

638

FRANCES G. RUSS,

Complainant,

VS.

M. H. GRIMES AND BERNARD GRIMES,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 638.

MOTION TO DISMISS.

Now comes the Defendants in the above entitled cause, by their attorney, and show unto the Court that on to-wit, January 3, 1940, Frances G. Russ filed in the Circuit Court of Baldwin County, Alabama, a detinue suit and suit on note against M. H. Grimes, in which suit Bernard Grimes was also named as Plaintiff, but which suit was filed by Frances G. Russ without his knowledge or consent, which parties are the same parties as the Complainant and the Respondents in this proceeding. The said suit that was filed on to-wit, January 3, 1940, was, on to-wit April 8, 1940 transferred by the Court to the Equity side of the said Court and is now pending on a motion to re-transfer to the Law side and was so pending on June 6, 1940 when this suit was filed and which suit will, if it is not re-transferred to the Law Side of the Court, determine all of the issues between the parties to this proceeding:

WHEREFORE, the Respondents, M. H. Grimes and Bernard Grimes move the Court to dismiss this proceeding.

Respectfully submitted,

J. B. Blackburn
Attorney for Respondents.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority, within and for said County in said State, personally appeared J. B. Blackburn, who, after being by me first duly and legally sworn, deposes and says: That he has personal knowledge of the facts stated in the foregoing motion and that the same are true.

Sworn to and subscribed before me on this the 17th day of July, 1940.

Ora S. Nelson
Notary Public, Baldwin County, Alabama.

STATE OF ALABAMA,
BALDWIN COUNTY.

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CIRCUIT COURT OF BALDWIN COUNTY,
IN EQUITY.

TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETING:

We command you, That you summon M. H. GRIMES and BERNARD GRIMES, 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 Frances G. Russ against said M. H. Grimes and Bernard Grimes, and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defendants 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, R. S. DUCK, Register of said Circuit Court, this 6 day of May, 1940.

R. S. Duck
Register.

FRANCES G. RUSS,

Complainant,

VS.

BERNARD GRIMES and M. H.
GRIMES,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY.

TO HONORABLE F. W. HARE, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA,
IN EQUITY:

And now comes your Complainant, FRANCES G. RUSS, and humbly complaining against the Respondents, BERNARD GRIMES and M. H. GRIMES, respectfully represents and shows unto your Honor and this Honorable Court as follows:

1. That your Complainant and the Respondents are all over twenty-one years of age, and residents of Baldwin County, Alabama.
2. That your Complainant and the Respondent, Bernard Grimes, are joint owners or tenants in common, and in possession of, subject only to a life estate of the Respondent, M. H. Grimes, to an undivided one-third, of the following described lands in Baldwin County, Alabama, to-wit:

The South half of the Northwest quarter of Section 23,
Township 5 South of Range 2 East.

Also beginning at the Southwest corner of the Northwest quarter of the Northwest quarter of Section 23, Township 5 South, Range 2 East, run East 900 feet to a post, thence North $57\frac{1}{2}^{\circ}$ West 575 feet to an iron pin, thence North 85° West 417 feet to the West line of said Section 23, thence South on said line to place of beginning and containing in all 84.8 acres, more or less;

that the Complainant, Frances G. Russ, and the Respondent, Bernard Grimes, own and are in possession of said property, subject only to a life estate of the Respondent, M. H. Grimes, with the rights of possession in the said M. H. Grimes, Frances G. Russ and Bernard Grimes.

