

ROBERT IVEY, by his next
friend, C. A. Robinson,

Complainant,

vs

W. W. MAY, et al,

Respondents.

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

No. 1 0 4 6.

TO THE RESPONDENTS OR TO HYBART, HEARD & CHASON, THEIR SOLICITORS:

Demand is hereby made that you produce at the hearing of this cause the original documents showing transactions between and among the respondents with reference to the land involved in this suit and especially the following documents, viz:

1. Deed from Robert Ivey to Peter Frankos made on or about November 23rd, 1931 and purporting to convey the property described in this suit.
2. Deed of Conveyance by Peter Frankos to W.W. May purporting to convey the land described in this suit.
3. Deed of conveyance from W. W. May to George Marinous purporting to convey the land described in this suit.

Dated this 21st day of August, 1933.


SOLICITOR FOR COMPLAINANT.

We hereby accept service of the foregoing notice and waive further forms and notices. We further agree to furnish the documents demanded and that if the deeds as demanded are not furnished, the complainant may offer copies from the records of the Probate Court without certificate by the Probate Judge or that he may offer in evidence the copies of deed from Complainant to Peter Frankos and from Peter Frankos to W. W. May, attached to the bill of complaint which we admit are true and correct copies of the originals.

Dated this 21st day of August, 1933.


SOLICITORS FOR RESPONDENTS.

DEC 19 1935

THE STATE OF ALABAMA * * * JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1935-36.

1 Div. 664.

Robert Ivey, pro am.

v.

W. W. May, et al.,

Appeal from Baldwin Circuit Court,
In Equity.

KNIGHT, Justice.

The appellant, suing by his next friend, filed his bill in the Circuit Court of Baldwin County against the appellees, W. W. May, George Marinous and Peter Frankos, the latter a resident of Illinois, seeking the cancellation of certain conveyances, the first of which was executed by the appellant, and at a time when it is averred he was of unsound mind, "and incapable of attending to business affairs." The deed of appellant was executed to appellee Frankos, and Frankos, in turn, conveyed the property to W. W. May, and May, after litigation arose, which involved the validity of appellant's deed to Frankos, conveyed, by

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quit claim deed, the same property to Marincus, another of the appellees.

The bill shows that complainant owned a piece of property in Baldwin County, at or near Lowley in said county; that the property was worth approximately six thousand dollars; that the complainant on November 23, 1931, was of unsound mind, and so much so that he was not capable of transacting business; that he was also in feeble physical condition. That with knowledge of the mental and physical condition of appellant, and with the fraudulent purpose of acquiring appellant's property at about one-fifth its real value, the appellee George Marincus, on November 23, 1931, prevailed on the appellant to sign a deed purporting to convey the property to appellee Peter Frankos; that Frankos, to aid in carrying out the fraudulent scheme of Marincus to acquire appellant's property at an amount greatly less than its real value, accepted the deed, but shortly thereafter conveyed the property to appellee May, who was an "agent, servant or employee of Marincus," and who paid nothing for the conveyance; that the deed made to May was but a further step in the consummation of the fraud upon appellant. (And we may here say that the evidence shows that shortly after the title had passed to May, he, May, conveyed the property to Marincus.)

It appears from the bill, and the evidence fully supports the averment, that the consideration paid, and to be paid, to appellant by Marincus for the property was one thousand dollars, of which amount five hundred dollars was paid by check drawn on the Baldwin County Bank by Marincus, and a note for five hundred dollars was executed to appellant, and which purported to have been made by Frankos.

It appears that appellant deposited the check in the Baldwin County Bank, and said bank was shortly thereafter placed in liquidation by the Superintendent of Banks of the State of Alabama, and sometime thereafter, under the authority of the State Banking Department, and by a decree of the Circuit Court of Baldwin County, the said bank was reorganized, and the reorganized bank issued to appellant, to cover his deposit in the bank at the time the bank failed, 6-495/1250 shares of stock in the reorganized bank, and a certificate of deposit for \$238.86. The said Ivey never withdrew the certificates, and, in fact never knew of the issuance of the same, but said "documents remained in the bank until withdrawn for use as evidence in this case."

On submission of the cause for final decree, the chancellor decreed that the complainant, Robert Ivey, was of unsound mind at the time of the execution of the deed to Peter Frankos, and that George Marinous was not "entitled to protection as an innocent purchaser for value under section 6822 of the Code of Alabama," - the deeds from Ivey to Frankos, and Frankos to May, and May to George Marinous were each held to be null and void, but required, as a condition precedent to the cancellation of said conveyances, that Ivey pay to the register of the court, for Marinous, within ninety days from the filing of the decree, \$623.00, representing the original cash payment for the land, with eight per cent. interest thereon from November 23, 1931, and also that the note given by Frankos to said Ivey for \$500.00, and which evidenced the unpaid purchase price of said land, should be returned to Frankos. The court further decreed

that unless the said \$525.00 was paid to the register "within ninety days from the filing of this decree, or if appealed, within ninety days from judgment on appeal, the said three deeds above mentioned and set out are not to be affected by this decree."

From this decree the complainant, Ivey, appealed, and has here assigned for error that part of the decree which required that the complainant, as a condition precedent to the cancellation of the conveyances, should pay the said \$525.00 to the register for the defendant Marinous.

The respondents have neither appealed from said decree, nor have they made any cross-assignments of error upon the record. It would, therefore, seem that the decree is entirely satisfactory to them.

That Marinous was in truth and fact the real purchaser of appellant's property, in the sense that he alone was to be benefited thereby, the evidence convinces us to a moral certainty; that Marinous knew, at the time he prevailed upon appellant, Ivey, to execute the deed, that Ivey was of unsound mind, and wholly incapacitated to transact any kind of business, we are equally well convinced; that Franken and Ray were mere dummies, brought into the transaction to aid Marinous in consummating the fraud upon the said Ivey, there is no room to doubt; and, lastly, that the property was worth several times the amount that Ivey was to be paid for it by Marinous, or by Franken, we are also reasonably satisfied.

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The sole question presented by this appeal is, will the complainant, under the averments of the bill and the proof as above stated, be required to make restitution to Marinous of the consideration paid for the property, together with interest thereon, as a condition precedent to the cancellation of the conveyances.

This precise question has never been determined by this Court.

Except in the cases provided for in sections 6822 and 6823, which have no application here, the contracts and conveyances of insane persons are absolutely void, and confer no rights upon the other party to the contract. - Metropolitan Life Ins. Co. v. Bramlett, 224 Ala. 473, 140 So. 752; Walker v. Hinn, Adm., 142 Ala. 560, 39 So. 121; Hougharty v. Fong, 127 Ala. 677, 30 So. 524; Hughes v. Bullen, 209 Ala. 134, 98 So. 379; Livingston v. Livingston, 210 Ala. 420, 98 So. 281; Code, sec. 6824.

This Court, in the case of Head v. Halligan, 229 Ala. 539, 153 So. 750, which was a suit to quiet title to land, held that a deed executed by a person of unsound mind to a grandson, who paid nothing for the property, and who procured the execution of the deed with notice or knowledge of the grantor's insanity, was void, and that the grantee of the grandson, though paying value, without notice or knowledge of the first grantor's insanity, received no better or higher title than the grandson, and that an offer to do equity or to make restitution was not necessary to secure a cancellation of the conveyance.

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This case, we concede, is not altogether in point for the reason that the insane grantor did not come into court in the first instance seeking a cancellation of his void deed, but was brought in as one of the defendants to the bill to quiet title, and when brought in sought cancellation by cross-bill.

The author of the text in 32 Corpus Juris section 543, page 742, states the rule bearing on the question now before us as follows: "It is generally held that the conveyance may be set aside without requiring the consideration to be refunded where the grantee had knowledge of the grantor's insanity, or where the consideration paid is so inadequate as to evidence an intention of the grantee to take advantage of the grantor's infirmity to defraud him. In such cases, at least, it is necessary to return only what is lost." (Italics supplied.)

The Supreme Court of Massachusetts, many years ago, had occasion to pass upon a case involving the exact question now before us. That court in the case of Gibson v. Ames, 6 Gray 279, held that a conveyance by an insane person could be avoided by him without being required, as a condition precedent to relief, to make restitution to the grantee. That to hold that restitution must be made as a condition to relief, would be to say, in effect, that, in a large majority of cases, his deed shall not be avoided at all. This Massachusetts' case has been cited with approval by the highest courts in a number of the states of the Union, and, at the expense of brevity we will quote from it:

"Upon the first impression, it may seem equitable that such restoration should be made; before the insane or infant grantor should recover his estate; but it is an impression which a little reflection removes. The law makes this very incapacity of parties their shield. In their weakness they find protection. It will not suffer those of mature age and sound mind to profit by that weakness. It binds the strong, while it protects the weak. It holds the adult to the bargain which the infant may avoid; the sane to the obligation from which the insane may be loosed. It does not seem to put them on an equality. On the other hand, it intends that he who deals with infant or insane persons shall do it at his peril. Nor is there, practically, any hardship in this; for men of sound minds seldom unwittingly enter into contracts with infants or insane persons.

"If the law required restitution of the price, as a condition precedent to the recovery of the estate, that would be done indirectly which the law does not permit to be done directly; and the great purpose of the law, in avoiding such contracts, the protection of those who cannot protect themselves, defeated. The insane grantor could not avoid the deed of his estate, because the deed is valid, which induced the sale; and the law is not to be construed so as to defeat the intent of the law in regard to it." (Italics supplied.)

The reason of the rule for declaring void conveyances by insane persons is not merely his incapacity to make the deed, but also his incapacity prudently to manage and dispose of the proceeds. - Harvey v. Davidson, 105 Ark. 22, 105 S. W. 10.

The Supreme Court of Errors of the State of Connecticut, in the case of DeGruith v. Conlan, 25 Conn. 587, held that it is a general rule that, where one seeks the advantage of a rescission of a contract, or re-conveyance, he should not be permitted to retain the consideration received by him. In other words, he who seeks equity must first do equity. But this court expressly held in that case that this rule has no application, except in cases where the grantee acted in good faith and without knowledge of the grantor's incapacity.

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In the case of Reaves v. Davidson, supra, the Supreme Court of Arkansas held that it was not necessary that the insane person should restore the consideration, where it appeared he had spent or wasted the same.

The Supreme Court of Illinois, in the case of Light v. Freeman, 251 Ill. 84, held that one who trades property with an insane person in good faith and without knowledge of the insanity should be placed in statu quo by requiring the money paid by him to the insane person to be returned before the transaction is set aside; but if he does not deal in good faith but with an intention to defraud, and know, or should have known, of the insanity, the transaction may be set aside without requiring that he be reimbursed for the money paid on the purchase.

The Supreme Court of Indiana, in the case of Thrush, et al. v. Starbuck, et al., 145 Ind. 673, in passing upon a similar question here presented, observed: "It has not, to our knowledge, been decided in this or any other state that where the contract has been entered into with knowledge of the insanity, and an unconscionable advantage has been taken of the insane person, that it is a necessary prerequisite to avoidance, that a tender of that which has been received by such insane person shall be made. If the rule requiring the parties to be placed in statu quo includes, as a necessary element, the requirement that the party dealing with the non compos shall be ignorant of the incapacity, and shall not deal unfairly, it would seem to follow as an indispensable result that the presence of such knowledge and of an unfair advantage would discharge the rule. Otherwise such elements of the rule are mere empty phrases."

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The Supreme Court of Nebraska, in the case of Latson v. Latson, 37 Neb. 6, gave its unqualified approval to the proposition that it would be absurd to annul the bargain for mental incapacity of a party, and yet to require of him to retain and manage the proceeds of his sale so wisely and discretely that they shall be forthcoming when with restored intellect he shall seek its annulment. This court unqualifiedly commits itself to the doctrine that it is not necessary to restrict the consideration paid.

The Supreme Court of Maine, in the case of MARVEL V. ROBSON, 53 Me. 487, gave its approval to the same doctrine announced in SILSON V. LINDSAY.

The Supreme Court of Oregon, in the case of SCHINDLER V. RAYSON, 53 Ore. 482, held that where the grantee in a deed of a non sane person knew of the grantor's insanity and, in addition, was guilty of a fraud in the procurement of the conveyance, that such grantee was not entitled to restitution.

The Supreme Court of New Jersey, in the case of Latson v. Fairbury, 57 N. J. L. 108, gave its approval to the doctrine that where a fraud is practiced upon one who is known at the time to be insane, it is not required that restitution should be made to avoid the contract.

Our own Court, in a number of cases, has held that where the conveyance is infected with actual fraud, as contradistinguished from constructive fraud, it will not be allowed to stand for any purpose. - Nelson v. Lee, 226 Ala. 562, 148 So. 311; Virginia-Carolina Chemical Corporation, et al. v. Salsmana, Grange and Texas Groves Co.; 227 Ala. 55, 148 So. 233; Campbell v. Davis, 25 Ala. 26, 4 So. 140; Britchett v. Jones, 27 Ala. 317, 6 So. 76; Roscoe v. Bronberg, 28 Ala. 619, 7 So. 684; Gordon, Rankin & Co. v. Ivesdy, 71 Ala. 202, 212.

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Other cases, in line with the above holdings, could be cited, but we deem the foregoing sufficient to demonstrate the bent of the judicial mind against permitting the avaricious, shrewd and designing man of affairs to deal with one whom he knows to be incapable of dealing with judgment and discretion, and, after taking an unfair and unconscionable advantage of the opportunity, incur no hazard whatever. If the courts would permit him to so deal, and thereby run no risk of losing that with which he parted, then he is not restrained in attempting the advantage as time and occasion present themselves. We know of no principles of law, or of morality, which require courts of equity to be swift, in extricating one who has laid meshes for another, and has been caught himself.

It only remains to be said that we are in full accord with the conclusions reached in the above cited cases, that a man who deals with one of unsound mind, and having notice or knowledge of such insanity at the time, does so at his peril. That such an one cannot be accorded the rights of a bona fide purchaser, nor is he, ordinarily, entitled to restitution, as a condition precedent to the cancellation of the contract. And when, in addition to dealing with a man of known unsound mind, he practices a positive fraud upon him, a court of equity will not exert itself in behalf of such a defrauding party.

If the consideration paid has been wasted or dissipated by the non donee, equity will not refuse to cancel the contract because of the inability of the defrauded party to return the consideration paid. For to do so, would often result in allowing the shrewd, avaricious and designing man to hold to his ill-gotten goods.

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However, in the case at bar, the complainant has offered to "do equity," that is, and must be construed to mean, an offer to do what a court of equity deems proper and equitable under the circumstances of the case.

The utmost consideration due appellee Marinos in this case is that the 6 and 405/1250 shares of stock in the reorganized Baldwin County Bank, and the certificate of deposit of \$250.00, issued by said bank to complainant Ivey be delivered to the said Marinos, in lieu of the consideration paid by him, and that the note of \$500.00 be returned to appellee Frankos.

In decreeing that complainant should, as a condition precedent to the cancellation of the conveyances, return to appellee Marinos the \$500.00 paid by him, with eight per centum interest thereon from November 23, 1931, the court below committed error. The court should have limited restitution to requiring the delivery to Marinos of the said bank stock and the said certificate of deposit, and the return of the Frankos note. This was the full extent of restitution to which the parties were entitled.

The decree of the circuit court will be here affirmed in so far as it decreed that the conveyances were null and void, but will be here corrected to conform to this opinion. A decree will be here entered accordingly.

Appellant will be allowed ninety days from this date within which to deliver to the register of the Circuit Court of Baldwin County, for Marinos, the said bank stock, and a similar

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period of time within which to deliver to the register the said note for Frankos; with power in the circuit court to extend the time, upon sufficient excuse therefor shown to the court.

As corrected, the decree appealed from will be and is here affirmed.

Appellees are taxed with all the costs accruing in this cause in the court below and with all the costs accruing on this appeal.

Corrected and affirmed.

Thomas, Bouldin and Brown, JJ., concur.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 864,
Robert Ivey, pro am, Appellant,
vs.
W. W. May, et. al., Appellee,
From Baldwin Circuit Court.

The State of Alabama,
City and County of Montgomery. }

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to 12 inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme
Court of Alabama, at the Capitol, this the

19th day of December, 1935

Robt F Ligon
Clerk of the Supreme Court of Alabama.

STATE OF ALABAMA, COUNTY OF BALDWIN.

ROBERT IVEY, by his next friend,
CHESLIE A. ROBINSON,

Complainant,

vs

W. W. MAY, et al,

Respondents.

IN THE CIRCUIT COURT OF
SAID COUNTY, IN EQUITY.

No. 1046

In the foregoing cause it is agreed that the testimony of the following witnesses named, D. S. Comstock, C. A. Robinson, Dr. H. W. Jordon, J. C. Griffin, W. B. Solley, Claude Ivey, *Percy Hall, Ruth M. Mahler, Mary, R. A. Papperton, Cheslie A. Robin-*
son may be taken before Ruth Macdonald, acting as commissioner, in shorthand and transcribed by her; issuance of commission, all forms and notices and the signatures of the witnesses to their respective depositions are waived; each party to be furnished with a copy of the depositions.

Dated this 31st day of August, 1932.

B. C. McMillan

F. F. Nelson
SOLICITORS FOR COMPLAINANT,

Walter Heard & Harold

W. W. May
SOLICITORS FOR RESPONDENTS.

Pursuant to the foregoing agreement I caused the following named witnesses, D. S. Comstock, C. A. Robinson, Dr. H. W. Jordon, J. C. Griffin, W. B. Solley, Claude Ivey

to come before me at Loxley in Baldwin County, Alabama, on August 31st, 1932 and the said witnesses after being duly sworn did testify as follows:

Deposition of D. S. Comstock.

Direct-Examination by Mr. McMillan.

I am sixty years old and I live in Loxley, Alabama. I do know Mr. Robert Ivey and have known him for twelve or thirteen years. I have been a neighbor to him for several years and lived within a mile or so. In the past I have seen him almost every day. Recently I haven't seen him very much. By recently I mean the last year or two and I didn't see him within the last year or two as often as

I did previous to that because of his condition. He has been confined to his home a good deal. As to his mental condition, it has seemed to me for the last two years or so that he has been very childish although I have known him very well and he has known me very well in the past and he was seldom able to recognize me and I have had to tell him my name and in his conversation he was very rambling, going from one subject to another. In fact it was hard to converse with the old man and stay on any one subject particularly. He was in that condition on November 23rd, 1931 and in that condition long before that time. His son John lived at that time and for about a year previous to that time and perhaps six months after that time he was my next door neighbor and it was the old man's habit to come to his son John's almost every day for a short time and in that way I met him in that time very often. I don't know how old Mr. Ivey is but he has the appearance of being an old man and I should judge his age at seventy-five but I do not personally know his age. He has been very feeble for the past two years.

