of the said Olivia Van Dorn Lumsden are dead, and if so, state their names and the names of their descendants, if any. If any of your answers to the foregoing questions are based on general family reputation, please specify them, or if any of them are based on declarations made by other members of your family, specify them, stating the names of the declarants, and whether they are living or dead.

THIRD INTERROGATORY. Please state the name of your great, great grandfather. Please state whether or not your great, great grandfather was James Knight. If so, then state how many children the said James Knight had. If you have said that the children of the said James Knight were Olivia and John C. Knight, then please state whether or not the said John C. Knight is dead, and if so, whether he died without issue. Please state whether or not the said Olivia intermarried with James D. Godbold, named hereinabove, and if she was your great

grandmother. If any of your answers to the foregoing questions are based on family reputation, specify them, or if any of them are based on declarations made by other members of your family, please specify them, stating the names of the declarants, and whether they are living or dead.

FOURTH INTERROGATORY. Please state where the said James Knight and the said James D. Godbold, or either of them resided during their life-time. Is your answer to the foregoing question based on general family reputation or on declarations made by other members of your family? If on the latter, state the names of the declarants, and whether they are living or dead.

INTERROGATORIES PROPOUNDED TO MRS. JULIA S. BULLOCK,  
a witness for the complainant.

FIRST INTERROGATORY. What is your name? Please state whether or not you were personally acquainted with Olivia Godbold, the wife of James D. Godbold, who formerly resided in Baldwin County, Alabama. If so, then please state whether or not you know who were the parents of the said Olivia Godbold, and state their names. Please state whether or not the said Olivia Godbold had any brothers or sisters, and if so, their names, and whether or not they are living or dead; If dead, the names of their descendants, if personally known to you. State whether or not the said Olivia Godbold and James D. Godbold are dead, and if dead, when did they die. If you know, please state where the parents of the said Olivia Godbold lived during their lifetimes.

SECOND INTERROGATORY. Please state whether or not the said James D. Godbold and Olivia Godbold had any children, and if so, their names, respectively, and whether they are living or dead. If you have stated that the said James D. Godbold and Olivia had one child whose name was Caroline, then please state whether or not the said Caroline was married, and if so, to whom? If you have stated that you have personal knowledge of the fact that the said Caroline ~~xxx~~ intermarried with General Earl Van Dorn, then please state whether or not the said Caroline

had any children, and if so, their names. If you have stated that the said Caroline Van Dorn had two children whose names were Earl Van Dorn Jr. and Olivia Van Dorn, then please state whether or not the said Earl Van Dorn Jr., and Olivia Van Dorn are living or dead, and if dead, when did they die? Please state also whether or not the said Caroline Van Dorn is living or dead, and if dead, when did she die?

THIRD INTERROGATORY. If you have stated that the said Olivia Van Dorn was one of the children of the said Caroline Van Dorn, then please state whether or not she is living or dead, and if dead, when did she die? Please state whether or not the said Olivia Van Dorn intermarried with Frank A. Lumsden, and if so, whether or not the said Frank A. Lumsden and Olivia Lumsden are living or dead, and if dead, when did they die? Also please state whether or not the said Olivia Van Dorn Lumsden had any children, and if so, their names and places of residence. Please state whether or not any of the children of the said Olivia Van Dorn Lumsden are dead, and if dead, when did they die; also state the names of their descendants, respectively, if any.

Jesse F. Hogan  
Solicitor for Complainant.

K. C. Cuthbert is suggested as being a competent person to take the depositions of the foregoing witnesses.

Jesse F. Hogan  
Solicitor for Complainant.

We hereby accept service of the foregoing interrogatories upon this the \_\_\_\_\_ day of October, 1922, and waive further notice thereof.

\_\_\_\_\_  
Solicitors for Respondents.

