
 Jacob H. Reichert,
 Plaintiff,

 -vs-

 Jerome Sheip, Inc., a cor-
 poration, and Fannie I.
 Becker,
 Defendants.

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

Come the defendants in the above stated cause and move the Court to set aside the verdict and judgment rendered in said cause at the present term of the said Court and grant a new trial in the said cause, upon the following several and separate grounds, each of which is separately assigned as a separate ground:-

1. The Court erred in the trial of said cause in removing juror Reuben E. Stapleton from the jury of twelve impaneled as a struck jury under the provisions of Section 8663 of the Code to try said case after the said trial had been entered upon with a jury selected by striking as provided in said Section of the Code, to which action on the part of the Court the defendants duly and legally excepted.

2. The Court in the trial of said cause erred in permitting plaintiff to challenge juror Reuben E. Stapleton after the jury to try the same had been selected pursuant to the provisions of Section 8663 of the Code and the trial had been begun, upon the ground that the said juror was a member of a jury which had tried the case at a previous term of the Court, and in responding to said challenge by removing the said juror from the jury so selected, to which action the defendants duly and legally excepted.

2(a). The Court in the trial of said cause erred in excusing or removing from the struck jury which had been selected by striking as provided by Section 8663 of the Code and had been impaneled to try said case, one member of said jury and substituting for him another member of the regular jury venire then in attendance upon the Court but who was not one of the twenty-four jurors from which said jury had been selected by striking as aforesaid, to which action the defendants duly and legally excepted.

3. The Court in the trial of said cause erred in substituting, on its own motion, for juror Reuben E. Stapleton, who the Court had removed from the struck jury selected under the provisions of Section 8663 of the Code to try said case, after the said jury had been impaneled and the trial begun, juror T. L. Baggett, as to whom the defendants were given no opportunity to strike or otherwise exercise any peremptory right of challenge, to which action on the part of the Court the defendants then and there duly and legally excepted.

4. The Court erred in the trial of said cause in excusing

and removing from the struck jury of twelve selected under the provisions of Section 8663 of the Code and impaneled to try the said cause one of said jurors because of the said juror making it known after the trial had begun that he had been a member of a jury which tried the case at a previous term of the Court, to which action the defendants then and there duly and legally excepted.

5. The Court erred in the trial of said cause in substituting, on its own motion, for a juror who was a member of the struck jury of twelve selected under the provisions of Section 8663 of the Code to try said case and who had been excused and removed from said jury by the Court, another member of the regular jury venire then in attendance upon the Court, but whose name was not upon the list of twenty-four jurors from which the said struck jury had been obtained by striking as provided in Section 8663 of the Code, to which action on the part of the Court the defendants then and there duly and legally excepted.

6. The Court erred in the trial of said cause in admitting in evidence over the objection and exception of the defendants the deed executed by Anna Ieland, individually and as attorney-in-fact for Jule Durette and a number of others, under date of September 24th 1918.

7. The Court in the trial of said cause erred in admitting in evidence over the objection and exception of the defendants the deed from Max Collins to J. H. Reichert under date of September 24th 1918.

8. The Court in the trial of said cause erred in sustaining plaintiff's objection to the admission in evidence of a certified transcript from the records of the Mobile Cathedral showing the baptism of one Eduard, illegitimate son of Isabel, negress slave of Mr. Durette, to which action the defendants then and there duly and legally excepted.

9. The Court erred in the trial of said cause in sustaining plaintiff's objection to the introduction in evidence of a certified transcript from the records of the Cathedral at Mobile showing the baptism of Isabel, a mulatto, daughter of father unknown and of

Isabel, black slave of Mr. Durette, together with the accompanying additional extract from said records showing the date of the entry first mentioned, to which action on the part of the Court the defendants duly and legally excepted.

10. The Court erred in sustaining plaintiff's objection to the introduction in evidence of a certified transcript from the records of the Cathedral at Mobile of the baptism of Clara, a mulatto daughter of Isabel, black and free, father not known, to which action the defendants then and there duly and legally excepted.

11. The Court in the trial of said cause erred in sustaining plaintiff's objection to the introduction in evidence of a certified transcript from the records of the Cathedral at Mobile showing the marriage of Clara Durette to Frank Lalanda, to which action the defendants then and there duly and legally excepted.

12. The Court erred in the trial of said cause in sustaining plaintiff's objection to the introduction in evidence of a certified transcript of the records of the Probate Court of Mobile County, Alabama, of the petition of Joseph Durette, administrator of the estate of Regis Durette, to sell lands for the payment of debts, to which action the defendants then and there duly and legally excepted.