I do not know anything about the place he sold or is alleged to have sold to George Marinous. I know the place Mr. Robert Ivey lived on and all I know is hearsay. That place is practically in the heart of the Town of Loxley. It is very close. In fact it is a quarter of a mile from the depot. It is hard to say what is the value of the place. I know at one time and that is about two years ago, the old man held the value of that place at eight thousand dollars. At present I don't think the place is worth that. Maybe about half that, under present conditions. The house is good, made of concrete blocks and built about fourteen years ago. The place is cultivated, partly in orange orchards and a few other trees, don't know just what they are. The house is in good condition. It would cost to rebuilt that house, I should think about two thousand dollars. That is to build the house alone. I know very little about what it would cost to plant those orange trees and cultivate them up to the present time.

On Cross-Examination by Mr. Hybart.

I think there are six or seven rooms in that house and the

house is possibly 32 x 40. There are six or seven rooms and upstairs, what I would call a story and a half house. The house is built of concrete blocks. I don't know if the upstairs is furnished. I haven't seen it recently. Time I saw it I made repairs on the house at onetime and at that time it was only partly furnished upstairs. I am a building contractor. I am not related to any of these parties. I have known Mr. Ivey about thirteen years, ever since he came here. The place is a little over a quarter of a mile from the post office at Loxley, perhaps three-eighths of a mile. I don't know exactly how many acres of land in the place. I think originally there was sixty-five acres but the place was eighty acres and the corner cut off by the railroad and I think there is sixty-five. I am not certain as to the acreage but my best judgment is that there was sixty-five acres in the place but I don't know if there were that many acres in November of 1931. I don't know at that time. I don't know when the Orange trees were planted there. The old man would plant and re-plant two or three times but I would say the first trees were planted there twelve years ago soon after he bought the place. I don't know the last time he gathered in the fruit. Some of the trees have been killed by freezing, quite a number killed in the last freeze two or three years ago. It didn't put him out of business. There were some left but I don't know how many and I don't know if he bought any since that time and I would say he wasn't able to sell a great deal of the fruit. It has been some time since I saw Mr. Robert Ivey. To the best of my recollection I haven't seen him in six months and before that time I saw him quite frequently. He came to the Post Office often and I would meet him on the street and when he was in condition to get around. Previous to about six months ago he went up to Range and previous to that time I saw him frequently for several years. I don't know if I saw him on November 23rd, of 1931. I wouldn't say and I don't know what his mental condition was on that day. I don't know if he was any better at some times than he was at others. Then his mental condition seemed to me to be very childish. He didn't sometimes know me when we met. Sometimes he didn't. His eyesight was very bad. I presume to say that he didn't know me because of the fact that he couldn't see. It was naturally not on account of his mental condition. He would

know me anyway although he couldn't always call my name. His recollection of names was poor. I don't know that mine is good along that line. I don't know anything to compare it with. I do forget names to be sure. I think in November of 1931 that the son, Oran, lived with Robert Ivey. All the sons I am personally acquainted with is three. He has four but the three I know are John, Claude and Oran and then there is another one up country. John, Claude and Oran lived around here. I haven't talked with John about the case any nor has Claude. Claude and I are good friends, we speak when we pass. We are as near neighbors as I was with the old man. He lived at the same place. No relation between Claude and me by marriage or otherwise. I didn't talk with John or the rest except Claude regarding the case. I think we had two conversations about this case and we talked the facts over and discussed the sale to a certain extent. I told Claude what the old man's ~~marital~~ condition was but didn't agree to any testimony. I don't know who attended to the transaction of the old man's business nor if he bought any goods or groceries or things himself. I don't know if it is a fact that he transacted his own business and wouldn't say.

Re-Direct Examination by Mr. McMillan.

After I would see Mr. Ivey and have to tell him my name he could not thereafter carry on a connected conversation. His conversation was very disconnected. He would ramble from one thing to another and his talk was childish. I could not say that he would forget my name and who I was after I had told him and talked with him because I do not recollect that he ever called me by name afterwards. He hasn't been engaged in any business for several years. The place testified about is the place the old man lives now. George Marinous is engaged in the mercantile business. I don't know for sure how long he has been here. About ten years.

Re-Cross Examination by Mr. Hybart.

I think the son, Claude, was working the place in 1931. I have seen him working there. I don't know if any part of it was rented to anyone and I don't know if Claude rented from his father. I don't know how many acres are in cultivation there.

Deposition of Cheslie A. Robinson.

Direct Examination by Mr. McMillan.

My name is Cheslie A. Robinson and I live at Range, Conecuh County, Alabama. I am Mr. Robert Ivey's son-in-law. I married his daughter. I am thirty-nine years of age. Mr. Robert Ivey's age is between eighty and eighty-one. He is right at eighty-one years of age. In January of 1931 Mr. Robert Ivey had a stroke of paralysis. I was with him four to six months during the year. He would be at my home or me at his. Previous to that time his mind was not exactly normal but it wasn't so bad as it has been since his stroke in January of 1931. I believe it was during the winter of 1931. And after that stroke his mental condition was impaired, at practically all times. At times he seems to be better. Since that time he has transacted no business whatever and previous to that time his sons, one or the other looked after his little affairs, Claude principally, and since that time or I might say during the last ten months, he spent a large portion of time among his children in Conecuh County and I looked after his business. He is not capable of looking after it himself. I know the place that he made deed of to Mr. George Marinous. That is where the old man lives and it has been his home since December of 1919. That is the only property he owns with the exception of some lots in front of the house which he transferred at the same time. That is the only property he had and is the property described in deed to George Marinous covering everything he had. Under present conditions I would say that the value of that place and the lots would be \$3500.00. The value in November of 1931 was about the same. When I say \$3500.00 I mean in these depressed times. In normal times it would be worth \$5,000.00 at least. The house is in good condition. The living room and dining room are connected which makes a large room large enough for two rooms, then there are three bedrooms and a kitchen, five rooms downstairs and two upstairs, one furnished upstairs and one unfurnished, but the entire house is in good condition. There are approximately twenty-one acres at the present time. It is cultivated principally in orange trees, a few in other crops. I do not know how many original orange trees he had.

Mr. Ivey is at his home today. He cannot get out unless someone helps him. His physical condition has been very bad ever since his stroke and he is unable to walk. When I speak of his mind being in bad condition, I base my idea of his mental condition on circumstances that have come up that showed he didn't know what he was doing. For instance, since he had this stroke he came to me and said that the lightning had struck his house and knocked off part of the roof which was all wrong, and later said there was a bunch of people he called Mexicans, cutting his pecan trees and said they would cut and make swings in the trees to put the babies in and would burn the boughs and that he had begged them not to do it and they would go ahead and do it anyhow and that he would ask his boys to stop them and they would say they didn't see anybody out there. And the old man said he saw these Mexicans cut off the trees, dig a big piece out of the trunk and then sit the tree back on the stump and put gum around it and the tree grew on. I tried to reason with him but he said he saw the piece, and he very frequently would be at my house and think he was somewhere else. He came there week before last and thought he was at Loxley and I couldn't make him see or realize where he was. And at the time this deed was made a few days afterwards, he came down here and began to talk to me about the reason he sold the place and he said he did it because the Mexicans were cutting down the pecan trees and carrying them and the oranges off and that the boys wouldn't take care of the place and he had to do it. As a matter of fact there are no Mexicans around there at all. I talked to him again after the deed was made and he said he didn't sell this place, it was the other place and when I asked him later about the matter of the deed he said that he didn't know anything about making the deed, that Mr. Marinous carried him to Bay Minette and didn't allow his presence at the time the deed was made and didn't read it to him before he signed it and he didn't know what he signed but there were two papers of some kind and also said he thought he sold the other place. His mind has been in that condition practically ever since he had that stroke except on some days when he talks with a little more sense but there is hardly a day but what you can see his real mental condition and his mind hasn't been clear at all since

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this stroke and hasn't been real good for a year previous. Mr. George Marinous lives here in Loxley. He undoubtedly must have known of Mr. Ivey's condition. Everyone else knew of it. Mr. Ivey's physical and mental condition for the past two years has not been such as to enable him to attend to business. He has resided in Baldwin County for twelve and a half years or a little better, on this land. I do not know who took the old man to Bay Minette at the time this deed was signed. I wasn't here but I have been informed that George Marinous took him. Mr. Ivey told me that.

Cross-Examination by Mr. Hybart.

Mr. Ivey lives about seventy-one miles from where I live. I don't know just how many times I visited Loxley in 1931, but Mr. Ivey was at my house a lot and I would say that I came to Loxley four times and the entire year at least six times. It might have been about the first of December in 1931 that I was here. I don't remember. The last time I was here before that was in October and before that I don't recollect what month but I know I was here in October because I went fishing. I went by Mr. Ivey's house on the way because I spend a night and a portion of the day on the way back. O. S. Ivey or Oran, and Claude Ivey were living with the old man there. There are furnished and unfurnished, seven rooms in that house. The unfurnished part is one room at the east end up-stairs, the attic you might call it. I do not know when that house was built. It was built when I first knew the place and that was about in 1919. It didn't appear to be old at that time. I sure am interested in the result of this suit. I know what the condition of Mr. Ivey's mind was previous to November 23rd, 1931. I know what it was a year previous to that. He sometimes has lucid intervals and his mind is better at sometimes than it is at others. He never bought anything of value without some of his children with him. He might have bought little things but I mean he never bought anything of value. I do not know of course what he was doing down here while I was up at Range. I don't think he had accounts at the stores but I don't know. I couldn't say how many orange trees are on the place. There are about twenty acres of land under cultivation. His two sons cultivated the other part of the place and they grew cotton

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and corn principally. I don't suppose they did rent from Mr. Ivey but I don't know. After he had his stroke in January, Claude was living with him and the old man had to be looked after and so he got the boys to move in and help him. Mr. Ivey claimed they were to pay rent. He claimed that he rented it to them and it was in the fall of 1931 that he claimed that but I never heard him mention it before that time. He had his stroke in January of 1931. Those orange trees were bearing slightly in 1931. I think possibly 75 bushel. His boys sold it. I know that of my own knowledge. I sold part of it. When Mr. Ivey would come to visit me his sons would bring him or I would come after him. He never came on the train. Mr. Ivey was not a man who indulged in whiskey or anything like that since I have known him.

I have discussed this case quite a bit with my brothers-in-law and I am naturally interested in the result of the suit.

On Re-Direct Examination by
Mr. McMillan.

When I spoke of Old Mr. Ivey wanting to see his boys and that he was seventy miles away from where they were, Mr. Ivey was at that time at my home at Range, Alabama, and the boys were at Loxley. Since Mr. Ivey had a paralytic stroke in January of 1931 he has spent about one-fifth of his time or a little more than that at Range, Alabama, with me. When I was here in October of 1931 and during the time that Mr. Ivey was spending with me, at my home, his mind ~~xxxx~~ was in the impaired condition I have described. When I said on cross-examination that sometimes his mind got better or was better than at other times, I do not mean that it would get perfectly clear. I meant he could discuss a topic and talk more collectedly at some times than at others, but after the stroke he had his mind was at no time perfectly clear.

After this deed was made I discussed the matter with Mr. Marinous. I told him of the old gentleman's mental condition and I took Mr. Ivey down with me to see Mr. Marinous on my visit here some weeks after the deed was made and talked it over with Mr. Marinous and so did Mr. Ivey and Mr. Ivey tried to get him to re-convey or cancel and get his money in return and Marinous refused to do it and insisted on the deed.

On Re-Cross Examination by Hybart

When I came down here and got Mr. Ivey and took him to Mr. Marinous, I did not insist on Mr. Marinous rescinding the contract. When Mr. Ivey found that his personal property was on that deed he got wrought up and wanted us to find out about his conveying/^{his} property away, something like three or four days afterwards. One of the boys came up to my place and I came on down. I saw the old man had been done and conducted him down to see Mr. Marinous. He wanted to go and talk to George so I took him and went down with him. I didn't expect to get the business straightened out but it was my business to see what actually took place and get it straight if possible.. With Mr. Ivey along I didn't do all the talking. One of his sons was along, Don. He came to my house and I came down with him to get the matter straightened out and Don and I took Mr. Robert Ivey down to Mr. Marinous. It is not a fact that when we got there I did all the talking and insisted on reconveyance of the property.

On Re-Direct Examination by McMillan.

That conversation in which Mr. Marinous refused to reconvey the deed was before the bill was filed in court.

On Re-re-Cross Examination by Hybart.

Don and I went to see Mr. Marinous before we carried the old man down there. We asked him if he didn't know that Mr. Ivey was not capable of selling the place and that we were dissatisfied and knew the old man had made a deed and that the deed was no good and asked if he was willing to pay what it was worth. We were going to have a guardian appointed but there was no guardian appointed to that time. The old gentleman was handling his property by some of us being with him. His youngest son would take him to Bay Minette to pay his taxes. I didn't see the old man assessing the taxes. There are now twenty-one acres in the place. There are not sixty-five acres at this time. Mr. Ivey bought twenty-five acres below him and then this forty acres. He sold about forty-five acres. He bought the twenty-one acres about three or four years after he moved down. I think the oldest son

On Re-Direct Examination by
McMillan.

The rest of his children asked me to look after his money and property and someone had to investigate it to keep an intelligent account until a guardian was appointed. I do not know who wrote the check he signed for taxes but he also signed a check the same day to Mr. Heard and I don't know who wrote that.

Deposition of Mr. J. C. Griffin.

Direct Examination by Mr. McMillan.

I live here in Loxley about half a mile down town. I am sixty years old. I know Mr. Robert Ivey. He is a very old, feeble man. I have known him, I would say, about fifteen or twenty years. I have known him intimately because I have been living by him for about ten or twelve years. I would say the condition of his mind for the past two years has been very bad and I base that on one little instance. I suppose it has been seven or eight months ago. He was supposed to go off up country and he wouldn't go until he had seen me so they brought him down and I came out and he said he wanted to talk to me a little bit and he wouldn't talk to me there at the gate. He wanted to go back in the back of the garage and when we got back there he said he was kind of mixed up about his place. That someone tried to make him believe his place was on the other side of the railroad and he wanted me to tell him where his place was. I sold him the place when he came here and he said then that he knew I would know and wanted me to tell him whether it was on the west or the east end of the track. I said, "You know mighty well that is your place on the east side of the track where the house and pecan trees and all that is. There is nothing on the other side!" And he said he thought that was it but that he had gotten balled up. I told some of them then that Mr. Ivey's mind was gone. Another time in the barber shop he told me about the people cutting his pecan trees. He said they would get the pecans and set the trees back up on the stumps and I know of different times he would talk at random. I knew him when his mind was perfectly good and I know his mind is gone. I recollect when he had the stroke of paralysis. He has had more than one but the last one was about one and a half

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years ago and since then there are times when he talks alright and then again he will be rambling and talk as though his mind was gone. I am a close neighbor, living about a quarter or half a mile from him. He lives on the one side of the tracks and I live on the other. I couldn't say what the value of that property is now but two or three years ago he would have said it was worth at least five thousand dollars. Now I don't know its value but I guess a heap higher than that. Mr. Ivey has tried to get it sold and wanted \$8500.00 and then brought it down to \$6500.00, the lowest he ever got me to sell it for.

Cross-Examination by Mr.
Hybart.

It was about 1930, sometime in that year that Mr. Ivey told me he would take \$6500.00 for the property. I wouldn't say positively as to the year. Times were not so extra good then but if I could have sold the place for \$6500.00 I would have. I would have gotten a commission and I offered the place for sale. I advertised it, just talked to people, I would say. At times Mr. Ivey's mind would be clear. I don't know if I saw him on November 23rd, 1931 or not. I don't remember. I didn't see him at Bay Minette on that day and I don't know the condition of his mind on that day. If I remember right about the time he came down and told me about the people cutting his pecan trees down, that was about sometime in last fall, along about the latter part of the year of 1931. I saw from that that he didn't have any mind and I remarked at that time that his mind was gone. And it was in the same conversation that he wanted to find out where his place was. This conversation took place in my garage at home. I had a conversation with him in the barber shop, we had two conversations and he mentioned the pecan trees when he wanted to know where his place was and he didn't ask me anything about his place in the barber shop and we talked about the pecans on two different occasions, if I remember right but the conversation in the barber shop took place after the other, and that was sometime last fall. I don't keep a note of these things and my recollection is that it was the latter part of last year. I never sold Mr. Ivey any gas. On the last business transaction I had

with Mr. Ivey he paid me by check. I don't know if he had a checking account in the Baldwin County Bank in 1931 and I do not know if he had one with the Bank when he paid his taxes. I thought Mr. Oran and Mr. Claude looked after his place for him. Mr. Ivey is of a very positive nature and up until his mind got off he ruled the roost but I cannot tell you much since then. I first really noticed things about Mr. Ivey's mind before the incident in the garage but I just don't remember when it was. I have talked to Mr. Ivey and ever since he had the last stroke his mind has been bad. I am not related to any of the parties in this suit but I am friends to all of them. I have not talked this matter over with them. They just came down and asked if I would testify as to their father's mental ability, the boys did, and I don't just remember when it was they came down, but it was Claude and Mr. Robinson. Claude came first. Old Mr. Ivey didn't tell me he wanted to sell the place on account of his boys. No such conversation took place. I do not know if he was trying to sell to Mr. Stanley or Orrie Hall or Prine. He tried to get me to sell. I was doing my best to sell it but I didn't advertise and I was conducting that transaction about like I did my other real estate and I couldn't get a purchaser.

~~XXX~~ On Re-Direct Examination by McMillan.

I am not in the real estate business much, just a little. Mr. Ivey was to give me five percent commission. That place was at all times worth more than one thousand dollars. Much more. I sold Mr. Ivey the place for \$4700.00, and that was before the orange grees were planted. The deal when I was trying to sell for Mr. Ivey was before he had his stroke and I never tried after that because I knew he wasn't capable and I never offered it to anyone for sale after that because of his condition. I couldn't afford to do it because his mind was gone.

On Re-Cross Examination by Hybart.

I sold Mr. Ivey forty acres of land more or less. I heard he sold off part although I don't know but I did hear that he sold some for an ice plant. I think that was a few years ago but I don't know if he made a deed and I do not know of any other land

he sold. I heard he sold his son a lot four or five years ago but I sold Mr. Ivey forty acres more or less and the acreage in his place is supposed to be forty or forty-one. And I heard he had sold his son, Claude, part of it. I don't know how much he owned in November of 1931 but I understood that he sold Claude half but I don't know that he sold the two acres off to the Ice house. All of the land is in cultivation. I do not know who was renting the land in 1931. The cold weather bit the orange trees back and they didn't bear much in 1931 but I believe they had a good crop in 1930 although I don't remember. I do not know who sold the oranges in 1931. When Mr. Ivey sold off that piece of land to his son, Claude, he did not sell off the best part of the place. It was some of the best part but the other is as good. It was no nearer into town than the house and not a bit nearer the depot. This lot is about a quarter of a mile from the depot. And he sold the strip near the railroad just around down back of his house a piece. They quite cultivating there and I understood they sold to the Ice Plant.