JESSE M. SMITH,	)	
Complainant,	)	
-vs-	)	IN THE CIRCUIT COURT OF BALDWIN
WINSTON JONES, et als.,	)	COUNTY, ALABAMA.
Respondent.	)	IN EQUITY. NO. _____

I, K. C. Cuthbert, Commissioner named in the Commission hereto attached, caused the witnesses named in the said commission to come before me, and after said witnesses were duly sworn they testified in response to the interrogatories addressed to them as hereinafter shown; that is to say the witness, Mrs. Carrie L. Clemmons, testified as follows:

Answering the first interrogatory witnesseth saith:

That her name is Carrie L. Clemmons, and that she is identical with the Carrie L. Clemmons named in the deed executed by Carrie L. Clemmons, Mrs. Lilly Bellanger and John Bellanger, husband and wife, Charles Bolman and Eugenia Bolman, husband and wife, and Tunstall Lumsden, in favor of Jesse M. Smith, dated the 6th day of April, 1921, and purporting to convey to the said Jesse M. Smith Division "A" and Division "C" of Fractional Section 7, Township 2 North of Range 2 East, in Baldwin County, Alabama. That she has been married, and that her name before marriage was Carrie L. Lumsden. That she is living in Mobile County, Alabama, and has lived in Mobile County all her life.

Answering the second interrogatory witness saith:

That her great grandparents were James D. Godbold and Olivia Godbold, and that they are both dead; that her great grandmother died in the year 1881, in Calvert Alabama, but that she does not know when and where her great grandfather died; that they resided in Calvert, Alabama. Witness saith that her answers to the foregoing questions; that is to say the names of her great grandparents; where they resided, and where her great grandmother died, are based on family reputation. They are also based on declarations made by other members of her family, viz: Her grandmother, Caroline Van Dorn, and her father, Frank A. Lumsden, both of whom are dead. That her great grandparents were James D. Godbold

and Olivia Godbold; that they had one child whose name was Caroline; that the said Caroline married Earl Van Dorn, and that she had two children, Earl Van Dorn, Jr., and Olivia Van Dorn; that the said Caroline died in the year 1876. Witness saith that the answers to the foregoing questions are of her own knowledge.

That the said Earl Van Dorn died without issue; that Olivia Van Dorn was married to Frank A. Lumsden, and that she had four children, viz: Lilly, who is the wife of John Bellanger, and who resides at Ponchatoula, Louisiana, Carrie, the witness, who resides in Mobile, Alabama, Aubrey, who is known as Charles Bolman, and who resides in New Orleans, Louisiana, and Tunstall Lumsden, who resides in Ponchatoula, Louisiana; that she is one of the children of the said Olivia Van Dorn Lumsden; that Olivia Van Dorn Lumsden is dead; that she died on February 4th, 1878, at Calvert, Alabama. That the said Frank Lumsden is dead; that he died January 1st, 1911; that none of the children of the said Olivia Van Dorn Lumsden are dead. Witness states that the answers to the foregoing questions are of her own knowledge.

Answering the third interrogatory witness saith:

That her great, great grandfather was James Knight; that he had two children, Olivia Knight and John C. Knight, and that the said John C. Knight is dead, and that he died without issue; that the said Olivia intermarried with James D. Godbold, and that she was her great grandmother. Witness states that her answers to the foregoing questions as to the children of James Knight, are based on family reputation. They are also based on declarations made by Mrs. Julia S. Bullock; that the other answers are of her own knowledge.

Answering the fourth interrogatory witness saith:

That the said James Knight and James D. Godbold resided in Calvert, Alabama; that she remembers living there in the old family home with her great grand parents when she was a small child.

Witness states that her answer to the foregoing question is of her own knowledge.

Carrie L. Clements

And the witness, Mrs. Julia S. Bullock, testified as follows:

Answering the first interrogatory witness saith:

That her name is Mrs. Julia S. Bullock; that she knew Olivia Godbold, the wife of James D. Godbold, well, and that she knew James Knight, who was the father of Olivia Godbold, but that she did not know her mother; that she does not know whether the said Olivia Godbold had any brothers or sisters, or not. That she knows that Olivia Godbold and James D. Godbold are both dead; that she does not remember exactly when they died, but she knows that it was a long time ago; that she knows that the parents of Olivia Godbold lived at Calvert, Alabama.

Answering the second interrogatory witness saith:

That James D. Godbold and Olivia Godbold had one child whose name was Caroline, and that she is dead; that the said Caroline married General Earl Van Dorn, and that she had two children, Earl Van Dorn Jr., and Olivia Van Dorn, and that they are both dead; that she does not remember just when they died, but that it was a long time ago. That the said Caroline is dead, but that she does not remember the date of her death.

