

1056

BAY MINETTE, ALA., Mar 20 1933

J. W. Robinson, Jr.

IN ACCOUNT WITH

G. W. HUMPHRIES

JUDGE OF PROBATE, BALDWIN COUNTY

Please Return Bill With Remittance

Privilege Tax Rec. Fee Total

		Privilege Tax	Rec. Fee	Total
To	<p>Balance of <u>Wm. M. Moore, York Club vs. [unclear]</u> Rec. Mort. from <u>to</u> <u>W. C. [unclear]</u></p>		1.40	
	<p><u>Paid</u> <u>3/20/33</u> <u>G. W. Humphries</u> <u>Judge of Probate</u></p>			

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 MOBILE YACHT CLUB, a corp.

of MOBILE 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 amended

E. M. YOHN & D. COOK

against said MOBILE YACHT CLUB, a corp.

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 28 day of

July 193 2

T. W. Richerson 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

~~MOBILE YACHT CLUB~~

E.M. YOHN & D?COOK

vs.

MOBILE YACHT CLUB,

a corp.,

**The State of Alabama,
BALDWIN COUNTY.**

Received in office this _____

day of _____ 193_____

Sheriff.

Executed this _____ day of _____

193_____

by leaving a copy of the within Summons with _____

Defendant.

Sheriff.

By _____

Deputy Sheriff.

~~Hyatt, Heard & Chason~~
Solicitor for Complainant.
cross

Recorded in Vol. _____ Page _____

*Copy of cross bill &
copy of summons mailed
Sec. R. Swanson
atty for complainant
July 29 1930.*

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 E.M.YOHN (Bay Minette, Ala)

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

MOBILE YACHT CLUB, a corporation

against said E.M.YOHN

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 30th day of

June 1932

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

MOBILE YACHT CLUB,

a corporation

vs.

E.M. JOHN

(BAY MINETTE, ALABAMA)

GEORGE SOSSAMAN

Solicitor for Complainant.

Recorded in Vol. _____ Page _____

RECORDED

The State of Alabama,
BALDWIN COUNTY.

Received in office this 30th

day of June 1932

W.R. Stewart

Sheriff.

Executed this 30th day of

June 1932

by leaving a copy of the within Summons with

E.M. John

Defendant.

W.R. Stewart

Sheriff.

By *J.B. Wilson*

Deputy Sheriff.

C O P Y.

DECEMBER NINETEENTH, 1932.

Hon. George Sossaman,
Attorney at Law,
Mobile, Alabama.

Dear Sir: RE: MOBILE YACHT CLUB VS. YOHN.

In accordance with our conversation last Saturday, I have computed the amount of principal and interest due Mr. Yohn by Mobile Yacht Club, if you are allowed to redeem. I have figured the interest through January 1st and the total amount due Mr. Yohn, if the Judge grants your Motion and allows you to redeem, is \$438.77, which I have arrived at as follows:-

Property sold May 28th, 1928, to State, for.....	\$57.35
Interest at 15% since May 28th, 1928, to January 1st, 1933.....	39.37
1928 Taxes.....	50.82
Interest at 15% since 1/1/1929.....	30.49
1929 Taxes.....	50.82
Interest from 1/1/30 at 15%.....	22.86
1930 Taxes.....	50.82
Interest since 1/1/31 at 15%.....	15.24
1931 Taxes.....	50.82
Interest since 1/1/32 at 15%.....	7.62
1932 Taxes, yet to be paid.....	60.06
Expenses connected with prepar- ation and recording of Deed.....	<u>2.50</u>
Total.....	\$438.77.

According to your idea of the law you would have to pay Mr. Yohn \$117.00, provided of course your Motion is granted and you are allowed to redeem. This figure is arrived at as follows:

Purchase price from State.....	\$100.00
Interest at 15% from 1/18/32, which is the date of Deed.....	14.50
Expenses in connection with pre- paring and recording Deed.....	<u>2.50</u>
Total.....	\$117.00

G. S. #2.

12/19/32.

I believe that is all the information that I was to send you, and if these figures do not correspond with yours please advise me at your earliest convenience.

Yours very truly,

JC:G.

C O P Y.

GEORGE A. SOSSAMAN
Lawyer
First National Bank Building
Mobile, Ala.

December 20th, 1932.

Messrs. Hybart, Heard & Chason,
Attorneys at Law,
Bay Minette, Alabama.

RE: Mobile Yacht Club vs. Yohn.

Gentlemen:

I have checked over your letter containing the figures in regard to this case and same appear to be correct.

You will understand, of course, that I do not admit that my client is due to pay fifteen per cent interest, or that he is due to pay each of the years for which the property is taxable; but I do admit that if you would prove that the amounts as shown by you are correct if your contention is accepted, and that the \$117.00 is correct if my contention is accepted.

Very truly yours,

George A. Sossaman

GAS:TP

MOBILE YACHT CLUB,
a Corporation,

Complainant,

.vs.


E. M. YOHN and D. COOK,

Respondents.

IN THE CIRCUIT COURT
BALDWIN COUNTY, ALABAMA
IN EQUITY.

Comes your complainant and cross respondent, the Mobile Yacht Club, and respectfully shows unto Your Honor that the pleadings now on file in this cause show that this suit involves the validity of a sale by the State of Alabama for taxes upon certain lands, and that your complainant is the successor in title to the person against whom the taxes were assessed at the time of said tax sale, and the successor to the owner of the land at the time of said tax sale, and that your complainant is still in the actual possession of said land.

Wherefore complainant respectfully prays the Court to ascertain the amount paid by the purchaser at the tax sale referred to in the pleadings in this cause and the amount of taxes, if any, subsequently paid by this purchaser together with fifteen (15) percent per annum thereon, and that upon the ascertainment of said amount Your Honor will be pleased to enter a judgment for the amount so ascertained in favor of the respondents against the complainant, and that upon the payment into Court of the amount of said judgment the Court shall enter judgment for your complainant for the land and divest all title or interest in said lands out of the owner of the tax deed and cancel and remove said deed as a cloud upon your complainant's title.


Solicitor for Complainant.

Answer
to Exhibit

Mobile Yachting Club
vs
E. M. Golub & al

Filed August 20, 1932
T. W. Richardson
Registrar

E. M. Golub vs E. M. Golub
MOBILE YACHTING CLUB

IN THE COUNTY OF MOBILE
STATE OF ALABAMA
IN THE MATTER OF THE ESTATE OF
E. M. GOLUB

EXHIBIT

... of ... in ...
... of ... in ...
... of ... in ...
... of ... in ...
... of ... in ...
... of ... in ...