On Re-re-Direct Examination by McMillan.

I didn't sell Mr. Ivey lots 1, 2, 3, and 4 in Block 11 Dinwiddie Addition at the Town of Loxley. He didn't include those lots but I know them. Those lots are not selling but they are asking about \$100.00 . They did ask \$125.00 and \$150.00 but they come down. The land I sold Mr. Ivey lies west of the L & N. Railroad; part of two-forties. He got two or three acres out of two forties.

On Re-re-cross Examination by Hybart.

I think it was in 1917 or 1918 I sold Mr. Ivey this land but I don't remember exactly. Conditions were pretty fair in Baldwin County at that time.

Re-Direct Examination by McMillan.

There was no boom at that time though.

Re-Cross Examination by Hybart.

There was no boom in 1931 either that I heard of.

since I have been treating him. I have treated this old man for every he has and he hasn't any sense. It might have been in November or in December, whenever he was sick that I treated him and if November 23rd, 1931 was the day the old man had the stroke then I saw him on that day. No one has been to see me about this case. They asked me would I come up here on this day. The lawyers asked me to come, that is Mr. Nelson, and then a few days ago one of the parties came by and said the trial came up today. I do not remember his name and don't know if he was a son. That is the man sitting over there.

On Re-Direct Examination by McMillan.

I can tell from having seen Mr. Robert Ivey before November, 1931 and on up to now that ~~HEXXXX~~ during all that time his mind was a blank. I noticed this old man particularly before this trouble you are wrangling over and he has been practically an imbecile. His mind is practically blank. It is just a degeneration of old age. I have absolutely no interest in this case.

On re-Cross Examination by Hybart.

I am the family physician just as you are a lawyer. This old man has been in this helpless condition for years.

Deposition of W.B. Solley.

Direct Examination by Mr. McMillan.

My name is W. B. Solley and I live out here in southwest about a mile or three-quarters. I know Mr. Robert Ivey and I reckon I have known him about eleven years this coming November. Throughout that time I have seen him regularly and once in a while met him around town. I visited him but not much until he got sick. I know when he had a stroke of paralysis but I just can't recall the date but I have known him intimately since then and since that time I don't claim he had any mind. He had a little but you might say none and he wouldn't have known enough since that stroke to enable him to make a deal. He is very weak physically and mentally. I didn't talk with him on the day he made the deed to George Marinous. The best I know I talked to

him the day before. I went to see him like I made a practice since he had been sick and I dropped up to his house and went in to him and got to talking to him and finally he said he wanted me to carry him up town to get him some "Red Man's Tobacco." and I carried him out and got him in the buggy. He said he could get in himself but he couldn't and I helped him by pulling and pushing him and finally got him in and we started out from his house and he said he wanted to go to Marinous' to get his "Red Man's Tobacco," and I stopped there with him and stayed in the store until he got his tobacco and finally he spoke to Mr. Marinous and Mr. Marinous to him and they stepped into the little side room and I heard them talking but I didn't know what about but after they came out of there I heard Mr. Marinous say to him, "I will see that you get a way," or "I will fix a way to go O. K." I didn't understand what he was talking about. Mr. Ivey was at that time what I would call a crazy man. He had just a child's mind. After we left the store I got him in the buggy and we drove back to the house and I put him out there and after we went back to the house he said to me, he says: "I am going to sell my place for one thousand dollars to get me something to eat." I never paid much attention to it. I knowed the condition of his mind and thought nothing about it. The place is of course worth infinitely more than one thousand dollars. I couldn't say what it is worth but about a year ago it was worth, considering town property, four or five thousand dollars or seven thousand with the building on it. Mr. Robert Ivey has been crazy ever since he had the stroke. I visited him every time I got the chance.

CROSS-Examination by Mr. Hybart.

Mr. Ivey has not been crazy ever since I have known him. I have known him eleven years this coming November and probably twelve. To go to my place from his, if you go the road to it and take the turn it brings it somewhere like three-fourths or probably a mile. I am a farmer and try to farm a little. There are forty acres in my place and I have been living at the present place for eleven years. Ever since I came to this country. I am from Montgomery. I couldn't swear that I went to his house the

day before the deed was signed and I couldn't say what month it was but I heard that he gave a deed the next day or the next. I was up there last year or year before, I think since he has been crazy. He said that day that he wanted some "Red Man's Tobacco," and I took him down to the store. Along the way I talked and he mumbled and I understood some of the things he would say and some not. His speech wasn't the best in the world and I can't ever understand him since the stroke and sometimes I would ask him over and sometimes pass it on. He went into the store and called for his tobacco. I cannot say absolutely who waited on him but I think it was Mrs. Marinous. He said he wanted "Red Man's Tobacco," and when he got it he took some of it. He chewed some of it. He always kept that kind of tobacco. I like that brand once in a while. I am not going to say if he paid for the Tobacco. We were only in the store a little while. I don't know if he said he was ready to go or whether I said so but I know that after he and Mr. Marinous came out of the side door we walked out and I took him back home and helped him out and left him there. I couldn't tell you if the man is of a positive nature and who generally bosses his place. I couldn't tell you how many acres he has in the place now. He has a good big orange orchard there but I don't know just how many trees, and from all accounts he deeded his son Claude some of his land, that part that is further from the railroad but it wasn't the best because all the land is alike. I don't know when he deeded to Claude. I don't know wither if he deeded to anyone else. That is hearsay about Claude and I don't know if the majority of the trees is on the part Claude got or the part Ivey kept and I couldn't say because I don't know if Claude got all the trees or not. And I couldn't swear if there is one or twenty-one acres in the place. The best I know to swear exactly the amount, I can't say, but it is claimed by all that ever heard anything that there is twenty acres. And I couldn't say if that is after Claude got his. I heard an ice company bought some and I heard that two or three years ago. That piece is over next to the railroad and some said the ice company bought two acres there. I'm a good friend of these people and everybody as far as I know. I am on good terms with them all. I haven't talked with them

about this case nor discussed it with any of them. I talked about it to Mrs Grant and said that anybody with any sense wouldn't trade with Mr. Ivey. Mrs. Grant said something about Mr. Marinous getting the place and I said that anybody that had any sense wouldn't trade with Mr. Ivey. I didn't know anything about the case until a little while ago when Mr. Claude Ivey got me out of bed.

Re-Direct Examination by Mr. McMillan.

My testimony as to values is based on the place where the old man lives now and the twenty acres they call "the twenty." That is where the improvements are.

Re-re-cross examination by Mr. Hybart.

You know where Alexander City is and you know where Hackneville a few miles north of Alexander City is. I come from right that part of Talappesa County.

Deposition of Claude Ivey.

Direct Examination by Mr. McMillan.

My name is Claude Ivey and I am a son of old man Robert Ivey. I had a conversation with Mr. George Marinous the day this deed from my father was made. I asked Marinous that morning if he was supposed to take my father to Bay Minette that morning and he said that he would if he would come down there he would take him to Bay Minette. And I said, "Now Mr. Marinous, if my father has business to attend to one of his boys always goes with him," but George said he didn't know anything about any business and I said, "Well, if he hasn't any business it is alright for you to take him. You will have to watch him in getting in and out of the car because he will fall and hurt himself." George Marinous didn't tell me about the business deal then. As to my father's mental condition that morning, I don't think he knew what he was doing. His mind has been a blank since the stroke he had in January of 1931. The deed to me was made in the summer of 1930 and my father's mind was at that time clearer than in 1931. I did not record my deed immediately and I don't remember how long afterwards that I did record it but it was a good while. The

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in all and they came on down to the house. We did not figure on giving George Marinous a beating and that wasn't even talked about. We had no intention of going down and making Marinous give the deed back. Nothing was said like that. They asked him to give the deed back. I didn't go down with them. Yes, I did get some of the land myself but I didn't get the best part of it. I got seven acres more or less. I did not pay him for it. He gave it to me. My father has had a good mind for longer than twelve or thirteen years and when he gave me my deed he was capable of attending to business. He was perfectly alright in that respect. He sold off part of his land to the Ice Company. That was the Mobile Ice Co., and he sold them two acres. That transaction took place along in the summer of 1931 and he made a deed to it. I don't exactly know how much they paid him and I don't know what he did with the money. He had a bank account with the Baldwin County Bank. I do not know how much he had in his checking account in 1930 nor in 1931, and at that time he had a banking account in this bank too. He has given checks payable to me but I couldn't say if he gave me any in 1931. I didn't pay him any rent for the place and never agreed to pay him any but of course I expected to pay him some. He said he expected me to pay his taxes. We both bought groceries and we paid for all we got in 1931 and in 1930 and my father would buy little things himself like a pair of pants but if he bought a suit or anything of value we boys went with him on all occasions. He paid his taxes and they took a check for that but when he assessed his taxes one of the boys was with him. In 1931 things were in a pretty low ebb financially and I didn't get much of a price for my potatoes and not much land was being sold then. I don't know of any other land than this place being sold in 1931.

On Re-Direct Examination by Mr. McMillan.

I don't think my father could have drawn a check in 1931 without someone supporting and assisting him. I was thinking it was the last of 1931 he had the stroke but this was the last of 1930 or the first of 1931 that he had the stroke, and after that he couldn't attend to any business.

ON Re-Oress Examination by Mr. Hybart.

In 1931 my father would make checks but he didn't know what he was doing after he had the stroke. We would always watch him and some of us were with him everytime he drew a check. I know that to be a fact and swear to it. His mind did not come and go. After he got that way his mind was bad all the time.

twenty acres surrounding the house now is the place my father lives on. And I suppose the value of that property exclusive of the piece he sold to the Ice Company would be about four thousand dollars. I don't know exactly how many orange trees on that property, but about seven hundred and they are from five to eleven years old and are in good condition. I don't know their value but they are bearing. On the day the deed was made to Marinous my father's mind was very childish.

On Cross-Examination by Mr. Hybart.

I am interested in the result of this suit. I did go to Mr. Marinous on the day my father was going up to Bay Minette, and I asked him if my father was going up there on business. He said he didn't know anything about any business and I asked Mr. Marinous if he were expecting to take my father to Bay Minette with him and he said he would take him if I would bring him to the store. I told him if my father had any business to attend to one of us boys had to go with him. I had nothing to cause me to think he had business to attend to unless he wanted to pay his taxes. I asked my father about it and he just said he was going to Bay Minette so I didn't ask what he was going there for. He said he was going to Bay Minette with George Marinous, the Greek. That was early in the morning about seven or eight o'clock. My father was at the house when I went down to see Mr. Marinous but he came on down to Marinous store afterwards. He walked down there. I helped him out the door and across the road and it took him thirty or forty minutes. I did have a conveyance I could have carried him in and it might have been in commission. I don't remember. I let him walk down there and that was before I saw Mr. Marinous because I walked down there at the time and passed my father as he was coming down. ~~He~~ was on the railroad on one side and he was ~~xxx~~ on the other side but I got to Marinous' before he got there. And Mr. Marinous said he didn't know anything about my father's business when I asked him and it was when they came back that I found my father had sold his land, at least my father said so and told me how much he got for the place and I think he said a thousand dollars. Then I got in touch with Robinson and my other brothers. There are six of us

had a mortgage on it. Robert Ivey sold off part of this forty and the other place in the last three or four years. He made a deed to it. He gave his son, Claude, part of the place. I don't know when that occurred. I know he sold two lots of land to the Gulf Ice and Cold Storage Company. That must have been in the spring of 1930. He made a deed to it. I don't know of any other part of the land sold off. He was looking after his own business then.

On re-re-Direct Examination
by McMillan.

In the conversation with Mr. Marinous when we told him he hadn't paid the value of the land, he didn't contend that he had but rather admitted that he bought the place for much less than its value.

On re-Dross Examination by
Hybart.

Mr. Ivey had a bank account in the Baldwin County Bank. He had it in 1931 and in 1930. I saw a statement shortly after this transaction and I think he had about \$181.00 in the bank at that time. Prior to that transaction and when he first came to Baldwin County he must have had five or six thousand dollars. In 1930 and 1931 he didn't have very much. ~~He~~ He drew his own checks and he has given me some. I took them. He gave me ^{one} ~~some~~ in 1931 and I cashed it. It was necessary to retrace his signature as a rule. I cannot tell if he paid his own taxes by check. I have been informed there was a check drawn on the day he made transfer but he didn't know what he was doing. Mr. O. C. Hall told him to sign his own checks and not let anyone else sign for him. The old man was of an independent nature and of course we let him. I am testifying what I know and not what someone told me, and I have Mr. Hall's word for it. Mr. Ivey placed the five hundred dollars Mr. Marinous paid him on savings. There is no other money I know of on savings. I investigated Mr. Ivey's money by the statements from the bank but I already knew about his property.

STATE OF ALABAMA, COUNTY OF BALDWIN.

ROBERT IVEY, by his next friend,
CHESLIE A. ROBINSON,

Complainant,

vs

W. W. MAY, et al,

Respondents.

IN THE CIRCUIT COURT OF
SAID COUNTY, IN EQUITY.

No. 1046

In the foregoing cause it is agreed that the testimony of the following witnesses named, D. S. Comstock, C. A. Robinson, Dr. H. W. Jordon, J. C. Griffin, W. B. Solley, Claude Ivey, Percy Hall, *Ruth M. Macdonald, W. B. Solley, R. A. Apperson, Cheslie A. Robinson* may be taken before Ruth Macdonald, acting as commissioner, in shorthand and transcribed by her; issuance of commission, all forms and notices and the signatures of the witnesses to their respective depositions are waived; each party to be furnished with a copy of the depositions.

Dated this 31st day of August, 1932.

B. O. McMillan

F. F. Nelson

SOLICITORS FOR COMPLAINANT,

Walter Heard Thomas

W. W. May

SOLICITORS FOR RESPONDENTS.

Pursuant to the foregoing agreement I caused the following named witnesses, D. S. Comstock, C. A. Robinson, Dr. H. W. Jordon, J. C. Griffin, W. B. Solley, Claude Ivey

to come before me at Loxley in Baldwin County, Alabama, on August 31st, 1932 and the said witnesses after being duly sworn did testify as follows:

Deposition of D. S. Comstock.

Direct-Examination by Mr. McMillan.

I am sixty years old and I live in Loxley, Alabama. I do know Mr. Robert Ivey and have known him for twelve or thirteen years. I have been a neighbor to him for several years and lived within a mile or so. In the past I have seen him almost every day. Recently I haven't seen him very much. By recently I mean the last year or two and I didn't see him within the last year or two as often as

I did previous to that because of his condition. He has been confined to his home a good deal. As to his mental condition, it has seemed to me for the last two years or so that he has been very childish although I have known him very well and he has known me very well in the past and he was seldom able to recognize me and I have had to tell him my name and in his conversation he was very rambling, going from one subject to another. In fact it was hard to converse with the old man and stay on any one subject particularly. He was in that condition on November 23rd, 1931 and in that condition long before that time. His son John lived at that time and for about a year previous to that time and perhaps six months after that time he was my next door neighbor and it was the old man's habit to come to his son John's almost every day for a short time and in that way I met him in that time very often. I don't know how old Mr. Ivey is but he has the appearance of being an old man and I should judge his age at seventy-five but I do not personally know his age. He has been very feeble for the past two years.

I do not know anything about the place he sold or is alleged to have sold to George Marinous. I know the place Mr. Robert Ivey lived on and all I know is hearsay. That place is practically in the heart of the Town of Loxley. It is very close. In fact it is a quarter of a mile from the depot. It is hard to say what is the value of the place. I know at one time and that is about two years ago, the old man held the value of that place at eight thousand dollars. At present I don't think the place is worth that. Maybe about half that, under present conditions. The house is good, made of concrete blocks and built about fourteen years ago. The place is cultivated, partly in orange orchards and a few other trees, don't know just what they are. The house is in good condition. It would cost to rebuilt that house, I should think about two thousand dollars. That is to build the house alone. I know very little about what it would cost to plant those orange trees and cultivate them up to the present time.

On Cross-Examination by Mr. Hybart.

I think there are six or seven rooms in that house and the

house is possibly 32 x 40. There are six or seven rooms and upstairs, what I would call a story and a half house. The house is built of concrete blocks. I don't know if the upstairs is furnished. I haven't seen it recently. Time I saw it I made repairs on the house at onetime and at that time it was only partly furnished upstairs. I am a building contractor. I am not related to any of these parties. I have known Mr. Ivey about thirteen years, ever since he came here. The place is a little over a quarter of a mile from the post office at Loxley, perhaps three-eighths of a mile. I don't know exactly how many acres of land in the place. I think originally there was sixty-five acres but the place was eighty acres and the corner cut off by the railroad and I think there is sixty-five. I am not certain as to the acreage but my best judgment is that there was sixty-five acres in the place but I don't know if there were that many acres in November of 1931. I don't know at that time. I don't know when the Orange trees were planted there. The old man would plant and re-plant two or three times but I would say the first trees were planted there twelve years ago soon after he bought the place. I don't know the last time he gathered in the fruit. Some of the trees have been killed by freezing, quite a number killed in the last freeze two or three years ago. It didn't put him out of business. There were some left but I don't know how many and I don't know if he bought any since that time and I would say he wasn't able to sell a great deal of the fruit. It has been some time since I saw Mr. Robert Ivey. To the best of my recollection I haven't seen him in six months and before that time I saw him quite frequently. He came to the Post Office often and I would meet him on the street and when he was in condition to get around. Previous to about six months ago he went up to Range and previous to that time I saw him frequently for several years. I don't know if I saw him on November 23rd, of 1931. I wouldn't say and I don't know what his mental condition was on that day. I don't know if he was any better at some times than he was at others. Then his mental condition seemed to me to be very childish. He didn't sometimes know me when we met. Sometimes he didn't. His eyesight was very bad. I presume to say that he didn't know me because of the fact that he couldn't see. It was naturally not on account of his mental condition. He would

know me anyway although he couldn't always call my name. His recollection of names was poor. I don't know that mine is good along that line. I don't know anything to compare it with. I do forget names to be sure. I think in November of 1931 that the son, Oran, lived with Robert Ivey. All the sons I am personally acquainted with is three. He has four but the three I know are John, Claude and Oran and then there is another one up country. John, Claude and Oran lived around here. I haven't talked with John about the case any nor has Claude. Claude and I are good friends, we speak when we pass. We are as near neighbors as I was with the old man. He lived at the same place. No relation between Claude and me by marriage or otherwise. I didn't talk with John or the rest except Claude regarding the case. I think we had two conversations about this case and we talked the facts over and discussed the sale to a certain extent. I told Claude what the old man's ~~mental~~ condition was but didn't agree to any testimony. I don't know who attended to the transaction of the old man's business nor if he bought any goods or groceries or things himself. I don't know if it is a fact that he transacted his own business and wouldn't say.