Answering the third interrogatory witness saith:

That Olivia Van Dorn is dead, but that she does not remember when she died; that the said Olivia Van Dorn married Frank L. Lumsden, and that they are both dead, but she does not remember when they died; that the said Olivia Van Dorn Lumsden had four children, but that she does not remember the names of any except Lilly, who is the wife of John Bellanger, and who is living somewhere in Louisiana, and Carrie, who is Mrs. Carrie L. Clemmons, and who is living in Mobile, Alabama; that she does not think that any of the children of the said Olivia Van Dorn Lumsden are dead.

Mrs. Julia S. Bullock

COMMISSIONER'S CERTIFICATE.

I, K. C. Cuthbert, Commissioner under the commission heretofore issued out of the Circuit Court of Baldwin County, Alabama, sitting in Equity in said cause, do hereby certify that under the power conferred upon me by said Commission, I caused the said Mrs. Carrie L. Clemmons and Mrs. Julia S. Bullock, witnesses for the complainant in said cause, who are known to me, and who are known to me to be the identical witnesses named in said depositions, to come before me; that is to say Mrs. Carrie L. Clemmons, at the office of Jesse F. Hogan, Esq., at No. 315 Van Antwerp Building, Mobile, Ala., on the 7th day of November, 1922, at the hour of 2.00 P. M., and Mrs. Julia S. Bullock, at her residence No. 154 State Street, Mobile, Ala., on the 11th day of November, 1922, at the hour of 4.00 P. M.; that said witnesses were first duly sworn by me before testifying, as aforesaid, and that in response to the interrogatories propounded to them, they each testified in response thereto, as hereinabove written, and that their testimony, and the testimony of each of them was by me reduced to writing as given by said respective witnesses, and as near as might be in the identical language of said witnesses, and that said depositions were read over to said witnesses, respectively, and each signed her name to her respective deposition.

I further certify that I am not of counsel or of kin to any of the parties in this cause, and am not in anywise interested in the result thereof.

K. C. Cuthbert  
Commissioner.

March 19th, 1923.

Hon. T. W. Richerson,  
Register,  
Bay Minette, Alabama.

Dear Sir:

I am suggesting the death of Winston Jones in the case of Jesse M. Smith, complainant, vs. Winston Jones, et als., Respondents, now pending in the Circuit Court. This is done under Chancery Rule No. 101. As I understand this rule, you have the authority to issue an order for a summons to issue to the personal representatives or heirs, or both, of the said Winston Jones. If you will send the subpoenas to me, I will place them in the hands of the Sheriff of Mobile County, and request him to serve them at once.

Very truly yours,

*Jesse F. Hogan*

STEVENS, McCORVEY, McLEOD & GOODE  
ATTORNEYS AT LAW  
503-7 CITY BANK BUILDING  
MOBILE, ALA.

THOMAS M. STEVENS.  
GESSNER T. McCORVEY.  
WILLIAM McLEOD.  
DAVID B. GOODE  
C.M.A. ROGERS.

November 20, 1924.

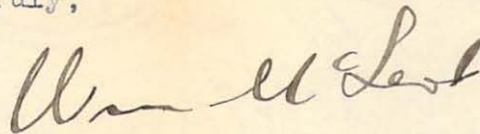
Mr. T. W. Richerson, Register,  
Circuit Court,  
Bay Minette, Alabama.

Dear Sir:- Jesse Smith vs. Cordelia Jones, et al.

You will recall that a part of the file in the above case was lost a long time. It had gotten confused with some papers in the file of Smiths, Young, Leigh & Johnston and when Judge Leigh located it he turned it over to me. I believe you have my receipt for the entire file and I am returning it herewith and ask that you please destroy my receipt.

Thanking you for your many courtesies, I am with best wishes,

Yours truly,



Enclosures.

WM: FAB

**The State of Alabama, Baldwin Mobile County**

Jesse M. Smith,

Complainant

**Circuit Court of Baldwin Mobile County**

No.

vs.

IN EQUITY.

Winston Jones and

Defendant

Pattie Jones Williams

The Respondents

requests the oral examination of the following named witness

on their behalf, viz.: Winston Jones, who resides in the City and County of Mobile, Alabama; also, Jack Fish, Joe White, Harry White and Bill Spotts,

said witnesses reside in the County of Baldwin, near Tenseaw,

State of Alabama.

