

MARTHA McNISKEY,

Complainant,

VS.

FRANK W. WALKER,

Respondent.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.

In Equity.

The Bill in this case is filed by a married woman whose husband has never been a resident of this State, and prays for the cancellation of a mortgage executed jointly by Complainant and her brother, who is not made a party to the suit. The husband did not join in the execution of the mortgage.

The allegations of both the Bill and Answer are loosely made and unsatisfactory.

The facts as they were gathered from the pleadings and proof seem to be that the Respondent, Walker, as agent for a fertilizer company, secured a judgment against Complainant's brother, presumably for \$372.00, as this is the amount of the mortgage. It appears that this judgment was obtained on November 28, 1921, and that subsequently thereto the judgment ~~was~~ ^{deputy}, who joins Complainant in the execution of the mortgage, conveyed this land to the Complainant, ^{for a nominal consideration.} It appears that the Respondent, Walker, procured a deputy sheriff to levy an execution on certain personal property alleged in the bill to be the property of the Complainant, the execution being on the judgment referred to. The allegation in the Bill that the personal property levied upon was the property of the Complainant is disproven by all the testimony, including that of the Complainant. All the proof as to the judgment and execution is not the best evidence, and under Section 6565 of the Code should not be considered.

It further appears that on the same day the Bill was filed, December 19, 1927, the mortgage was foreclosed, and Walker became the purchaser at and for the sum of \$500.00. It does not appear whether or not service was had on the Bill before

the mortgage was foreclosed, and it further appears that when the execution was levied on certain personal property as that of the judgment debtor, Complainant executed this mortgage on consideration that the levy on the personal property be released, and a mortgage on the real estate be accepted and time given for payment. It appears also that on this date the Complainant paid an additional sum of \$50.00 as some kind of expense, which is not satisfactorily explained. Without satisfactory explanation Complainant would be entitled to a return of this \$50.00, but there is nothing in the Bill justifying a decree with respect thereto. Nor is there anything in the Bill with respect to the sum realized at the foreclosure sale over and above the \$372.00, consideration named in the mortgage.

The Complainant claims that the mortgage was without consideration and the facts show that she was not indebted to the mortgagee, but there is no other evidence other than this to show that there was not in fact a valid consideration. The burden is on the Complainant to establish this fact by evidence. There is no denial that there was a beneficial and valuable consideration moving to another at her request, nor is there any denial that there was some detriment to the mortgagee inuring to the benefit of the mortgagor, or to some third party at her request.

Both the pleadings and proof are in such condition that I do not feel that justice can be done the parties by a decree on the present stage of the record. The Court will, therefore, of its own motion, set aside the submission and allow the parties ninety days for such amendments to pleadings and additional testimony as they may see fit to file.

The Register will enroll the following

D E C R E E

This cause coming on to be heard is submitted for final decree upon the pleadings and proof as noted by the Register.

Upon consideration of such pleadings and proof the Court is convinced that justice cannot be done ^{in the present state of the record} between the parties, and;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the submission in this cause be set aside, and the parties allowed ninety days from the date hereof for amendments to the pleadings and for the taking of additional testimony, if they so desire.

This 19th day of July, 1938.

J. M. Hare
Judge

MARTHA McNISKEY,

Complainant,

-VS-

FRANK W. WALKER,

Respondent.

IN THE CIRCUIT COURT--IN EQUITY

STATE OF ALABAMA

BALDWIN COUNTY.

It is stipulated and agreed by the parties to this proceeding, acting through their respective Solicitors of Record, that a copy of the Deed from William Petritis to Martha McNiskey,

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Dee
orig

and recorded in the Office
unty, Alabama, in 40 N. S.,
eed, and that the same be
ach original Deed, and that
omplainant in said cause,
a witness for Respondent.
he Complainant shall have the
at this time, so that said
l cause was submitted on said
mentioned in the Complainant's

ny, 1938.

Hybert & Chason
Attorneys for Complainant.

A. H. Smith
Attorney for Respondent.

*8-23-39 Sumner P. ...
Wichout ...
B.B.*

STATE OF ALABAMA,

WARRANTY DEED.

BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of One Dollar and other valuable consideration, dollars to me in hand paid by Martha McNisky, the receipt whereof is hereby acknowledged, that I, William Petrietes, unmarried, do grant, bargain, sell and convey unto said Martha McNisky the following described lands situate in Baldwin County, Alabama, to-wit:-

East half of Northeast Quarter of Northwest Quarter of Section 29, Township 6 South of Range 4 East, containing 20 acres, more or less.

TO HAVE AND TO HOLD to the said Martha McNisky, her heirs and assigns, forever. And I do covenant with the said Martha McNisky that I am seized in fee of the above described premises; that I have the right to sell and convey the same; that the said premises are free from all encumbrances and that I will and my heirs, executors and administrators shall forever warrant and defend the same to the said Martha McNisky, _____ heirs and assigns, against the lawful claims of all persons whomsoever.

Witness my hand and seal this 16th day of December, 1925.

his
William x Petrietes L. S.
mark.

Witnesses:

P. J. Cooney
P. H. Seibert.

STATE OF ALABAMA,

BALDWIN COUNTY.

I, P. J. Cooney, a Notary Public in and for said State and County, do hereby certify that William Petrietes, unmarried, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that being informed of the contents of the said conveyance, has executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 16th day of December, 1925.

P. J. Cooney,
Notary Public, Baldwin County,
Alabama.

(SEAL)

Filed July 6th, 1926.
Recorded 40 N. S., page 268.

STATE OF ALABAMA
BALDWIN COUNTY.

MARTHA McNISKEY
-vs-
FRANK W. WALKER

IN THE CIRCUIT COURT, EQUITY SIDE.

The testimony in the above stated case shows that on December 26, 1925, William Petritus and Martha McNiskey made and executed a mortgage to Frank W. Walker for the sum of three hundred seventy two dollars, which was given to secure an indebtedness. That subsequent thereto said Frank W. Walker foreclosed said mortgage according to law and said property covered thereby was sold to him as the highest bidder at the sale and a deed was made to him, the said Frank W. Walker.

That said William Petritus December 16, 1925, made and executed a deed to his sister, Martha McNiskey, which was done for the purpose of evading the payment of an execution against him in favor of the Foley Fertilizer Company for which the said Walker was at that time and now is the agent, and said corporation had its headquarters at Albertville, Alabama, and said Walker was authorized to collect notes, mortgages and other evidences of indebtedness in any manner he thought best, and especially so with respect to the execution above referred to, and on the date of the said mortgage a deputy sheriff, E. E. Gullledge, levied on certain personal property, and in consideration of the release thereof William Petritus and Martha McNiskey executed the aforesaid mortgage, and thereupon said personal property, which was used jointly by them; was released from said levy and delivered to said William Petritus and Martha McNiskey, who benefited in its use in farming together.

That attached to the mortgage to the said Frank W. Walker is an affidavit of William Petritus in which he swears that he
"is the owner in fee simple of said real estate
and that there are no liens against the same
except one hundred fifty dollars balance on
purchase price and a trust deed as securities
to his sister Martha McNiskey."

There is a well established rule that "who comes into equity must do so with clean hands" which we contend the complainant has not done, as the testimony plainly shows, as the deed was given by Petritus to McNiskey and was not placed on record for some months after said mortgage to the said Walker, and affidavit aforesaid that the deed was only made from Petritus to McNiskey as security and not in good faith as a barter and sale, and was in fraud as against his creditors.


In support of the claim of the fraudulent intent of the conveyance from Petritus to McNiskey, paragraph "2" of the complaint recites that complainant is in peaceable possession of the land mortgaged, while the testimony of all the witnesses, both defendant's and complainant's, shows that, at the time the mortgage was made, complainant was residing and had her home on lands belonging to her husband, adjacent to the property at issue, and the only evidence of her possession was a claim based on a second small garden planted by Petritus.

As part of the consideration for the execution of said mortgage complainant received the full benefit of the release and surrender of the personal property which had been levied upon by the joint use and enjoyment of the same as aforesaid, and under the terms and conditions of said mortgage and in equity and good conscience the title to the property involved, to-wit:

Begin at the northeast corner of the northeast quarter of the northeast quarter of section twenty nine (29) township six (6) south, range four (4) east; run thence west seven hundred sixty feet; thence south-easterly thirteen hundred twenty-five feet, to the south line of said forty; thence east five hundred three feet, to the east line of said forty; thence north thirteen hundred twenty-five feet to the place of beginning,

should be by decree of your Honor and this Honorable Court placed in the name of the defendant, Frank W. Walker, in accordance with the statutes in such cases made and provided,

Respectfully submitted.



Attorney for Frank W. Walker,
Defendant.

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 Frank W. Walker

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

Martha Mc Niskey

against said Frank W. Walker,

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 19th day of December, 1927

T. W. Richerson Register.

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

MARTHA McNISKEY,

Complainant,

-vs-

FRANK W. WALKER,

Respondent.

IN THE CIRCUIT COURT--IN EQUITY

STATE OF ALABAMA

BALDWIN COUNTY.

Now comes the Complainant in the aforesaid cause, and objects to the Interrogatories filed to W. D. Claybrook, and assigns the following grounds, separately and severally, to each Interrogatory:-

1st. That said Interrogatory propounded to W. D. Claybrook does not designate his residence, as Rule 60 of the Chancery Practice requires.

2nd. That said Interrogatory calls for illegal, irrelevant and incompetent testimony.

3rd. That said Interrogatory calls for hearsay testimony.

4th. That said Interrogatory calls for secondary evidence.

5th. That said Interrogatory calls for a conclusion of the witness.

6th. That said Interrogatory is too general in its nature.

7th. That said Interrogatory calls for immaterial testimony.

Hypatia Casan
Solicitors for Complainant.

No. 1713

Allen

THE STATE OF ALABAMA,
BALDWIN COUNTY,
CIRCUIT COURT.