... of ... in ...
... of ... in ...
... of ... in ...
... of ... in ...
... of ... in ...
... of ... in ...

... of ... in ...
... of ... in ...
... of ... in ...
... of ... in ...
... of ... in ...
... of ... in ...

[Handwritten signature]
...
...
...

GEORGE A. SOSSAMAN
LAWYER
FIRST NATIONAL BANK BUILDING
MOBILE, ALA.

December 19th, 1932.

Hon. F. W. Hare,
Circuit Judge,
Monroeville, Alabama.

Re: Mobile Yacht Club vs. Yohn.

Dear Judge Hare:

After again studying over the tax laws it seems to me that the only sections that could be in conflict with section 3108 are section 3101 and section 3102, and sections 3123 and 3126.

It seems clear that if a valid tax title was acquired by the sale from the State Auditor, then there is no right of redemption unless it is by section 3108, for all of the sections imply that the right of redemption is barred after the tax deed is issued, and section 3126 specifically states that after the tax deed is issued the right to redeem is forfeited.

It, therefore, appears to me that in this proceeding for the purposes of this motion the tax deed may be treated as conveying a valid tax title. In such a situation there would be no hope for the real owner of the land except for section 3108.

Mr. Hybart seems to draw the distinction between tax sale by the tax collector at the court house door, and a private sale by the auditor after the expiration of two years after the sale at the court house door. Let us assume for the present that Mr. Hybart is right, and that the true tax sale is the sale made in front of the court house door. Notwithstanding this section 3108 will permit the real owner to redeem from such a sale and pay the tax purchaser the amount he bid at the sale plus the taxes subsequently paid by him plus fifteen per cent interest.

Section 3120 provides that when the land is bid in by the state at the court house sale and two years

Hon. F. W. Hare.

have elapsed from the date of said sale, then the auditor may sell same at private sale for an amount "not less than the amount of money for which the lands were bid in by the state with interest thereon at the rate of ten percent per annum from the date of sale, together with the amount of all taxes due upon said lands since the date of sale with interest thereon at the rate of eight percent per annum from maturity of such taxes." Of course any sale made for a less amount than the above would be void as the court knows the general rule that compliance with all the statutory requirements is necessary in order to make a valid sale. It will be noted that the tax deed given by the auditor to the respondents in this cause, and which is attached to and made a part of their cross-bill, recites in part as follows: "The auditor has fixed the price of said lands and ascertained that the sum of \$100.00 is sufficient to cover and satisfy all claims of the state and county against said lands for, or on account of, taxes, interest, fees and costs and officers' fees which were due upon or have accrued against said lands as provided in Chapter 58 Article 8 of the Code of Alabama of 1923".

In the case of Threadgill vs. Home Loan Company, 219 Alabama 411, and 122 Southern page 401, the court affirmed the decree of the trial court which trial court had held that the recital in the deed estopped the tax purchaser from asserting that the amount as shown therein was less than the lien of the state for taxes upon the lands. In part the court said: "(the recitals of the tax deed are set out) and whose recitals as to the amount being sufficient to cover and satisfy all claims of the State of Alabama and Jefferson County against said lands for, or on account of, taxes, interest, fees, costs and officers' fees respondent is estopped to deny."

It, therefore, seems to me that if the tax sale was valid that the only method of redemption is through section 3108, and that that section applies even though the tax sale was the sale at the court house door, for then the State of Alabama became the purchaser and Mr. Yohn became the vendee of the purchaser at the tax sale, and of course would stand in the shoes of the purchaser. Following the wording of the Statute, the court shall ascertain the amount paid at the sale which the Thread-

Hon. F.W. Hare.

gill case has held to be in effect not greater than the amount shown in the recitals of the tax deed.

If the court will again carefully read the case of Green vs. Stevens, 198 Alabama page 325, I believe that the court will be convinced that redemption under section 3108 is the true remedy in this case. The court in this case said in part as follows: "Its language is plain and its purpose to a certain extent too obvious to be mistaken. It arms the owner whose land has been sold for taxes with a right of redemption in addition to and different from that previously extended to defaulting tax payers.....no method of interpretation by referring to other sections of the code or the hardships of the particular case can lead to any other conclusion.....The case creates a new right.....As a matter of necessary law the purchaser knew of section 2312, though in fact it may have been one of the secrets of a voluminous code, in that the right of defendants under the section might be asserted whenever within the time prescribed he might bring suit to enforce his title and he acquired his title subject to that right."

Mr. Hybart argued that the court might, under the present state of the pleadings, find the tax sale invalid and permit a redemption under section 3123 of the code. He argued that all sections must be given their place, and that section 3123 applied to auditors' sales, while section 3108 applies to court house sales. It will be noted that section 3123 has been in the last four Codes, while section 3108 has only been in the last two Codes. Certainly, the lawmakers in enacting section 3108 knew of this other section, and, therefore, the new section must have superseded the old in-so-far as they came into conflict.

Again, in the Green vs. Stevens case, it says: "It arms the owner with a right of redemption in addition to and different from that previously extended to defaulting tax payers." Surely this shows that section 3108 is an additional remedy and supersedes section 3123 in-so-far as they conflict.

As stated before, all of the other sections in

Hon. F. W. Hare.

this Chapter on tax sales refer to situations where the tax deed is for some reason invalid, and when redemption is permitted from an invalid tax sale. Section 3108 is the only section based upon a redemption from a valid tax sale, *after 2 years have expired.*

In the Threadgill case the court considered an auditor's deed. However, the respondent in that case admitted the invalidity of his deed and claimed a lien. But the court held his lien to extend only to the amount he paid the auditor. I believe that if the court will read this case in the light of all the other tax decisions in this state, which lean heavily towards redemption and a protection of the real owner, that it is impossible to escape the conclusion that the Supreme Court, if the issue were directly presented to them, would hold that section 3108 applies to auditors' deeds.

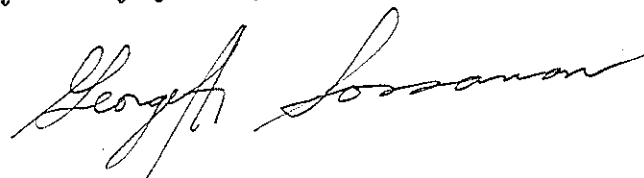
I am enclosing herewith a copy of a brief from which I read at the hearing showing all of the decisions construing section 3108.

I am also enclosing a form of decree which, if my contention is supported, would be in my opinion the correct form. It will be noted that this decree allows \$100.40 plus interest at fifteen percent per annum from the date of the deed to the date of the decree, and further requires that the complainant pay the 1932 taxes which are now due and chargeable against the respondents; and further shows that both of these sums have been paid.