3. That the said property described herein in Paragraph 2 is such that it cannot be equitably divided or partitioned among the owners with a sale thereof.
4. That the Complainant has employed the Solicitors to prosecute this action which is for the common benefit of all interested.
5. That on June 18th, 1938, the Respondent, M. H. Grimes, executed and delivered to the Bank of Fairhope his promissory waive note, to secure the sum of Five Hundred and Thirty (\$530.00) Dollars, payable September 28th, 1938; that there was given and described in said note, as collateral security therefor, the follow-

ing personal property:

Allis Chalmers Tractor and cultivator and power lift;
One Black mare mule, age about 7 years, weight about
1350 lbs., named "Maude";
One Black horse, age about 12 years, weight about 1300
lbs., named "Frank";
All of the cattle owned by the said M. H. Grimes, being
10 head, and all increase, and all the farming equipment
owned by him, including harness;

said note being of record in the Office of the Probate Judge of Baldwin County, Alabama, in Mortgage Book 77, page 209; that on February 24th, 1939, the said note, mortgage and the indebtedness secured thereby was, by the Bank of Fairhope, in consideration of the sum of Four Hundred and Ninety-five (\$495.00) Dollars, the amount due on said note, transferred and assigned to Frances G. Russ and Bernard Grimes; that there is now due on said note and mortgage the sum of Four Hundred and Ninety-five (\$495.00) Dollars, together with interest thereon from May 28th, 1939; that said transfer is of record in the Office of the Probate Judge of Baldwin County, Alabama, in Mortgage Book 79, page 180;

That in, by and as a part of said note, the said M. H. Grimes agreed to pay all costs of collecting or securing, or attempting to collect or secure the said note, including a reasonable attorney's fee, whether the same be collected or secured by suit or otherwise, and waived all right to exemption under the Constitution and laws of the State of Alabama or any other state as to personal property; that the Complainant now claims the benefit of said waiver and agreement to pay attorney's fee; That the Complainant and the Respondent, Bernard Grimes, are now the owners of said note and the indebtedness secured thereby, which is due and unpaid, and that the Respondent, Bernard Grimes, has failed or refused to join with the Complainant in the collection thereof.

6. That on June 18th, 1938, the Respondent, M. H. Grimes, executed and delivered to the Bank of Fairhope his promissory waive note, in the sum of Three Hundred and Fifty (\$350.00) Dollars, due June 28th, 1938; that in, by and as a part of said note, the Respondent, M. H. Grimes, waived all rights to exemption under the Constitution and laws of the State of Alabama, or any other state, as to personal property, and agreed to pay all costs of collecting or securing, or attempting to collect or secure said note, including a reasonable attorney's fee; that the Complainant now claims benefit of said waiver and agreement;

That on September 14th, 1938, the said note being past due, the Complainant, at the request of the Respondent, M. H. Grimes, paid said note amounting to Three Hundred and Fifty (\$350.00) Dollars principal and Six (\$6.00) Dollars interest;

that neither the Respondent, M. H. Grimes, nor any other person has repaid your Complainant; that the said note was supposed to have been transferred and endorsed by the Bank of Fairhope to your Complainant, however, the said Bank inadvertently marked said note paid; that the Complainant having paid said note now claims the right of subrogation to all rights of said Bank of Fairhope under said note; that the sum of Three Hundred and Fifty-six (\$356.00) Dollars is now unpaid and due to your Complainant by the Respondent, M. H. Grimes, together with interest on the principal amount thereof since September 14th, 1938.

7. That your Complainant submits herself, and agrees to abide by all orders, judgments and decrees of the Court, and offers to do equity as determined by the Court.

WHEREFORE, the premises considered, your Complainant prays that your Honor will, by proper process, make the said M. H. Grimes and Bernard Grimes party respondents to this Bill of Complaint, requiring them to plead, answer or demur to the same within the time and under the penalties prescribed by law and the practice of this Honorable Court;