Miss Jamie McDavid

who reside at Mobile, Alabama,

is suggested as a suitable person to be appointed Commissioner to take deposition of said

witness on such oral examination

*George Edington & Chas. Hall*

Solicitors for *Respondents*

No. 309. ....

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**Circuit Court of Mobile County**

Mobile, Alabama.

IN EQUITY.

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vs.

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.....

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DEMAND FOR ORAL EXAMINATION

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Filed Nov 11 1922

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*J. W. Riccison*

Register.

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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 Cordelia Vass Jones and Frank Norton  
Williams, as Executrix and Executor, respectively, of the last  
will and testament of Winston Jones, deceased, and as Trustees under  
the last will and testament of Winston Jones, deceased,.

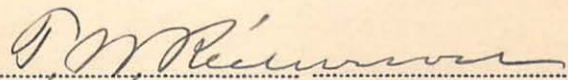
of Mobile, County, to be and appear before the Judge of the Circuit Court of Bald-  
win County, exercising Chancery jurisdiction, within thirty days after the service of Summons, and there to answer,  
plead or demur, without oath, to a Bill of Complaint lately exhibited by \_\_\_\_\_  
Jesse M Smith,

against said Winston Jones,

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 20th, day of March,

192.....



Register.

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

Serve on -----

Circuit Court of Baldwin County  
In Equity

No. -----

SUMMONS

Jesse M. Smith,

vs.

Cordelia Vass, Jones and

Frank Norton Jones, as executor and

executor under the last will and

testament of Winston Jones, Deceased.

Hon. Jesse F Hogan.

Solicitor for Complainant

Recorded in Vol. ----- Page -----

THE STATE OF ALABAMA  
BALDWIN COUNTY

Received in office this -----

day of ----- 192-----

Sheriff

Executed this 28 day of

March 1923

by leaving a copy of the within summons with

Cordelia Vass Jones as executrix  
and as trustee

Defendant

P. S. Cazalas

Sheriff

By H. D. Meyers

Deputy Sheriff

On March 28, 1923 I sent a copy  
of this within Frank Norton Jones to  
Cordelia Vass Jones, as executrix, and as trustee

P. S. Cazalas Sheriff  
by G. M. Wilson OS

Jesse M. Smith, Complainant,

vs.

In Circuit Court of Baldwin Co.

In Equity.

Winston Jones and Pattie  
Jones Williams, Respondents.

Now comes both of the above named Respondents, by their Solicitors of Record, and each of them, separately and severally demurs to the bill of complaint as filed in this cause, and as grounds for such demurrer assign the following;

1st. There is no equity in the said Bill of Complaint.

2nd. That the description of the lands as set out in the said bill of complaint is so vague and indefinite that the respondents are not charged with notice as to what lands they are called upon to set up their, title, interest or incumbrance.

3rd. Because the description of the lands as set out in the said bill of complaint are vague, indefinite, and uncertain.

4th. Because the respondents are unable from the description of the lands in the said bill of complaint to say what lands are involved in this cause of action.

Charles Hall and  
Gordon & Edington  
Solicitors for the Respondents.

JESS

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

Come now Jesse F. Hogan, Esq., solicitor for the complainant, and Messrs. Gordon and Edington, Esqs., solicitors for the respondents, and agree that said cause may be submitted in vacation on demurrer to the bill of complaint, upon briefs of solicitors.

June 7 Hager

Solicitor for Complainant.

Gordon & Edington

Solicitors for Respondents.

JESSE M. SMITH,  
Complainant,

-VS-

WINSTON JONES AND  
PATTIE JONES WILLIAMS,  
Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY.  
IN EQUITY.

Now come the Respondents and propound the following Interrogatories to the Complainant under Section 4049 of the Code:

FIRST: You state in your Bill of Complaint that you own and are in possession of Sub-Division "A" and Sub-Division "C" of Fractional Section 7, Township 2 North, Range 2 East, will you please state from whom you purchased the said lands, and if said deed is recorded, please state in what Deed Book and Page it is recorded on the Records of Baldwin County. Please state exactly where said land is located in Baldwin County, and state whether or not Sub-Division "A" and Sub-Division "C" lie side by side. Please state how many acres of land are contained in Sub-Division "A" and how many acres are contained in Sub-Division "C".