It is my suggestions that the court sign the decree, and have the Register hold it until we have paid the money into court and paid the current taxes before filing it in the cause. This will do away with the necessity of a decree ascertaining the amount due and a second decree quieting the title.

I understand that you will show this letter to Mr. Hybart, and that he will make a reply thereto.

Very truly yours,



No. 5966

Book No.

Sup. John D. Cook

RECEIVED OF

John D. Cook

of Alabama and County of Baldwin, for the year 1932, divided as follows:

Dollars, 57.00

the sum of being in full of the amount of Taxes due the State

26.00

DOLLARS CENTS

Total Value of Real Estate

46 80

Total Value of Personal Property

Total State and County Tax

57

(Int. \$)

7 80

District School Tax, Dist. No.

(Int. \$)

District School Tax, Dist. No.

(Int. \$)

District School Tax, Dist. No.

(Int. \$)

Assessor's Fee

Int. 5 Dec 6

50

Interest on State and County Tax

55 10

Interest on District School Tax

9 7

Collector's Fee

50

Printer's Fee

Probate Judge's Fee

56 57

Grand Total

John D. Cook

Tax Collector

BRIEF ON RIGHT OF OWNER OF LAND TO REDEEM FROM TAX SALE

UNDER SECTION 3108 OF THE CODE.

Section 3108 of the Code of 1923 (being Section 2312 of the Code of 1907) reads as follows:

Ascertainment of amount of taxes paid and fifteen per cent per annum; conditional judgment in such case.--When the suit is against the person against whom the taxes were assessed, or the owner of the land at the time of the sale, his heir, devisee, vendee, or mortgagee, the court shall, on motion of the defendant, made at any time before the trial of the cause, ascertain the amount paid by the purchaser at the sale and of the taxes subsequently paid by the purchaser, together with fifteen per cent per annum thereon and a reasonable attorney's fee for the plaintiff's attorney for bringing the suit, and shall enter judgment for the amount so ascertained in favor of the plaintiff against the defendant, and the judgment shall be a lien on the land sued for. Upon the payment into court of the amount of the judgment and costs, the court shall enter judgment for the defendant for the land and all title and interest in the land shall, by such judgment, be divested out of the owner of the tax deed.

The first case construing this section is the case of Green vs. Stephens, 73 Southern page 532..... 198 Alabama page 325. This was a suit in ejectment wherein certain parties intervened and sought redemption of the property under Section 2312 of the Code of 1907. The court permitted this redemption. This case holds as follows:

Under Code 2312 providing that in suits to confirm tax title the owner may tender the amount paid by the purchaser, with interest, etc., and recover back the land, it is immaterial that the purchaser holds a valid tax title or that the period for the other methods of redemption has expired.

A motion pursuant to Code 2312, authorizing the owner of land sold for taxes to tender the amount paid at the tax sale, with interest, etc., and recover the land, which substantially follows the language of the statute, is sufficient.

Where tax title claimants sued tenants in ejectment, the landlord may intervene and tender the amount of taxes paid, with interest, etc., and recover the land under Code 2312.

In ejectment by a tax title claimant where the owner offered the amount of taxes, with interest, etc., pursuant to Code 2312, the court should ascertain whether the tax proceeding was taken against the owner or his predecessors, unless plaintiff disclaims any interest under the tax title.

In ejectment by a tax title, claimant, the owner seeking to pay the taxes, with interest and recover the land pursuant to Code 2312, has the burden of proving that the tax proceeding was taken against him or his predecessors.

The section creates a new right, and to construe it otherwise than according to its plain letter would destroy its efficacy in every respect. Indeed, appellant's argument comes to nothing less than this, that the section should be eradicated from the Code because its policy is bad and because another method of redemption had been provided. We have no power to change the policy shown by the clear language of the statute; but it may be observed that if the owner fails to avail himself of the other mode of redemption and waits until he is sued, the burden of redemption is increased by the addition of an attorney's fee and interest at a rate 10 per centum in excess of that required where resort is had to the other method.

The tax deed in this case was a deed issued by the Judge of Probate.

The second case construing this Code Section is Georgia Loan & Trust Company vs. Washington Realty Company. 87 Southern page 794.....205 Alabama page 288. This was a statutory bill to quiet title and seeking the additional relief of removing a certain tax deed as a cloud upon the title. The Court said in part as follows:

The complainant avers it is in possession of the land; and when the defendant, being out of possession, specifies by answer or

cross-bill its tax claim and liens, if any, then section 2312 of the Code of 1907, as amended by Acts 1915, 240, p. 475, will be a guide to the court in fixing the amount to be paid by complainant and for which defendant has lien on the lot.

The law does not require the owner, his heir, devisee, vendee, or mortgagee of land, in possession, when it is sold for taxes, to wait for the purchaser to file ejectment suit in order to put into operation section 2312 of the Code of 1907, amended by Acts 1915, 240, p. 475; but the owner, his heir, devisee, vendee, or mortgagee of the land, at the time of the tax sale, or the person against whom the taxes were assessed, being in possession, may file bill, like in this cause, and force defendant, the purchaser at the tax sale, to propound his tax claim, lien, or tax title, whether valid or invalid, so it can be paid as said act (section 240) requires, and the tax deed removed as cloud on the title to the lot. Section 2312, Code of 1907, as amended Acts 1915, 240 p. 475; Green v. Stephens, 198 Ala. 325, 73 South. 532.

The tax deed in this case was a deed issued by the Judge of Probate.

The next case construing this Section is a case of Threadgill vs. Home Loan Company. 122 Southern page 401.....219 Alabama 411. This was a suit

to quiet title against a purchaser of a state auditor's private sale for taxes. In this case the court held as follows:

In an action under Code 1923, 9905, to clear title, purchaser at state auditor's private sale cannot, under 3021 et seq. (including 3120) claim a lien on the land for interest estimated and computed on the real worth of the land largely in excess of the amount at which it was assessed; such purchaser being estopped to claim interest on any greater sum than that at which the property was assessed.

Purchaser at state auditor's private sale held not entitled to reasonable attorney's fee for services rendered by attorney in resisting suit to clear title by redeeming owner; Code 1907, 2312 being no longer applicable.

The next case construing this Section is the case of Burdett vs. Rossiter. 127 Southern page 202.... 220 Alabama page 631. This was a bill to quiet title by the owner against the holder of a Judge of Probate's tax deed. In this case the Court held:

Code 1923, 3108, confers an additional and distinct right of redemption, where valid tax titles have been made, and original owner remains in possession.