Your Complainant further prays that your Honor and this Honorable Court will, upon a hearing of this cause, enter a decree that the real estate hereinabove described be sold and make and issue all such orders and decrees as may be necessary to effect the sale and a due distribution of the proceeds thereof, and appoint a suitable commissioner to make the sale and proper conveyance of the said property to the purchaser thereof, and ascertain and fix an attorney's fee to be paid Beebe & Hall, as Solicitors, out of the proceeds of said sale; that a reference be ordered to determine the amount due your Complainant under the notes herein described in Paragraphs 5 and 6, and also determine a reasonable attorney's fee due by said notes; that a further order, judgment and decree be made and entered determining the indebtedness due by the Respondents to the Complainant under and by said notes and that said chattel property described in the note set out in Paragraph 5 be ordered sold for the satisfaction of the amount due thereunder; that such orders, judgments and decrees as may be proper hereunder be entered granting to your Complainant such other, different or further relief as she may be in equity and good conscience entitled to receive;

That in the event that the Complainant is not entitled to the relief prayed for hereunder, then she prays that she may have such other or different relief as she may be entitled to receive hereunder, and that such orders, judgments and

decrees be made and entered as necessary and proper to protect and enforce all rights of the Complainant hereunder.

Frances G. Russ
Complainant.

BEEBE & HALL,

By: [Signature]

STATE OF ALABAMA,)
BALDWIN COUNTY.)

Before me, the undersigned authority, in and for said County, in said State, personally appeared FRANCES G. RUSS, who is known to me, and who having been by me first duly sworn, deposes and says, that she has read over and understands the allegations contained in the foregoing Bill of Complaint; that said allegations are true and correct.

Frances G. Russ

Sworn to and subscribed before me this 28th day of May, 1940.

[Signature]
Notary Public, Baldwin County, Ala.

FRANCES G. RUSS,

Complainant,

VS.

M. H. GRIMES AND BERNARD
GRIMES,

Respondents.

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

ANSWER.

Now comes Bernard Grimes, one of the Respondents named in the above entitled cause, reserving to himself all right of exception to the Bill of Complaint, for answer thereto says:

1. Respondent admits the allegations of paragraph numbered One of the Bill of Complaint.
2. Respondent admits the allegations of paragraph numbered Two of the Bill of Complaint.
3. Respondent denies that the lands described in the Bill of Complaint cannot be equitably divided or partitioned among the joint owners thereof without a sale thereof.
4. Respondent admits that the Complainant has employed a solicitor or solicitors to prosecute this action but denies that the prosecution of the said action by the said solicitors employed by the Complainant is for the common benefit of all of the parties to this suit.
5. Respondent admits that M. H. Grimes executed and delivered to the Bank of Fairhope his promissory waive note to secure the payment of Five Hundred Thirty Dollars (\$530.00) payable September 28, 1938, and admits that there was given and described in the said note as security therefor the property described in paragraph numbered Five of the Bill of Complaint, and further admits that the said note is recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Book Number 77 of Mortgages at page 209, but denies that the said note, mortgage and the indebtedness secured thereby were transferred and assigned by the Bank of Fairhope to Frances G. Russ and Bernard Grimes and further denies that any indebtedness is now due on the said note and for further answer says that a suit on the said note was commenced in the Circuit Court of

the said M. H. Grimes.

Respondent having fully answered all of the allegations of the said Bill of Complaint prays that he be dismissed with his reasonable costs in this behalf expended and further prays that his interest be protected in any decree rendered by the Court in this cause.

Respectfully submitted,

J. J. Mashburn, Jr.

Solicitor for Respondent,
Bernard Grimes.

FRANCES G. RUSS,

Complainant,

VS.

M. H. GRIMES AND BERNARD
GRIMES,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

ANSWER AND CROSS BILL.

Now comes M. H. Grimes, one of the Respondents named in this cause, reserving to himself all right of exception to the said Bill of Complaint, for answer thereto, says:

1. This Respondent admits the allegations of paragraph Numbered One of the Bill of Complaint.

2. Respondent denies each and all of the allegations of paragraph Numbered Two of the Bill of Complaint.

3. Respondent denies each and all of the allegations of paragraph Numbered Three of the Bill of Complaint.

4. Respondent admits that the Complainant has employed a solicitor to represent her in this proceeding but denies that the prosecution of this action by the said solicitor is for the common benefit of all of the parties to this proceeding.