SECOND: Please state upon what Map are the said Sub-Divisions "A" and "C", or either one of them is shown, and whether or not said Map is recorded in Baldwin County. Please state if said Sub-Division "A" or said Sub-Division "C" are bounded on any side by the Alabama River. Please state what lands bound Sub-Division "A" on the North, East, West and South sides. Please state how Sub-Division "C" is bounded on the North, East, West and South sides. Please state if either of said Sub-Divisions touch Section 47, Township 2 North, Range 2 East at any point, and if so, please state as near as you can what point.

THIRD: You state that you are in the possession of said lands, please state when you went into possession of said lands. Please state if said lands are fenced. Please state if you are cultivating any of said lands, and if so, which. Please state if there is any one living on said lands, and if so, who. Please state what you have done on said lands at any time during the past twelve months.

FOURTH: You allege in your Bill of Complaint that the defendants claim, or are reputed to claim, some right, title or interest in, or encumbrance upon said lands, will you please state what claim the defendants make to said lands, or have made to said lands. If you state that they are reputed to claim some interest or encumbrance, please state who told you that they claimed some interest or encumbrance. If you have an abstract showing that they claim some interest, right, or title, or some encumbrance upon said land, please state by what instrument they claim same, and whether or not said instrument is recorded, and if so, in what book or record of Baldwin County they are recorded. Please state by what instrument, and if recorded, where, the Respondents claim any interest or encumbrance upon the said lands.

FIFTH: Please state if your claim to said lands did not grow out of a tax title. If you say yes, please state when said lands were sold for taxes, and to whom they were then assessed.

Gordon & Covert  
ATTORNEYS FOR RESPONDENTS.

STATE OF ALABAMA,  
MOBILE COUNTY.

Personally appeared before me, Inez Kramer, a Notary Public, in and for said State and County, Robert E. Gordon, who being by me duly sworn, deposes and says: That he is one of the Attorneys of Record for the Respondents in the above said cause, and that if the answers to the foregoing interrogatories are well and truly made, that they will be material evidence for the Respondents in the trial of said cause.

Robert E. Gordon

Subscribed and sworn to before me this 2nd day of June, 1921.

Inez Kramer  
NOTARY PUBLIC, MOBILE COUNTY, ALA.

I, as Attorney of Record for Jesse M. Smith in the above cause, do hereby accept service of the foregoing interrogatories, and do hereby waive all further notice thereof. Given under my hand this 7th day of June, 1921.

Jesse M. Smith  
As Solicitor for Complainant.

JESSE M. SMITH,

COMPLAINANT,

VS

WINSTON JONES &  
PATTIE JONES WILLIAMS,

RESPONDENTS.

No. \_\_\_\_\_

IN THE CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA.

IN EQUITY.

BRIEF OF COMPLAINANT ON DEMURRERS TO BILL.

The demurrers to the bill raise the single question of the sufficiency of the description of the land contained in the bill of complaint. This description is as follows:

Subdivision A and Subdivision C of fractional section seven, township two North, of range two East, St. Stephens Meridian, Alabama; all of said lands lying and being in the county of Baldwin, state of Alabama.

This description is identical with the description contained in the patents under which complainant claims. The complainant claims under two patents; both dated the 30th day of May, 1833; the description in one being as follows:

The West subdivision C. of fractional section seven, in township two of range two East in the district of lands subject to sale at St. Stephens Alabama, containing one hundred and thirty four acres, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor General.

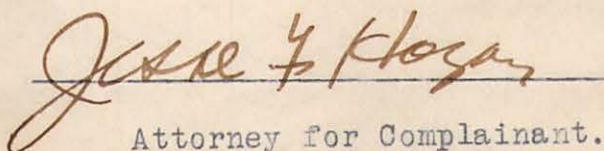
The description in the other patent is as follows:

The Southeast subdivision A of fractional section seven in township two of range two East, in the district of lands subject to sale at St. Stephens, Alabama, containing one hundred and thirty two and fifty hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor General.