Additional right of redemption from tax sale conferred by Code 1923, 3108, which is somewhat more burdensome than that exercised under section 3111, is not subject to two-year limitation of section 3109.

When holder of tax title sues landowner for possession under Code 1923, 3108, authorizing motion by owner to have court ascertain amount necessary for redemption, landowner for purposes of motion in ejectment suit, is treated as admitting validity of tax title; no proof being required thereof.

Landowner in possession need not await suit in ejectment by holder of tax title, but may file statutory bill to quiet title under Code 1923, 9905, and obtain complete relief by exercising right of redemption under section 3108.

Landowner in possession, who files his statutory bill against holder of tax title to quiet title under Code 1923, 9905, does not thereby admit validity of tax sale, but may redeem under section 3108 if tax title is valid, and discharge tax lien under sections 3101 and 3102 if title is invalid.

The next case construing this section is the case of Bell vs. Propst, 127 Southern page 212....220 Alabama page 641. This was a statutory bill to quiet title with a cross bill by the owner of the tax title with a motion to redeem under Section 3108 by the complainant. This does not show whether or not the tax deed was an auditor's or probate judge's deed. The court held as follows:

Appellant claims that the suit is not of such nature as to make the right of redemption declared by that statute applicable. It will be noted that it is applicable "when the suit is against the person against whom the taxes were assessed, or the owner of the land at the time of the sale." It is not dependent upon the invalidity of the tax sale. Green v. Stephens 198 Ala. 325, 73 So. 532. In that case it was held, however, to be conditioned upon the owner of the land remaining in possession. We take this to mean such possession as that the purchaser must sue for its recovery in order for him to gain its possession. But it was held by this court that the owner in possession need not wait until the purchaser sues him, but may institute a suit to quiet title or remove a cloud, and exercise this right of redemption. Georgia Loan & Trust Co. v. Washington Realty Co., 205 Ala. 288, 87 So. 794. To justify a suit in equity to exercise this right, the complainant must have such possession as will require some nature of suit by the purchaser at tax sale to recover it of him. It need not be that peaceable possession which will justify a statutory bill to quiet the title. For if the original owner be and remain in such possession as that it will require some nature of suit to oust him, though his possession be a scrambling one, he need not wait to be sued to stimulate an exercise of the right conferred by section 3108, but may, as was done in Georgia L. & T. Co. vs. Washington Realty Co., supra, institute a suit in equity to enforce the right. Of course he could not, as the decree in this case stated, have the statutory relief to quiet the title unless he had peaceable possession. But if he is in possession and the purchaser is scrambling with him as to its retention, such situation should not deprive him of this right to file a Bill

for an exercise of this right of redemption whether it deprives him of relief under the statute to quiet the title or not. *Montgomery v. Spears*. 218 Ala. 160., 117 So. 753.

The cross-bill was dependent upon the tax title, and the former owner was in such possession as to require a suit to dispossess him, and the cross-bill was of a nature sufficient for that purpose; therefore the owner had the right of redemption conferred by the express terms of section 3108.

We think, therefore, that relief should not be denied cross-complainant, until the original complainants shall have complied with the order of the court prescribing the terms on which the right of redemption was granted. If complainants fail so to comply, relief will be due to cross-complainant on the cross-bill.

The decree of the circuit court will be so modified that it grants relief under the cross-bill in event complainants fail to exercise the right of redemption in the manner which the court may order. As modified, the decree of the court is affirmed.

The next case construing this Section is the case of *Morris vs. Card*, 135 Southern page 340..... 223 Alabama page 254. This was a bill to quiet title with a prayer to permit redemption from a tax sale. Was was a Judge of Probate's deed. The court held at follows:

✓ Statute confers distinct right of redemption, where valid tax titles have been made and original owner remains in possession. (Code 1923 3108)

Particular statutory right to redeem from tax sale is not subject to two-year limitation. (Code 1923, 3108-3109.)

Landowner in possession need not wait to be sued in ejectment by holder of tax title, but may file statutory bill to quiet title. (Code 1923, 3108, 3109).

Where vendee of original owner was in actual possession when he received his deed and when he filed bill to redeem against owner of tax title, statute providing particular right of redemption applied. (Code 1923, 3108).

Decree awarding redemption from tax sale should have included, in amount necessary to redeem, sidewalk and street improvement assessments paid by owner of tax title. (Laws 1915, p. 475, 240)

Statute applying to redemption from tax sale is that of the date of assessment and sale consummation by tax deed. (Code 1923, 3107, 3108.)

Interest on subsequently accruing taxes paid by tax purchaser will be repaid by person redeeming at rate required by statute obtaining at time of accrual and payment by tax purchaser and to time redemption is effectuated. (Code 1923, 3107, 3108.)

The last case construing this Section is the case of Chestnutt v. Morriss, 135 Southern page 344..... 223 Alabama page 254. This was a bill to quiet title in which there was a question of scrambling possession. The Court held as follows:

Where tax purchaser does not have actual possession of property, original owner or his vendee may go into possession of vacant property peaceably and sue to redeem, notwithstanding tax purchaser attempts to regain possession by force or intermittent acts. (Code 1923, 3108.)

Vendee of original^{owner}/peaceably acquiring actual possession of vacant property and building fence held entitled to redeem from tax sale, notwithstanding possession may not have been maintained continually from tax sale. (Code 1923, 3108.)

In dismissing the bill, the trial court, no doubt, had in mind the question of a scrambling possession. This was before the decision in Bell v. Propst. 220 Ala. 641, 127 So. 212, When the fence was built by the vendee, alleged to have been erected by the original owner, his possession as vendee authorized him to file a bill to redeem. Section 3108, Code. That is, so long as the tax purchaser does not have the actual possession of the property, though he has the right by valid tax deed, the true and original owner or his vendee may go into possession of vacant property peaceably, and file a bill to redeem under section 3108, even though the tax purchaser should be attempting to regain possession by force or by way of scrambling or intermittent acts.

It is insisted that the provisions of section 3108, Code, Acts 1915, p. 475, 240, for redemption by the several classes indicated by the statute, apply to those who constantly remained in possession, and not to one of the class who did not actually and continuously

hold the possession, against occasional acts hostile to his ownership, though "the owner of the land at the time of the sale, his heir, devisee, vendee, or mortgagee," may be in the actual possession at the time the bill for redemption is filed, and who cannot be peaceably dispossessed without appropriate "suit against such person."