5. This Respondent denies each and all of the allegations of paragraph Numbered Five of the Bill of Complaint and for further answer thereto says: That on to-wit, the 3rd day of January, 1940, the Complainant, Frances G. Russ, filed a suit in the Circuit Court of Baldwin County, Alabama, at law, in which Frances G. Russ and Bernard Grimes were Plaintiffs and M. H. Grimes, was defendant, being case number 549 on the Law Side of the said Court, which case was a detinue suit seeking to recover of the said Defendant named therein the personal property described in the said paragraph Five of the Bill of Complaint in this cause and was also a suit on the note described in paragraph Five of this Bill of Complaint, and on the 8th day of April, 1940, when the said cause was regularly set for trial, the Court made an ex meru motu order transferring the said cause to

Respondent and Cross Complainant, M. H. Grimes, during his lifetime which agreement was a material part of the consideration for the aforesaid conveyances to the said Frances G. Russ and Bernard Grimes, the said M. H. Grimes now elects to treat the said conveyances as void and now desires to have them cancelled and removed as clouds on his title to the said property.

PRAYER FOR PROCESS.

The said M. H. Grimes having now fully answered the Bill of Complaint, prays that this answer be taken and treated in all respects as a Cross Bill and prays that notice thereof be given to the said Frances G. Russ and the said Bernard Grimes in the form and manner prescribed by law and according to the rules and practice of this Honorable Court.

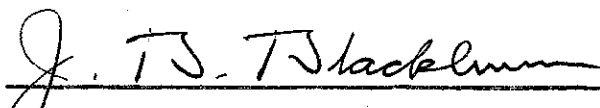
PRAYER FOR RELIEF.

THE PREMISES CONSIDERED, the said Respondent and Cross-Complainant, M. H. Grimes, prays for the following separate and several relief:

1. That the Court will order a reference to be held before the Register to ascertain the amounts due to Respondent and Cross Complainant by the said Frances G. Russ and Bernard Grimes because of the matters and things alleged in this Cross Bill.

2. That the two said conveyances from Respondent and Cross Complainant to the said Frances G. Russ and Bernard Grimes which are described in this Cross Bill, be cancelled and removed as clouds on Respondent and Cross Complainant's title to the said property.

3. That Respondent and Cross Complainant be granted such other, further and general relief as he may be equitably entitled to the premises considered.


Solicitor for Respondent and Cross-Complainant, M. H. Grimes.

RECORDED

ANSWER.

FRANCES G. RUSS,

Complainant,

VS.

M. H. GRIMES AND BERNARD
GRIMES,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Filed January 21, 1941
R. S. Dreck, Register

RECORDED

638.

Received in Sheriff's Office
June 7-1940
W.R. Stewart Sheriff

SUMMON AND COMPLAINT

FRANCES G. RUSS,

Complainant,

VS.

M. H. GRIMES and BERNARD
GRIMES,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

IN EQUITY.

*Filed June 6, 1940
R.S. Dault, Register*

Executed 6th 17th 1940
by serving copy of within Summons and
Complaint on

M.H. Grimes
and

Bernard Grimes

W.R. Stewart Deputy
Sheriff

By _____ Deputy Sheriff

BY MINNIE ALBAMA

ATTORNEY AT LAW

J. B. BLACKBURN

*Filed January 21, 1941
U.S. Bank, Progress*

IN EQUITY

EATON COUNTY, ALABAMA,

IN THE CIRCUIT COURT OF

Respondents:

CRIMES,

M. H. CRIMES AND BERNARD

VS.

Complainant,

FRANCIS G. BUSS,

ANSWER AND CROSS BILL.

MOTION TO DISMISS.

FRANCES G. RUSS,

Complainant,

VS.

M. H. GRIMES AND BERNARD GRIMES,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 638.

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- 5 4

Filed June 17, 1940
R. S. [Signature]
Registrar