The foregoing description according to the official records of the Land Office certainly is definite and sufficient. These tracts are shown very clearly on the official plat.

The court will take judicial notice of the official surveys made under the authority of the General Land Office.

Respectfully submitted,

  
Attorney for Complainant.

THE STATE OF ALABAMA,  
BALDWIN COUNTY.

CIRCUIT COURT OF BALDWIN COUNTY,  
IN EQUITY.

To any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon Winston Jones and Pattie Jones Williams,

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

Jesse M. Smith,

against said

Winston Jones and Pattie Jones Williams,

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 April

1921.

*T. W. Richerson*

Register.

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

2 Original (124)

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

Circuit Court of Baldwin County  
In Equity

No. \_\_\_\_\_

SUMMONS

Jesse M Smith

vs.

Winston Jones, 953 Gov. St.  
Mobile Ala.

Pattie Jones Williams 1272 Dauphin St.  
Mobile Ala.

RECORDED

Jesse F Hogan.

Solicitor for Complainant

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

THE STATE OF ALABAMA  
BALDWIN COUNTY

Received in office this \_\_\_\_\_  
day of \_\_\_\_\_ 192\_\_

Sheriff

Executed this 27 day of  
April 1921

by leaving a copy of the within summons with

Winston Jones and Pattie  
Jones Williams  
Defendant

W. H. Stalham Jr.  
Sheriff

By M. B. Edgworth  
Deputy Sheriff

JESSE M. SMITH,

Complainant,

-vs-

WINSTON JONES, et als.,

Respondents.

IN THE CIRCUIT COURT OF BALDWIN  
COUNTY, ALABAMA.

NO.

AT LAW.

TO THE HONORABLE T. W. RICHMOND, REGISTER OF THE CIRCUIT  
COURT OF BALDWIN COUNTY, ALABAMA:

Comes now the complainant and suggests the death of the said Winston Jones, and that Cordelia Vass Jones and Frank Norton Williams are executrix and executor, respectively, of the last will and testament of the said Winston Jones, deceased; and that by the terms of said will all of the property belonging to the said Winston Jones at the time of his decease, including real, personal and mixed, excepting, however, certain real property located in the City of Mobile, Alabama, was devised to the said Cordelia Vass Jones and Frank Norton Williams, as trustees.

Wherefore, the complainant prays that an order shall be made for a summons to issue to the said Cordelia Vass Jones and Frank Norton Williams, as executrix and executor, respectively, of the will of said Winston Jones, deceased, and as trustees under said will, and complainant will ever pray, etc.,

*Jesse F. Hogan*  
Solicitor for Complainant,

JESSE M. SMITH,

Complainant,

1 vs-

WINSTON JONES. et als.,

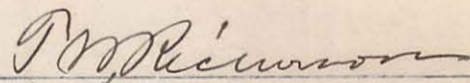
Respondents.

IN THE CIRCUIT COURT OF BALDWIN  
COUNTY, ALABAMA.

O R D E R.

The death of Winston Jones, one of the respondents in the foregoing cause, having been suggested, and it having been made to appear that all of the estate of the said Winston Jones, deceased, excepting certain real property situated in the City of Mobile, Alabama, was devised to the said Cordelia Vass Jones and Frank Norton Williams, as Trustees, to be held by them upon the trusts named in the will;

Now, therefore, it is ordered, adjudged and decreed that a summons issue to the said Cordelia Vass Jones and Frank Norton Williams, as executrix and executor, respectively, of the last will and testament of Winston Jones, deceased, and to the said Cordelia Vass Jones and Frank Norton Williams, as Trustees under the last will and testament of Winston Jones, deceased.

  
Register.

# The State of Alabama, Mobile County

Jesse M. Smith,

Complainant

## Circuit Court of Mobile County

No.

vs.

Winston Jones et als.,

Defendant

IN EQUITY.

The Complainant

requests the oral examination of the following named witness

on his

behalf, viz. :

J. E. Smith,	20 m	1 day	Pd 150 - 200	=	3 50
Robert A. Smith	20 m	Pd	150 - 200		3 50
Joe E. Smith	20 m	Pd	150 - 200		3 50
Cap't N. L. Durent,	15 m	Pd	150 - 150		3 00

~~Edmund S. Tunstall, Jr.,~~

Howard Hall,

Jesse M. Smith,

Henry White,

Joe White,

Bill Spotts,

said witnesses reside in the County of Baldwin,

State of Alabama.