The case of *Bell v. Propst*, supra, is decisive on the point that the bill may not be dismissed on the view that there was a scrambling possession. If when the vendee connected his title to the original owner at tax sale, and peaceably acquired the actual possession of the vacant property and built his fence, he acquired such possession as required a suit by the tax purchaser to gain possession, he had such possession as enabled him to redeem from the tax sale. That is, so long as the tax purchaser is not in the actual possession in person or by lessees or tenants, the true owner may go into the peaceable and actual possession and have redemption, though that possession may not have been maintained continually from the tax sale. See, also, *Morris v. Card*, supra.

We are of the opinion that the trial court was in error in dismissing the bill and taxing the complainant with the costs.

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA, SITTING IN EQUITY.

Comes your complainant The Mobile Yacht Club, a corporation, organized and existing under the laws of Alabama and whose place of residence is Fairhope, Alabama, and respectfully exhibits this its bill of complaint against E. M. Yohn who is over the age of 21 years and a resident of Bay Minette, Alabama, and D. Cook who is over the age of 21 years and resides in Montgomery, Alabama, and whose address is c/o of the Health Department of the State of Alabama. And complainant respectfully shows unto the Court as follows:

1. That it is in the actual, peaceful possession of the following tract of land in the County of Baldwin, State of Alabama described as follows:-

Lots 4 & 5, Block 6, of the Magnolia Beach Plan or addition to Fairhope, as per map or plat of said plan or addition recorded in Misc. Book No. 1, at Page 296, of the Probate Records of Baldwin County, Alabama, and as described in that certain deed dated April 30th, 1920, from A. D. Russell & wife to the EASTERN SHORE YACHT CLUB, INC., and recorded May 4th, 1920, in the office of the Judge of Probate of Baldwin County, Alabama, in Record Book No. 29, N. S. page 478; together with all improvements thereon, and with all appurtenances thereunto belonging or in anywise appertaining.

2. That the complainant owns said land in its own right and that its title thereto is denied or disputed by the respondents to this bill of complaint, or said respondents claim or reputed to own the same or some part thereof, or some interest therein, or to hold some lien or encumbrance thereon.

3. No suit is pending to enforce or test the validity of such title, claim or encumbrance of the said respondents, and that therefore the complaint brings this suit to settle the title to said lands and to clear up all doubts or disputes concerning the same.

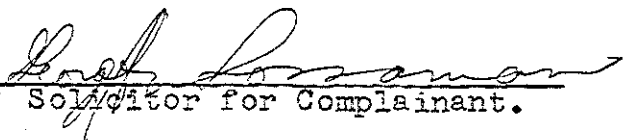
4. The complainant further shows unto the Court that it owns the entire fee simple title to said property, and that the respondents claim or are reputed to claim some right, title or interest in or encumbrance upon said lands, and the complainant calls upon them to set forth and specify their title, claim, interest, or encumbrance and how and by what instrument the same is derived and created.

PRAYER FOR PROCESS

Premises considered complainant prays the Court to take jurisdiction of this cause and have its process issue to the respondents commanding them to plead, answer or demur to this bill of complaint within the time required by law.

PRAYER FOR RELIEF

And complainant further prays that upon a final hearing of this cause the Court will be pleased to ascertain and settle the title to such lands and clear up all doubt or disputes concerning same, and decree that the complainant owns said lands in fee simple and that the respondents have no estate or interest in, or encumbrance upon said lands or any part thereof. And complainant prays for all such other, further and different relief as it may be entitled to receive the premises considered.


Solicitor for Complainant.

FOOT-NOTE:-

The respondents are requested to answer each and every allegation of the foregoing bill of complaint from paragraph one to paragraph four inclusive, but not under oath, answer under ^{oath} being hereby expressly waived.

Herath Suman
Solicitor for Complainant.

RECORDED

Handwritten notes and signatures in the right margin.

Original

RECORDED

Price of Complaint

Filed June 30th 1932
D. W. Reservoir
Register

6200-1000

These records of the Department are confidential and
should be kept confidential and no disclosure should
be made, either in whole or in part, to any person
other than those authorized to receive them.

MOBILE YACHT CLUB'
A Corporation'

Complainant'

-vs-

E. M. YOHN and D. COOK'

Respondents.

IN THE CIRCUIT COURT-IN EQUITY

STATE OF ALABAMA

BALDWIN COUNTY.

Now come E. M. Yohn and D. Cook and file this' their Answer and Cross-bill to the Original Complaint in this cause' and show unto your Honor as follows:-

FIRST:

That the Complainant' Mobile Yacht Club' is a Corporation organized under the laws of Alabama' and that E. M. Yohn and D. Cook are residents of the State of Alabama' and over the age of twenty-one years.

SECOND:

Cross-complainants admit that the Mobile Yacht Club is in the possession of the land described in paragraph one of the Original Bill of Complaint.

THIRD:

Cross-Complainants deny that the Mobile Yacht Club is the owner of the aforesaid lands in its own right' but respectfully show unto your Honor that in the year 1927 said land' which was duly assessed to the Eastern Shore Yacht Club' was sold by the State of Alabama and Baldwin County for the taxes due thereon' which were unpaid and delinquent' and which was done according to law' and that the State of Alabama at said sale' by the Tax Collector of Baldwin County' Alabama' became the purchaser of the same' said sale having taken place on May 28th' 1928' and that on the 18th day of January' 1932' the State of Alabama sold and conveyed said lands to your Cross-complainants' a copy of the said Deed being hereto attached' marked Exhibit "A" and made a part of this Bill of Complaint.

FOURTH:

Your Cross-complainants admit that there is no suit pending to enforce or test the validity of the title' claim or

encumbrance of the said Cross-complainants' and most unequivocally deny that the said Complainants own the entire fee simple title to said property' and respectfully show unto your Honor that they hold the fee simple title to said property and are entitled to its immediate possession and a judgment against the said Complainant for its damages by way of rent or use and occupation.

PRAYER FOR PROCESS.

THE PREMISES CONSIDERED' Cross-complainants pray that your Honor will take this Answer as a Cross-bill' and that your Honor will cause the usual Writ of Process to issue to the Mobile Yacht Club' making it a party defendant to this Cross-bill of Complaint' and requiring it to plead' answer or demur to the same within the time required by law.

PRAYER FOR RELIEF.

Your Cross-complainants further pray that upon the final hearing of this cause' that your Honor will decree that they have the fee simple title to the above stated property' and that your Honor will cause to be issued the appropriate Writ directed to the Sheriff of Baldwin County' Alabama' to place your Cross-Complainants in the possession of said property' and if necessary to issue a Writ of Injunction restraining the said Mobile Yacht Club from interfering with their use and occupation of said lands' and that your Honor will ascertain such reasonable amount as the ends of justice require to cover their damages as may be due them by reason of the unlawful use and occupation of said premises by said Mobile Yacht Club from the date that they purchased the same from the State of Alabama. Your Cross-complainants further pray that your Honor will grant to them all such other' further and different relief as in equity may seem just and meet. And your Cross-complainants will ever pray.