Foley Fertilizer Company, a
Corporation,

vs.
Plaintiffs.

William Feltite,
Defendants.

CIVIL EXECUTION

Judgment for NOV 28, 1921 for \$ 272.55

Interest from NOV 28, 1921

to 1921 \$

Damages \$

Costs \$ 12.70

Total \$ 285.25

Civil Fee Book Page

Execution Docket Page

Filed 1921

Clerk.

W. R. Stark
Plaintiff's Attorney.

W. R. Stark
Defendant's Attorney.

GILL P. CO., MOBILE

COLLECT COST FROM

THE STATE OF ALABAMA,
BALDWIN COUNTY.

I hereby certify that the within Judgment and
Costs in this case are correct, and there was a
waiver of exemption as to personal property under
the Constitution and Laws of Alabama.

This 22 day of Dec 1921

W. R. Stark
Clerk.

Received in Office

1921

Sheriff

Sheriff's Execution Docket, Page

Sheriff's Fee Book, Page

THE STATE OF ALABAMA, BALDWIN COUNTY.

By virtue of the within Execution, I have, at 1 o'clock, P.M., this

26 day of December 1921, levied on one team of

mules one set harness one wagon
one load lumber on lot lumber at house
about 500 ft. 4 head of cattle - 54 head
of poultry and farm implements as
follows.

W. R. Stark

SHERIFF.

W. R. Stark

RECORDED, *Duch*
2-375

*Decree setting aside
submission*

*Filed July 22, 1938
R. S. Duch, Register*

27

11

SECTION 11

STATE OF ALABAMA

COUNTY OF ...

... of ... and ...

... of ...

Filed May 27, 1938
R. S. Duck, Register

Proceedings

... and ...

... of ...

... of ...

RECORDED
7-493
Duck

... of ...

STATE OF ALABAMA

... of ...

... of ...

... of ...

... of ...

Brief for
~~Complaint~~
Respondent

2 Original

SERVE ON

Circuit Court of Baldwin County
In Equity.

No. _____

SUMMONS

Martha Mc Niskey,

vs.

Frank W. Walker.

Norborne Stone.

Solicitor for Complainant

THE STATE OF ALABAMA,
BALDWIN COUNTY.

Received in office this 19th
day of December 1927

Sheriff.

Executed this 19th day of

Dec 1927
by leaving a copy of the within Summons with
Frank W. Walker

Defendant.

Sheriff.

By *Bevaggi*
Deputy Sheriff.

RECORDED

Recorded in Vol. _____ Page _____

RECORDED
Duck
6-488

MARTHA MCNISKEY,

Complainant,

-vs-

FRANK W. WALKER,

Respondent.

objections to Interrogatories

IN THE CIRCUIT COURT-IN EQUITY

STATE OF ALABAMA

BALDWIN COUNTY.

Filed August 5, 1936

R. D. Duck
Register.

SEARCHED TO RECORD

REGISTRATION NUMBER

OFFICE NUMBER TO WHICH SENT

PROPERTY TO WHICH APPLICABLE

8-23-39 Duvall

Without Residue

Ra

MAILER TO BE OPENED

POSTAGE WILL BE PAID BY ADDRESSEE

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

8-23-39 Dunsen

Without Budget

RA

COMPLAINANT'S NOTE OF TESTIMONY

MOORE PRINTING CO., BAY MINETTE, ALA.

8581. NOTE OF TESTIMONY

MRS. MARTHA McNISKEY,

Complainant,

VS.

FRANK W. WALKER,

Respondent.

THE STATE OF ALABAMA
Baldwin County

IN EQUITY
Circuit Court of Baldwin County

This cause is submitted in behalf of Complainant upon the original Bill of Complaint, Admissions in the Answer, Stipulation dated April 8th, 1938, Testimony of Mrs. Martha McNiskey, Clementine McNiskey and William Petritis.

A Stipulation of all, dated 2 May 1938

and in behalf of Defendant upon

P. S. Duck

Register.

RESPONDENT'S NOTE OF TESTIMONY

MOORE PRINTING CO., BAY MINETTE, ALA.

8581. NOTE OF TESTIMONY

710

MARTHA McNISKEY*,
 Complainant,
 vs.
 FRANK W. WALKER,
 Respondent.

THE STATE OF ALABAMA
Baldwin County

IN EQUITY
Circuit Court of Baldwin County

This cause is submitted in behalf of Complainant upon the original Bill of Complaint,

and in behalf of Defendant upon Answer; Testimony of Frank W. Walker and
E. E. Gullledge;

R. S. Duels

Register.

No. 710

The State of Alabama
BALDWIN COUNTY

IN EQUITY
Circuit Court of Baldwin County

McNINSKY,

vs.

WALKER

NOTE OF TESTIMONY

Filed in Open Court this 12th

day of April 1938

R. S. Duch

REGISTER

No. 710

The State of Alabama
BALDWIN COUNTY

IN EQUITY
Circuit Court of Baldwin County

M^c Kisby

VS.

Walker

NOTE OF TESTIMONY

Filed in Open Court this 12

day of April 1938

R. S. Duster

REGISTER

STATE OF ALABAMA
COUNTY OF BALDWIN.

MARTHA MCNISKEY
COMPLAINANT.
vs.
FRANK W. WALKER,
DEFENDANT.

IN THE CIRCUIT COURT EQUITY SIDE.

Testimony of W. D. Claybrook taken before Thomas E. Orr
Direct examination by A. H. Crovatt, Attorney for Respondent.

Q: Your name is W. D. Claybrook.

A:

Q: Where do you reside?

A:

Q: What was your connection with the Foley Fertilizer Company?

A:

Q: During what period of time were you so connected with the Foley Fertilizer Company?

A:

Q: Were you authorized to handle the business end of said Foley Fertilizer Company, such as receiving and collecting notes, accounts and other evidences of indebtedness?

A:

Q: Did you, as such representative of the Foley Fertilizer Company, authorize said Frank W. Walker to proceed with the filing of a suit against William Petritis in the Circuit Court of Baldwin County, Alabama?

A:

Q: What further action, if any, did you authorize said Frank W. Walker to take to further the collection of the indebtedness of said William Petritis?

A:

Q: Did you have knowledge of the judgement obtained against said William Petritis and the mortgage subsequently taken by said Frank W. Walker from William Petritis and Martha McNiskey?

A:

Defendant suggests Thomas E. Orr, a practicing Attorney of Albertville, Alabama, as the Commissioner to take the deposition of W. D. Claybrook in the above cause.

STATE OF ALABAMA
COUNTY OF BALDWIN.

MARTHA McNISKEY
COMPLAINANT.
VS.
FRANK W. WALKER,
DEFENDANT.

IN THE CIRCUIT COURT EQUITY SIDE.

Testimony of W. D. Claybrook taken before
Direct examination by A. H. Crowatt, Attorney for Respondent.

Q: Your name is W. D. Claybrook.

A: Yes.

Q: Where do you reside?

A: Albertville, Alabama.

Q: What was your connection with the Foley Fertilizer Company?

A: Secretary & General Manager.

Q: During what period of time were you so connected with the Foley Fertilizer Company?

A: 1912 to the present date.

Q: Were you authorized to handle the business end of said Foley Fertilizer Company, such as receiving and collecting notes, accounts and other evidences of indebtedness?

A: Yes.

Q: Did you, as such representative of the Foley Fertilizer Company, authorize said Frank W. Walker to proceed with the filing of a suit against William Petritis in the Circuit Court of Baldwin County, Alabama?

A: Yes.

Q: What further action, if any, did you authorize said Frank W. Walker to take to further the collection of the indebtedness of said William Petritis?

A: To handle the matter in any way he thought best and to fully represent me in said collection.

Q: Did you have knowledge of the judgement obtained against said William Petritis and the mortgage subsequently taken by said Frank W. Walker from William Petritis and Martha McNiskey?

A: Yes.

State of Alabama, Marshall County: Before me, A. B. Hooper Jr, a Notary Public in and for said State and County, personally appeared W. D. Claybrook who being first duly sworn states that the above answers made to the questions are true and made by him willingly on this the 25th. day of Aug. 1936.

Sworn to and subscribed before me this Aug. 25th, 1936.

W. D. Claybrook

A. B. Hooper Jr. Notary Public

MARTHA McNISKEY,

Complainant,

-VS-

FRANK W. RALKER,

Respondent.

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

BRIEF AND ARGUMENT
OF COMPLAINANT

BY:

HYBART & CHASON,
Bay Minette, Alabama.

The Evidence in this case discloses that Martha McNiskey was the owner of the land involved in this suit and was in possession of the same at the time that the suit was filed and has continued in such possession; that she acquired this land from William Petritis. See copy of deed attached to stipulation dated May 2, 1938.

The record further discloses that Martha McNiskey was never indebted to the defendant, Frank W. Walker. The evidence further discloses, see testimony of William Petritis, that he was never indebted to Frank W. Walker, nor was he indebted to the Foley Fertilizer Company; that he was indebted to the Peoples Fertilizer Company. See pages 11, 12 and 13 of the testimony of William Petritis.

The record discloses that Mrs. McNiskey and William Petritis were foreigners and not well acquainted with the English language and that a wrong has been committed upon them by the said Frank W. Walker in procuring from them a mortgage for a large

Or in otherwords, our contentions are that this case is to be decided upon legal testimony. If there was a judgment against Petritis, a certified copy of the same would be the best evidence and the only evidence that the Court could receive as to this judgment indebtedness, unless it was shown to the Court that the record of the court had been destroyed and then secondary evidence would be permissible.

Walker and Gullledge speak of an execution that they had at the time that the mortgage was executed, and consequently, the execution itself would be the best evidence unless it is accounted for, then any testimony relative to the same would be secondary evidence.