T. W. Richerson, Register of the Circuit Court of Baldwin County,

who resides at Bay Minette, Alabama,

is suggested as a suitable person to be appointed Commissioner to take deposition of said

witnesses on such oral examination

*Jesse F. Hagen*

Solicitor for Complainant.

*Now Judge this is our brief on  
demurrer filed - as to which Mr. Logan  
has already his brief.*  
L -

JESSE M. SMITH,  
Complainant,

-VS-

WINSTON JONES AND  
PATTIE JONES WILLIAMS,  
Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY,  
IN EQUITY.

BRIEF IN SUPPORT OF DEMURRER AS FILED TO SAID BILL OF COMPLAINT.

The demurrer in this cause raises the proposition that there is no equity in the bill and that the description alleged in said bill is so vague and indefinite that the Respondents are not charged with notice of what they are called upon to defend. We are very frank in saying that if the description is sufficient then the demurrer is possibly not well taken.

The description in the bill is as follows:-

"Sub-Division "A" and Sub-Division "C" of Fractional Section 7, Township 2 North of Range 2 East, St. Stephens Meridian, Alabama; all of said lands lying and being in the County of Baldwin, State of Alabama."

Our position is that had this land been described as some Governmental Sub-Division of said Section, Township and Range, such as the Northwest Quarter or the Southwest Quarter, then the Court could take judicial knowledge and the Respondents would have been charged with notice as to the exact lands in dispute. But when the averment is Sub-Divisions "A" and "C", no Plat referred to, no Map referred to, and no Survey referred to, there is a broad difference so far as a definite description is concerned.

We have before us the Brief of Complainant, as to the

sufficiency of said description, and the lack of merit of the demurrer as filed. This Brief is simply a statement of what certain Patents contain, and upon reading this statement it will be found that the description, as given in said Patent, has, besides the averment and description in the complaint, the following:-

"According to the Official Plat of the Survey of the said lands returned to the General Land Office by the Surveyor General."

Because Complainant, in his Brief, avers a fuller description of the lands than is shown in the Bill of Complaint, is an admission on his part that the description can be given more accurately and more definitely, and that the description, as contained in the Bill, is insufficient. From the averments in the bill there is nothing shown which would indicate that the Sub-Divisions were according to the Survey of an Official of the General Land Office, or according to the Survey of the Complainant himself, or according to the Survey of some Local Surveyor. Counsel for Complainant states that the Court will take judicial notice of the Official Surveys made under the authority of the General Land Office; then it would be seen that it was at least necessary for the bill of complaint to have shown that the description, as alleged, was according to such a Survey. The Court cannot read into a bill of complaint something of which he takes judicial knowledge, but the bill of complaint is to be construed as it is written, and that more strongly against the Complainant.

The gentleman avers in his Brief that the above tracts or Sub-Divisions are very clearly shown on the Official Plat, but

this Court cannot know that the Sub-Divisions, as alleged, have any connection with any Survey under the authority of the General Land Office, or according to any Sub-Division which is made at the instance of the United States Government. Should he aver that the above Sub-Divisions are according to a Survey by the United States Land Office, or according to a Plat thereof, as made by said Government, then a field of operation for judicial knowledge will come into existence, but until he makes such an averment there is no field of operation for judicial knowledge.

We therefore respectfully submit that the demurrer is well taken and a decree should be entered sustaining same.

Respectfully Submitted,

*Gordon & Edingbrie*

Solicitors for Respondents.

Hogan & Steele  
Attorneys and Counsellors  
VAN ANTWERP BUILDING  
Mobile, Ala.

June 28, 1923.

Mr. Jesse M. Smith,  
Bay Minette, Alabama.

Dear Mr. Smith:

I have an agreement with Judge Leigh and Mr. McLeod to take the testimony of your witnesses on Tuesday, July 10th. This is the earliest date that seems to be convenient to all parties. You will please have your witnesses present. We will probably come to Bay Minette on the train that leaves Mobile shortly after 10 o'clock A. M. If any change should occur I shall advise you.

Very truly yours,

*Jesse F. Hogan*