Hyatt, Heard & Pearson
Solicitors for Cross-Complainants.

FOOT NOTE:-

The Mobile Yacht Club is required to answer Paragraphs "FIRST" to "FOURTH" inclusive' but answer under oath is hereby and herein respectfully waived.

Hyatt, Heard & Pearson
Solicitors for Cross-complainants.

EXHIBIT "A".

"THE STATE OF ALABAMA

REVENUE DEPARTMENT.

KNOW ALL MEN BY THESE PRESENTS: That Whereas' on the 16th day of April' A. D.' 1928' the Probate Court of Baldwin County rendered a decree for the sale of lands hereinafter described and conveyed for the payment of state and county taxes then due from the Eastern Shore Yacht Club' the owner of said lands' and for the payment of the fees' costs and expenses of and under said decree and the sale had in execution thereof;

AND WHEREAS' thereafter' to-wit' on the 28th day of May' 1928' under and in pursuance of said decree said lands were regularly offered for sale by the Tax Collector of Baldwin County' for said taxes' fees' costs and expenses' and no person having bid a sufficient sum for said lands to pay the same' said lands were bid in for the State for the sum of said taxes' fees' costs and expenses;

AND WHEREAS' the time allowed by law for the redemption of said lands has elapsed since said sale' and the same not having been redeemed' the title thereto under said sale is still in the State;

AND WHEREAS' said lands having been entered upon the books of this Department' and the auditor and treasurer of this State' with the approval of the Governor' have fixed the price of said lands and ascertained that the sum of One Hundred Dollars (\$100.00) is sufficient to cover and satisfy all claims of the State and County against said lands for or on account of taxes' interest' fees and costs and officer's fees which were due upon or have accrued against said lands as provided for in Chapter 58' Article 8 of the Code of Alabama of 1923;

AND WHEREAS' application has been made to the Auditor of the State by E. M. Yohn and D. Cook to purchase said lands' and said sum of One Hundred Dollars (\$100.00) therefor has been paid into the State Treasury.

NOW' THEREFORE' I' John Brandon' as Auditor of the State of Alabama' by virtue of and in accordance with the provisions of said Chapter 58' Article 8' of the Code of Alabama of 1923' with the approval of the Governor of Alabama' and in consideration of the premises above set out' have this day granted' bargained' sold and conveyed' and by these presents do grant' bargain' sell and convey unto the said E. M. Yohn and D. Cook' without warranty or covenant of any kind on the part of the State' express or implied' all right and title of the State of Alabama in and to said lands' described as follows:

Lots Four (4) and Five (5)' Block Six (6)'
Magnolia Beach Addition to Fairhope' lying
and being situate in said County and State'

TO HAVE AND TO HOLD the same' the said right and title of the State in the lands aforesaid unto E. M. Yohn and D. Cook' and their heirs and assigns forever.

In testimony whereof I have hereunto set my hand and seal this the 18th day of January' 1932.

John Brandon (SEAL)
State Auditor.

STATE OF ALABAMA'

MONTGOMERY COUNTY.

I' Langdon C. Parker' a Notary Public in and for said County' in said State' hereby certify that John Brandon' whose name is signed to the foregoing conveyance as State Auditor' and who is known to me' acknowledged before me on this day that' being informed of the contents of this conveyance' he executed the same voluntarily on the day the same bears date.

Given under my hand this the 18th day of January' 1932.

(SEAL)

Langdon C. Parker'
Notary Public. "

Filed April 16th' 1932.
Recorded 52 N. S.' page 236.

THE MOBILE YACHT CLUB,
a Corporation,

Complainant,

.vs.

E. M. YOHN and D. COOK,

Respondents.

IN THE CIRCUIT COURT
BALDWIN COUNTY, ALABAMA
IN EQUITY.

D E C R E E

This cause coming on to be heard and being submitted upon the motion of the complainant for a redemption from the tax sale, and it appearing to the satisfaction of the Court upon the pleadings in this cause that the complainant is in the actual peaceable possession of the land described in the bill of complaint, and that the sole claim of the respondents to said land is by reason of a certain tax deed dated January 18th, 1932, and recorded in Deed Book 52 N. S. page 236 of the Probate Records of Baldwin County, Alabama,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the complainant be and is hereby allowed to redeem said land from the tax sale hereinabove referred to.

And the Court now proceeding to ascertain the amount paid by said purchaser at the tax sale which said deed shows to be One Hundred (\$100.00) Dollars, and it being further shown to the court that the respondents have paid Two and 40/100 (\$2.40) Dollars recording fees, and the Court further computing the interest upon said One Hundred Two and 40/100 (\$102.40) Dollars at fifteen percent from January 18th, 1932, does ascertain same to be \$116⁹⁵; and the Court disallows any sol-

isitor's fees for respondents' solicitors; and it further appearing to the court that no other amounts have been expended upon said land by the respondent, and the complainant now depositing in Court the sum of \$119²⁵ which it is hereby ascertained to be the total amount due from it for a redemption of said property from said tax sale; and it further being shown to the court that the taxes upon said lands for the year 1932 amount to \$60⁰⁶ and are now due and assessed to the respondents, and the complainant has filed in this cause its receipt showing the payment of these taxes,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the respondents hereto have no right, title or interest in, or encumbrance upon, the following described land, or any part thereof, and that the title to said land is hereby fixed and established in the complainant as against the respondents, viz:

All that tract of land in the County of Baldwin, State of Alabama, described as follows:
Lot Four (4) and five (5) of Block Six (6) of the Magnolia Beach Plan or Addition to Fairhope, as per map or plat of said plan or addition recorded in Miscellaneous Book 1 Page 296 of the Probate Records of Baldwin County, Alabama, and as described in that certain deed dated April 30th, 1920 from A. D. Russell and wife to the Eastern Shore Yacht Club, Inc., recorded May 4th 1920, in the office of the Judge of Probate of Baldwin County, Alabama in Record Book 29 N. S. Page 478; together with all improvements thereon and with all appurtenances thereunto belonging or in anywise appertaining.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the deed from John Brandon, as Auditor of the State of Alabama, to E. M. Yohn and D. Cook which deed is dated January 18th, 1932, and recorded in Deed Book 52 N. S. Page 236 of the Probate Records of Baldwin County, Alabama is null and void as an encumbrance against the title of the complainant to the land therein described,

and said deed is hereby cancelled and annulled and removed as a cloud upon the title of the complainant to the land herein above described.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Register of this Court within thirty days after the rendition of this decree shall file a certified transcript thereon in the Probate Court of Baldwin County, Alabama and tax the cost of same as a part of the costs in this cause.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the costs in this cause are hereby taxed against the ^{Complainants} ~~respondents~~ for which let execution issue.