It appears that respondent has attached to the brief a statement by W. B. Claybrook, sworn and subscribed before a Notary Public. This, of course, could not be evidence and could not be accepted by the Court as evidence for the following reasons:

1. That this statement is not noted in the note of testimony.
2. There is no commission or authority from the Court to the Notary Public to take said

testimony.

3. There is no certificate of said Notary Public as required of Commissioners in taking of testimony.

4. That the interrogatories propounded, if they could be considered as such, do not state the residence of the said W. D. Claybrook as required by law.

And we respectfully submit that no valid consideration has been shown to have been passed to either Martha McNiskey or William Petritis for the execution of said mortgage.

Respectfully submitted,

Hyatt & Brown
Solicitors for Complainant

MARTHA MONISKEY,

Complainant,

VS.

FRANK W. WALKER,

Respondent.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.

In Equity.

The Bill in this case is filed by a married woman whose husband has never been a resident of this State, and prays for the cancellation of a mortgage executed jointly by Complainant and her brother, who is not made a party to the suit. The husband did not join in the execution of the mortgage.

The allegations of both the Bill and Answer are loosely made and unsatisfactory.

The facts as they were gathered from the pleadings and proof seem to be that the Respondent, Walker, as agent for a fertilizer company, secured a judgment against Complainant's brother, presumably for \$372.00, as this is the amount of the mortgage. It appears that this judgment was obtained on November 28, 1921, and that subsequently thereto the judgment ~~creditor~~ ^{debtor}, who joins Complainant in the execution of the mortgage, conveyed this land to the Complainant ^{for a nominal consideration}. It appears that the Respondent, Walker, procured a deputy sheriff to levy an execution on certain personal property alleged in the bill to be the property of the Complainant, the execution being on the judgment referred to. The allegation in the Bill that the personal property levied upon was the property of the Complainant is disproven by all the testimony, including that of the Complainant. All the proof as to the judgment and execution is not the best evidence, and under Section 5565 of the Code should not be considered.

It further appears that on the same day the Bill was filed, December 19, 1927, the mortgage was foreclosed, and Walker became the purchaser at and for the sum of \$500.00. It does not appear whether or not service was had on the Bill before

the mortgage was foreclosed, and it further appears that when the execution was levied on certain personal property as that of the judgment debtor, Complainant executed this mortgage on consideration that the levy on the personal property be released, and a mortgage on the real estate be accepted and time given for payment. It appears also that on this date the Complainant paid an additional sum of \$50.00 as some kind of expense, which is not satisfactorily explained. Without satisfactory explanation Complainant would be entitled to a return of this \$50.00, but there is nothing in the Bill justifying a decree with respect thereto. Nor is there anything in the Bill with respect to the sum realized at the foreclosure sale over and above the \$372.00, consideration named in the mortgage.

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Both the pleadings and proof are in such condition that I do not feel that justice can be done the parties by a decree on the present stage of the record. The Court will, therefore, of its own motion, set aside the submission and allow the parties ninety days for such amendments to pleadings and additional testimony as they may see fit to file.

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D E C R E E

This cause coming on to be heard is submitted for final decree upon the pleadings and proof as noted by the Register.

Upon consideration of such pleadings and proof the Court is convinced that justice cannot be done ^{in the present state of the record} between the parties, and;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the submission in this cause be set aside, and the parties allowed ninety days from the date hereof for amendments to the pleadings and for the taking of additional testimony, if they so desire.

This 9th day of July, 1938.

J. W. Hare
Judge

TESTIMONY OF FRANK W. WALKER. DIRECT EXAMINATION BY MR. CROVATT.
ATTORNEY FOR RESPONDENT.

Q: Your name is Frank W. Walker?

A: Yes sir.

Q: Where do you reside?

A: Foley, Alabama.

Q: Do you know William Petritis?

A: Yes sir.

Q: Do you know Mrs. Martha McNiskey?

A: Yes sir.

Q: Did you know them in December, 1925?

A: 1925 or 1926? At the time the Mortgage in question was made I knew them.

Q: Did you have occasion to see them on the 26th day of December, 1925?

A: Yes sir.

Q: Where was that?

A: I saw them at the farm and also at the office of Bruce Etheridge, Justice of the Peace.

Q: What was the occasion for your seeing them?

A: Mr. Gullede had levied an execution that I had given him on a team of mules, wagon, load of lumber, cattle and hogs, and they were negotiating for the release of that property from the levy.

Q: About how much would all of that personal property that you levied upon bring at that time, approximately?

A: As a guess I would say about \$300.00.

Q: In order to secure the release of that property from the execution and to secure you, what did William Petritis and Martha McNiskey agree to do and afterwards did?

A: They agreed to execute four Notes, three of them for \$100.00 each and one of them, I forget the exact amount but I think it was \$72.00 and something. Can I refresh that?

Q: Yes.

A: Yes, \$372.00 in all, and pay \$50.00 in cash to cover the amount that the judgment and costs in the case of the Foley Fertilizer Company vs. William Petritis.

Q: Did they sign the Notes and the Mortgage?

A: Yes sir.

Q: Who witnessed that? Took the acknowledgment?

A: Bruce Etheridge, Justice of the Peace.

Q: Did she pay that \$50.00 in cash?

(page two)

A: She did not. When she got to the point of paying the \$50.00 after the Notes and Mortgage were made she said she did not have it and wanted a little time to get it, and she made another Note without any security for \$50.00 which was given to the Deputy Sheriff, E. E. Gulledege.

Q: What did he finally do with that Note?

A: I have no personal knowledge of that.

Q: Where was Martha McNiskey living at the time she executed this Mortgage and Notes?

A: On the West half of the Northeast Quarter of Northeast Quarter of Section--I will have to get that description, I think it is 29, Township 6 South, Range 4 East. Yes.

Q: Was that the property covered in this Mortgage?

A: It was not.

Q: Was it adjoining this piece of property?

A: It was adjoining it. The land covered in the Mortgage is approximately the East half of that Northeast Quarter of the Northeast Quarter. The description as given, however, shows the middle line running a little diagonal.

Q: Mrs. McNiskey and William Petritis signed this paper without any threats on your part?

A: They did, at their own suggestion.

Q: Now did they farm together?

A: I don't believe I have any personal knowledge of that.

Q: Has that Mortgage and the Notes ever been paid by either or both of the parties to this suit?

A: I foreclosed the Mortgage on it.

Q: It has never been paid?

A: In no other way except by the foreclosure.

Q: Mr. Gulledege was present at the time you talked to them regarding personal property that was levied on?

A: Yes sir.

Q: He was deputy sheriff at that time?

A: Yes sir.

CROSS EXAMINATION BY MR. HVBART.

Q: Mr. Walker, you say that this personal property that was levied on was of the value of \$300.00.

A: That is the best guess that I can make now of what it ought to have brought.

Q: And what did it consist of?

A: A team of mules, harness, wagon, a load of lumber, some cows and hogs.

Q: Do you know who the lumber belonged to?

(page two)

amount of money that they were not liable to any one for, and that said mortgage should now be cancelled by an order of this Court and that the foreclosure deed in which Frank W. Walker purchased the lands, should also be annulled, as it appears that he had the mortgage foreclosed and bought the same in his own name. Walker says that he is representing the Foley Fertilizer Company; that the Foley Fertilizer Company had a judgment against William Petritis; the record discloses that no judgment was introduced. The record discloses that no certified copy of a judgment was introduced in the record; that the note of testimony of the respondent submits on the answer, the testimony of Frank W. Walker and E. E. Gullledge and nothing else. That there is no certified copy of the judgment attached to the testimony of either of these witnesses, or elsewhere shown in the record.

"The best evidence of the result of a suit between the third party and the defendant was the judgment entry made in that case - hence the Court properly refused to allow witness to state how that suit terminated."

Williams vs. Shows,
197 Alabama, page 596.

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Q: On what place?

A: The Petritis place.

Q: Did you tell here in that conversation that you could take the Petritis place for that debt?

A: That I would take it?

Q: Could take it, under that execution?

A: I think that to the best of my knowledge that I told them that the Judgment was a lien against the Petritis place and that the notes could levy on any personal property that we could find that belonged to him.

Q: And then after you told them that she agreed to execute this Mortgage?

A: I think so.

Q: Well then, we are talking about over at the house, then you had an understanding that you would meet at Bruce Etheridge's office in the Town of Summerdale and you met over there?

A: Yes sir.

Q: Now who prepared the Mortgage Mr. Walker?

A: I believe that I wrote it.

Q: You wrote it?

A: I think so.

Q: Mr. Etheridge take the acknowledgment?

A: Yes sir.

Q: Can Mrs. McNiskey read and write?

A: I believe she can.

Q: Did she write her name there or did she make her mark?

A: I believe she wrote her name. Yes sir.

Q: William Petritis can't write, could he?

A: I think not.

Q: Did he sign by mark?

A: I think so.

Q: How long were you ever at the Justice's office?

A: I expect we were a couple of hours there and I remember now that we went to Jerkowitz's Store where she got him to get out of the safe a paper claiming to be a Bill of Sale from Petritis to her of all his personal property, and she claimed that the mules were hers under that Bill of Sale, then later when they came to make the Mortgage she claimed the land was hers and got an alleged Deed from Petritis to her, both of which were dated as near as I can remember the same day that the execution was issued here.

Q: Do you know what date the execution was issued?

A: No sir, I would have to go to the Circuit Clerk's office to find out.

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A: No further than that it was in the possession of William Petritis and the sawmill man had told me that he was cutting Petritis' logs for lumber.

Q: Where was this levy made?

A: On the highway on the East side of the land described in this Mortgage.

Q: How far from the land? In the immediate vicinity of the land?

A: I think that the highway is forty feet wide and we were in the road there.

Q: Adjoining the land?

A: Yes sir.

Q: What process did they have there to levy on? Where did he get the execution?

A: From the Circuit Court.

Q: What was the amount of the Judgment?

A: I don't know.

Q: Was it an attachment or was it an execution?

A: It was an execution.