Re-Direct Examination by Mr. McMillan.

After I would see Mr. Ivey and have to tell him my name he could not thereafter carry on a connected conversation. His conversation was very disconnected. He would ramble from one thing to another and his talk was childish. I could not say that he would forget my name and who I was after I had told him and talked with him because I do not recollect that he ever called me by name afterwards. He hasn't been engaged in any business for several years. The place testified about is the place the old man lives now. George Marinous is engaged in the mercantile business. I don't know for sure how long he has been here. About ten years.

Re-Cross Examination by Mr. Hybart.

I think the son, Claude, was working the place in 1931. I have seen him working there. I don't know if any part of it was rented to anyone and I don't know if Claude rented from his father. I don't know how many acres are in cultivation there.

Deposition of W. P. Hall.

Direct Examination by B. F. McMillan.

My name is Percy Hall. I live at Loxley and with the exception of nine years I have lived there all my life. For the past nine years I lived at Daphne. That is eleven miles from Loxley. I know Robert Ivey and have known him about twelve years. Ever since he moved to Loxley. I have known him intimately quite a bit. During the year 1931 and throughout that year and since the condition of Mr. Ivey's mind has been very poor in my opinion. He is about something over eighty years, that is, around eighty. Physically as well as mentally he is very feeble. It is my opinion that he could not understand the nature of a business transaction in November of 1931. I don't believe he could and his mind was not in any condition to follow details. I do not believe that his mind in November of 1931 was in such condition that he could follow the details of a business transaction and I donot believe he could follow any business transaction.

On Cross-Examination by Mr. Hybart.

My name is Hall - Percy Hall and I am now living at Loxley and have been living there this time since October of 1932. I came from Daphne to Loxley. Lived at Daphne about nine years. Daphne is about eleven miles from Loxley. Mr. Robert Ivey lives at Loxley. I haven't any idea how many times I visited Loxley during last year. I don't come all the time but I have a home in each place. I did come over to Loxley during the nine years but I couldn't say how many times. Sometimes I would spend a week with my relatives who live there. I was born and raised in Loxley but during those visits over there I would see Mr. Ivey almost always on each one of those visits and would spend the night at his place and had dinner with him. His mind is very bad. It has been that way ever since he had that stroke of paralysis. I don't just exactly know what date that was but it has been three or four years ago. I don't altogether know who attended to his business. Claude, his youngest son, attended to most of his business for him and lived there and looked after him but I do not know that he attended to his business for him of my own knowledge. He had an account in my store when I ran

a store there but I don't know about his other accounts. He traded with me a good deal and on credit but he didn't draw any checks during that period. That was before he had the stroke. I don't remember that I saw Mr. Ivey on about the 23rd day of November, 1931 but it was sometime about that time that I made a deed from him to his son to some part of the farm. I mean I prepared a deed. I was a Justice of the Peace and Mr. Robert Ivey made a conveyance to his son. That was for part of the land. I don't remember the consideration. I believe Mr. Ivey gave it to him and I think the deed was made for One Dollar and other valuable considerations. I don't know if Mr. Ivey understood that transaction or not. The children were all willing to that part of it, so what was I to do? Yes, sir, I drew the deed knowing that Mr. Ivey didn't know what he was doing but he sent for me and said to make it for him and I did. I don't think he was capable of executing the deed but I certified that he did sign it voluntarily.

On Re-Direct Examination by Mr. McMillan.

That was a deed of gift from him to his son. I didn't see all of the other children but two of his other sons there said it was alright if he wanted to give Claude a deed and that it was perfectly agreeable. They said that before I made the deed. I don't think Mr. Ivey's mind has ever improved since he had the stroke. When I was living at Loxley I lived about an eighth of a mile from where Mr. Ivey lives. He lives in front of me and I can see his home.

I am familiar with the place where Mr. Ivey lives and has lived and I believe the value of that property in November of 1931 with the improvements and everything would be about five thousand dollars.

On Re-Cross Examination by Mr. Hybart.

I mean that Mr. Ivey could have gotten that for it if anyone had wanted the place but at that particular time there was no sale for land there and it is my best judgment that there has been no sale around any place for the last five years. Times were pretty depressing in 1931.

I didn't say that Mr. Ivey's children were present the time he executed this deed. I said I saw Claude and Mr. John Ivey and they said it was alright if he wanted to make the deed. I don't know how

many children Mr. Ivey has. I know John Ivey and Claude Ivey and Warren Ivey and I know Mrs. Grant, About five of them I know. Mrs. Grant lived there in town and Oren lives up in Escambia County. He wasn't present. I think he has other children living in Mobile or Escambia County but I don't know. None of them were present if he has such children.

Mr. Ivey has an unsound mind and the peculiar things I noticed about him were in his conversation and the foolish things he would say. He said he had a row of pecan trees in the alley and that somebody pulled them up and they stayed there three months and he and Claude moved them back. He told me that occurred just a little while before that, but I don't remember the exact date. I don't remember anything else peculiar about him especially. He said he had a bank account but I don't know that he had of ~~my~~ own knowledge. How could I? He didn't give me any checks at the time of making the deed. I didn't charge for it. I was Justice of the Peace at Daphne.

Deposition of Robert M. Mahler.

Direct-Examination by B. F. McMillan, Jr.,

My name is Robert M. Mahler. I am sixty-four years old and live at Loxley. I am Post Master there and have a real estate business. I have been living in Loxley permanently for seventeen years and interested in lands for thirty-five years.

I know Mr. Robert Ivey. He was a man upwards of eighty years (Solicitor for the defendant here objected to leading questions)

I don't know how old Mr. Ivey is but he is seventy-five or eighty years. I have known him about ten years. I didn't know him very intimately but I have seen him every day and talked with him. That is about all, just ordinary conversation. Never had any business dealings with him. The condition of his mind is very poor and was very poor when I saw him last, sometime ago. I haven't seen him for a year. I knew him in November of 1931 and his mind was not very good then. He wandered in his conversations. He was not, in my opinion, capable of carrying on a business deal. I know the place where he lives and in my

opinion that house and twenty acres, under ordinary circumstances, I should imagine would be worth about five thousand or fifty-five hundred dollars, about between five and six thousand dollars.

On Cross-Examination by Mr. Hybart.

Mr. Ivey's place is about three-fourths of a mile from the Town of Loxley. The Town of Loxley is not incorporated but his place is about 220 rods from what we call the heart of town.

I did see Mr. Ivey in November of 1931. I do not know the day he executed this deed and don't know if I saw him on that day or not.

I do not know if he had a bank account.

The peculiar things I noticed about Mr. Ivey was in ordinary conversation. He would drift from one subject to another. He has been wanting me to go fishing with him and we have been going every day for the past seven years and haven't gone yet. He would ask me to go fishing and the next time I would speak about it and he wouldn't know me. Yes, his eyesight is bad. I don't know of any business that he transacted. I am the Post Master at Loxley. The old man got some of his mail but usually Claude got it and the old man didn't get around much except when he came to the drug store. I didn't notice anything else peculiar except that he couldn't keep on any one subject. There are twenty acres of land to his place. I think the house has five or six rooms. It is a cement block house. Mr. Adams built it. I know when it was built but don't know the date. It was probably about fifteen years ago. It was a shingle roof and I think it was replaced sometime ago with an iron roof. Around in Loxley in 1931 there were some land deeds made - farm lands sold at about thirty or forty dollars an acre outside Mr. Ivey's. I cannot recall any land transactions in 1931 in the location of Mr. Ivey's property. Land hasn't been selling for sometime and in 1931 land wasn't selling. Some was sold then but very, very little of it, and at a low price.

On Re-Direct Examination by Mr. McMillan.

I know Mr. George Marinous. He knows old man Ivey and has known him and traded with him. Mr. Marinous is in the grocery business, and has been for a number of years.

I think the roof on there now is galvanized iron but I don't know what it had on there then. I lived at that time about a fourth of a mile from this place, that is in 1931.

In 1931 there were orange trees and Mr. Ivey had the ordinary crops, raised some Irish potatoes. I don't know how many orange trees there were in 1931 but I know they bore fruit because I bought some. I couldn't say that the freeze killed these trees in 1931 but I do know that I bought oranges from Claude a number of different times. I couldn't say if there were any land sales there in 1931. Values in property hadn't materially depreciated.

I have been fishing with Mr. Ivey a lot but I couldn't say when the last time was that we went. I presume it was in 1928 and 1929 that I fished with him. That was before he had the stroke of paralysis. I haven't been with him since he had that stroke. I was in the mercantile business at Loxley but I am not in that business now. I am now in the restaurant business. I went out of the mercantile business in 1928, January of 1928. I haven't had any business transactions with Mr. Ivey in the last two or three years. I couldn't make a sworn statement that Mr. Ivey had a bank ~~account~~ account except that I know he had money in the ~~Bank in Loxley~~ Bay Minette Bank and always paid me with checks in 1928 but not since that time.

Sometimes Mr. Ivey would meet me and not know me. His eyesight was very bad but he didn't know me or recognize my voice. I haven't noticed anything peculiar about him; his condition is just the breaking down of old age and his mentality was slipping and he was non compos mentis, I guess you would say. I couldn't give you any particular occasion when he did and said strange things except that he would ask the same question over several times and when I would meet him again the same day he would ask the same question. It was just a mental break-down. There isn't any particular occasion that I would remember, just trifling incidentals but I had no business connection with him that would bring it out. I am not related to any of the parties to this suit and have no connection with them whatsoever by blood or marriage or otherwise. I just know Mr. Ivey in a friendly and commercial way and went fishing with him once in a while. He was a customer of mine in the store. I haven't seen him particularly frequently since

I couldn't swear positively that I saw Mr. Ivey on the 23rd day of November, 1931. I saw him occasionally just about every day. I didn't see him when he made this deed and didn't know anything about that. I have a gasoline service station but I never had any business transactions with Mr. Ivey. I am not related to any of the parties interested in this suit by marriage or otherwise. Before I went into the gasoline station business I was an entomologist and was for eighteen years in the Government service.

I would say that Mr. Ivey is a man of unsound mind. He would come to the place and talk to me, just a friendly conversation, and in ten minutes he wouldn't know where he was nor how to get home and I would have to send one of my boys to take him home. And he would ask me where he lived and talked about Orrie and some of the children not within a hundred miles. His eyesight was bad, yes, sir. I didn't pay any particular attention to anything else peculiar about Mr. Ivey but I never saw him walking along the street except when he came to my place because he was there most of the time. He passed my place going to Loxley but he wouldn't have to to get to the town. I never saw him with packages he might have bought. He went around by himself but sometimes they had to come after him. That was along in 1931 and 1932. Mrs. Grant came after him sometimes. I don't know her first name. She lives in Mobile at the present time but at that time she was visiting. She came after Mr. Ivey at least three different times and Warren Ivey came several times. It would be about noon time and sometimes in the evening about supper time. She would just say to him that she wanted him to come back and get something to eat and sometimes she would have to argue with him and he would say he didn't want to go and one night in particular they left him at my place because he wouldn't go and didn't want to go home and wasn't going, so I took him home myself. He wanted to stay with me.

On Re-Direct Examination by Mr. McMillan.

I had seen Mr. Ivey about the date of October 23rd, 1931 and have seen him since that date. His physical and mental condition was always about the same. It was of a continuous nature.

The land I spoke of selling was for the most part wild, un-cleared and unimproved land. It is three miles from Loxley and not as

his daughter-in-law trying to quiet him and get him back to bed and I went to the foot of the stair and asked him what he wanted and he told me that if I had any money I had better put it under my head and sleep on it that there were three men there who would rob me and that they had already gotten a dollar of his money. I asked him what kind of men they were and he said one was a tall fellow with a cap and the other had a broad brimmed hat and that the third one didn't have any head. No one was there but he insisted that these men had gotten a dollar of his money and Claude Ivey found a dollar of his money on the floor where he had dropped it. The old man's mind is gone.

On Cross-Examination by Mr. Hybart.

I live at Range in Conecuh County, Alabama. The Post office is Range, Alabama. I am the Post Master there. I haven't the dates when Mr. Ivey was up there visiting me but I brought him back to Loxley about two weeks before this deed was signed, in the first part of November, 1931. Bob Rawlins came with us. I believe Mr. Ivey has ten children. I believe only four lived down there in 1931 - Mrs. Grant, Claude, Orren and John. Mr. Ivey is originally from Conecuh County. I visited his home in 1931 about twice or three times and went there prior to the time this deed was signed. Mrs. Ivey died in February of 1930 and the old man was more at unrest then than ever before and he would no sooner get up there than he would want to come back and many a night he would call to his wife and talk to her as though he were having a conversation with her and just like she was still there. Some of his children brought him up to my home when he came. He never did come on the train. I have never known him to come that way since his stroke. He would have a little money with him. He kept his own bank account. At all times when he gave me a check for money I always signed his name in the left hand side of the check myself because his writing was very bad. Whenever he would need spending money of about five or six dollars he would draw a check. He might have given me four checks or about that, but I do not recall but one check in 1931 and that one was for six dollars. It was on the Baldwin County Bank and I gave him the six dollars. I know what his statement said

and it was about \$161.00 and some few cents on the checking account and a few dollars on the savings but this checking account was all he had at the time the deed was made and then he had about \$186.00 and some few cents. I don't think Mr. Ivey had any tenants on the place. His boys made the crops and there were one or two years that they were very small but they never had picked less than a hundred hampers of Satsumas. The freeze in 1931 was not as severe as the freeze in 1928 but it might have killed a few.

valuable as the town land. I said it was three miles out from the Town of Loxley. Mr. Ivey's place is ~~about~~ joining the town sight.

On Re-Cross Examination by Mr. Hybart.

I sold my land to a man named Driskell, John E. Driskell and he is now living on part of the land. It was not a cash transaction and I gave him five years to pay for it in and the land has since been transferred to the Federal Land Bank. They are holding a mortgage on it. The amount of the mortgage is \$3800.00. The house on the place cost me about eight or nine hundred dollars and it is painted. The house was built along in 1914. It opens on about seventeen acres. The land has been stumped and fenced. It has a wire fence around it. I had three acres in pecan trees bearing on it and had grape vines and fig trees on it but no oranges. Those were paper shell pecans and were about seventeen years old.

Deposition of Cheslie A. Robinson.

Direct Examination by B. F. McMillan, Jr.,

I am a son-in-law of Mr. Robert Ivey. During the examination of witnesses the question has arisen about some of his orange trees being killed by the cold. There has been three freezes that killed some of them but the most damage was done in 1928. The trees were replanted in 1928 and since then there has been a few killed, I would say possibly one-fourth missing in that orchard now.

The question has also arisen about Mr. Ivey's stroke of paralysis. That occurred in January of 1931. I live at Range, Alabama in Conecuh County. About two weeks before November 23rd, 1931 when Mr. Ivey made this deed to Marinous I was with him. He spent something like two weeks at my house at Range and I brought him to Loxley prior to when this deed was made. His mental condition at that time was very poor. Several things cross my mind that occurred which would indicate the condition of his mind but members of the family were with him so we would just pass it off and never think of them again but on the night I carried him back to Loxley I slept upstairs and about eleven o'clock, I judge it was, that night, he kept calling me and I heard

1931, just meet him on the street once in a while and I have called at his house once or twice to see how he was getting along when he was sick and talked to him and he just answered ordinary questions about the weather and how he was feeling and he told me.

Deposition of R. A. Apperson.

Direct-Examination by B. F. McMillan, Jr.,

My name is R. A. Apperson. I am 56 years old and live at Loxley, Alabama and have been living there for thirty-five years. I know Robert Ivey. He is a very old man and well along in years. I have known him since 1920. I haven't known him very intimately except in the last six years and in the last six years I have been one of his nearest neighbors. I live about an eighth of a mile from his home. I have lived that close to him for the last seven years. I think it was the latter part of 1930 that Mr. Ivey had the stroke or the first part of 1931. Regarding his mental condition, for the last five years I don't think he has been in his right mind at all. I know that in October of 1931 his mental condition was such that he couldn't understand a business transaction and I would frequently have to send one of my kids to take him home. I know where the old man lives and in my opinion I would say the value of that place would be anywhere from forty-five hundred to probably six thousand dollars.

On Cross-Examination by Mr. C. L. Hybart.

There was no property being sold around that neighborhood in 1931 except my own. I sold a place in 1931. It was one hundred acres about three miles out of Loxley. This land was practically all in the woods except seventeen acres cleared and I got forty-two dollars an acre for it. There is a six-room house on the land and a barn. The house is a six-room frame house. That was in the first part of 1931. I believe conditions were a little better in the first part of 1931 than they were in the latter part; things were generally getting worse. In the fall of 1931 there were very few sales in real estate. I can't say that I recollect any other sales.

On Re-Cross Examination by Mr. Hybart.

Mr. Ivey's family traded with Mr. Marinous and I have seen Mr. Ivey go and come to and from the store and his daughter, Mrs. Grant bought from there. Personally I never saw Mr. Ivey doing any trading but I wouldn't say he didn't trade because I think the family bought their groceries from Marinous. I don't think Mr. Ivey did much buying.

Mr. Ivey's land is good land and he has an orange grove, I don't know how many acres. The trees are in very good condition now and he has been getting oranges off it. I think he did get some in 1931. I was on the place two years ago. There was a freeze in 1931 and it killed some of the trees but not all because he has bearing trees today and he hasn't replaced any. I don't know how much of a crop he had in 1931 but I know he had some because I bought some of them oranges.

Deposition of M. B. Dewey.

Direct-Examination by Mr. B. F. McMillan, Jr.,

My name is M. B. Dewey and I am about 57 years old. I know Mr. Robert Ivey and have known him ten or twelve years. I live at Loxley about three-quarters or half a mile from Mr. Ivey. I have known Mr. Robert Ivey rather well and he has been a customer of mine and we went fishing together. I couldn't tell you the date he had the stroke but I know he had one. As to Mr. Ivey's mind, I would say that he isn't capable of doing business. He didn't hardly know me at times and inquired who I was for the past couple of years. I expect that condition existed in November of 1931. I know his place at Loxley. It is pretty hard to state values right now but I would say off-hand that in November of 1931 that place was worth about ~~four~~ four thousand dollars. The buildings are good and the house cost around Twenty-five hundred to build.

On Cross-Examination by Mr. C. L. Hybart.

I came to Loxley in September of 1913, I think it was and I should say the house was built in 1914 or 1915, sometime in there because Mr. Wolf lived on the farm and they built it and moved into it.

