

3645

J. D. MORRIS

Plaintiff

vs

~~CLAUDE YANCEY~~

Defendant

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

SECURITY FOR COSTS

I, C. LeNoir Thompson, Attorney at Law in the above styled cause hereby acknowledge myself security for costs in the foregoing appeal.

~~THOMPSON & WHITE~~

BY:

C. LeNoir Thompson
Attorney for the Plaintiff

*approved this
11th day of Jan. 1961
Alice J. Duck - clerk*

FILED

JAN 11 1961

ALICE J. DUCK, CLERK
REGISTER

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

March 15, 1960

~~Monday~~

~~XX105XX~~

, 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 Judgment

, the said J.D. Morris

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

~~Supreme~~ 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~~

C. LeNoir Thompson

~~with~~

, sureties,

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

~~W~~ 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 12

day of January, A. D., 1961

Attest:

Alice J. Duck, Clerk.

J. D. MORRIS

PLAINTIFF

VS

CLAUDE YANCY

DEFENDANT

IN THE CIRCUIT COURT OF

BAWDWIN COUNTY, ALABAMA,

AT LAW

NO. 3645

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

1.

Not guilty.

Wiltors & Brantley

BY: J Oliver M Brantley

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

Filed
8-27-58

Wiltors & Brantley

BY: J Oliver M Brantley

Attorneys for the Defendant

J. D. MORRIS

PLAINTIFF

VS

CLAUDE YANCEY

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

CASE NO. 3645

MOTION

Comes now the Defendant in the above styled cause and moves the court to stay this suit and for grounds therefor says as follows:

1.

That an ejectment suit has heretofore been filed by the Plaintiff in this cause and against the Defendant for the same land involved in this suit. That the costs in the prior suit have not been paid and on the authority of Ex parte State Ex rel. Gulf M. & N. R. R. Co., 95 So. 49, the Defendant files this motion.

Wilters & Brantley

BY: Tolbert M. Brantley
Attorneys for the Defendant

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority, in and for said County, in said State, personally appeared Tolbert M. Brantley, who being duly sworn, deposes and says; that the allegations of said motion are true and correct.

Tolbert M. Brantley

Sworn to and subscribed before me on this the 4 day of Sept., 1958.

Evelyn Watts
Notary Public, Baldwin County, Alabama

Filed
9-4-58

J. W. Morris vs. Claude Young

JURY LIST, SPRING TERM, MARCH 12, 1960

- ~~1. Baker, Louis, Laborer, Foley~~
- ~~2. Baker, Louis, Laborer, Foley~~
- ~~3. Holmes, Kenneth D., Civil Service, Elberta~~
- ~~4. Holmes, John H., Civil Service, Elberta~~
- ~~5. King, Ophens N. Jr., Clerk, Bay Minette~~
- ~~6. Hirz, Donald, Civil Service, Elberta~~
- ~~7. Hughes, Wayne, Farmer, Fairhope~~
- ~~8. Bishop, Bennett D., Meat Packer, Fairhope~~
- ~~9. Cooper, M.C., Carpenter, Robertsdale~~
- ~~10. Cooper, M.C., Livestock Dealer, Robertsdale~~
- ~~11. Corte, Ferdinand A., Farmer, Loxley~~
- ~~12. Gibson, Leon, Mechanic, Bay Minette~~
- ~~13. Harrison, John, Laborer, Summerdale~~
- ~~14. Barker, Joe C., Farmer, Bon Secour~~
- ~~15. Gumbert, Frank, Salesman, Bay Minette~~
- ~~16. Cantt, Ralph F., Farmer, Little River~~
- ~~17. Peavy, Richard V., Building Supt., Foley~~
- ~~18. Pilgrim, A.L., Farmer, Elberta~~
- ~~19. Pilgrim, H.E., Farmer, Elberta~~
- ~~20. Pilgrim, Joseph A., Jr., Farmer, Elberta~~
- ~~21. Reed, M.D., Postal Clerk, Bay Minette~~
- ~~22. Elant, Hugh Paul, Brockley Field, Bay Minette~~
- ~~23. Stone, W.A., Farmer, Little River~~
- ~~24. Bryant, Julis Lee, Farmer, Stockton~~
- ~~25. Chestang, Pelham D., Brockley Field, Bay Minette~~
- ~~26. Childress, Calvin, Farmer, Summerdale~~
- ~~27. Childress, Hobson, Farmer, Silverhill~~
- ~~28. Chestain, Charles, Farmer, Bay Minette~~
- ~~29. Cleverdon, Paul L., Farmer, Summerdale~~
- ~~30. Andrews, Herbert E., Farmer, Foley~~
- ~~31. Armstrong, William, Civil Service, Elberta~~
- ~~32. Williams, Bryant, Farmer, Fairhope~~
- ~~33. Wenzel, Emmett O., Merchant, Gulf Shores~~
- ~~34. Walters, Thomas W., Farmer, Bon Secour~~
- ~~35. Craft, Ervin P., Farmer, Daphne~~
- ~~36. Crull, Calvin, Creamery, Fairhope~~
- ~~37. Dean, David R., Farmer, Lottia~~
- ~~38. Fell, Walter, Mechanic, Bon Secour~~
- ~~39. Flowers, Albert T., Farmer, Gulf Shores~~
- ~~40. Ford, W.B., Jr., Type Setter, Foley~~
- ~~41. Inflan, Lawrence F., Machinist, Foley~~
- ~~42. Lazzari, Angelo, Farmer, Belforest~~
- ~~43. Lazzari, Joe, Farmer, Daphne~~
- ~~44. Graham, James R., Laborer, Bay Minette~~
- ~~45. Graham, John C., Brockley Field, Bay Minette~~
- ~~46. Grimes, Roy A., Newport, Bay Minette~~
- ~~47. Gullidge, William, Farmer, Robertsdale~~
- ~~48. Swallow, John H., Farmer, Robertsdale~~
- ~~49. Vitous, Albert, Farmer, Silverhill~~