Q: Who was the Deputy Sheriff?

A: E. E. Gullledge.

Q: Who was this execution against?

A: William Petritis.

Q: You did not have any claims against Mrs. McNiskey, did you?

A: No sir.

Q: Who did the mules belong to?

A: They were in the possession of William Petritis. He had made an Affidavit shortly before that that he owned the mules, the wagon, cattle and I think the hogs. N

Q: Now you don't know of your own knowledge as to who the wagon belonged to, do you?

A: I do not know of my own knowledge who any of the property belonged to.

Q: Now Mrs. McNiskey, was she there at the time that the levy was made?

A: She was at the house on the West half of the forty acres as I remember.

Q: Were you there at the time the levy was made?

A: I was with Gullledge when he made the levy and directed him to make the levy on this property. I gave him the execution and took him out there to show him the property that I believed to belong to Petritis.

Q: And you did point out the property to him?

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A: Yes sir.

Q: Now what was the basis of your judgment against Petritis?

A: Promissory Waive Note given to the Foley Fertilizer Company and for which I was agent.

Q: For which you were agent?

A: Yes sir.

Q: Was the Note payable to the Foley Fertilizer Company?

A: Yes sir.

Q: Was the suit brought by the Foley Fertilizer Company?

A: Yes sir.

Q: And what was the amount of the Note Mr. Witness?

A: I don't remember, I haven't looked it up at all.

Q: You have no independent recollection of it?

A: No sir, the only think I can tell you about it was that the amount of the Judgment, costs and of the levy was figures up and the interest on the Judgment figures up to the amount of the Notes that were given, plus the \$50.00 for which subsequently a Note was given and delivered to Mr. Gullledge,

Q: What was this \$50.00?

A: It was part of the total amount of the Judgment and the amount of money we were to get on the execution, and after he had his costs in there I left that Note with him and after he collected it he sent me down the balance of the money above it;-the Court costs and Sheriff's costs.

Q: He did collect the Note?

A: He did collect the Note subsequently.

Q: I believe you testified on your direct examination that you did not know whether the Note was paid or not, did you?

A: No, I don't think I did.

Q: But the \$50.00 note was paid. Who signed the \$50.00 Note?

A: I think both Petritis and McNiskey, but I can't tell you.

Q: About what time of day was it you made this levy, to your best recollections?

A: I think it was in the latter part of the afternoon.

Q: Did Mrs. McNiskey come down to where you had stopped the mules?

A: To the best of my recollection we drove into the barn where she was living and she came out that far and the deputy then made the levy on the cattle and hogs and then we drove to Summerdale and Mrs. McNiskey and Petritis got in the car and got to Summerdale before we did.

Q: How far is it from Mrs. McNiskey's house to Summerdale?

A: Summerdale lies in the exact Southwest corner of the section.

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Q: Just give us your best judgment as to the distance is all I want.

A: A little bit less than two miles.

Q: Now Mrs. McNiskey came out to Summerdale where you were?

A: Yes sir.

Q: Do you live in Summerdale?

A: No sir, in Foley.

Q: What place did you all meet at in Summerdale?

A: At the office of Bruce Etheridge, Justice of the Peace.

Q: Had you had an understanding that you were to meet there at Mr. Etheridge's before you left Mrs. McNiskey's place?

A: Yes sir.

Q: What was said at that time and place, at Bruce Etheridge's, between you and Mrs. McNiskey?

A: The details of the deal by which they were to have the team, wagon, lumber, cattle and hogs released were discussed.

Q: Had they been discussed before you meet at Etheridge's office?

A: They had made the offer to make a Mortgage to secure the payment of the Judgment and costs, and to get the release of the mules at that time.

Q: Where was that proposition made first, at the house?

A: They made the proposition at the house to the best of my recollections.

Q: What was said at the house between the parties relative to this Mortgage that you speak of? What did Mrs. McNiskey say?

A: I don't think I can give you her words.

Q: Well the substance?

A: The substance of the whole thing was that in order^{net} to have the team sold and the other goods taken away and sold that they wanted to give security for the payment.

Q: What did Mrs. McNiskey say?

A: I can't tell you whether Mrs. McNiskey or Petritis did the talking.

Q: You can't tell me as to whether Mrs. McNiskey said anything about it or not?

A: I know that she and Petritis both discussed this thing several times and they agreed, both of them agreed with me that if I would take the Notes and Mortgage and let them have the levy released that they would make the Notes & Mortgage.

Q: Now did Mrs. McNiskey agree to that Mr. Walker?

A: She did.

Q: Well what did she say about it in substance?

A: In substance she said that if we would release that, that she would make a Mortgage on the place.

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Q: Now what was done after you prepared the Mortgage? What was done between you and Mrs. McNiskey after you prepared the Mortgage?

A: The Mortgage & Notes were signed.

Q: They were signed?

A: Yes sir.

Q: Was that the only ceremony? What did you say? Did you present the Mortgage to her?

A: The agreement was that they were to sign the Notes and Mortgage for security and I don't remember presenting it to her or anything. As near as I can remember I made the Mortgage, I wrote it myself.

Q: You wrote the Mortgage?

A: Yes sir.

Q: Where did you get the description of the land from?

A: Can't tell you. The description is not, as I say, the half of the forty, but the west line of the description is slightly diagonal to the forty, I can't remember what it is but if you have the Deed there--

Q: There is the Mortgage right here.

A: The description says run Southeasterly 1325 feet. Beginning at the NE corner of the NE $\frac{1}{2}$ of the NW $\frac{1}{2}$, is that right? I believe that is right, I thought it was the NE $\frac{1}{2}$ of NE $\frac{1}{2}$ when I spoke from memory, but this is the NE $\frac{1}{2}$ of NW $\frac{1}{2}$ of the Section. I believe that is a half section line on the east side of the land in dispute; thence run West 760 feet, that would be a little over half of the forty, thence Southeasterly 1325 feet to the South line of said forty, thence East 503 feet to the East line of said forty, thence North 1320 feet to the place of beginning. In other words, that center line between the land that Mrs. McNiskey lived on and the land that Petritis owned or claimed to own was 760 feet wide on the North side and only 503 feet wide on the south line.

Q: Now who lives on that property now?

A: I don't know.

Q: Who is in possession of it?

A: Petritis or McNiskey, I don't know which.

Q: When was it you claimed to foreclose your Mortgage?

A: That Mortgage was foreclosed I think in '27. December 19th, 1927 the Mortgage was foreclosed, and I purchased the land for the sum of \$500.00 and the Deed to me was dated the 19th day of December, 1927.

Q: Who did you buy the land from?

A: Mr. Hawkins was the Auctioneer and executed the Deed.

Q: For whom?

A: For the Mortgagors, Petritis and McNiskey.

Q: Well who had it foreclosed. I mean the principal, not the attorney, the Foley Fertilizer Company?

A: No, Frank W. Walker.

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Q: How far did you live from this place?

A: About seven or eight miles.

Q: Do you know who was working the place over there?

A: The only person I have ever seen working it at about that time was Bill Petritis.

Q: Never did see her in the field?

A: Never saw her on the place at all.

Q: She could have been in the possession of it so far as you know, though, couldn't she Mr. Walker?

A: If you consider that living on the other half of the forty was in possession of it, of the whole forty, she could have been, but otherwise I have no reason to believe that she had any possession of it at all.

Q: I ask the same question over. She could have been in the possession of it so far as you know, though, couldn't she Mr. Walker?

A: She could have been, yes sir.

Mr. Heard: Was this transaction explained by you or Mr. Etheridge. I believe you said this was taken before Bruce Etheridge. About the Mortgage, was that explained to Mrs. Petritis by you or Mr. Etheridge?

A: By Etheridge, I think.

Mr. Heard: He has since left the Country, hasn't he?

A: Since, yes sir.

RE-DIRECT BY MR. GROVATT.

Q: But you had the Mortgage all arranged for before you talked to Mr. Etheridge, didn't you?

A: Arranged for the Mortgage, yes. We had arranged to take the Mortgage.

Q: You took it to Bruce Etheridge for the purpose of having it acknowledged?

A: We went down to his office to get the blanks to write it out on and wrote it at his office and I also required Mr. Petritis to make an Affidavit that he was the owner of it and that this Deed she had was given to her to secure her against anything that she would have to pay out on his account.

TESTIMONY OF E. E. GULLEDGE. DIRECT EXAMINATION BY MR. CROVATT,
ATTORNEY FOR RESPONDENT.

Q: Your name is E. E. Gullledge?

A: Yes sir.

Q: Where do you live Mr. Gullledge?

A: Summerdale.

Q: Do you know Frank W. Walker?

A: Yes sir.

Q: You were Deputy Sheriff in December, 1925?

A: Yes sir.

Q: Did you know Martha McNiskey and William Petritis?

A: Yes sir.

Q: Did you have occasion to see them about the latter part of December, 1925?

A: Yes sir.

Q: What did you do at that time?

A: I went there with an execution to levy on his mule team and other things that would cover the debt.

Q: And you made the levy?

A: Made the levy on the mule team and went on down to the gate to go into the barn to look the cows and hogs over and Mrs. McNiskey met us at the gate. We left the wagon at the gate and she says, "Why Mr. Gullledge it's going to ruin me and Bill to take the mule team away from us, why not take the cattle and hogs and let us have the mule team". Why, we said, Mrs. McNiskey, it'll take the cattle and the hogs and then some, Bill owes the Fertilizer Company a pretty good debt. Mr. Walker told her about what it was. She then turned and said, "I got forty acres of land here". She had twenty, Bill had a twenty and they had another twenty it seems. Bill's place was in the NE corner, then this 20 here, then another twenty. There was a barn on that and this little house they lived on was on this twenty.

Q: Was she living in the Petritis house at that time or in the other house?

A: She was living in the other house.

Q: What did Mrs. McNiskey and Petritis say?