ROBERT IVEY, by his next
friend, CHESLIE A ROBINSON,

Complainant,

vs

W. W. MAY, et al,

Respondents.

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

No. 1 0 4 6

Complainant's rebuttal testimony taken before
Ruth Macdonald at Loxley and Bay Minette, Alabama, on December
14th, 1933.

AGREEMENT.

It is agreed that the testimony of the following
witnesses, viz: W. J. Richberg, H. H. Levins, J. O. Driskell,
H. W. Wilson, Leonard Nalls, C. C. Fuller, C. A. Robinson, D. W.
Fields, J. H. Morris, Claude Ivey, ~~W. D. Stanleton~~, and Edward
S. Tunstall, will be taken before Ruth Macdonald, as Commissioner;
That issuance of Commission, all forms and notices and signatures
of the witnesses to their respective depositions are expressly
waived; That the depositions of these witnesses now be included
and returned with the depositions of complainant's witnesses
originally taken by the said commissioner under one certificate.

It is further agreed that the testimony of the witnesses
this day taken shall be taken down and returned by the Commissioner
in form of question and answer instead of narrative form and no
objection will be made or advantage taken to the testimony as so
returned.

Dated this 14th day of December, 1933.

B. J. McMillan
ATTORNEY FOR PLAINTIFF,

Walter Stewart Thomas
ATTORNEYS FOR DEFENDANTS.
by Ch. W. Thomas

DEPOSITION OF W. J. RICHBERG.

Direct Examination by B.F. McMillan, Jr.,

Q. What is your name?

A. W. J. Richberg.

Q. Where do you live?

A. Edwards Place, a half mile east of town.

Q. You know old man Ivey?

A. Yes.

Q. How long have you known him?

A. Six years.

Q. Did you know him in the year of 1930?

A. Yes, sir.

Q. What has been the condition of his mind since his stroke of paralysis?

A. Very weak, very weak.

Q. Able to carry on a business conversation comparatively well?

A. No, sir.

Q. Did you know him intimately?

A. Yes, sir.

Q. Is it your opinion that his mind is gone?

A. Yes, sir.

Q. And has been ever since he had the stroke?

A. Yes, sir, possibly one day he would know you and next time would not.

On Cross Examination by C. L. Hybart.

Q. Then at times he would have what is lucid intervals,

A. What is that?

Q. He would have lucid intervals, his mind at times would be alright?

A. Well, for a few minutes.

Q. Be alright for a few minutes. Where did you say you lived? With Mr. Robinson?

A. Edwards Place, a half mile east of town.

Q. Where you live from Mr. Ivey?

A. Half a mile.

Q. How long you been living there?

A. Been living there three years. In this country six years.

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- Q. Where you live before you moved to this place out here?
- A. In the Hot Springs Farm, Old man Sanford's farm, four and a half miles, but I was in Loxley very often and in touche with people.
- Q. How long have you known Mr. Ivey.
- A. Six years.
- Q. You related to any of the parties to this suit?
- A. No, sir, no more than Mr. Claude's wife is just a fourth cousin.
- Q. You and Mr. Grant good friends?
- A. Yes, sir.
- Q. You visit with him?
- A. We pass around and see each other.
- Q. You don't visit much anyway?
- A. No, sir. I took dinner the first time I saw him.
- Q. Who was it you took dinner with?
- A. Old Man Ivey and Claudie and some of them from up in Repton.
- Q. When was it you took dinner?
- A. December of 1927, about this time of year.
- Q. When was the last time you took dinner with old man Ivey?
- A. I haven't taken dinner since.
- Q. Haven't visited him?
- A. Nothing more than passing through, short visits.
- Q. When was the last time you visited him on short visits?
- A. Since he got his stroke. Must have been in November or December of 1931.
- Q. See him then?
- A. Yes, sir.
- Q. How long were you with him?
- A. About an hour and a half. He was very feeble.
- Q. Knew you didn't he?
- A. No. sir.
- Q. Didn't know you?
- A. No, sir.
- Q. Asleep or unconscious?
- A. Unconscious.
- Q. Have his eyes closed?
- A. Yes.
- Q. In bed?
- A. Yes, he was in a trance, like.

- Q. Where had you seen him before that?
- A. Some little bit before he had the stroke. In the spring. I believe he had the stroke in February.
- Q. Of what year?
- A. 1931.
- Q. And you had seen him in the Spring.
- A. Yes.
- Q. What year.
- A. of 1931
- Q. Was that before or after the stroke?
- A. Before.

On Re-Direct Examination by Mr. McMillan.

- Q. You would see him in passing since that time?
- A. Yes sir.
- Q. About how many times?
- A. $\frac{1}{2}$ Seen him in the last two years, I know.
- Q. Six or eight times?
- A. More than that. I pass his place going to the mill.
- Q. What are your initials?
- A. W. J.

On re-Cross Examination by Mr. Hybart.

- Q. In passing you would see him about the place?
- A. Yes, sir, walking around on crutches.
- Q. And then you would go on by to the mill?
- A. I'd speak to him. He would know me one time and another time he wouldn't.
- Q. His mind was some days good and sometimes wasn't?
- A. Yes.

On re-direct examination by Mr. McMillan.

- Q. You mean his mind was alright?
- A. No, just for a few minutes. You could get in a conversation with him and tell it mighty quick.

On re-Cross Examination by Mr. Hybart.

Q. You wouldn't be prepared to swear he didn't have his mind alright ordinarily.

A. No, sir, because I wasn't with him.

On re-direct examination by Mr. McMillan,

Q. But you know the times you were with him it was only momentarily that he was alright?

A. Yes, sir.

DEPOSITION OF H.H. LEVINS.

Direct-Examination by B.F. McMillan, Jr.,

Q. What are your initials?

A. H. H. Levins.

Q. Where do you live, Mr. Levins?

A. I live in Loxley.

Q. How long have you lived here?

A. I moved here, I think in 1918.

Q. What is your occupation?

A. I am telegraph operator and station agent.

Q. How long have you been such?

A. I have been with the L & N for thirty-five years last July.

Q. Mr. Levins, do you know Robert Ivey?

A. Yes, sir.

Q. How long have you known him?

A. I don't remember. It must be some eleven or twelve years. Since I moved here.

Q. Do you know him intimately?

A. Well, I have been associated with him in business and socially too.

Q. Do you know the condition of his mind?

A. Well, you ask a very pointed question. I can tell you what I thought.

Q. That is all any of us can do. Some know more.

A. There have been times when I have seen Mr. Ivey that I am sure his mind was very badly unbalanced.

Q. Did you have a conversation with him with reference to selling his place just before he is reported to have sold it to Mr. Marinous?

A. He tried to sell that place to me once. In fact offered it for sale

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three or four different times but on this particular occasion that I have in mind now, he come to my office and tried to sell the place for a surprising amount.

Q. What was that amount?

A. Two thousand dollars.

Q. When was that?

A. I couldn't remember just the date because I didn't try keeping up with it but sometime prior, possibly a month or two, maybe a little longer, to the time I heard he sold to Mr. Marinous?

Q. To whom?

A. To Mr. Marinous?

Q. Why didn't you buy it?

A. Well, sir, I didn't think I could buy it for that money.

Q. It was worth very much more?

A. I considered it more.

Q. Why didn't you close the trade with him?

A. I didn't think it would stand.

Q. Why?

A. I didn't think he was competent.

Q. You didn't think him mentally capable?

A. No, sir, I asked one of his children about it.

Q. It would have been a bargain at that price?

A. I considered it so.

Q. And you wouldn't buy it because of his mental condition?

A. I didn't think he was capable of making the trade, no, sir.

On Cross Examination by Mr. Hybart.

Q. You say you are station agent here?

A. Yes, sir.

Q. When did he come to you to sell the place?

A. As I just stated, I can't remember exactly. He had offered to sell the place at times before that but for no such price as that.

Q. You remember the year?

A. I can't say I do but it has been a year and a half, possibly two years ago.

Q. You wouldn't say exactly?

A. I didn't consider it worth trying to keep in my mind.

Q. At that time were you able and in a position to have bought it for two thousand dollars?

A. I think I could have gotten it.

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- Q. Have the money?
- A. Had part of it.
- Q. You say at times you saw him his mind was bad?
- A. Yes, sir.
- Q. And at other times you didn't think as much?
- A. Well, for several years I thought his mind was alright, and I believe it was. For nearly two or three years I am positive it wasn't alright.
- Q. Every day?
- A. I haven't seen him sometimes when I thought his mind was right.
- Q. When was the last time you saw him?
- A. It has been something like three or four months ago he was down here.
- Q. You related to any parties to this suit, Mr. Levins?
- A. No, Sir.
- Q. You don't recall when it was you had the conversation with him about the sale?
- A. No, I can't remember the exact date.
- Q. Was it in 1929?
- A. I wouldn't say positively because I didn't try to keep it in mind.
- Q. Now, Mr. Levins, any property being sold here in 1930 and 1931?
- A. I don't know.
- Q. You know of any property being sold outside this place?
- A. I couldn't say positively.
- Q. Isn't it a fact that real estate values have been might low since this depression hit?
- A. I don't think there is considerable of it moving enough for a man to tell. I think this place is worth about as much as it ever was. Trees might have died, some of them from cold.
- Q. You know of no sales made?
- A. I don't know.
- Q. You ever heard of Jake Griffin making a sale of real estate?
- A. Never heard of any sales.
- Q. Ever recall any sales he made in the last five or six years?
- A. Well, let's see, I don't know as I can remember any right off the bat right now. As I understood it he sold this place to Mr. Ivey years ago when Mr. Ivey bought it.
- Q. When Mr. Ivey bought it? Did Mr. Griffin own the place?
- A. I understood he did.
- Q. As a real estate agent I am talking about. Ever hear of him making any sales?

- A. Well, I have understood he sold land to different ones and had land in charge.
- Q. You can't point to a single one?
- A. No.
- Q. Never saw him?
- A. I am swearing now, not talking.
- Q. You mentioned something about trees dying, what trees?
- A. Satsuma trees.
- Q. Ever have Satsuma trees on his place?
- A. Yes, sir.
- Q. Those killed?
- A. Some, most killed, a good many.

On re-direct examination by Mr. McMillan.

- Q. As I understood it, Mr. Levins, you can't remember the exact date he made you this offer. You said it was a month and a half or two months before you heard he sold it to Mr. Marinous?
- A. Something like that.
- Q. You say he had offered to sell you the place on previous occasions but the price was very much higher?
- A. Yes, sir.
- Q. Mr. Hybart asked you if you had the money to buy the place and you said you did not but you could have gotten it for that price. You mean you could have borrowed security on the place?
- A. I could have borrowed what I needed I am positive.

DEPOSITION OF J. O. DRISKELL.

Direct-Examination by B. F. McMillan, Jr.,

- Q. What are your initials?
- A. J. O.
- Q. Where do you live, Mr. Driskell?
- A. Right here in Loxley.
- Q. How long have you lived here?
- A. Ten years
- Q. Do you know Mr. Robert Ivey?
- A. Yes, Sir.
- Q. How long have you known him?
- A. Ten years.

- Q. Intimately?
- A. Sir?
- Q. You know him well?
- A. I fished with him and been round him right smart.
- Q. What is the condition of his mind?
- A. When I fished with him, alright, but the years 1929 and 1930 and in there, it began to get bad and when he had the stroke, it got worse.
- Q. Since he had that stroke had he any mind to speak of?
- A. His mind went and come. I shave him. I'm the barber here and at times he would be in there and wouldn't remember where he was and would talk about first one thing and then another.
- Q. Talk at Random?
- A. Yes, sir.
- Q. Been like that since 1929 or 1930 and gotten worse?
- A. Yes, last time he couldn't recognize who I was. Thought he was in Monroeville or where he lived in Repton.
- Q. Very old, isn't he?
- A. Seventy or eighty some odd.

On Cross-Examination by Mr. Hybart.

- Q. Mr. Driskell, you live herein Loxley?
- A. Yes, sir.
- Q. You say his mind would come and go?
- A. Yes, Sir.
- Q. Sometimes wouldn't know anything and sometimes talk alright?
- A. Sometimes talked sense and sometimes didn't.
- Q. You wouldn't know the condition of his mind on the day this deed was signed, would you?
- A. Well, I shaved him the day before, because I remember the morning George carried him up there and his mind was very poor then.
- Q. You saw him that morning?
- A. Yes.
- Q. You didn't talk with him that morning, did you?
- A. You are talking about the day before?
- Q. You wouldn't know the condition of his mind in Bay Minette?
- A. No.
- Q. You couldn't swear as to that?
- A. No, sir.

- Q. Because sometimes his mind cleared up and then go bad, that it?
- A. Well, the experience I had, it stayed bad.
- Q. Didn't you just state it would come and go?
- A. Well, it would come and go.
- Q. You say it stayed bad.
- A. It stayed bad most of the time.
- Q. You related to any of these parties?
- A. His son married my niece.
- Q. Mr. Ivey's Son? Which son?
- A. Claude.
- Q. You have discussed this case with Claude, haven't you?
- A. I talked with him some this morning.
- Q. Haven't talked before that?
- A. Well, I have been knowing about the case since it happened.
- Q. You have talked to him, haven't you?
- A. Yes.
- Q. How is Mr. Ivey's eyesight, good or bad?
- A. Bad.

On re-direct examination by Mr. McMillan.

- Q. You say you have been knowing about the case ever since it happened. You mean when Marinous got the deed?
- A. I remember when He carried him to Bay Minette.
- Q. It is the subject of talk around Loxley about Marinous getting the deed from that old man?
- A. Yes, Sir.
- Q. You say you saw him when Marinous took him up there. What was his mental condition then?
- A. I would say it was bad.
- Q. Was he capable, in your opinion, of understanding a transaction of this kind?
- A. No, sir.

On re-Cross Examination by Mr. Hybart.

- Q. I understood you to say you didn't talk to him that day?
- A. I didn't. I didn't talk to Mr. Ivey. No.

On re-direct Examination by Mr. McMillan.

- Q. You spoke of "George" carrying him up there. That is George Marinous?
- A. Yes, sir.

- Q. Then he paid you every time?
- A. Always had the money.
- Q. When was it you visited over there last, Mr. Wilson?
- A. Couldn't recall.
- Q. About how long ago?
- A. Was there this spring.
- Q. Once or twice? Over there last Spring?
- A. I have been going there once in a while to see him ever since I have been here.
- Q. What year you went first to visit him, Mr. Wilson?
- A. Well, it was in 1931.
- Q. What part of the year in 1931?
- A. It was in the Spring, of 1931.
- Q. You saw Mr. Ivey at that time?
- A. Yes, I saw him.
- Q. You talk with him?
- A. Yes, sir.
- Q. Mr. Wilson, Mr. Ivey's mind would kind of come and go, wouldn't it?
- A. Well, he would sometimes talk a little sense and again he wouldn't.
- Q. You wouldn't know the condition of his mind on the day the deed was signed to you, at Bay Minette?
- A. Didn't talk to him.
- Q. You weren't up there?
- A. Saw him go by in the car.
- Q. You related to any of the parties by marriage or otherwise?
- A. No, sir.
- Q. Any of them customers?
- A. No, sir.
- Q. Didn't do any business?
- A. No.
- Q. What business you in?
- A. The grocery business.
- Q. Mr. Marinous is engaged in the same line?
- A. Yes, Sir.
- Q. And you are competitors in business?
- A. Yes, sir, we are here together.

Q. Where you come from when you came here?

A. Covington County.

On Re-Direct Examination by Mr. McMillan.

Q. I want to ask you something: Since he has had the stroke of paralysis has it or not been the subject of general knowledge around here that the old man's mind is gone?

A. Yes, that is what they all said.

Q. From what you knew of it, would you believe he was capable of keeping details of business transactions, the sale of land, in his mind?

A. No, sir.

DEPOSITION OF LEONARD NALLS.

Direct-Examination by B. F. McMillan, Jr.,

Q. What is your name?

A. Leonard Nalls.

Q. Where do you live?

A. Near Repton, about six or seven miles.

Q. In Monroe County?

Mr. Hybart: Conecuh, I reckon.

Q. Did you ever know Mr. Robert Ivey?

A. I do.

Q. Did you know him about the time he is alleged to have made a sale of land to Mr. George Marinous?

A. I remember hearing about it.

Q. You see him about that time.

A. Somewhere about that time.

Q. What was the condition of his mind?

A. Well, I couldn't say that he was mentally balanced.

Q. Did he seem to be very weak mentally and physically?

A. Yes, he seemed to be that way.

Gross-Examination by Mr. C. L. Hybart.

Q. Mr. Nalls, where do you live?

A. Near Repton.

Q. Conecuh County?

A. Towards Lennox, kinda between Lennox & Repton.

- Q. When did you come here?
- A. This morning.
- Q. Who did you come with?
- A. Mr. Robinson.
- Q. Mr. Robinson is what relation to Mr. Ivey?
- A. Son-in-law.
- Q. You kin to Mr. Robinson?
- A. No, sir.
- Q. Kin to the Iveys?
- A. No, sir.
- Q. Just a good friend of Mr. Robinson.
- A. Yes, sir.
- Q. You say you saw Mr. Ivey about the time this deed was executed.
- A. I wasn't down here. I saw him up there.
- Q. How long before the deed was executed, Mr. Nalls, was it you saw him or how long after?
- A. I couldn't say positively.
- Q. Couldn't remember? Remember what year you are talking about?
- A. 1931, best of my knowledge.
- Q. Know what month?
- A. No, sir, in fall time, possibly November.
- Q. Where you see him at?
- A. At his son's
- Q. You wouldn't say when you saw him next?
- A. Couldn't say exactly except on visits up there.
- Q. He is a man whose mind comes and goes?
- A. Yes, sir.
- Q. Sometimes clear and alright?
- A. Couldn't say that. He seems to be worse at times than at others.
- Q. But you wouldn't say his mind wasn't clear the day this deed was executed?
- A. Wouldn't know about that.

Re-Direct Examination by Mr. McMillan.

- Q. His mind was bad all the time you ever saw him?
- A. Yes, sir, I would have to say it was, but worse at others.

Q. Ever hear of him making a sale?

A. Presume he did.

Q. But you never heard of him making any sales?

A. I wouldn't say that, but it is all hearsay. I don't believe I can put my finger on any sales.

On Re-Direct Examination by Mr. McMillan.

Q. If he had made a sale you wouldn't know about it?

A. No.

On Re-Cross Examination by Mr. Hybart.

Q. Loxley is a pretty small place isn't it?

A. Yes. He tried to sell my Dad a farm at one time but it didn't go through but that showed he was active along those lines in attempting to do something of the sort.

Re-Direct Examination by Mr. McMillan.