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P XXXX XXXXX

D XXXX XXXXX

Div. No. _____

CERTIFICATE OF APPEAL. (Civil Cases,)

No. 3645

BALDWIN County, Circuit Court.

J.D. MORRIS

Plaintiff.
vs.

CLAUDE VANCEY

Defendant.

I, Alice J. Duck Clerk of Circuit Court,
of Baldwin County, Alabama, hereby certify that in the
cause of J.D. Morris plaintiff
vs.

Claude Vancey defendant,
which was tried and determined in this Court on the 15th day of
March 1960, in which there was a judgment for
Defendant ~~Dollars in favor of the plaintiff, (or judgment~~
~~for defendant)~~ ^{or} the 12 ^{day of} 11th ~~on the~~ January day of
1961, took an appeal to the Supreme Court
of Alabama to be holden of and for said State.

I further certify that J.D. Morris
filed security for cost of appeal, to the Supreme Court, on
the 11th day of January 1961, and that
C. LeNoir Thompson,
¹³~~and~~ sureties on the appeal bond.

I further certify that notice of the said appeal was on the
day of _____ 19____, served on Walters & Brantley
as attorney of record for said appellee, and that the amount sued for
was Property and \$1,000.00 Dollars. (~~Or certain bonds~~)
(~~Or personal property~~)

Witness my hand and the seal of this Court, this the 12
day of January 1961.

Alice J. Duck
Clerk of the Circuit Court of

Baldwin County, Alabama.

J. D. MORRIS

Plaintiff

vs

CLAUDE YANCEY

Defendant

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NOTICE OF APPEAL

Comes now the plaintiff, J. D. Morris, separately and severally, and does hereby appeal to the Supreme Court of Alabama from the final decree and judgment of the Circuit Court of Baldwin County, Alabama, at law, rendered in the above styled cause on, to-wit: the 15th day of March, 1960, and also, separately and severally, from the overruling of said plaintiff's motion for a new trial, said motion having been filed by said plaintiff and having been over-ruled by the Circuit Court of Baldwin County, Alabama, at law, on, to-wit: the 30th day of December, 1960.

THOMPSON & WHITE

BY:

C. L. D. Thompson
Attorneys for the Plaintiff

FILED

JAN 11 1961

ALICE L. DUCK, CLERK
REGISTER

JUN 29 1961

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1960-61

1 Div. 963

J. D. Morris

v.

Claude Yancey

Appeal from Baldwin Circuit Court

MERRILL, JUSTICE.