13. The Court erred in the trial of said cause in sustaining plaintiff's objection to the introduction in evidence of a certified transcript from the Probate Court of Mobile County, Alabama, of the answer of Isadore Durette and others to the aforesaid petition of Joseph Durette, as administrator, for the sale of lands, to which action of the Court the defendants then and there duly and legally excepted.

14. The Court erred in the trial of said cause in sustaining plaintiff's objection to the introduction in evidence of a certified transcript from the Probate Court of Mobile County, Alabama, of all proceedings in the matter of the estate of Regis Durette, deceased, to which action the defendants then and there duly and legally excepted.

15. The Court erred in the trial of said cause in sustaining plaintiff's objection to the introduction in evidence of that portion of the American State Papers which deals with the claim of Louis Durette to the land in controversy, to which action the defendants then and there duly and legally excepted.

16. The Court erred in the trial of said cause in sustaining plaintiff's objection to the introduction in evidence of a duly certified copy from the General Land Office of the plat showing the survey of the land in controversy, to which action the defendant then and there duly and legally excepted.

17. The Court erred in the trial of said cause by sustaining plaintiff's objection to the introduction in evidence of a copy of the field notes of the survey of the land in controversy, such copy being duly certified by the Probate Judge of Baldwin County, Alabama, to which action the defendants then and there duly excepted.

18. The Court erred in the trial of said cause by sustaining plaintiff's objection to the introduction in evidence of a certified copy of a deed executed by Isidore Duret and others to Walter Smith and James H. Coke under date of February 1st, 1831, and acknowledged under date of February 2nd, 1831, to which action the Court the defendants then and there duly and legally excepted.

19. The Court erred in the trial of said cause by sustaining plaintiff's objection to the introduction in evidence of the deed last above mentioned for the limited purpose of showing that the grantors in said deed there describe themselves as "devisees of Louis Durette", to which action the defendants then and there duly and legally excepted.

20. The Court erred in the trial of said cause by sustaining plaintiff's objection to the introduction in evidence of, for the limited purpose of showing color of title, a certified copy of a deed made by Frank David to John A. Cooper and Christian Becker executed on January 26th, 1870, and purporting to convey the land in controversy, to which action the defendants then and there duly and legally excepted.

21. The Court erred in the trial of said cause in sustaining plaintiff's objection to the introduction in evidence of a certified copy from the records of the Probate Court of Baldwin

County, Alabama, of a proceeding partitioning certain lands between Christian Becker and the heirs of John A. Cooper and in which the lands in controversy in this cause were partitioned to the said Christian Becker and the said proceeding being offered for the limited purpose of showing color of title, to which action on the part of the Court in sustaining said objection the defendants then and there duly and legally excepted.

22. The Court erred in the trial of said cause in sustaining plaintiff's objection to the introduction in evidence of a certified copy from the Probate Court of Mobile County, Alabama, of the last will and testament of Christian Becker, deceased, and of the probate thereof, to which action the defendants then and there duly and legally excepted.

23. The Court erred in the trial of said cause in sustaining the objection of the plaintiff to a question propounded to the witness Fannie I. Becker by the attorneys for the defendants inquiring, in substance, as to the possession and occupancy of the said lands by her husband, Christian Becker, in his lifetime and by her after his death, to which action the defendants then and there duly and legally excepted.

24. The Court erred in the trial of said cause in ruling, after the attorneys for the defendants had stated that they could show, and proposed to show, by several witnesses actual occupancy and possession of the lands in question since about the year 1870 by the defendant Fannie I. Becker and those under whom she holds, all such occupancy and possession having been under a claim of ownership by the occupant adverse to every one, that all such possession and occupancy was immaterial and could not be shown, to which action the defendants then and there duly and legally excepted.

25. The Court erred in the trial of said cause by sustaining plaintiff's objection to the proof of adverse possession on the part of defendants and those under whom they hold, which the defendants offered and undertook to make by the witnesses George W. Unruh, D. S. Barnett, Payton York, William F. Bryant, Berry A. Cannon and Percy Bryant, to which action as to the testimony of each of said witnesses separately the defendants then and there duly and legally excepted.

26. The Court erred in the trial of said cause by sustaining the objection of the plaintiff to the introduction and reading in evidence of the deposition of Cecelia Lelande theretofore taken in the cause by the plaintiff, to which action the defendants took and there duly and legally excepted.

27. The Court erred in the trial of said cause in sustaining the plaintiff's objection to the defendant's proving in this trial the testimony of a witness, Cecelia Lelande, given on a former trial of the same cause when called therein as a witness by the plaintiff, it being shown that the said witness was a woman who resided out of the County of Baldwin and was not present at the trial to which action the defendants duly and legally excepted.