Q. Mr. Fuller, you know Mr. Ivey's place?

A. I am familiar with it. Have a place near there about three or four blocks from it.

Q. What would you say the value of Mr. Ivey's place is?

A. Well, in comparison with mine it should be worth four or five thousand dollars.

Q. Is that in normal times?

A. Yes.

Q. You would consider it in normal times worth four or five thousand dollars?

A. Yes.

Re-Cross Examination by Mr. Hybart.

Q. Conditions were very abnormal in real estate in 1931, weren't they?

A. Well, not so much so as later. We hadn't felt the full brunt of the blow.

Q. No property being sold, was there?

A. More or less inactive as far as that was concerned, I guess.

Q. You didn't hear of any property being sold?

A. Might have been.

Q. I am not asking you about what might be. You didn't know of any sold in 1931, did you?

A. Not that I would call anything.

whatsoever or with his knowledge on his part that it was going to be made to him and the ejectment suit was brought also without knowledge to him although it was brought in his name, and said the first time he knew of it, Claude mentioned it to him.

Q. George Marinous filed both deeds to Frankos and May?

A. I suppose so.

Q. What did he tell you about the deed from him back to George Marinous?

A. I asked him if the property was still in his name and he said "No," that George Marinous asked him to go to Heard's office and sign a deed and he did so, although he didn't know who the deed was to and he dropped in and signed the deed.

Q. Just signed a paper?

A. Yes sir.

Q. Now Mr. Robinson, this money that was paid at the time Mr. Ivey signed that deed was immediately put in the bank?

A. Yes, sir.

Q. Never drawn out?

A. No, sir.

Q. Note given never paid?

A. No, sir.

Q. Now is it nor not a fact that when the Baldwin County Bank failed, they transferred on their records certificates of deposit and certificates of stock to Mr. Ivey for that money deposit?

A. A percentage of it. Thirty-seven and a half percent, I believe it was.

Q. Certificates of stock and certificates of deposit?

A. Yes, sir.

Q. Have you those certificates of stock?

A. Yes, sir.

Q. That was issued under decree of the court in the liquidation proceedings, wasn't it?

A. Yes, sir.

Q. Did or not those certificates of stock and certificates of deposit remain in the bank until after this litigation started?

A. Until this year.

Q. And you took them out of there, out of the bank, for the purpose of using in taking testimony of the respondent's witnesses at Bay Minette on whatever date it was?

A. Yes, sir.

Q. Have you got those certificates?

A. Yes, sir. do you want them?

Q. Yes, but we needn't stop now.

The certificates of stock and certificate of deposit and note referred to, attached to the deposition of the witness and

DEPOSITION OF C. C. FULLER.

Direct-Examination by B.F. McMillan, Jr.,

- Q. What is your name?
- A. C. C. Fuller.
- Q. Where do you live, Mr. Fuller?
- A. You mean now? I live here in Loxley.
- Q. How long have you lived here?
- A. The last residence has been since 1924.
- Q. You know Mr. Robert Ivey?
- A. Yes.
- Q. How long have you known him?
- A. About the same length of time - about twelve years.
- Q. Know him before he had the stroke of paralysis?
- A. Yes.
- Q. What was the condition of his mind before that stroke?
- A. I didn't come in contact with him so awfully much, but he seemed to be evasive and rather hazy at times, wouldn't know me, seemed in a fog as it were. I didn't come in contact so much afterwards as before.

Cross-Examination by Mr. C. L. Hybart.

- Q. Wouldn't know you at times?
- A. No.
- Q. His eyesight good or bad.
- A. His eyesight was bad.
- Q. His mind would come and go wouldn't it?
- A. I don't know, I hadn't been with him very much before he had the stroke.
- Q. You haven't been with him much?
- A. Haven't had much to say. Times I would see him. I know there was considerable deterioration from what there used to be, but I haven't seen him very many times.
- Q. Couldn't know whether his mind was better sometimes than before?
- A. Couldn't, no.
- Q. You wouldn't know the condition of his mind on the day he executed this deed?
- A. No.
- Q. Ever heard of Jake Griffin making a sale of any real estate as a real estate agent?
- A. He used to be in the real estate business.

Q. Ever hear of him making a sale?

A. Presume he did.

Q. But you never heard of him making any sales?

A. I wouldn't say that, but it is all hearsay. I don't believe I can put my finger on any sales.

On Re-Direct Examination by Mr. McMillan.

Q. If he had made a sale you wouldn't know about it?

A. No.

On Re-Cross Examination by Mr. Hybart.

Q. Loxley is a pretty small place isn't it?

A. Yes. He tried to sell my Dad a farm at one time but it didn't go through but that showed he was active along those lines in attempting to do something of the sort.

Re-Direct Examination by Mr. McMillan.

Q. Mr. Fuller, you know Mr. Ivey's place?

A. I am familiar with it. Have a place near there about three or four blocks from it.

Q. What would you say the value of Mr. Ivey's place is?

A. Well, in comparison with mine it should be worth four or five thousand dollars.

Q. Is that in normal times?

A. Yes.

Q. You would consider it in normal times worth four or five thousand dollars?

A. Yes.

Re-Cross Examination by Mr. Hybart.

Q. Conditions were very abnormal in real estate in 1931, weren't they?

A. Well, not so much so as later. We hadn't felt the full brunt of the blow.

Q. No property being sold, was there?

A. More or less inactive as far as that was concerned, I guess.

Q. You didn't hear of any property being sold?

A. Might have been.

Q. I am not asking you about what might be. You didn't know of any sold in 1931, did you?

A. Not that I would call anything.

DEPOSITION OF C. A. ROBINSON.

Direct Examination by B.F. McMillan, Jr.,

- Q. Mr. Robinson, did Dr. R. A. Hail ever wait on Mr. Ivey?
- A. No.
- Q. Ever intimate or know him as far as you knew?
- A. He probably knew him but never called on him.
- Q. He is located at Robertsdale and his practice is confined almost to Robertsdale?
- A. I am not in a position to say. As far as I know, it is.
- Q. You ever hear of him buying any land around here or negotiate for land around here?
- A. Loxley? No, sir.
- Q. Mr. Robinson, you remember the land that Mr. Ivey sometime ago sold? Two acres off his land to the Gulf Ice and Coal Storage?
- A. Yes, sir.
- Q. What price was that land?
- A. One thousand dollars for two acres?
- Q. Same character of land as this other?
- A. Same character. Had a railroad frontage. He just took a small corner off but has something like a quarter of a mile of railroad front yet.
- Q. This is just a block away?
- A. Yes, sir.
- Q. Mr. Robinson, this deed that was made to Peter Frankos, you remember the date of that deed?
- A. It is on record as November 23rd, 1931.
- Q. Dated November 3rd?
- A. November 23rd.
- Q. The record is?
- A. Yes, sir.
- Q. On record in Deed Book 52 N. S. page 104?
- A. Yes, sir.
- Q. Afterwards Frankos made a deed to W. W. May? Isn't that his name?
- Hybart: W. W. May.
- Q. You have a conversation with Mr. W. W. May about this?
- A. Yes, sir.
- Q. What did May tell you?
- A. Told me that deed was made to him without any consideration

- Q. Where had you seen him before that?
- A. Some little bit before he had the stroke. In the spring. I believe he had the stroke in February.
- Q. Of what year?
- A. 1931.
- Q. And you had seen him in the Spring.
- A. Yes.
- Q. What year.
- A. of 1931
- Q. Was that before or after the stroke?
- A. Before.

On Re-Direct Examination by Mr. McMillan.

- Q. You would see him in passing since that time?
- A. Yes sir.
- Q. About how many times?
- A. $\frac{1}{2}$ Seen him in the last two years, I know.
- Q. Six or eight times?
- A. More than that. I pass his place going to the mill.
- Q. What are your initials?
- A. W. J.

On re-Cross Examination by Mr. Hybart.

- Q. In passing you would see him about the place?
- A. Yes, sir, walking around on crutches.
- Q. And then you would go on by to the mill?
- A. I'd speak to him. He would know me one time and another time he wouldn't.
- Q. His mind was some days good and sometimes wasn't?
- A. Yes.

On re-direct examination by Mr. McMillan.

- Q. You mean his mind was alright?
- A. No, just for a few minutes. You could get in a conversation with him and tell it mighty quick.

On re-Cross Examination by Mr. Hybart.

- Q. You wouldn't be prepared to swear he didn't have his mind alright ordinarily.
- A. No, sir, because I wasn't with him.

On re-direct examination by Mr. McMillan.

- Q. But you know the times you were with him it was only momentarily that he was alright?
- A. Yes, sir.

DEPOSITION OF H.H. LEVINS.

Direct-Examination by B.F. McMillan, Jr.,

- Q. What are your initials?
- A. H. H. Levins.
- Q. Where do you live, Mr. Levins?
- A. I live in Loxley.
- Q. How long have you lived here?
- A. I moved here, I think in 1918.
- Q. What is your occupation?
- A. I am telegraph operator and station agent.
- Q. How long have you been such?
- A. I have been with the L & N for thirty-five years last July.
- Q. Mr. Levins, do you know Robert Ivey?
- A. Yes, sir.
- Q. How long have you known him?
- A. I don't remember. It must be some eleven or twelve years. Since I moved here.
- Q. Do you know him intimately?
- A. Well, I have been associated with him in business and socially too.
- Q. Do you know the condition of his mind?
- A. Well, you ask a very pointed question. I can tell you what I thought.
- Q. That is all any of us can do. Some know more.
- A. There have been times when I have seen Mr. Ivey that I am sure his mind was very badly unbalanced.
- Q. Did you have a conversation with him with reference to selling his place just before he is reported to have sold it to Mr. Marinous?
- A. He tried to sell that place to me once. In fact offered it for sale

- Q. Have the money?
- A. Had part of it.
- Q. You say at times you saw him his mind was bad?
- A. Yes, sir.
- Q. And at other times you didn't think as much?
- A. Well, for several years I thought his mind was alright, and I believe it was. For nearly two or three years I am positive it wasn't alright.
- Q. Every day?
- A. I haven't seen him sometimes when I thought his mind was right.
- Q. When was the last time you saw him?
- A. It has been something like three or four months ago he was down here.
- Q. You related to any parties to this suit, Mr. Levins?
- A. No, Sir.
- Q. You don't recall when it was you had the conversation with him about the sale?
- A. No, I can't remember the exact date.
- Q. Was it in 1929?
- A. I wouldn't say positively because I didn't try to keep it in mind.
- Q. Now, Mr. Levins, any property being sold here in 1930 and 1931?
- A. I don't know.
- Q. You know of any property being sold outside this place?
- A. I couldn't say positively.
- Q. Isn't it a fact that real estate values have been might low since this depression hit?
- A. I don't think there is considerable of it moving enough for a man to tell. I think this place is worth about as much as it ever was. Trees might have died, some of them from cold.
- Q. You know of no sales made?
- A. I don't know.
- Q. You ever heard of Jake Griffin making a sale of real estate?
- A. Never heard of any sales.
- Q. Ever recall any sales he made in the last five or six years?
- A. Well, let's see, I don't know as I can remember any right off the bat right now. As I understood it he sold this place to Mr. Ivey years ago when Mr. Ivey bought it.
- Q. When Mr. Ivey bought it, did Mr. Griffin own the place?
- A. I understood he did.
- Q. As a real estate agent I am talking about. Ever hear of him making any sales?

- A. Well, I have understood he sold land to different ones and had land in charge.
- Q. You can't point to a single one?
- A. No.
- Q. Never saw him?
- A. I am swearing now, not talking.
- Q. You mentioned something about trees dying, what trees?
- A. Satsuma trees.
- Q. Ever have Satsuma trees on his place?
- A. Yes, sir.
- Q. Whose killed?
- A. Some, most killed, a good many.

On re-direct examination by Mr. McMillan.

- Q. As I understood it, Mr. Levins, you can't remember the exact date he made you this offer. You said it was a month and a half or two months before you heard he sold it to Mr. Marinous?
- A. Something like that.
- Q. You say he had offered to sell you the place on previous occasions but the price was very much higher?
- A. Yes, sir.
- Q. Mr. Hybart asked you if you had the money to buy the place and you said you did not but you could have gotten it for that price. You mean you could have borrowed security on the place?
- A. I could have borrowed what I needed I am positive.

DEPOSITION OF J. O. DRISKELL.

Direct-Examination by B. F. McMillan, Jr.,

- Q. What are your initials?
- A. J. O.
- Q. Where do you live, Mr. Driskell?
- A. Right here in Loxley.
- Q. How long have you lived here?
- A. Ten years
- Q. Do you know Mr. Robert Ivey?
- A. Yes, Sir.
- Q. How long have you known him?
- A. Ten years.

marked Exhibit 1. Are you willing to return those certificates?

A. Yes, sir.

Q. Do you know whether W. W. May was an employee of George Marinous at the time?

A. I talked to him shortly afterwards in his store and he was apparently working.

Q. Told you he paid nothing for the land?

A. Didn't at that time but told me later. In other words, I might relate that on the morning of February 15th, 1932, I went to the grain store to talk to Mr. May and he seemed not to know what to say. He didn't give satisfaction about this deal. He said he didn't have anything to do with it and called Mr. Marinous, who was in the back of the place and I told Mr. Marinous I had come my last time offering to pay back the five hundred dollars he paid to Mr. Ivey.

Q. He said to pay him that and two hundred dollars more and he would give it back, didn't he?

A. Yes, sir. I told him that day I wouldn't do it. That if I wanted to enter suit and have the deed set aside I could do that and keep the five hundred dollars.

On Cross-Examination by C. L. Hybart.

Q. Now Mr. Robinson, I believe you live in Conecuh County?

A. Yes, sir.

Q. And you visit down here at stated times?

A. Yes, sir.

Q. How many times you come in 1931?

A. I usually came down on visits and bring my wife to see her people about three times a year and of course after this transaction was made with Mr. Marinous and Mr. Ivey, I came once.

Q. I am speaking about in 1931. You know how many times you came then?

A. I would say four times.

Q. And how long did you stay?

A. About three days each time.

Q. You never kept up with Dr. Hail's comings and goings during that time, did you?

A. Nothing except what the family tells me.

Q. You wouldn't know what happened while you were in Conecuh County, would you or couldn't tell how many times Dr. Hail was in Loxley?

A. No, sir.

Q. He could have been here practically all the time?

A. Yes, he could.

Q. And could have had many conversations with Mr. Ivey as far as you know?

A. He wouldn't have been called to attend him medically.

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Q. I am asking you about his opportunities of seeing him. Many times as far as you know, and you wouldn't know what real estate transactions he was making?

A. Never heard of any. Don't know.

Q. Wouldn't say he hadn't would you?

A. No, sir.

Q. You speak about a plot of land being sold off this land in suit, on the railroad front. You say that was sold to the Gulf Ice and Cold Storage Company.

A. Yes, Sir.

Q. You present when the transaction was made?

A. No, sir.

Q. You know of your own knowledge how much was paid for it?

A. Of my own knowledge I don't know.

Q. You never saw any money passed?

A. Not a cent.

Q. Mr. Ivey handle that?

A. He and his son.

Q. You know if his son had anything to do with it of your own knowledge?

A. No.

Q. When was that sale?

A. I don't remember the date.

Q. What year, not particular about the date?

A. I really think, it seems to me it was in August of 1930.

Q. That your best recollection? Could have been in the Spring of 1931?

A. I don't know.

Q. You seen where the deed is recorded?

A. Yes, sir.

Q. In the Probate Court?

A. Yes, sir.

Q. Now when was it you had the conversation with Mr. May?

A. In August of this year.

Q. Where was that conversation?

A. He was hoeing in his garden here in Loxley and I passed along the road.

Q. Saw him and called to him?

A. To the fence and talked to him.

Q. Just a short time before that hadn't he had trouble with one of the Ivey boys, with Ion or Oren Ivey?

- A. Not that I know of.
- Q. You heard of him getting after Mr. May with a gun?
- A. I heard some talk.
- Q. You heard he told Mr. May if he came on the place he would kill him?
- A. No, sir.
- Q. Know where Mr. May is now?
- A. No, sir.

Re-Direct Examination by Mr. McMillan.

- Q. Mr. Robinson, do you know of your own knowledge the consideration ~~of~~ the deed to this Ice and Cold Storage land recites?
- A. Only what is on the record and what was told me.
- Q. What was on the record?
- A. One thousand dollars.
- Q. That was two acres?
- A. Yes, sir.
- Q. Same character of land?
- A. Yes, sir.
- Q. And adjoins this other land of Mr. Ivey's?
- A. Yes, sir.
- Q. Who was Mr. Ivey's doctor?
- A. Mr. Jordon.
- Q. What are his initials?
- A. I don't recall. He is at Robertsdale.
- Q. He is the doctor who testified here originally?
- A. Yes, sir. That was when he was here and in Evergreen he used Dr. Betts.

DEPOSITION OF D. W. FIELDS.

Direct Examination by B. F. McMillan, Jr.,

- Q. What are your initials?
- A. D. W.
- Q. Where do you live?
- A. Two miles north of Loxley.
- Q. Do you know Mr. Ivey?
- A. The old man? Yes, sir.

- Q. How long have you known him?
- A. About ten years.
- Q. Did you know him before he had the stroke of paralysis?
- A. Yes, sir.
- Q. What was his condition then?
- A. Well, about ten or twelve years ago, about the time we came here, He was alright. Before the stroke he seemed to me he was getting off some.
- Q. But after he had the stroke?
- A. Why, he wouldn't know me when he met me on the street.
- Q. Would you say his mind was completely gone after the stroke?
- A. Seemed so to me.

Cross-Examination by Mr. C. L. Hybart.

- Q. Ever get in a conversation with him after then?
- A. Well, not much, only just when I saw him, he wouldn't know me.
- Q. Could he carry on a conversation normally?
- A. No. Sir.
- Q. You say you didn't carry on a conversation?
- A. I talked to him up to Grant's, up to his house. Grant is his son-in-law.
- Q. What Grant is that?
- A. That is his son-in-law.
- Q. That his last or first name?
- A. Last.
- Q. What is his first name?
- A. Charlie Grant
- Q. When did you talk to him up at Charlie Grant's?
- A. That was after he had the stroke. Must have got it in 1931, somewhere along in there.
- Q. When did you talk to him?
- A. In 1932, and all along. I would help carry him home.
- Q. How many conversations have you had with him?
- A. Didn't have any much. He wouldn't know me.
- Q. Is his eyesight bad?
- A. I don't know. When I would tell him my name he wouldn't seem to remember me.
- Q. How many times you tell him your name in 1932?