Done in term time this th 27 day of ~~December~~ ^{February}

1932.

F. W. Hare
JUDGE.

1933.

Done in full and true faith

of the State of Michigan

140

W. M. ...

Bease

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MICHIGAN

vs.

of Baldwin County, Alabama
and certified pursuant to the provisions of the Act of the Legislature of the State of Michigan in the year 1906, and the Act of the Legislature of the State of Michigan in the year 1907, and the Act of the Legislature of the State of Michigan in the year 1908, and the Act of the Legislature of the State of Michigan in the year 1909, and the Act of the Legislature of the State of Michigan in the year 1910, and the Act of the Legislature of the State of Michigan in the year 1911, and the Act of the Legislature of the State of Michigan in the year 1912, and the Act of the Legislature of the State of Michigan in the year 1913, and the Act of the Legislature of the State of Michigan in the year 1914, and the Act of the Legislature of the State of Michigan in the year 1915, and the Act of the Legislature of the State of Michigan in the year 1916, and the Act of the Legislature of the State of Michigan in the year 1917, and the Act of the Legislature of the State of Michigan in the year 1918, and the Act of the Legislature of the State of Michigan in the year 1919, and the Act of the Legislature of the State of Michigan in the year 1920, and the Act of the Legislature of the State of Michigan in the year 1921, and the Act of the Legislature of the State of Michigan in the year 1922, and the Act of the Legislature of the State of Michigan in the year 1923, and the Act of the Legislature of the State of Michigan in the year 1924, and the Act of the Legislature of the State of Michigan in the year 1925, and the Act of the Legislature of the State of Michigan in the year 1926, and the Act of the Legislature of the State of Michigan in the year 1927, and the Act of the Legislature of the State of Michigan in the year 1928, and the Act of the Legislature of the State of Michigan in the year 1929, and the Act of the Legislature of the State of Michigan in the year 1930, and the Act of the Legislature of the State of Michigan in the year 1931, and the Act of the Legislature of the State of Michigan in the year 1932, and the Act of the Legislature of the State of Michigan in the year 1933.

Filed February 28, 1933,

M. Richardson
Registrar

the laws herein above described.

being as aforesaid the title of the complaint for
and said case is hereby cancelled and annulled and re-

RECORDED

MOBILE YACHT CLUB,
a Corporation,

Complainant,

vs.

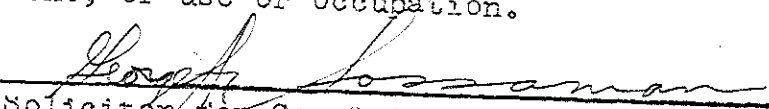
E. M. YOHN and D. COOK,

Respondents.

IN THE CIRCUIT COURT
BALDWIN COUNTY, ALABAMA
IN EQUITY.

Comes the complainant and for answer to the cross bill says:

1. It admits the allegations of paragraphs one and two thereof.
2. For answer to the third paragraph thereof complainant admits that said lots were assessed to the Eastern Shore Yacht Club and sold to the State of Alabama for taxes on May 28th, 1928 and that on January 19th, 1932, the State of Alabama sold said lands to the cross-complainant and that exhibit "A" attached to said cross bill is a true copy of the deed made in pursuance thereof, and complainant further says that at the time of said sale the Eastern Shore Yacht Club was in the actual, peaceable possession of said land and remained in said actual, peaceable possession until the complainant acquired title thereto from said Eastern Shore Yacht Club who delivered possession thereof to your complainant, and that your complainant has remained in the actual, peaceable possession thereof since that time.
3. And answering paragraph four of the cross complaint your complainant admits that there is no suit pending to test the title to said lands other than the present suit and complainant denies that the respondents hold the fee simple title to said property, and deny that the respondents are entitled to the immediate possession thereof, and deny that the respondents are entitled to any damages by way of rent, or use or occupation.


Solicitor for Complainant & Cross-Respondent.

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

MEMORANDUM FOR THE DIRECTOR

FROM: SAC, NEW YORK (100-100000)

DATE: 10/10/68

100-100000

RE: JAMES EARL RAY, AKA

ET AL

On 10/10/68, the following information was received from the New York Office:

On 10/10/68, the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

It is noted that the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

The New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

It is noted that the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

RECORDED

Robert G. ...
E. M. Golan ...

Filed Aug 3, 1968
R. P. ...
Register

of the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

It is noted that the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

The New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

It is noted that the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

The New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

It is noted that the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

The New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

It is noted that the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

The New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

It is noted that the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

The New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

It is noted that the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

The New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

It is noted that the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

The New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

It is noted that the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

The New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

It is noted that the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

The New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

It is noted that the New York Office advised that James Earl Ray, AKA, was observed at the New York City Club, 100 West 67th Street, New York, New York, on 10/10/68.

MOBILE YACHT CLUB, A CORPORATION,

Complainant,

VS.

E. M. YOHN and D. COCK,

Respondents.

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

BRIEF AND ARGUMENT OF
RESPONDENTS,
By

Hybart, Heard & Chason.

The proceedings in this case were instituted by the Complainant filing its bill of complaint for the purpose of quieting its title to Lots Four (4) and Five (5), in Block Six (6), Magnolia Beach addition to Fairhope, Alabama, whereupon Respondents filed their answer and cross bill setting up that they were the owners of the land involved by reason of the fact that they had purchased the same from the State Auditor, and obtained from him a deed to said land that the State had acquired by reason of a tax sale of the same by the Tax Collector of Baldwin County, Alabama, for delinquent taxes due thereon, and the State became the purchaser at said sale, said sale having taken place on May 28, 1928, and that on the 18th day of January, 1932, the State of Alabama sold and conveyed said lands to said Respondents.

Said Cross Bill of Respondents' prays for a writ of possession, or some such similiar writ, to be issued in their behalf placing them in possession of said property, and for such other and further relief as maybe right and proper in the premises. On the filing of the answer and cross bill by the said respondents, Complainant's moved the Court that the Court ascertain the amount expended by ~~these~~ Respondents in their said purchase of said property, and such amounts as they may have expended for taxes since and permit it to pay said amounts and be allowed to redeem the same under the provisions of Section 3108 of the Code of 1923.

Complainant has submitted, through its able Solicitor, several authorities dealing with Section 3108 of the Code, but all of these authorities with the exception of one, that is Threadgill v. Home Loan Company, 219 Alabama, 411, have to do with sales made by the Tax Collector to individuals and Corporations other than the State.