28. The Court erred in the trial of said cause in giving to the jury, at the request of the plaintiff, the following written charge:

"2. The court charges the jury, that there is a prima facie presumption that Louis Duret was lawfully married to the mother of his children, if he had any, and this presumption could not be over turned without evidence, negating the existence of a common law marriage between Louis Duret and the mother of his children."

29. The Court erred in the trial of said cause in giving to the jury, at the request of the plaintiff, the following written charge:

"3. The court charges the jury that there is a prima facie presumption that parents of every child are lawfully intermarried and this presumption can be overcome only by clear and convincing testimony, which negatives both the existence of a marriage which had been solemnized between them and also negatives the existence of a common law marriage between them."

30. The Court erred in the trial of said cause in giving to the jury, at the request of the plaintiff, the following written charge:

"4. The court charges the jury that according to the undisputed testimony in this case, the records of the Catholic Church contain only such marriages as were solemnized in the church and the fact that there was no record of a marriage being solemnized in that church between Louis Duret and the mother of his children is not alone sufficient to overcome the prima facie presumption that they were man and wife."

31. The Court erred in the trial of said cause in giving to the jury, at the request of the plaintiff, the following written charge:

"11. The court charges the jury that it appears

from the evidence in this case, that the lawful heirs of Louis Duret are the true owners of the property in question."

32. The Court erred in the trial of said cause in giving to the jury, at the request of the plaintiff, the following written charge:

"13. The court charges the jury that if they believe from the evidence that some of the grantors in the conveyance to Max Collins, are the lawful heirs of Louis Duret, then they should find for the plaintiff."

33. The Court erred in the trial of said cause in giving to the jury, at the request of the plaintiff, the following written charge:

"14. The court charges the jury that under the undisputed evidence in this case, the absence of any record in the Catholic Church of a marriage between Louis Duret and the mother of his children, does not tend to show that they were not lawfully man and wife by a common law marriage.

34. The Court erred in the trial of said cause in giving to the jury, at the request of the plaintiff, the following written charge:

"15. The court charges the jury that it is their duty to render their verdict in accordance with the evidence introduced and the charge of the court."

35. The Court erred in the trial of said cause in giving to the jury, at the request of the plaintiff, the following written charge:

"16. The court charges the jury that it was not against the law of the State of Alabama for a white man to marry a negro woman, until after the Civil War."

36. The Court erred in the trial of said cause in giving the jury, at the request of the plaintiff, the following written charge:

"17. The court charges the jury that the facts that Louis Duret was a white man and the mother of his children, who were born prior to the Civil War, was a negress, if these were the facts, do not prevent the law from raising the prima facie presumption that Louis Duret and the mother of his children, were lawfully married."

37. The Court erred in the trial of said cause in giving to the jury, at the request of the plaintiff, the following written charge:

"18. The court charges the jury that if they believe from the evidence, that the children of Louis Duret were born prior to the Civil War, then they cannot consider the fact that the mother of his children was a negress as showing or tending to show, that she was not his lawful wife or that his children were not his legitimate children."

38. The Court erred in the trial of said cause in giving to the jury, at the request of the plaintiff, the following written charge:

"19. The court charges the jury that they have no right to return a verdict against the plaintiff in this case, because of any prejudice that they may entertain against the intermarriage between Louis Duret and the mother of his children."

39. The Court erred in the trial of said cause in giving to the jury, at the request of the plaintiff, the following written charge:

"A. The Court charges the Jury that in the absence of any evidence to the contrary the law presumes that the children of Louis Durette were his legitimate children."

40. The Court erred in the trial of said cause in giving to the jury, at the request of the plaintiff, the following written charge:

"B. The Court charges the Jury that the law presumes, in the absence of evidence to the contrary, that Louis Durette was lawfully married to the mother of each of his children at the time of his or her birth."

Stevens, McCony, McLeod, Good & Turner

N. R. Leigh, Jr. and

J. H. Webb

Attorneys for Defendants.

We acknowledge receipt on this 5th day of December, 1927, of a copy of the foregoing motion, and notice that the same will be heard by the Court at 1:30 o'clock P. M. of Friday, December 9th, 1927.

Harvey Smith Caffey

Attorneys for Plaintiff.