A: I said she named these twenty acres of land here and said that she had been offered \$2000.00 or she had refused \$2000.00, or she paid \$2000.00 for it, and said she would give her Note for that for the release of the mule team and Mr. Walker told her if there was nothing against this land if she would sign these papers jointly with Bill that he would release the mule team. Well, they agreed then right there to go to the Justice of the Peace and see if the land was all right and if it was nothing against it to make out the papers. She gets in her car and dikes up a little bit and I take the mule team to Summerdale and Mr. Walker took his car, and when I got to Summerdale they was sitting there talking around the table in Summerdale. When they got through making out the papers the Justice of the Peace read the papers to me.

Q: Were Mrs. McNiskey and Petritis there at the time the

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time the papers were made out?

A: Yes sir.

Q: Did they sign the papers?

A: Yes sir.

Q: And Bruce Etheridge took the acknowledgment?

A: Yes sir, he was Justice of the Peace.

Q: Did she give a Note for \$50.00.

A: Yes, in the final wind up they had agreed she would pay \$50.00 cash and the Justice of the Peace when they got all the papers signed he said you pay Mr. Gullidge the \$50.00. She says, "I haven't got it with me". He says, "How long before you can get it"? She said, "I'll have to write to my husband in Chicago to get it", and he asked her then would she give me a Note and she said yes, and the Justice of the Peace wrote out a Note and they all signed that, payable at my house in thirty days, and thirty days went by and then sixty days went by and she didn't show up. I saw Mr. Walker and told him what had happened and he said take it to the Justice of the Peace. Charlie Davidson went over there and she cussed him out and she cussed me out, called me an old drunken person, etc., and he come and told me about it.

Q: You finally collected that Note?

A: Yes, I collected it. She came up to Bay Minette and paid Norborne Stone part of it, and the balance of it she paid down there.

Q: Did Mrs. McNiskey have a garden or anything on this Petritis place?

A: No sir. They was plowing it then that day or day before. He had plowed one end of the field.

Q: They were farming together?

A: Yes sir. They did farm together that year.

Q: Did Mrs. McNiskey's husband ever live in Summerdale?

A: Yes sir.

Q: Did you know him?

A: Well, I saw the man several times, but I never spoke to him in my life. Only reason that I well remember him was that he was building the Barn on this twenty and he fell off it.

Q: Did you know Mrs. McNiskey?

A: Yes sir.

Q: Can she speak English?

A: Yes sir.

Q: Can you understand her?

A: Yes sir.

Q: Did she ever operate the hotel at Summerdale?

A: Yes sir.

Q: She is an intelligent woman, a good business woman?

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Q: Who read it?

A: Bruce Etheridge.

Q: Where is he?

A: I don't know, he left about a year ago.

Q: Are you an officer now?

A: No sir.

Q: Were you an officer at the time he left?

A: Yes sir.

Q: Were you looking for him?

A: No sir, didn't have occasion to.

Q: And you haven't heard from Etheridge since he left here?

A: No sir.

Q: Do you know of anybody who knows where he is?

A: No sir. I think if they did they would bring him back.

Q: Would bring him back? Who?

A: State, I guess.

Q: Now he is the man who read the papers?

A: Yes sir.

Q: Who prepared the papers?

A: He did.

Q: What did he read from the papers?

A: He read the Note.

Q: What else?

A: He read the Note, I don't remember whether he read anything else or not.

RE-DIRECT BY MR. CROVATT.

Q: Did Mrs. McNiskey sign this voluntarily without any persuasion on Mr. Walker's part, threats or anything?

A: Not a bit.

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Testimony by Respondent

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TESTIMONY OF MRS. MARTHA McNISKEY. DIRECT EXAMINATION BY HON.
C. L. HYBART.

Q: What is your name, please mam?

A: Martha McNiskey.

Q: Where do you live, Mrs. McNiskey?

A: Summerdale, Alabama.

Q: How old are you?

A: Fifty-five.

Q: Are you married or unmarried?

A: Married.

Q: What's your husbands name?

A: Joseph McNiskey.

Q: Where were you living in December, 1925?

A: I just came down from up north to Summerdale.

Q: You live at Summerdale?

A: Yes.

Q: Did you have a brother at Summerdale?

A: Yes, I have brother in Summerdale.

Q: What's his name?

A: William Petritis.

Q: William Petritis?

A: Yes.

Q: Mrs. McNiskey, are you acquainted with the land involved in this suit?

A: Yes.

Q: Do you own this land?

A: Yes, my brother deeded it to me.

Q: Your brother deeded it to you?

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A: Yes.

Q: Do you remember about when he deeded it to you, about what year?

A: I don't remember now what day?

Q: What's that?

A: I can't know what day I got it.

Q: You can't know what day you got it. Do you know about how many years you have owned it?

A: About six years.

Q: When was it that you came to this County, Mrs. McNiskey, to live?

A: 1925.

Q: Do you remember what month?

A: July 15th.

Q: Did you own the land at that time?

A: No.

Q: How long after that before you bought it?

A: About in October or November sometimes.

Q: In October or November in the year that you bought it?

A: Yes.

Q: And you went into the possession of it at that time? That is, you went to living on it?

A: Yes.

Q: And have you been in the possession of it ever since? Ever since that time?

A: Yes.

Q: Are you living on the land now?

A: Yes.

Q: And have been living on it ever since?

A: Yes.

Q: You've got your home on the place?

A: Only a little shack on it.

Q: Do you live in that house?

A: Not right now, but I did live there.

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Q: When did you live in there last?

A: Last year, because the house don't fit to live in I move out.

Q: Did you live in there in 1925?

A: Yes.

Q: That was your homestead?

A: Yes.

Q: Now Mrs. McNiskey, do you recall anybody bringing a paper to you of any kind along in December about Christmas time and asking you to sign it?

A: Yes, they did. Mr. Walker.

Q: Mr. Walker. What Walker is that?

A: I don't know his first name.

Q: Is this the man?

A: Yes.

Q: His name is Frank W. Walker. That's the man?

A: Yes.

Q: And who was with him?

A: Gullledge, I think.

Q: A man by the name of Gullledge?

A: Yes.

Q: Did your brother at that time own any mules? Did your brother at that time own any mules? Teams?

A: Yes. I don't own any mules at that time.

Q: Well did your brother, Mr. William Petritis, own any mules at that time?

A: Yes, he did. No, them mules belong on the mortgage to the Bank.

Q: Had he given a Mortgage on the mules?

A: Yes.

Q: Well was he in possession of the mules?

A: Yes.

Q: Well you didn't own the mules, did you?

A: No.

Q: Well what was said to you Mrs. McNiskey about signing the paper?

A: I can't know what they said, I was so scarey I don't know myself what I am doing.

Q: Did you owe them any money? Did you owe Mr. Walker?

A: No, I don't owe him. First time I saw him

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Q: Did you know that you were signing a Note and Mortgage to Mr. Walker?

A: They said Mortgage, but I don't know what I sign for.

Q: You didn't have any interest in the mules, did you?

A: No.

Q: And they didn't turn the mules over to you, did they?

A: No, they turned the mules to my brother, put them back on the place till I pay them \$50.00, I don't know for what.

Q: Pay them \$50.00, you don't know for what?

A: No, they say expense, and I don't know what expenses. The mules was on mortgage to Silverhill Bank. They let us use it to take care of them, we need the mules and we pay so much for them on the mortgage.

Q: About how much was this land worth in December, 1926?

A: Wasn't much.

Q: How much?

A: About couple hundred dollars.

Q: Wasn't worth as much as a thousand dollars, was it?

A: You mean now?

Q: No, then. In 1926.

A: I don't know how much, I don't know nothing how much land worth hardly.

Q: Well, what's your best judgment about it, of the value?

A: Right now you mean?

Q: No, then.

A: Oh, then, about \$300.00. That's all its worth.

Q: Did you understand what they were talking about when you signed that paper?

A: See, I got to have somebody. I can't understand right now every word you're asking me.

Q: Well did you know what they were talking about when you signed that paper?

A: No, I don't. I can't understand little easy word I so scared they take the mules away. We needed them on the farm. I so scared they take the mules.

Q: Did you know you were giving a Mortgage on your place?

A: No, I don't.

Q: Did they make that plain to you, that you were giving a Mortgage on your place.

A: They said the Mortgage came on the mules but not on the place.

Q: Did you read the Mortgage?

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A: The house stands on twenty acres.

Q: Yes, but not the twenty acres that you made Mortgage for twenty acres for?

A: I can't understand what you ask, twenty acres next to house on the twenty acres, what's that?

Q: You made a Mortgage to Mr. Frank W. Walker on twenty acres of land?

A: Yes, on twenty acres of land.

Q: Now did that twenty acres have any house on it?

A: Yes.

Q: That you mortgaged to him?

A: Yes.

Q: Was the one that the house was on?

A: Yes.

Q: You were moving lumber from the saw mill to fix that house to move in to live in?

A: In that house on the forty acres, yes.

Q: Was it on this twenty acres?

A: No, on my forty acres.

Q: That forty acres was next to this?

A: Yes.

Q: How much did you pay William Petritis for this land?

A: I paid dollar.

Q: Dollar?

A: Yes.

Q: Why did he make a Deed to you for this land.

A: Because he is my brother.

Q: Because he is your brother?

A: Yes.

Q: Did he come to you and ask you to let him make a deed to you, or did you ask him to make a deed to you?

A: He asked me.

Q: He asked you?

A: Yes.

Q: At that time did you know that your brother, William Petritis, was in debt?

A: No.

Q: Did you know that he was in debt \$150.00 besides Mr. Walker's indebtedness?

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A: No, I didn't.

Q: You didn't know that?

A: No.

Q: Were you present when William Petritis signed the Mortgage acknowledgments with you?

A: He can't sign. No, he don't have his name on there.

Q: No, were you there when Bruce Etheridge made his mark for him.

A: Yes.

Q: You were right there?