This is the third appeal by the plaintiff, J. D. Morris, in an ejectment suit against appellee. On the first appeal, we reversed a judgment in favor of appellee because the trial court had given the general charge for appellee, and we held that a jury question was presented. 266 Ala. 54, 94 So. 2d 195. At

2.

the second trial, the court submitted the question to the jury and verdict was in favor of the appellee. We affirmed the judgment based upon the verdict. 267 Ala. 657, 104 So. 2d 553.

Appellant filed another ejectment suit for the same lands. Verdict and judgment were again for appellee and this appeal followed. This is the final ejectment suit between these parties relating to these lands. Tit. 7, § 959, Code 1940.

There is little material difference in the facts in this case and those set out in Morris v. Yancey, 267 Ala. 657, 104 So. 2d 553. Since we do not reach a discussion of the facts on this appeal, the facts will not be restated here.

Of the twelve assignments of error, appellant purportedly argues all but No. 6 in brief. We list one group:

"1. For that the verdict of the jury and the judgment of the court is contrary to the great weight of the evidence.

"2. For that the verdict of the jury and the judgment of the court is contrary to the great weight of the evidence in that the legal evidence on the lands sued for fails to show such possession as will establish prescription on the part of the defendant.

"9. For that the verdict of the jury and the judgment of the court is contrary to the evidence in that the legal evidence concerning the property described in the

3.

complaint did not meet the requirements of the law for prescription.

"11. For that the verdict of the jury and the judgment of the court is contrary to the evidence in that it is based on evidence admitted concerning the occupancy of a tract or parcel of land which was not involved in the litigation nor described in the complaint.

"12. For that the verdict of the jury and the judgment of the court is contrary to the evidence in that the court erroneously admitted evidence of the occupancy of the 4-acre tract exception in said complaint."

These assignments of error are not sufficient to present any question for our review. Bertolla v. Kaiser, 267 Ala. 435, 103 So. 2d 736; Thompson v. State, 267 Ala. 22, 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.

Another group reads:

"7. For that the court erred in overruling objections of the plaintiff to testimony of the defendant and of the defendant's witnesses as to possession of the defendant of property excluded in the complaint.

"8. For that the court erred in admitting testimony repeatedly concerning occupancy and possession of the 4-acre tract which was excepted from the complaint.

"10. For that the court erred in admitting testimony repeatedly concerning occupancy and possession of land not a part of this action."

These assignments of error are too general. Morris v. Yancey, 267 Ala. 657, 104 So. 2d 553[12]; Orso v. Cater, 1 Div. 927, Sup. Ct. Ms.

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. Morris v. Yancey, 267 Ala. 657, 104 So. 2d 553. Moreover, there is no citation in the assignment of error of the transcript page on which the alleged error could be found. Brooks v. Everett, 124 So. 2d 105; Orso v. Cater, 1 Div. 927, Sup. Ct. Ms.

Assignments of error 3 and 4 charge that the verdict was contrary to the following part of the oral charge:

"So, gentlemen, as I said, when it comes down to it, you are the sole judges. The law is limited as to a paper title and possession and on the adverse side title by prescription. You are to determine which is the stronger."

This statement was part of the recapitulation of the trial court. The jury was to decide between plaintiff's evidence of paper title and alleged possession, and defendant's evidence of possession by his father from 1897 to 1933, and his own possession since that date. The verdict was not contrary to this instruction.

5.

The only remaining argued assignment of error is that the court erred in denying plaintiff's motion for a new trial on the grounds of newly discovered evidence.

To warrant the granting of a motion for a new trial on the ground of newly discovered evidence, the petitioner must show the nature of the newly discovered evidence and the fact that such evidence would probably cause a different conclusion to be reached, and that it is not merely in the nature of cumulative evidence, and in addition must show that they had no notice of the evidence and could not have discovered it by reasonable effort in order to obtain the benefit of it on the trial. Tankersley v. Tankersley, 270 Ala. 571, 120 So. 2d 744; Alexander v. Alexander, 230 Ala. 170, 160 So. 343.

Here, the newly discovered evidence, presented by an affidavit, was in the form of photostatic copies of a voter registration certificate from the records of the Probate Court of Mobile County, showing that appellee had paid poll tax in Mobile County from 1923 to 1945, and photostatic copies of old city directories of Mobile which showed that appellee's father had lived at various Mobile addresses.