The motion of the defendants in this cause having been fully presented to the Court and the Court having been fully advised by Counsel for plaintiff and defendants and having fully considered the same, the Court is of the opinion that motion should be granted. It is therefore ordered and decreed by the Court that said motion be and the same hereby is granted except to granting of said motion granted and the verdict of the jury is set

set aside and a new trial granted
in said cause; The plaintiff duly
excepts to the order of the Court in granting
said motion in said cause
Dated at Bay Minette Ala this the
day of December 1927

John D. Leigh
Judge of the 2nd
Judicial Circuit
Alabama

1927

as being on the Court at 1:00 o'clock P. M. of December
of a copy of the foregoing report and notice and the same with
the foregoing report on this day of December, 1927

Witness my hand and seal of office at Bay Minette, Alabama, this 15th day of December, 1927.

copy of his certificate as the time of his or her trial,
that points relative has been fully satisfied to the motion of
pleasure in the presence of witnesses to the contrary.
13. The Court ordered the jury that the jury

order:

to the jury as the witness of the defendant and following
10. The Court called to the effect of each case in State

order.
that the certificate of points relative have his testimony
presence of all witnesses to the contrary the jury pleasure
17. The Court ordered the jury that the jury

order:

to the jury as the witness of the defendant and following
12. The Court called to the effect of each case in State

and the motion of his certificate.
that the certificate of points relative between points relative
this case presence of all witnesses that each will be
no longer to return a verdict against the defendant in
18. The Court ordered the jury that the jury

order:

to the jury as the witness of the defendant and following
19. The Court called to the effect of each case in State

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THE UNIVERSITY OF CHICAGO
LIBRARY

Jacob H. Reichert

74

Jerome Shipman
and Fernando V. Braker

Defendants' Motion
for a New Trial

Filed Dec 6/1927
T.W. Peterson
Clerk

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

Alabama Territory, :
:
Mobile County. :

For and in consideration of the sum of three thousand two hundred dollars to us in hand paid by Sam'l Acre of the County and Territory aforesaid, the receipt whereof we do hereby acknowledge, we Regis Duret, Joseph Duret, Isadore Duret, Charlotte Duret, Margueritte Duret, Genevieve Duret, Nannette Duret, Clairre Durett, Charles Lalande, Isabelle, his wife, late Isabelle Duret legal representatives, and heirs of the late Louis Duret, of the County and Territory aforesaid do assign, and transfer to the said Sam'l Acre all our right, title, claim and interest to, and in the land-claim or tract of land containing six hundred and forty acres confirmed to us in right of the late Louis Duret our father, by an act of the Congress of the United States entitled an act for the relief of Narcissus Braytin and other papers on the 9th day of April in the year of our Lord, one thousand eight hundred and eighteen; and we do moreover authorize the said Sam'l Acre to take possession of the same to the use of himself, his heirs, and assigns forever or to locate the same in the manner prescribed by the above, recited act, so that the Patent therefor may be issued in his own name, or in the name of his assigns.

In testimony whereof, we have hereunto hereunto set our names, and affixed our seals at the Town of Mobile, this 4th day of January in the year of our Lord one thousand eight hundred and nineteen.

Signed, sealed and
delivered in the
presence of:
Jno. Dail
Robt. R. Dade

his	
Regis X Duret	(LS)
mark	
Izazhe Durett	(LS)
Charlotte Durett	(LS)
Marguerit Durett	(LS)
Genevieve Durette	(LS)
Nannette Durette	(LS)
Clair Durette	(LS)
Ch Lalande	(LS)
Isabelle Lalande	(LS)
Charles Lalande	(LS)

Alabama Territory, :
Mobile County. :

Personally appeared before me Thos. Powell, Esq. a Justice of the Quorum for the County aforesaid, the person whose name are above written, who acknowledged the above signatures to be theirs, and that they did make, sign, and seal the above assignment of their right and title to the land-claim therein mentioned on the day and year therein written to the aforesaid Sam'l Acre.

Given under my hand and seal this 6th day of January in the year of our Lord one thousand eight hundred and nineteen.

Thos. Powell, J.Q.

State of Alabama, :SS
Mobile County. :

I, Henry Lewis a Clerk of the County Court of said county hereby certify that Thomas Powell was on the 6th day of January 1819 a Justice of the Quorum of said County as appears by the Records of my office.

Given under my hand & the seal of said Court this 3 day of February 1836.

H. Lewis, Clerk.

Filed for Record Dec. 18th 1916.

Recorded Jan. 8th, 1917.

J.H.H. Smith, Judge of Probate, per J.M.S.

The State of Alabama,:

Mobile County.

I, Henry Lewis clerk of the County court of said county hereby certify that Regis Duret, Joseph Duret, Isadore Duret, Charlotte Duret, Margueritte Duret, Geneveive Duret, Nannette Durett, Clairre Duret, Charles Lalande and Isabelle his wife late Isabelle Duret whose names are signed to the deed hereto annexed bearing date the 4th day of January 1819 were each and all on that day of lawful age according to the laws of the State that is to say they were twenty-one years of age and upwards.