A: Yes.

Q: You and your brother were farming together weren't you? Were going to farm together that year?

A: Yes.

Q: Did you farm together that year, 1925?

A: Yes.

Q: Did you use those mules in farming?

A: Yes, we did.

Q: And the wagon?

A: Yes, we did.

Q: And you knew at the time you made this mortgage that you and your brother, William Petritis, were going to farm together, did you not?

A: Yes, we did.

Q: You had it all planned?

A: But after storm comes I don't farm together. After 1926 storm comes knock everything down we don't farm.

Q: But your intention was to farm with him?

A: Just one year.

Q: And use those mules?

A: Yes, we use those mules.

Q: Will you look at this? (map) This is a public road running by there. This is the twenty that you lived on, isn't it, and this other twenty is yours also.

A: I can't understand what you make two twenties there for.

Q: Well, there are three twenties.

A: The forty belongs to my husband. It don't belong to me.

Q: Were you living on this, in this house with a barn back of it at the time you made the Mortgage.

A: No, I lived on my husband's land, on the forty acres.

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Q: You lived on that, but not on this twenty that you mention?

A: No, because it don't fit to live in.

Q: Where is your husband?

A: Detroit, Michigan.

Q: How long since he has been down here?

A: Twelve years ago.

Q: Twelve years ago?

A: Yes.

Q: You are not living together now?

A: No.

Q: Haven't lived together for a number of years, have you?

A: No.

Q: How many years since you separated?

A: Twelve years.

Q: Twelve years?

A: Yes.

Q: Have you heard from him or seen him since then?

A: No, I don't.

Q: You don't know where he is, do you?

A: Detroit, Michigan.

Q: Have you ever heard from him?

A: No.

Q: Not in twelve years?

A: No.

Q: The last you knew twelve years ago he was in Detroit, Michigan?

A: I don't know how many years. What my husband have to do with--

Q: Please answer my question, Mrs. McNiskey. Have you heard from him, directly or indirectly? How have you heard from him?

A: Indirectly. He lives with my oldest son.

Q: And you have heard from your son?

A: Yes.

Q: About ~~when~~ him?

A: Yes.

Q: How long ago?

A: My son was here a couple of weeks ago to see me and I heard he was all right. He is sickly though.

(page eight)

(page six)

A: The house stands on twenty acres.

Q: Yes, but not the twenty acres that you made Mortgage for twenty acres for?

A: I can't understand what you ask, twenty acres next to house on the twenty acres, what's that?

Q: You made a Mortgage to Mr. Frank W. Walker on twenty acres of land?

A: Yes, on twenty acres of land.

Q: Now did that twenty acres have any house on it?

A: Yes.

Q: That you mortgaged to him?

A: Yes.

Q: Was the one that the house was on?

A: Yes.

Q: You were moving lumber from the saw mill to fix that house to move in to live in?

A: In that house on the forty acres, yes.

Q: Was it on this twenty acres?

A: No, on my forty acres.

Q: That forty acres was next to this?

A: Yes.

Q: How much did you pay William Petritis for this land?

A: I paid dollar.

Q: Dollar?

A: Yes.

Q: Why did he make a Deed to you for this land.

A: Because he is my brother.

Q: Because he is your brother?

A: Yes.

Q: Did he come to you and ask you to let him make a deed to you, or did you ask him to make a deed to you?

A: He asked me.

Q: He asked you?

A: Yes.

Q: At that time did you know that your brother, William Petritis, was in debt?

A: No.

Q: Did you know that he was in debt \$150.00 besides Mr. Walker's indebtedness?

(page six)

(page nine)

Q: Who drew the deed from William Petritis to you to this land?

A: Who make the Deed?

Q: Yes. Mr. P. J. Cooney?

A: Cooney, yes.

Q: Do you remember going there one night, you and your brother, and having him draw the Deed for you?

A: No, not night.

Q: Wasn't it. When was it?

A: Day time. We go in the afternoon, one afternoon about noon time.

RE-DIRECT EXAMINATION BY HON. C. L. HYBART.

Q: Now Mrs. McNiskey, you say that you owned twenty acres and your husband owned forty acres adjoining?

A: Yes.

Q: And the total amount as owned by both of you is sixty acres?

A: Yes.

Q: And about what was that worth per acre in 1925?

A: Per acre?

Q: Yes, your husband's land and your land all together?

A: About \$10.00 per acre/

Q: That is your best idea or judgment about it?

A: Yes.

Q: And you were living over on the twenty acres, on your twenty acres?

A: I did for a year. The storm comes, and after storm I move away.

Q: What year was the storm, 1926?

A: Yes, 1926.

Q: And after the storm you moved?

A: I moved to Summerdale in Hotel. I lived for couple years in Hotel.

Q: Have you returned to your place? Where are you living now? Summerdale or where?

A: Yes, I live Summerdale.

Q: You don't live on this land now?

A: No.

Q: Now did your husband come down here before you come down?

A: No. My son come down with me and my daughter.

Q: Has your husband ever been down here?

(page nine)

(page ten)

A: No.

Q: Never has been in this State?

A: No, he hasn't been down here, he just didn't want to come.

TESTIMONY OF CLEMENTINE McNISKEY. DIRECT EXAMINATION BY HON. C. L. HYBART.

Q: Your name, please?

A: Clementine McNiskey.

Q: Miss McNiskey, were you present when this paper was signed?

A: No, I wasn't.

Q: This proceeding is in regard to twenty acres of land. Do you know where you were living in December, 1925?

A: Where we were living? On the forty, and then we moved on the twenty. We just lived in one house when it was better and then moved into the other.

Q: Now in December, 1925, that was before the storm, you were living on the twenty acres of land?

A: No, on the forty.

Q: Do you know about the value of the land then?

A: I don't know, whatever the value of land was around then.

Q: Do you know whether your brother signed this Mortgage or not?

A: Well, when they came from town they told--

Q: You can't tell what they told you. Do you know who the mules belonged to at that time?

A: No, only that they were on the place.

Q: How old were you at that time?

A: Fourteen. I knew that they were mortgaged.

Q: Did they belong to your mother or your uncle?

A: They belonged to my uncle.

Q: And your uncle's name is what?

A: William Petritis.

CROSS EXAMINATION BY HON. A. H. CROVATT.

Q: The mules were used by your brother and your mother to farm, were they not?

A: My Uncle Bill used them, and my brother used them, all of them used them.

Q: The family used them?

A: Yes.

RE-DIRECT EXAMINATION BY HON. C. L. HYBART.

Q: Did your mother farm any in 1925?

(page ten)

(page eleven)

A: A little.

Q: A little bit. All right.

TESTIMONY OF WILLIAM PETRITIS. DIRECT EXAMINATION BY HON. C. L. HYBART.

Q: Your name, please sir?

A: William Petritis.

Q: Do you know Mr. Frank Walker, the Defendant here?

A: Yes.

Q: Where were you living in 1925?

A: I was living on the forty acres.

Q: The forty acres?

A: Yes.

Q: You owned that forty?

A: My brother-in-law.

Q: Your brother-in-law owned it?

A: Yes.

Q: What's his name?

A: Joe McNiskey.

Q: Do you know the lands involved in this suit here?

A: No.

Q: Do you know the land that they claim that your sister gave a mortgage on?

A: No.

Q: You don't know it?

A: No, I don't.

Q: Does your sister own any land down there?

A: Forty acres.

Q: Do you know anything about twenty acres she owns?

A: I deeded it to her. I living by myself.

Q: Did you deed her a piece of land?

A: Yes, I did.

Q: Do you know that land? Are you acquainted with that land?

A: Yes sir.

Q: Who is in possession of that land now?

A: I stay on it.

Q: Who does it belong to? (page eleven)

(page twelve)

A: It belongs to my sister.

Q: Well now, were you ever indebted to Mr. Walker over here? Did you ever owe him anything?

A: Yes, I have seen him.

Q: I know you've seen him but did you ever owe him anything?

A: No, I don't. I owed to a Fertilizer Company at Foley, but not to him.

Q: What Fertilizer Company was that?

A: Peoples Fertilizer Company.

Q: Did you ever give Mr. Walker a mortgage?

A: No.

Q: Did you ever give him any Notes?

A: No, never gave him anything.

Q: In December 26th, 1925, did you own some mules?

A: Yes.

Q: How many mules did you own?

A: Two mules.

Q: Did you own a wagon?

A: Yes, wagon belong to place that my brother has.

Q: Your brother owned the wagon?

A: Yes.

Q: And you owned the mules?

A: Yes.

Q: At that time your sister did not have any interest in those mules, did she?

A: No.

Q: Did anybody come there and try to take the mules away from you?

A: Yes, Mr. Walker tried to take them, but mortgaged to Silverhill Bank, don't belong to me, don't belong to her.

Q: What mortgage was that? Mortgage on the mules?

A: Yes.

Q: Who did you give a mortgage on the mules to?

A: Silverhill Bank.

Q: Silverhill Bank?

A: Yes.

Q: Did the Deputy Sheriff ever try to take those mules?

A: One time.

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(page thirteen)

Q: When was that? Was that in December, 1925?

A: Yes. Mr. Walker and the deputy came there.

Q: Deputy came there. Did he take charge of the mules?

A: Yes.

Q: Did your sister owe Mr. Walker any money at that time?

A: No.

Q: Did you all give him a Mortgage?

A: No. Come down twice to take the mules. Come down there about it once--

Q: And you didn't sign any mortgage or papers?

A: Not before my sister signed.

Q: Well did you at the time your sister signed?

A: (Miss McNiskey) He said that when they took the mules down town they said to sign that paper and then my mother wouldn't have to pay \$50.00, or my Uncle Bill wouldn't have to pay \$50.00 if they signed the papers.

Q: Well when you signed the papers did they turn the mules over to you?

A: Yes.

Q: When you paid \$50.00?

A: If I pay \$50.00 to Mr. Walker then I get the mules back.