It is our contention that by reason of statutory provisions, there is a different rule laid down to govern the rights of redemption where one is claiming under a deed from the State Auditor by virtue of a valid sale of the lands for taxes than in the case of the ordinary purchaser at the tax sale, and in support of our contention, we quote the following from Hooper v. Bankhead, 171 Alabama, 637.

"Of course, no such condition surrounded the purchaser from the State. He is simply a buyer for cash. There is no redemption right or period to be considered."

In Threadgill v. Home Loan Company, the Court will observe that the respondent did not contend that there was a valid sale of the land for the taxes due thereon, or, if we are mistaken in this, the respondent did not contend for a writ of possession, but only contended that he was entitled to a lien on said lands by reason of its assignment to him by the State, and, of course, under the relief prayed for the Court had no authority to ascertain as to what rights he was entitled to by virtue of his deed from the State Auditor, and ~~in~~ a valid tax sale and proceeding that in-

vested the State with the title in and to said property, so consequently, the respondent, Threadgill, having only asked in his said answer and cross bill that the Court declare a lien and compensation therefor, there was nothing else for the Court to do than to ascertain what amount he was entitled to under and by virtue of his said lien.

The only reference that the learned Judge made to Section 2308, which in the 1907 Code was 2312 with the same provisions except the amount of interest, was that it was not applicable to the facts set forth in the proceedings in Threadgill v. Home Loan Company.

We have no higher authority for this statement than that of the Supreme Court in the case of Morris v. Card, 223 Alabama, 254, the Court said:

"In Threadgill v. Homeloan Company the suit was by the owner under Section 9905 to clear title, and in which there was answer and cross bill by the tax purchaser at the State Auditor's private sale, and asserting a lien for the amounts so paid under Section 3120 of the Code. The observation was made that the Statute providing for attorneys' fee for plaintiff's purchaser at tax sale to recover the possession of the land for bringing the suit for possession under the foregoing and last cited statute did not provide for purchasers at State Auditor's private sale."

In this proceeding it is conceded that there was a valid tax sale and in strict compliance of the law in the selling of said lands both by the Tax Collector and the State Auditor, and we contend that Section 3126 of the Code in the case at bar controls.

SECTION 2126.

"The right to redeem any real estate bid in for the State shall be forfeited unless such real estate is redeemed within the time prescribed in this chapter; and if not redeemed within that time, all of the right, title and interest of the owner of such real estate and of the person whose duty it was to pay the taxes thereon in and to such real estate shall be transferred to, and absolutely vested in the State."

It is an elementary proposition that every statute, when possible, should be given its field of operation. Section 3126 of the Code emphatically states that all of the right, title and interest of the owner of such real estate shall be transferred to, and absolutely vested in this State on the expiration of the period prescribed in said chapter, which is defined in Section 3122 as being two years.

SECTION 3122.

"When lands have been sold for taxes and bought in by the State, and after the lapse of two years from such sale no person entitled thereto has redeemed the same, the State Auditor may sell all of the right, title and interest of the State in and to such lands at the best price obtainable."

So it will appear that the State, after the two years, the owner not having redeemed the same being vested with the title to the same has the authority and the power and the right to sell said lands and vest the purchaser from it with whatever title or right or interest it may hold in and to the same, which is the absolute right, title and interest of the owner of such real estate.

Then, if this be true, how would it be possible to permit a redemption under Section 3108 of the Code, as the party moving for the same has no right, title or interest in and to the property by reason of the fact that by virtue of Section 3126 of the Code he has been divested of the same, and has no further rights in the premises? It not only says that it transfers the title and his interest, but said Section expressly states that all rights are passed out of him to the State, and, consequently, becomes extinguished and he ceases to have any further control over the property in any manner, shape or form. This being so, it necessarily follows to give the second Section, That is Section 3126 and Section 3108 a field of operation. That Section 3108 should be applied to the ordinary sales other than when the lands are bid off for the State, and Section 3126 should be applied when the facts are as set forth in the case at bar.

AMOUNT TO REDEEM.

We contend that the Complainant is not entitled to redeem this property at this time, but in the event that the Court is of the opinion that it is, we don't agree with the Complainant as to the amount that should be paid by it for this purpose. The Court will recall that in the case of Threadgill v. Home Loan Company 219 Alabama, 411, that the Cross Complainant asked affirmatively for his

relief as to his lien and the amount involved thereon, but in the case at bar the Complainant is moving the Court to fix the amount due, and coming into the equity Court as it has and submitting itself to its jurisdiction, then it should offer to pay whatever amount is due for the purchase price that the lands were bid off to the State for, together with the taxes that should have been paid thereon, together with the interest on the same. It is not a question of estoppel so far as we are concerned, but it is a question of the movant paying to the Respondents the exact amount that should have been paid upon the lands for the taxes, etc.

Your Honor will recall that Messrs. Chason and Sossaman were to agree upon the amount that the record disclosed that the taxes on which the lands were sold for. My recollections are that the amount due for taxes for the year that the land was sold for is something around Fifty (\$50.00) Dollars. The State held these lands for some several years, and the amount of the taxes for those several years should be in the neighborhood of the amount it was assessed for the year in which the lands were sold. This information we will obtain and deliver to your Honor in the event that you are of the opinion that the Complainant is entitled to redeem, and are of the further opinion that it should pay all amounts that it would have had to paid by way of taxes to the State and County if it had kept *it*.

We desire to call your Honor's attention to Section 3123 of the Code to the effect that the Auditor's deed to the purchaser would vest him with all of the right, title and interest of the State in and to the lands purchased by him; and such purchaser shall thereafter have all the right, title, and interest of the state in and to such lands, and shall be held and treated as the assignee of all the taxes due upon such lands, or for which they were sold, and the penalties, and of all the taxes that should have been, under the law, assessed upon the same, if they had been the property of a private citizen of the state; and he shall be clothed with all the rights, liens, powers and remedies, whether as a plaintiff or defendant, respecting said lands as an individual purchaser at the tax collector's sale would have in similar circumstances.

With the data referred to above, that is the agreement between Messrs. Chason and Soßsaman, will clearly demonstrate that the sum of \$100.00 will not near cover the amount of taxes that this property was subject to, and that the movant in this case will not be doing equity by paying to us the sum of \$100.00, for, by this last mentioned section we have been transferred all of the rights, and interest of the State of Alabama for a consideration as to the taxes that should have been paid upon this property from the time that it was sold up until the present time.

Respectfully submitted,

Hyatt & Howard P. C. has an
Solicitors for Respondent.