This evidence was only cumulative, because appellant offered evidence at the trial that appellee lived in Mobile County and not in Baldwin County.

There is also a question about due diligence. This dispute has been in the courts since 1955 and these records had been in existence all that time, and appellant's affidavit in support of the motion states that appellant and counsel "had previously searched court records of Mobile County."

6.

A new trial should not be granted on newly discovered evidence unless such evidence would probably change the verdict. Malone Coal, Grain & Motor Co. v. Hale, 207 Ala. 335, 92 So. 553. We are not convinced that the new evidence would probably change the verdict. Gray Lumber Co. v. Johnson, 239 Ala. 576, 195 So. 731.

Finally, a motion for a new trial based on newly discovered evidence is addressed largely to the trial court's sound discretion. Birmingham Electric Co. v. Toner, 251 Ala. 414, 37 So. 2d 584; Hopkins v. Harrison, 228 Ala. 180, 153 So. 255. We cannot hold that there was an abuse of discretion here.

AFFIRMED.

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

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 963,

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 six 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 June 29, 1961

J. Render Thomas
Clerk of the Supreme Court of Alabama

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 60-61

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 29th day of June, 19 61, 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 29th day of

June, 19 61

J. Render Thomas
Clerk of the Supreme Court of Alabama.

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 18 day of August, 1958.

Alice J. Luck
Clerk.

64-8-18-28
J. D. MORRIS

PLAINTIFF

VS

CLAUDE YANCEY

DEFENDANT

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

* AT LAW.
*

* CASE NO. 3645
*

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

All of the 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 854.5 feet for point of beginning, thence North 426.5 S 83 degrees 30' West 289.3 feet, M.O.L. to East margin BM 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.

THOMPSON & WHITE

BY: C. L. Davis Thompson

Attorneys for Plaintiff.

BEEBE & SWEARINGEN

BY: W. C. Beebe

Attorneys for Plaintiff.

Plaintiff demands a trial of this cause by jury.

C. L. Davis Thompson
Attorney for Plaintiff.

MICHAEL STEPHENS, a minor,
suing by his mother and
next friend, TILLIE K. STEPHENS,

Plaintiff

-VS-

AUTRY GREER, A. V. GREER, J. B.
GREER, AND E. S. GREER, individual-
ly and doing business as co-part-
ners under the firm name and style
of AUTRY GREER & SONS, and LOUISE
BEATTY,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

CASE NO. _____

ORDER

This cause coming on to be heard on the Complaint, Answer,
and Confession of Judgment by AUTRY GREER AND SONS and the Court
hearing the testimony of TILLIE K. STEPHENS for the minor, is of
the opinion that the Plaintiff should recover.

It is, therefore, ordered adjudged and decreed, that
the Plaintiff recover of the Defendant the sum of ONE HUNDRED AND
TWENTY-FIVE DOLLARS (\$125.00) damages, for which let execution issue.

Done this the 2nd day of September, 1958.

Hubert M. Hall
JUDGE OF CIRCUIT COURT

HAMILTON, DENNISTON, BUTLER & RIDDICK

PETER HAMILTON (1838-1886)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1899-1956)

ATTORNEYS & COUNSELLORS AT LAW
FIRST NATIONAL BANK BUILDING
MOBILE 13, ALABAMA

THOMAS A. HAMILTON
ROBERT P. DENNISTON
CHARLES R. BUTLER
HARRY H. RIDDICK
ROBERT R. LOCKLIN
W. JACK EDWARDS

September 4, 1958

Hon. Alice J. Duck, Clerk
Circuit Court of Baldwin County
Bay Minette, Alabama

Dear Mrs. Duck:

Would you kindly send us a certified copy of the Order and Judgment entered by Judge Hall in the case of Michael Stephens, plaintiff, vs. Autry Greer, et als, defendants, which was entered by Judge Hall on September 2. We would also like a certificate from you that the judgment has been paid. Please add any charges that you might have to the bill for court costs, which we are to pay.

Thanking you, we are

Yours respectfully,

For the Firm

HHR:gt
11502

P.S. We acknowledge receipt of bill for court costs in this matter and enclose herewith our check for \$10.20 in payment of same. Please let us know if there is any additional charge for for certified copy of the Order and Judgment and certificate of payment above requested.

H.H.R.

Enclosure