Q: Your sister paid \$50.00 to Mr. Walker?

A: Yes sir.

Q: And you got the mules back?

A: Yes sir.

Q: And those are your mules?

A: Yes.

CROSS EXAMINATION BY HON. A. H. CROVATT.

Q: Do you remember Bruce Etheridge?

A: Yes.

Q: He witnessed the papers, did he not?

A: I don't know nothing about that.

Q: Do you remember signing a paper in which you stated that you owed \$150.00 and you made a deed to her to avoid paying that \$150.00. Did you make a statement to that effect?

A: No.

Q: You still owed \$150.00 to Mr. Antke for the balance on this place, didn't you.

A: To the Fertilizer Company.

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Q: You say you didn't make such a statement at the time you signed the Mortgage. Did you at the time you and your sister signed the Mortgage to Mr. Walker? Did you sign a statement to the effect that you owed \$150.00 and that to avoid paying that you made a Trust Deed to your sister?

Mr. Hybart: He says this: Did you make a statement to Bruce Etheridge, this Justice of the Peace, did you make a statement to Bruce Etheridge that you signed a Trust Deed to your sister to avoid paying this \$150.00. To keep out of paying this \$150.00 you made this Deed?

A: (Miss McNiskey) He said he didn't talk to Bruce Etheridge at all about anything.

RE-RE DIRECT EXAMINATION OF MRS. MARTHA McNISKEY BY HON. C. L. HYBART.

Q: Mrs. McNiskey, how old are you?

A: Fifty-five.

Q: Do you know where Mr. Walker lives, Mr. Frank Walker?

A: I think he lives in Foley.

Q: In this County? Foley, Alabama?

A: Yes.

Q: Is he over the age of twenty-one years?

A: I don't know whether he is or not.

RE-CROSS EXAMINATION OF WILLIAM PETRITIS BY HON. A. H. CROVATT.

Q: Mr. Petritis, after you made this deed to your sister did you haul lumber and fix the house on your twenty acres?

A: No, after that.

Q: After you made the Deed?

A: I haul that lumber on the forty acres/

Q: On the forty acres?

A: Yes. I go through the fields and I go through the road and Mr. Walker he meet me in the road with Gullidge and drive me Summerdale with load and wouldn't let me have it.

RE-RE-RE DIRECT EXAMINATION OF MRS. MARTHA McNISKEY BY HON. C. L. HYBART.

Mr. Hybart: Mrs. McNiskey, you testified that your husband, what did you say his name was?

A: Joseph McNiskey.

Q: You testified he owned forty acres of land adjoining this twenty.

A: Yes.

Q: And were you in possession of it? Were you handling it, the forty acres of land that the title was in your husband, were you in possession of it?

A: Yes.

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Q: Didn't you have your garden on the forty acres on which you lived?

A: We have little things on this land.

Q: On the forty? Did you have chickens?

A: A few, about half a dozen.

Q: You kept them on the forty?

A: Yes.

Q: You had a chicken coop and barn on the forty acres?

A: Yes.

Q: That was your home?

A: Yes, that was my home. I lived there.

Q: Now this twenty acres that you made the mortgage on to Mr. Walker was your brother's home place, was it not?

A: No, he stay with me. We work together. He is old bachelor. He can't do nothing alone. We plant little things on twenty and little things on forty too because we got to look after place to keep from burning down.

Testimony for
Complainant

Filed April 12, 1935
R. S. Dreck, Reporter

MARTHA MCNISKEY,
Complainant,
-vs-
FRANK W. WALKER,
Defendant.

IN THE CIRCUIT COURT-EQUITY SIDE.
STATE OF ALABAMA.
BALDWIN COUNTY.

TO THE HON. THE CIRCUIT OF BALDWIN COUNTY, STATE OF ALABAMA, AND THE HON. JOHN D. LEIGH, JUDGE THEREOF, SITTING IN EQUITY:-

Comes your complaint and exhibits this, her Bill of Complaint against the defendant, Frank W. Walker and shows:-

(1). That both your complainant and the defendant are bona fide residents of Baldwin County, Alabama and over the age of 21 years, your complainant residing near Summerdale and the defendant residing at Foley.

(2). That your complainant is the owner and in the peaceable possession of the following described real property in Baldwin County, Alabama, viz:- the east half of the northeast quarter of the northwest quarter of section twenty-nine in township six south of range four east and has been the owner and in the peaceable possession thereof since December 16th., 1925.

(3). That on heretofore to-wit: December 26th., 1925, the defendant, under circumstances and by reason of matters and conditions then existing as hereinafter set out, procured your complainant's signature to a paper writing, which paper was retained by the defendant who/now claims to have and hold a mortgage on a portion of said above described property; that said instrument or writing does on its face purport to be a mortgage on a portion of said property and by reason of this and on account of it being of record in the office of the Judge of Probate of Baldwin County Alabama, constitutes a cloud on your complainant's title to said property; that said instrument is of record in said office in

(page two)

MortgageBook 34, page 495, and a copy thereof is hereto attached marked Exhibit "A" and made a part of this bill of complaint as though fully incorporated therein; that in addition to said mortgage your complainant is informed and believes that her signature was also, at the same time, procured to four (4) notes as described in said mortgage but as to the contents of said notes, if there be any, she cannot and does not know.

(4). That said mortgage and notes were and are void in that the alleged making, execution and delivery thereof by your complainant was wholly without consideration.

(5). That said alleged mortgage is void in that your complainant at the time of the signing by her was a married woman and that the said mortgage was and is without the assent and concurrence of her husband, John McNiskey.

(6). That at and for sometime prior to the time of the signing of the instrument by your complainant she resided on said property as her homestead and there resided with her, in addition to her family, a brother, William Petrites; that as against her said brother William Petrites, the defendant claimed to hold an account, debt, demand or obligation, the character and extent of which your complainant did not and does not now know and that in the prosecution of his alleged claim against the brother of complainant, the defendant instituted or caused to be instituted legal proceedings in the Justice Court of one Bruce Etheredge, whom your complainant knew to be then and there acting as a Justice of the Peace, and that on the day that your complainant signed said instrument the said defendant came to complainant's home where she and the said William Petrites were

(page three)

residing, accompanied by the Justice and ^a ~~two~~ parties who claimed to be ^a deputy sheriffs or some other officers of the law; that said deputies or officers seized certain properties of your complainant, to-wit:- One team of mules and a wagon, together with a load of lumber ~~belonging to other parties but which was being transported by said team and wagon,~~ claiming and representing to your complainant that the seizure and holding of said properties was under orders from such Justice Court for the debt of William Petrites and that unless complainant then and there paid said debt or demand that such property would be sold; that all of said acts of seizure and holding of said property were done in the presence or with the knowledge of defendant who at the time either confirmed or countenanced such seizure and representations; that in addition thereto said defendant fraudulently and falsely represented to your complainant, who can neither read nor write the English language and is not versed in business or legal matters, to believe that his claim or demand against William Petrites constituted a lien or charge against her real property and that same would be sold unless she signed said instruments which had been tendered for her signature by the defendant under an offer by him to release all of said properties from such seizure; dismiss the court proceedings and to permit her to discharge said debt or claim from time to time as she was able and that under the duress of such circumstances and by reason of such false and fraudulent representations by the defendant, which representations were material and on which your complainant relied, she signed said instruments as aforesaid.

PRAYER FOR PROCESS AND RELIEF:

THE PREMISES CONSIDERED, your complainant prays that there issue all necessary summons and notices to make Frank W. Walker party respondent to this cause, requiring him to appear

Exhibit A. p. 1.

THE STATE OF ALABAMA.

BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS:

That we, Wm. Petrites, unmarried and Martha McNisky, in consideration of the sum of Three Hundred Seventy two Dollars, to us in hand paid, by Frank W. Walker, the receipt whereof is hereby acknowledged, do grant, bargain, sell and convey unto Frank W. Walker, his heirs and assigns, forever ALL that real estate in Baldwin County, Alabama described as follows, to-wit:

begin at the northeast corner of the northeast quarter of the northwest quarter of section twenty nine (20 Township six (6) South range four (4) East, run thence west seven hundred Sixty ft. thence southeasterly thirteen hundred twenty five feet to the south line of said forty, forty, thence east five hundred three feet to the east line of said forty, thence north thirteen hundred twenty feet to the place of beginning subject only to a lien of one hundred fifty dollars

TO HAVE AND TO HOLD, the above granted and described premises with the appurtenances unto the said Frank W. Walker, and to his heirs and assigns, and to their sole and only proper use, benefit and behoof forever PROVIDED ALWAYS, and these presents are upon the express condition, that if the said Wm. Petrites and Martha McNisky shall well and truly pay to the said Frank W. Walker the sum of Three Hundred seventy two dollars as evidenced by four promissory notes of even date herewith payable in one, two, three and four year, respectively, the first three notes for one hundred dollars each and the fourth note for seventy two dollars, all bearing interest at 8% per annum annually then these presents shall cease, determine to be void, otherwise to remain in full force.

And the said Wm. Petrites and Martha McNisky do hereby vest the said Frank W. Walker, or his assigns, with full power and authority upon the happening of default in the payment of the note above described, to sell their interest in said real estate at public sale for cash, giving thirty days notice in a newspaper published in Baldwin County, Ala, and the proceeds to apply first, to the payment of the amount due on said note with interest on same; second, to the payment of the cost of sale, including a reasonable attorney's fee, and if there shall be a surplus, then the balance to be paid over to Wm. Petrites and Martha McNisky and Wm. Petrites and Martha McNisky do authorize the said Frank W. Walker to conduct the sale, and to make Deed to the purchaser, and the title so made we hereby agree to defend against all persons. It is agreed that the mortgagee herein may bid at said sale as if he were a stranger to this instrument.

Given under our hands and seals this 26 day of December in the year of our Lord One thousand nine hundred and twenty five.