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- A. I couldn't tell you that.
- Q. How many times you see him in 1932.
- A. A lot of times. Couldn't tell you how many. I would see him on the streets and lead him along, take him by the arm.
- Q. How many times you take him home?
- A. I couldn't tell you.
- Q. You kin to these parties?
- A.- No, sir.
- Q. Friends to all of them.
- A. All of them, yes, sir.
- Q. What business you in?
- A. Farming.
- Q. How many miles you live from here?
- A. Two miles north of Loxley.
- Q. How long have your lived there?
- A. About fifteen years.
- Q. How long have you known Mr. Ivey?
- A. Somewhere around ten or twelve years.
- Q. You visit him in his home?
- A. Yes, sir.
- Q. When was the last time you visited him?
- A. About a year ago, I helped take him home in the car.
- Q. Where did you carry him from?
- A. From down in town here.
- Q. Who was with you?
- A. Some of the boys, I couldn't tell.
- Q. You wouldn't know which one.
- A. Maybe Charlie Grant, Sometimes Claude or one of them.
- Q. You any kin to Charlie Grant?
- A. No, sir.
- Q. Good friend of his?
- A. Nothing tooextra.
- Q. You talk to Charlie Grant about this case?
- A. No, sir.
- Q. Ever talk to anybody about it?
- A. Nobody except when he ran up there and told me.
- Q. Who came after you?

- A. Ivey.
- Q. Which Ivey?
- A. Claude and Don, I believe they call him.
- Q. Now, wasn't his mind better some times than at others?
- A. I couldn't tell you that, whether it was or not. Everytime I have seen him he was off so, and I knew him before he got that way.
- Q. What would you say to him?
- A. I would tell him, "Hello, Mr. Ivey," and he would just grunt, like.
- Q. And what would you say?
- A. I would just pass on sometimes. If he would want to get into a car I would help him and ride up and help him out.
- Q. And what would you say to him?
- A. Nothing, just talk to him some.
- Q. What would he say?
- A. Wouldn't say much of anything.
- Q. But he would get in the car?
- A. We would help him in and then when he got to the place we would help him out.

Re-Direct Examination by Mr. McMillan.

- Q. He is in bad shape in every way.
- A. He doesn't seem well. I don't know about his eyesight since he went wrong.

DEPOSITION OF J. H. MORRIS.

Direct-Examination by B. F. McMillan, Jr.,

- Q. What is your name?
- A. My name is J. H. Morris.
- Q. Where do you live?
- A. I live in Loxley.
- Q. How long have you lived here?
- A. I have lived here around about twenty years.
- Q. Do you know Mr. Robert Ivey?
- A. Yes, sir.
- Q. Do you know him intimately?
- A. Sir?
- Q. Do you know him intimately, know him well?
- A. Yes, sir, well as any other man.

- Q. Visit him?
- A. Yes, sir and been in his house.
- Q. What is the condition of his mind in the past three years?
- A. Bad.
- Q. In your opinion?
- A. In all the opinions of men I have heard talk.
- Q. You think he could carry on a business transaction intelligently?
- A. No, sir.
- Q.- His mind is what you would say, completely gone?
- A. I couldn't say it was completely gone but it is in a shape ~~he~~ I couldn't say he was capable of doing business.

On Cross-Examination by C. L. Hybart.

- Q. Your name is Morris, you say?
- A. Yes, sir.
- Q. You say you visited Mr. Ivey, Mr. Robert Ivey.
- A. Yes, sir.
- Q. How is his eyesight?
- A. I don't know.
- Q. Well, how is your eyesight?
- A. I haven't got any.
- Q. How long has ~~g~~his been?
- A. I have been totally blind ever since the last Saturday night, March a year ago.
- Q. How long you been partially blind, Mr. Morris?
- A. I have been blind in my left eye four years. I could see out of my right eye until March, a year ago.
- Q. You say you visited Mr. Ivey?
- A. Yes, sir.
- Q. You neighbors?
- A. Yes, Sir.
- Q. How far you live from Mr. Ivey?
- A. Something like a quarter.
- Q. You go there frequently in 1931 to visit him?
- A. I was there a few times.
- Q. Talk with him?
- A. We would go fishing together.
- Q. In 1931?
- A. No sir.

- Q. You talk to him in 1931?
- A. Yes, sir.
- Q. Carry on a conversation with him?
- A. Yes, sir.
- Q. Did he visit at your place?
- A. I have talked once with him since I was blind.
- Q. Did he visit at your place?
- A. He has been there a time or two. He didn't go about no big chance. I would see him most of the time in Loxley.
- Q. When you went there you went to see Mr. Ivey. That was the purpose of your visit?
- A. Yes, sir.
- Q. How long did you stay?
- A. Sometimes two or three hours.
- Q. And you would talk along all during that time?
- A. Yes, sir.
- Q. And his mind was better at times than at others?
- A. Well, a man would think so.
- Q. Clear up wouldn't it?
- A. No, it didn't seem so clear. At times you couldn't make him understand. He wouldn't know who I was.
- Q. He cannot see very well himself, can he?
- A. No, sir, not very well.
- Q. You would tell him who you were, and he would say "good evening," Mr. Morris," and then you would carry on a conversation, wouldn't you?
- A. Yes, sir.
- Q. And discussed various and sundry things, discuss neighborhood conversations and crops wouldn't you?
- A. Yes, sir.
- Q. He could carry on a conversation, couldn't he?
- A. Well, he could to some extent but he would be at random and sometimes he would talk about two or three things in and out, You know, jump from one thing to another.
- Q. And sometimes carry on a pretty rational conversation?
- A. I don't know just exactly what you mean.
- Q. Well, he would carry on an ordinary conversation. Couldn't he sometimes?
- A. Well, you might consider it that way, I judge.
- Q. You know the condition of his mind on the 23rd day of November, 1931 while he was at Bay Minette?

- A. While he was at Bay, Minette?
- Q. Did you know the condition of his mind that day? Were you there?
- A. No, sir.
- Q. You wouldn't know the condition of his mind when he was up there?
- A. I know the condition before and since then but on that day, No, sir, I don't.
- Q. You don't know but you say his mind is better at times than at others?
- A. Well, it seemed that way, but if you want the straight of it you would have to have a doctor.

On Re-Direct Examination by Mr. McMillan.

- Q. You know his mind was gone before November 23rd, 1931, and you know it has been gone since that date?
- A. Yes, sir.

DEPOSITION OF CLAUDE IVEY.

Direct Examination by B.F. McMillan, Jr .

- Q. Your name is Claude? Claude Ivey?
- A. Yes, sir.
- Q. Was Doctor R. A. Hail ever the physician for your father?
- A. No, sir.
- Q. Who was your father's physician?
- A. In Loxley, Dr. Jordon.
- Q. Was Dr. Hail ever intimate with him that you ever knew of?
- A. Not that I know of.
- Q. You know Albert Keuler?
- A. Yes.
- Q. He ever intimate with your father when your father had the stroke?
- A. No.
- Q. Your father is physically and mentally unable to attend this hearing?
- A. I would think so, yes sir.
- Q. In your opinion, has he been able to attend to anything since this proceeding started?
- A. No, sir.
- Q. Has his physical and mental disability been continuous since his stroke in 1930?
- A. Yes, sir.

Cross-Examination by C. L. Hybart.

- Q. Dr. Hail comes to Loxley quite frequently, doesn't he?
A. Yes.
Q. He was here in 1931?
A. I suppose he was
Q. Couldn't say he wasn't, could you?
A. No, sir.
Q. You couldn't know how many conversations he had with your father in 1931?
A. I have never seen him talking to him?
Q. You couldn't say Mr. Keuler hadn't talked to him numerous times?
A. No.

DEPOSITION OF EDWARD S. TUNSTALL.

Direct Examination by Mr. B. F. McMillan, Jr.,

- Q. What is your name?
A. Edwin S. Tunstall.
Q. Mr. Tunstall, where do you live?
A. I am here at present. I lived at Tensaw.
Q. You are connected with the Tax Assessor's office?
A. Yes, sir.
Q. How long?
A. Seven years.
Q. Do you know Robert Ivey?
A. The Old man? Yes, sir.
Q. How long have you known him.
A. Ever since I have been here, the last seven years.
Q. What has been the condition of his mind the last three years?
A. Well, to my best judgment he had a stroke and has been off at times.
Q. In your opinion was he capable of attending to business?
A. He hasn't been the last three years I know of.
Q. Very old, isn't he?
A. Yes, sir.
Q. Never did sign his assessment?
A. Not in the last three years.

On Cross-Examination by C. L. Hybart.

- Q. He live in Loxley?
- A. Yes, sir.
- Q. How long is Loxley from Bay Minette?
- A. About eighteen miles.
- Q. How often you see him, Mr. Tunstall in the last three years?
- A. I would see him two or three times in the year.
- Q. Every time you saw him you carried on a conversation with him?
- A. Yes, sir.
- Q. You say sometimes you thought he was off?
- A. Yes, to the best of my judgment, because he said he couldn't sign any assessments.
- Q. You know anything about his eyesight?
- A. No, I don't.
- Q. You know he was practically blind?
- A. No, I don't.
- Q. Told you he couldn't see it?
- A. Said he couldn't and said he had no use in himself.
- Q. That sounded intelligent, didn't it?
- A. Yes.
- Q. What else he say to you?
- A. I don't know. I couldn't say, Mr. Hybart, just general conversation.
- Q. Sometimes his mind was better than at others, wasn't it?
- A. That is the way it seemed to me.
- Q. You couldn't say his mind was not alright November 23rd, 1931, could you?
- A. That specific date I couldn't say.
- Q. You werent there when the deed was signed, were you?
- A. All I know, ^{of} the transaction is in the Tax Assessor's office. He would come in two or three times a year and I would see him at the tax office and talk.
- Q. How many times in 1931 was he in the Tax Office?
- A. I couldn't say.

Re-Direct Examination by Mr. McMillan.

- Q. Every time you have seen him in the last three years his mind seemed bad?
- A. Well, yes.

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Re-Cross Examination by Mr. Hybart.

Q. Better at sometimes than at others?

A. I couldn't say.

It is agreed that the certificate of stock
Certificate of deposit and note, attached
to the deposition of C. A. Robinson,
as Exhibit 1 and as such to be of-
fered in evidence, may be with-
drawn from the files when the case
is closed for delivery to whom so-
ever may be entitled to them + dated
this December 14-1933

BT
Hybart
by Christian

CERTIFICATE OF DEPOSIT

No. 633

BALDWIN COUNTY BANK

\$239.86

Bay Minette, Alabama, October 25, 1932.

THIS CERTIFIES that Robert Ivey

is entitled to Two Hundred Thirty-nine and 86/100 DOLLARS from the net proceeds, ratably with holders of similar Certificates of Deposit, of the liquidation of the assets of the Baldwin County Bank, Bay Minette, Alabama, as provided in the plan of reorganization of said Bank as decreed by the Circuit Court of Baldwin County, Alabama, which decree is dated October 14, 1932, and is on file in the Register's office. Payments on this Certificate of Deposit are to be made as and when authorized by the Board of Directors of the Baldwin County Bank. This Certificate of Deposit does not bear interest and is non-negotiable.

S. S. Adams, Cashier.

Aetna Insurance Company
OF THE AETNA FIRE GROUP
HARTFORD, CONNECTICUT
PRINTED IN U.S.A.

*Decree of circuit
court in
Case 1030*

ROBERT IVEY, by his next friend,
CHESLIE A. ROBINSON,

Complainant,

vs

W. W. MAY, et al,

Respondents.

IN THE CIRCUIT COURT OF BALD-
WIN COUNTY, IN EQUITY.

No. 1946.

CERTIFICATE OF COMMISSIONER.

I, Ruth Macdonald, the person agreed upon by counsel as Commissioner in the foregoing cause as shown by agreement hereinabove set forth do hereby certify that I am personally acquainted with the said witnesses, D. S. Comstock, C. A. Robinson, Dr. H. W. Jordan, J. C. Griffin, W. B. Solley, Claude Ivey, Percy Hall, Robert M. Mahler, M. B. Dewey, R. A. Apperson, W. J. Richberg, H. H. Levins, J. O. Driskell, H. W. Wilson, Leonard Nalls, C. C. Fuller, D. W. Fields, J. H. Morris, and Edward S. Tunstall, the witnesses named in the agreements hereto attached and know them to be the identical persons named in said commission; that all of the said witnesses personally appeared before me; that they were duly sworn by me to speak the truth, the whole truth and nothing but the truth and examined as above stated; that their testimony was taken down by me as near as might be in their own language and issuance of commission, and signatures of the said witnesses to their respective depositions were waived by the parties or counsel.

That the witnesses, D. S. Comstock, C. A. Robinson, Dr. H. W. Jordan, J. C. Griffin, W. B. Solley and Claude Ivey so appeared before me and testified as hereinabove stated at Loxley, Alabama, on the 31st day of August, 1932; that the witnesses, W.P. Hall, Robert M. Mahler, M. B. Dewey, R. A. Apperson and Cheslie A. Robinson so appeared before me and testified at Bay Minette, Alabama, on to-wit; the 18th day of May, 1933, and that the witnesses W. J. Richberg, H. H. Levins, J. O. Driskell, H. W. Wilson, Leonard Nalls, C. C. Fuller, C. A. Robinson, D. W. Fields, J. H. Morris, Claude Ivey and Edward S. Tunstall so appeared before me and testified at Bay Minette, Alabama, on the 14th day of December, 1933.

I further certify that at said hearing the testimony of said witnesses was taken on oral examination by agreement among the parties, B. F. McMillan, Jr., as solicitor for the complainant appearing for Complainant and conducting said oral examination on their behalf, and Charles L. Hybart, of the firm Hybart, Heard and Chason as solicitors for Respondents so appeared on behalf of Respondents, and conducted said examination in said behalf on the respective dates hereinabove set forth.

I further certify that I am neither of counsel nor of kin to any of the parties to this cause, nor in any way interested in the result thereof.

WITNESS my hand and seal this 15th day of December, 1933.

Commissioner's Fee \$67⁰⁰

Ruth Macdonald
COMMISSIONER.

ROBERT IVEY, by his next friend,
CHESLIE A. ROBINSON,

Complainant,

-VS-

PETER FRANKOS ET AL,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

No. 991.

It is agreed that the three Deeds hereto attached are the original Deeds from Robert Ivey to Peter Frankos; from Peter Frankos to W. W. May and from W. W. May to George Marinos.

Dated this 24th day of February, 1934.

B. J. Ziemle
Solicitor for Complainant.

Hyport Wend Jackson
Solicitors for Respondents.

STATE OF ALABAMA,

WARRANTY DEED.

BALDWIN COUNTY.

THIS INDENTURE, made and entered into on this the 23 day of November, 1931, by and between ROBERT IVEY, a widower, of the first part, and PETER FRANKOS, of the second part, WITNESSETH:-

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration in hand paid to party of first part by party of second part, receipt whereof is hereby acknowledged, party of first part has and by these presents does hereby GRANT, BARGAIN, SELL AND CONVEY unto the party of the second part, the following described real property in Baldwin County, Alabama, viz:-

Lots One (1), Two (2), Three (3) and Four (4) in Block Eleven (11) of the W. C. Dinwiddie Addition to the Town of Loxley, Alabama, as per Plat thereof recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Miscellaneous Record 1, page 110;

Also, all that tract of land lying to the West of the Louisville & Nashville Railroad in the West half of the Northeast Quarter of the Northwest Quarter ($W\frac{1}{2}$ of $NE\frac{1}{4}$ of $NW\frac{1}{4}$) of Section Fourteen (14) Township Five (5) South of Range Three (3) East;

Also, the Northwest Quarter of the Northwest Quarter of Section Fourteen (14) in Township Five (5) South of Range Three (3) East, excepting and reserving therefrom all that certain parcel of land lying to the East of the Louisville & Nashville Railroad, being in the Northeast Quarter of the Northwest Quarter of the Northwest Quarter ($NE\frac{1}{4}$ of $NW\frac{1}{4}$ of $NW\frac{1}{4}$) of said Section Fourteen (14) Township Five (5) South, Range Three (3) East, excepting twenty (20) feet off the North end for a public highway, which said parcel of land was deeded to Albert N. Bliss by Deed dated February 8th, 1916 and recorded in Deed Book 22 N. S., page 86 of the Baldwin County Records, being the same property conveyed by T. R. Crumpler and wife to J. C. Griffin on November 3rd, 1917, by Deed recorded in Deed Book 26 N. S., pages 532-3 of the Baldwin County Records; Also, excepting therefrom the following described land heretofore sold by Robert Ivey to C. H. Schutte, doing business as Baldwin Ice & Storage Company: From the Northwest corner of Section 14 Tp. 5 South, Range 3 East, Baldwin County, Alabama, run East along section line 1029.5 feet to its intersection with the west right of way line of L. & N. Railroad, for point of beginning, thence West 90 feet, thence South $13^{\circ} 33'$ East 512 feet, thence East 227 feet to west right of way line of L. & N. Railroad, thence Northwestwardly along said right of way 557.5 feet to point of beginning, containing one and eighty-hundredths acres of land and being a fractional part of Northwest Quarter of Northwest Quarter of said Section Fourteen;

Also excepting therefrom the following described tract of land heretofore sold by Robert Ivey to Claude T. Ivey and being described as follows: Beginning at a stake one hundred seventy (170) feet south of the Northwest Quarter of the Northwest Quarter of Section Fourteen, Township Five South, Range Three East, and twenty (20) feet East of the section line running South from said stake, run South eleven hundred forty-five (1145) feet to a stake, thence East six hundred sixty (660) feet to a stake, thence North eleven hundred forty-five (1145) feet to a stake, thence West six hundred sixty (660) feet to point of beginning. Containing seventeen (17) acres more or less, lying and being in the Northwest Quarter of the Northwest Quarter of Section fourteen (14) Township Five South, Range Three East in Baldwin County, Alabama.

Also, one tractor disc, together with tools, and any and all other farming machinery now belonging to me and located on this land; Also my interest or equity in that certain sprayer owned by myself, M. B. Dewey and others, said interest being a one-fourth interest.

TO HAVE AND TO HOLD unto the said party of the second part, his heirs and assigns, FOREVER. And the party of the first part, for himself and his heirs, executors and administrators, hereby covenants and warrants to and with party of second part, his heirs and assigns, that he is seized of an indefeasible estate in fee simple in and to said property; that he has a good right to sell and convey the same as herein contained; that he will guarantee the peaceable possession thereof; that said property is free from all liens and encumbrances and that he will and his heirs, executors and administrators shall forever warrant and defend the same unto the party of the second part, his heirs and assigns, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the party of the first part hereunto sets his hand and affixes his seal on the day and year first above written.

WITNESSES:

J. J. [Signature]
[Signature]

^{his}
Robert X Ivey SEAL
mark

[Signature] [Signature]

STATE OF ALABAMA,

BALDWIN COUNTY.

I, Reshard, a Notary Public in and for said County in said State, hereby certify that Robert Ivey, a widower, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and Notarial Seal hereto affixed by me this 23 day of November, 1931.