Given under my hand and the seal of said Court this 15th day of June A D 1832.

(Court Seal)

Filed for Record Dec. 18th, 1916.

Recorded Jan. 8th, 1917.

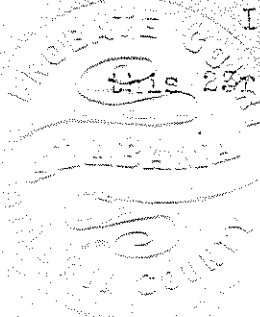
J.E.H.Smith, Judge of Probate, per J.M.S.

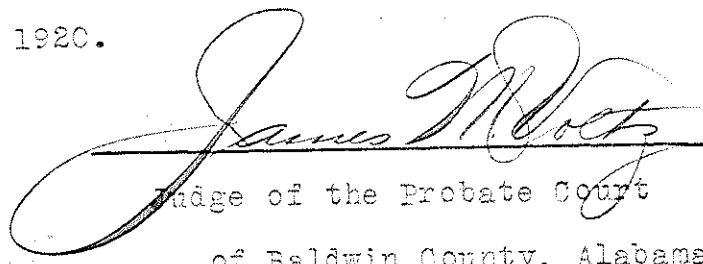
State of Alabama, :

Baldwin County. :

I, James M. Voltz, Judge of the Probate Court of Baldwin County, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an instrument of writing, appearing of record in Deed Book 25 N.S. on pages 412 & 413 in the office of the Judge of Probate of Baldwin County, Alabama.

In Witness Whereof I have hereunto set my hand and seal this 23rd day of November, 1920.




Judge of the Probate Court
of Baldwin County, Alabama.

THE STATE OF ILLINOIS

COUNTY OF COOK.

KNOW ALL MEN BY THESE PRESENTS, that we, E.J.

BIHLER and his wife Amanda E. Bihler of said County and State, for and in consideration of the sum of FIFTY DOLLARS (\$50.00) in hand paid to us by J.H. REICHERT, the receipt whereof is hereby acknowledged, do hereby remise, release, quit-claim and convey unto the said J.H. Reichert, all our right, title, interest and claim in and to the following described real estate, situate in the County of Baldwin, State of Alabama, to-wit:

Section Forty-three (43), Township

One (1) North, of Range One East.

TO HAVE AND TO HOLD the same unto the said J.H. Reichert, and unto his heirs and assigns, in fee simple.

WITNESS ours hands and seals, this the 2nd day of July, A.D., 1918.

E.H. Drumming
R. Knudson

Emil J. Bihler. (SEAL)
Amanda E. Bihler. (SEAL)

STATE OF ILLINOIS

COUNTY OF COOK.

I, W. S. Turner, a Notary Public, in and for said state and county, hereby certify that E.J. Bihler and Amanda E. Bihler whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day, that, being informed of the contents of the said conveyance, they executed the same voluntarily, on the day the same bears date.

Given under my hand and official seal this 2nd day of July

A.D., 1918.

W.S. Turner
Notary Public, Cook County, Illinois

THE STATE OF ALABAMA, } Office of the Judge of
BALDWIN COUNTY, } the Probate Court.
I, JAMES M. WELTZ, Judge of said Court in and for
said County, do hereby certify that the within insten-
ment was filed in this office for record on the 18th day of
July, 1918, and I further certify that the
same is duly recorded in Record Book No. 2777.
Witness my hand this 18th day of July, 1918.
James M. Welts
Judge of Probate Court

W. E. ...
...

Jacob H Reichert

vs.

Jerome H Sheep Inc.
and
Fannie J Becker.

Now comes the plaintiff in the
above entitled cause and amends
his Complaint in said Cause as
last amended so as to make the
description of the land sued for therein
read as follows:-

"All that portion
of section 43 Township 1 North Range
1 East, ^{Baldwin County, Alabama} which lies west of Stiggins
Lake except that portion thereof which
conflicts with Section 37 Township
1 North Range 1 East in said Baldwin
County, Alabama.

Harry J. Smith Coffey
Claude Hamilton.

Atty for Plaintiff.

RECORDED

Jacob H. Reichert
v.
Jerome H. Sheip Inc
et al.

Answer to
Complaint

Filed this 28th
day of May, 1924

J. W. Newman

Clk.

RECORDED

We the jury find for
the defendant

Frank Probst Foreman

We the jury find for
the plaintiff for the reasons recited
here in the body of the verdict
of the jury