X
William Petrites (Seal)

X
Martha McNisky (Seal)

(page two)

Signed, Sealed and Delivered in the presence of
E. E. Gullledge
R. L. Etheredge

The State of Alabama.)
Baldwin County.)

I, Bruce Etheredge a Justice of the Peace, in and for
said county and state hereby certify that Wm. Petretis and Martha
McNisky, whose names are signed to the foregoing conveyance, and
who are known to me, acknowledged before me, in this day, that
being informed of the contents of the conveyance, they executed
the same voluntarily on the day the same bears date.

Given under my hand this 26 day of December A. D.
1926.
(SEAL)

Bruce Etheredge

And I do further certify that on the 26 day of
December, 1925, came before me the above named Martha McNisky
known to me to be the wife of Joe McNisky who being examined by
me separate and apart from her husband, touching her signature to
the above instrument, acknowledged that she signed the same of
her own free will and accord, and without fear, constraint or
threats on the part of her husband.

In witness whereof, I hereunto set my hand this
26 day of December, 1925.

Bruce Etheredge

(SEAL)

State of Alabama.
County of Baldwin ss

Before me a Justice of the peace in and for said
county and state personally appeared Wm. Petretis known to me who
being duly sworn deposes and says that he is the owner in fee
simple of said real estate and that there are no liens against
the same except one hundred fifty dollars balance on purchase price
and a trust deed as securities to his sister Martha McNisky.

his

William Petretis
mark

Witness
Bruce Etheredge
R.L. Etheredge

Dec. 1926.
SEAL

Subscribed & Sworn to before me this 26 day of

Bruce Etheredge
Notary Public, Baldwin Co. Ala.

I hereby certify that the mortgage or privilege tax
on within instrument was paid by the lender or credit

(page three)

(See general acts of the Legislature of 1919 on page 420.)

Frank W. Walker,
By, J. L. Kessler.

STATE OF ALABAMA

BALDWIN COUNTY.

I, W. D. Stapleton, Judge of Probate for said county hereby certify that the following privilege tax has been paid by the within instrument as required by Acts of 1902 and 1903 viz: \$___ cts 60

W. D. Stapleton, Judge of Probate
By, J. L. Kessler.

Filed for record Dec. 28, 1925 at 1:05 P. M.
Recorded December 30th, 1925.

W. D. Stapleton, Judge of Probate.

BILL OF COMPLAINT.

MARZHA MCNISKEY, Complainant.

-VS-

FRANK W. WALKER, Defendant.

Filed December 19th., 1927.

T. W. Rimmer
Register.

RECORDED

LAW OFFICES
NORBORNE STONE
BAYMINETTE, ALABAMA

state of Alabama,
County of Baldwin.

In the Circuit Court, Equity side.

Martha McNiskey
vs
Frank W. Walker.

Supplementing the brief of the respondent already of file in the record of said case; Your respondent asserts that evidence conclusively shows that the land in question was not resided upon by the complainant and was not a homestead of hers nor of her husband. The evidence further shows that the deed from William Petritis to Martha McNiskey was made at the instance and request of one William Petritis and not at the suggestion or request of the complainant.

The testimony shows that the issuance and levy of an execution on December 22, 1925, and December 26, 1925, respectively.

The testimony shows, without contradiction, that said respondent was the agent for the Foley Fertilizer Company, and that it had its office and place of business at Albertville, Alabama.

The testimony of Martha McNiskey and William Petritis shows that the personal property released from levy upon the execution of the mortgage to Frank W. Walker was used jointly by said complainant and said William Petritis, without which complainant could not have engaged in farming without securing such means of farming at an expense much greater than the amount of said mortgage. Said complainant received consideration and benefit from the execution of said mortgage without any loss to her whatever.

Aside from the written testimony of W. D. Claybrook, stating that his residence was Albertville, Alabama, and said respondent, Frank W. Walker, was empowered to collect notes and accounts in any manner he deemed advisable, and was the authorized agent of Foley Fertilizer Company, he, said Frank W. Walker, testified that he was the agent of said Company and had been for some time. This statement was never denied nor disputed.

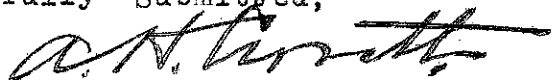
At the time of the transactions in question there was not in existence such a firm or corporation as the Peoples Fertilizer Company operating within this county.

The amount of said execution and court costs when execution was served was \$285.25. Interest on this for four years and 24 days was \$115.62. To these must be added the sheriff's fees for making and releasing the levy and care of the property, justice fees for acknowledging mortgage and affidavit, and attorney fees of \$50.00. The said mortgage herein mentioned was for \$372.00, which added to said note for \$50.00 was the consideration given for the release of said levy.

The proceeds of the foreclosure sale was \$500.00, which was applied to payment of \$372.00 on Mortgage; interest on same for 1 year and 11 months and 23 days, \$59.02; Attorneys fees and advertising, \$68.98.

According to the decree setting aside the submission by this honorable court, and there being no further submission of testimony by the complainant touching the points enumerated in said decree we believe the complaint should be dismissed.

Respectfully Submitted,



Attorney for Respondent.

Martha McNisky, Complainant.

vs.

In Circuit Court of Baldwin County,

Frank W. Walker, Defendant.

Alabama,-- In equity.

To the Honorable John D. Leigh, Judge of said Court:

Comes the defendant, Frank W. Walker, and as answer to bill of complaint in this cause, alleges and states, separately and severally;

First.

Defendant admits the averments contained in paragraph one.

Second.

Defendant denies the allegations set up in paragraph two as to complainant being the owner and in the peaceable possession of the land mentioned in paragraph two.

Three.

Defendant admits that on December 26, 1925 he procured the signatures of complainant to mortgage described in ~~paragraph~~ paragraph three of complaint and at the same time procured complainant's signature to the four notes described in said mortgage; in further answer to said paragraph three, defendant denies that the circumstances, matters, and conditions then existing, were as set forth hereinafter in said bill of complaint.

Four.

Defendant denies all of the averments of paragraph four and alleges that the notes and mortgage were made, executed and delivered by complainant on and for a valuable consideration.

Fifth.

Defendant denies that the mortgage executed by complainant is void, whether or not it was signed by her husband John McNisky or without his consent or concurrence.

Sixth.

Defendant as further answer to paragraph six of the bill of complaint states that it is not true that complainant was residing on the property covered by said mortgage, at the time of the execution of said mortgage, but that it is true that her brother, William Betritis was residing with her on another place adjoining this land, and that neither complainant nor her brother were living on the land covered by this mortgage, at the time of the execution of the mortgage and four notes.

Defendant further states that on the 26th day of December 1925, the Foley

Fertilizer Company, a corporation, had and held a judgment against William Petritis, which said judgment was ~~duly recorded in the probate office of Baldwin County, Alabama, a copy of which certificate of judgment is herewith attached and marked exhibit, "A"~~ ^{also secured Nov. 28, 1927} That defendant was at this time and had been for a number of years previously to the securing of this judgment, an agent of the said Foley Fertilizer Company, a corporation, and empowered and charged with the collection of various notes and accounts due to the said Foley Fertilizer Company;

That on said judgment against William Petritis, an execution was issued and placed in the hands of E. E. Gullede, a deputy sheriff of Baldwin County, Alabama; that said Gullede on the 26th day of December 1925 did levy upon and take possession of a team of mules, a wagon and a load of lumber as the property of said William Petritis; that at the time of the levy, the said above described property was in the possession of William Petritis, and that at said time, an affidavit was on file on the public records of Baldwin County, Alabama, made and sworn to by William Petritis in which affidavit William Petritis claimed that he owned the mules and wagon, and at the time of the levy of said execution as aforesaid, there was no paper on record showing a sale of said mules and wagon to any one. That said E. E. Gullede, ~~as~~ as deputy-sheriff took the said mules, wagon and lumber with him and was overtaken at or near Summerdale by said complainant accompanied by her brother, the said William Petritis; that said complainant and William Petritis entered into negotiations with the defendant, seeking to release said team, wagon and lumber.

That in order to effect a release of said personal property from sale under the execution aforesaid, the said complainant and William Petritis, voluntarily executed the notes described in said mortgage, and the mortgage securing the notes. That at the time of signing said notes and mortgage, William Petritis, made an affidavit that he was the owner of the property described in the mortgage in fee simple, but that he had given his sister, Martha McNisky, a trust deed, and he verbally stated at that time in the presence of witnesses that the said deed was made to his sister for the purpose of securing said complainant against any loss by reason of her executing said notes and mortgage; that because the officers, office and stockholders of the Foley Fertilizer Company, were located in North Alabama, said notes and mortgage were made payable to Frank W. Walker.

Three

That upon the making and executing of said notes and mortgage, the said E. E. Gullledge, deputy-sheriff, did release unto Martha McNisky and William Petritis, jointly, said mules, wagon and load of lumber.

Seventh.

That on to-wit:- December 19, 1927, the mortgage made by complainant and William Petritis was foreclosed and at said sale Frank W. Walker became the purchaser of said land for the sum of \$500.00, and that a deed to this land has been made to the said Frank W. Walker, dated the 19th. day of December 1927.

The Premises Considered, defendant ^{prays} that your Honor decree, that complainant be not entitled to relief, and the said complaint be dismissed as against defendant with his costs.

M. Hawkins

A. W. Grath

Solicitors for Defendant.

Martha McNiskey

vs

Frank W. Walker.

Supplemental Brief
for Respondent.

Martha M. Huskey
Complainant

vs
Frank W. Walker
Defendant

Answer of deft

Filed Jan 18 1928.
T. H. Reiman
Register

RECORDED

W. H. Hawkins
A. N. Grotath
Sols for deft

RECORDED

Duch
7-492

McNISKEY,

vs.

WALKER,

Stipulation

STIPULATION.

Filed April 12, 1938

R. S. Duch, Register