(affix seal)

[Signature]
Notary Public, Baldwin County,
State of Alabama.

RECORDED

4. The Court charges the Jury that one of the issues submitted to them in this case is whether the defendant, George Marinous, purchased the property without notice of Mr. Ivey's mental incapacity to make the deed and in determining this fact the court charges you that if Marinous had knowledge of the facts sufficient to put a reasonable man on inquiry as to Ivey's mental incapacity this would be sufficient notice on his part.

Refused to sign

1. The Court charges the Jury that the test of the sufficiency of Robert Ivey's mental ability to make a contract is whether he had sufficient mental capacity to understand in a reasonable manner the nature and effect of the act he was doing.

Henry W. Adams

RECORDED

EXHIBIT

2. The Court charges the Jury that in order for plaintiff to recover it isn't necessary that the Jury should find that his mind was completely gone but if they should find from the evidence that he didn't have sufficient mental capacity to understand in a reasonable manner the nature and effect of the act he was doing, the Jury may find that he was insane for the purpose of this trial even though they further believe from the evidence that he was not totally insane.

*Refused
JWA
Zaidge*

EXHIBIT

3. The Court charges the Jury while the burden of proving mental incapacity of the Grantor to make the deed at the time the business was transacted is on the complainant, yet if such mental incapacity is once shown and is not tracable to a cause temporary in its nature this mental incapacity may be presumed to continue and if the Jury should find that the Grantor was the subject of mental incapacity and that it was not ~~temporary~~ of a temporary nature, the burden of removing the presumption is on the defendant.

*Refused
JWA
Zaidge*

UNCORRECTED
M

The Court - charges the jury that -
if you are reasonably satisfied
with the evidence that Robert - I rely, in
conclusion the deed that she was capable
of reasonably understanding the
transaction and its effect - then
your verdict should be that her
mind was sound -

Yours
J. W. Hare
Judge -

10

RECORDED
12/17

- C -

The Court charged the jury that if you believe from the evidence that Roberts' mind at the time he made the act was so impaired that he did not act under a rational understanding of the nature and effect of the act he was doing, it is your duty to find that he was insane &

Wm
J. W. Hare
Judge

1046

ROBERT IVEY, By his next friend, Cheslie A. Robinson,

Complainant,

-vs-

W. W. MAY, GEORGE MARINOS, and PETER FRANKOS,

Respondents.

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

Now comes George Marinos, and for answer to the Bill of Complaint in this cause, says:-

FIRST:

In answer to the first paragraph of the Bill of Complaint that he admits the allegations contained therein.

SECOND:

Respondent is not advised as to the age of Robert Ivey, but denies that at the time he entered into the transaction mentioned in said Bill of Complaint that the said Ivey was of unsound mind, and states the facts to be that the said Ivey was capable of attending to the business affairs mentioned therein; that he has no knowledge of any fact that would lead him to believe that the said Ivey was of unsound mind at the time of said transaction to any extent, and certainly not to the extent that he was incapable of attending to the business affairs mentioned in said Complaint. Respondent admits that for the last several years the said Ivey has resided near Loxley, in Baldwin County, Alabama, on the lands mentioned in the third paragraph of said Bill of Complaint, but denies that said lands are very valuable and with the improvements thereon are worth approximately Six Thousand Dollars (\$6000.00), or any such amount, or anything in the neighborhood of that amount. Respondent further says that said lands, together with the improvements, together with the property mentioned in Paragraph three of said Complaint in value would not at the time of the conveyance mentioned herein exceed the value of One Thousand Dollars (\$1000.00).

THIRD:

Respondent for answer to Paragraph Three of the said Bill of Complaint says that on, to-wit, November 23rd, 1931, that in his

opinion and judgment that the said Robert Ivey was capable of looking after the affairs mentioned in said Bill of Complaint, and that he did not attempt on that occasion, or on any other occasion to defraud or to treat the said Ivey unfairly in the transaction mentioned in said Bill of Complaint, or in any other transaction; that the said Robert Ivey came to him with the proposition to sell to him the property mentioned in Paragraph Three at and for the sum of One Thousand Dollars (\$1000.00); that at that time W. W. May, who was working for your Respondent, conceived the idea that he would like to have this property, that he would like to move out from the Town of Loxley where he was then and there residing and start a chicken farm or a truck farm thereon, and that your Respondent then and there agreed to purchase the property mentioned in Paragraph Three for the said May; that the said May was to refund to your Respondent the said sum of One Thousand Dollars (\$1000.00), together with the interest thereon, and was to become the owner of said property. Your Respondent further shows in answer to said paragraph that it was agreed by and between the parties; that is, Robert Ivey and himself, that they were to come to Bay Minette for the purpose of having the papers prepared relative to their said trade and for the execution of the same; that said papers were prepared in Bay Minette, Alabama, and without any undue influence, connivance or fraud, intentionally or otherwise, said Ivey executed the same voluntarily; that in the procuring of the Deed to said property your Respondent for convenience took the Deed in the name of Peter Frankos, who resides in Chicago, Illinois, and emphatically denies that it was his purpose of acquiring title to Complainant's property for less than one-fifth its value, and that it was for any furtherance of any fraudulent or unlawful purpose of acquiring Complainant's property for a nominal consideration.

Your Respondent further says that said transaction was open and aboveboard; that it was without any knowledge of any mental unsoundness of the Complainant or without any information or knowledge that would lead him to believe that the Complainant was of unsound mind; that the consideration agreed upon was commen-

(page three)

surate with the value of the property and was solely for the purpose of meeting the wishes of the Complainant and helping W. W. May to secure a place that he desired, and that he bought the same for the purpose of selling the same to the said W. W. May at the price he paid the said Ivey plus interest thereon; that soon after said transaction was closed with the said Ivey, and after the said Ivey had executed his Deed to the said Frankos, he had the said Frankos convey the said property to the said W. W. May; that since said suit was filed that the said W. W. May, making it known to him that he did not care to get mixed up in this litigation, the said W. W. May has re-conveyed said property to your Respondent, who now holds the deed to said property and takes full responsibility for the transaction with the said Robert Ivey in connection with said property.

FOURTH:-

In answer to the fourth paragraph Respondent admits that he caused a Deed to be executed by Peter Frankos conveying the said property to said W. W. May pursuant to an agreement that he had with the said W. W. May as outlined in his answer to the third paragraph of the Bill of Complaint. Your Respondent denies that the said W. W. May in this transaction was acting as his agent, servant or employee; that the transaction between him and the said W. W. May was as has heretofore been mentioned, and that said Deed to the said W. W. May was not in pursuance of any fraudulent scheme to defraud Complainant of his property on the theory that the said May or the said Frankos were bona fide purchasers for value; that the transaction between him and the said Ivey was open, fair and aboveboard, and based upon a consideration equivalent with the value of the property mentioned in said Bill of Complaint as having been conveyed.

FIFTH:

Respondent denies any fraudulent scheme on his part or anyone else connected with this transaction so far as he knows to acquire the title to said property mentioned in said Bill of Complaint and secure possession of Complainant's property for a sum

(page three)

(page four)

greatly less than its value. Respondent admits that Proceedings in Ejectment have been commenced in this Court by W. W. May to secure possession of the property, and Respondent further shows that May having become unwilling to proceed further with the Contract has made the Deed to him as heretofore mentioned to said property. Your Respondent further shows unto your Honor that Robert Ivey has become dissatisfied, so he is informed, with his said trade, if he is of that frame of mind, by the influence and connivance of his sons, who for some purpose best known to themselves have brought about this controversy between your Respondent and the said Robert Ivey; that at the time of the trade the said Robert Ivey was perfectly satisfied; that your Respondent did not know of any impairment of his mental facilities; that he was capable of entering into the Contract, and did so enter into said Contract, willingly, and that the consideration paid to the said Robert Ivey was a reasonable and fair price for said property.

Having answered the aforesaid Bill of Complaint Respondent respectfully requests that he be now discharged with his reasonable costs that he has been caused to expend unjustly.

Hybart, Herd & Cheson
Attorneys for Respondent.

ROBERT IVEY, By his next
friend, CHESLIE A. ROBINSON,

Complainant,

-vs-

W. W. MAY et al,

Respondents.

IN THE CIRCUIT COURT-IN EQUITY

STATE OF ALABAMA

BALDWIN COUNTY.

Now come the Defendants and demur to the Bill of Com-
plaint as last amended, and for grounds of demurrer say:-

FIRST:

That said Bill of Complaint as last amended does not
contain equity.

SECOND:

That said Bill of Complaint as last amended does not
show that any of the Defendants or their agents were conscious
of the mental infirmities of Robert Ivey at the time of the sale
or purchase of the lands involved therein.

THIRD:

That it is not alleged that the said Robert Ivey did
not agree in writing to the plans of the re-organization of the
Baldwin County Bank.

FOURTH:

It is not averred that the said Robert Ivey did not
agree in writing or otherwise to accept Certificates of Stock and
Certificates of Deposit as to the funds that he had on hand at
the time said Baldwin County Bank went into liquidation and its
affairs were taken over by the Superintendent of Banks for the
State of Alabama.

FIFTH:

No reason is shown as to why said Bank Stock or Certi-
ficates of Deposit mentioned therein should be in any way charged
up to the Defendants or either of them, or that they should be
required to accept said Certificates in satisfaction of any ob-
ligation that the said Robert Ivey might have against them.

W. W. May et al
Solicitors for Respondents.

ROBERT IVEY, by his next friend,
CHESLIE A. ROBINSON.

Complainant,

VS.

W. W. MAY, ET AL.

RESPONDENT.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.

IN EQUITY.

INTERROGATORIES TO BE PROPOUNDED TO W. W. MAY, WHO RESIDES IN
MONTGOMERY, ALABAMA, AND WHOSE PRINCIPLE PLACE OF BUSINESS IS 26
SOUTH COMMERCE STREET IN THAT CITY, AND WHO IS A MATERIAL WITNESS
FOR THE RESPONDENTS IN THE AFORESAID CAUSE.

1. Please state your name, age and residence.

Are you acquainted with Robert Ivey? Are you acquainted with George
Marinous? If so, where does the said Robert Ivey live? Where does
the said George Marinous live?

2. Are you acquainted with the property involved in
this suit? Were you acquainted with the property involved in
this suit at the time that the said Robert Ivey sold or conveyed
the same to Peter Frankos?

3. Did you have a conversation with George Marinous
relative to your purchase of this property about the time that the
said Robert Ivey conveyed said property to the said Peter Frankos.
If so, please state what that conversation was, and whether it was
agreed and understood that you were to become the owner of said
property and that the said Peter Frankos or George Marinous were to
convey the same to you.

4. Did the said Peter Frankos, or George Marinous
convey said property to you? Did you authorize an ejectment suit to
be ~~brought~~ brought for said property? What was the understanding
between you and the said George Marinous relative to your becoming
the purchaser of the property involved in this suit?

5. After the litigation was started relative to
this property, did you decide to reconvey the property to any one?

If so, who, and what was said between you and the party to whom you conveyed the same? Please give full details of this conversation.

6. Was there any threats made by any one to you, or that you heard of in regard to your owning this property?

7. Did you have a conversation with C. A. Robinson in regard to this property? What did you tell him in said conversation in regard to said ejectment suit and the consideration of the deed to you and your knowledge relative to the deed? What prompted this statement by you, if anything, to the said Robinson, if you had such a conversation? Please give in detail your conversation, if any, with C. A. Robinson in regard to this property, and also what Robinson had to say about the matter, if anything, and what induced your statement relative to the same, if anything?

Hyball, Heard & Bacon
Solicitors for Respondents.

Respondents suggests the name of Hon. R. Tyler Goodwin, Attorney at Law, Montgomery, Alabama, as being a suitable person to act as Commissioner in taking the depositions of the aforesaid witness, W. W. May.

Hyball, Heard & Bacon
Solicitors for Respondents.

ROBERT IVEY, By his Next
Friend, Cheslie A. Robin-
son,

Complainant,

-vs-

W. W. MAY, GEORGE MARINOS
and PETER FRANKOS,

Defendants.

)
) IN THE CIRCUIT COURT-EQUITY SIDE

) STATE OF ALABAMA

) BALDWIN COUNTY.

Come the Defendants, by their Attorneys of Record,
Hybart, Heard & Chason, and demur to the Bill of Complaint in
this cause filed, on the following grounds:-

FIRST:-

For that there is no equity in the Bill.

Hybart, Heard & Chason
Attorneys for Defendants.

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

ROBERT IVEY, by his next
friend, Cheslie A. Robinson,

Complainant,

vs

W. W. MAY, et al,

Respondents.

To W. W. May, George Marinous and Peter Frankos and each of them:

Take notice that in the foregoing cause pending in our
Circuit Court of Baldwin County in Equity, interrogatories to be
propounded to each of you and a copy of which herewith issues in
behalf of the complainant, have this day been filed in my office.

Witness T. W. Richerson, Clerk of said Circuit Court
this day of February, 1932.

T. W. Richerson (CLERK)

ROBERT IVEY, by his next
friend, CHESLIE A. ROBINSON,

Complainant,

vs

W. W. MAY, et al,

Respondents.

IN THE CIRCUIT COURT OF BALDWIN

COUNTY, ALABAMA, IN EQUITY

No. _____

INTERROGATORIES PROPOUNDED BY THE COMPLAINANT TO THE RESPONDENTS AND EACH OF THEM UNDER ARTICLE 10, CHAPTER 290 OF THE CODE OF ALABAMA, 1923.

1. Where does the respondent, Peter Frankos live? What is his occupation? Has he ever lived in Baldwin County? If so, in what part of said county and during what period of time; has he ever been in Baldwin County? If so, when and in what part of the county? Does he own or control any property in Baldwin County and if so, where is it located? Has he ever been engaged in business in Baldwin County and if so, when, where and in what business? What property in Baldwin County is assessed in his name? Where was he and where was his home when the deed purporting to have been made to him by complainant was signed and delivered?
2. Where does the respondent, W. W. May live? What is his occupation? Has he ever lived in Baldwin County? If so, in what part of said county and during what period of time; has he ever been in Baldwin County? If so, when and in what part of the county? Does he own or control any property in Baldwin County and if so, where is it located? Has he ever been engaged in business in Baldwin County and if so, when, where and in what business? What property in Baldwin County is assessed in his name? Where was he and where was his home when the deed purporting to have been made to him by Peter Frankos was signed and delivered?
3. Where does the respondent, George Merinous live? What is his occupation? Has he ever lived in Baldwin County? If so, in what part of said county and during what period of time; has he ever been in Baldwin County? If so, when and in what part of the county? Does he own or control any property in Baldwin County and if so, where is it located? Has he ever been engaged in business in Baldwin County and if so, when, where and in what business? What property in Baldwin County is assessed in his name? Where was he and where was his home when the deeds purporting to have been made by complainant to Peter Frankos and by Peter Frankos to W. W. May were made? What individual filed each of said deeds for record and what individual paid the recording fees for said deeds?
4. Are respondents, Peter Frankos and George Merinous related by blood or marriage? If so, how? Are they engaged in business with each other? If so, how, where and in what business. Are they jointly interested in any business enterprises in Baldwin County and if so, what? Did the respondent, Frankos, ever see the property described in third paragraph of the bill of complaint? If so when? Was he acquainted with the complainant, Robert Ivey? If so, how long had he known complainant and when and how intimately? Did they know each other? Did respondent, Frankos, ever discuss with complainant the purchase of the property described in third paragraph of the bill of complaint? If so, when and where. How many such discussions did they have and who was present?
5. Are respondents, W. W. May and George Merinous related by blood or marriage? If so, how? Are they engaged in business with each other? If so, how, where and in what business? Are they jointly interested in any business enterprise in Baldwin County and if so, what? Did the respondent, May, ever see the property described in third paragraph of the bill of complaint? If so, when?

13. What is the reasonable market value of the land described in the third paragraph of the bill of complaint? What improvements are on said land and what is the reasonable market value of such improvements? What was the reasonable market value of the land and of the improvements when the deed from complainant to Frankos was executed and delivered? What would it cost to replace the improvements that were on the land when the deed from complainant to Frankos was executed?

14. For how long and how intimately had the respondent, George Marinous known the complainant, Robert Ivey, previous to the execution and delivery of the deed from the complainant to Peter Frankos? How did it happen that when the respondent, George Marinous took the complainant to Bay Minette to execute the deed he didn't also take some of complainant's sons or other members of his family? Isn't it a fact that the complainant, Robert Ivey, is approximately 80 years old? Isn't it a fact that he is feeble physically and mentally and was not that his condition when the deed to Frankos was signed? Did not the complainant, Robert Ivey, have grown sons living in and around Loxley? Did the respondent, Marinous, ever discuss the proposed deal with them or other members of complainant's family?

15. What was done with the five hundred dollar check and the five hundred dollar note when they were delivered to complainant? Did the respondent, George Marinous ever mention the name Peter Frankos to the complainant? Isn't it a fact that the respondent, George Marinous furnished the purchase money and is the real claimant of this land? Was the amount paid by May for the land more than the amount paid by Frankos for the land and if so, who got the difference?

16. What business is the respondent, W. W. May engaged in and by whom is he employed? What are his duties under such employment and in what way is the respondent, George Marinous interested as owner or contractually in that business? How long and how intimately have the respondents, Marinous and May known each other and what business dealings have they had with each other?

17. What individual employed the attorneys who filed an ejectment suit in the Circuit Court of Baldwin County against Claude Ivey and Mrs. Claude Ivey to recover this land? Isn't it a fact that the respondent, George Marinous was the main factor in commencing said suit and did he not employ the said attorneys? Did Peter Frankos convey the property described in the complaint to W. W. May? If so, state when, for what consideration and attach a copy of the written document to your answers and mark Exhibit "D"!

F. J. Nelson

B. F. McMillan, Jr.
ATTORNEYS FOR COMPLAINANT

STATE OF ALABAMA, |
COUNTY OF MOBILE. |

Before me, Ruth Macdonald, a Notary Public in and for said State and County personally appeared B.F. McMillan, Jr., who being sworn says on oath that he is of counsel for the complainant in the foregoing cause, that as such attorney he has propounded the foregoing interrogatories to the respondents and that the answers thereto will be material testimony for complainant in said cause.

B. F. McMillan, Jr.

Sworn to and subscribed before me this 20th day of February, 1932.

Ruth Macdonald
Notary Public, Mobile County, Alabama.

Mr. Hall
Albert Keuler
Lewis Racey
Leo Marino
F. S. Griffin
Jerome Seay
J. S. Primes
F. W. Friskhorn
Mr. J. F. Bryers
W. W. May
W. H. Stapleton

11 witnesses

1. offered it back for 2000⁰⁰th
2. Mr. Lacy made money
3. Property in fact there
4. No other accounts for him
5. What the witness said
he was unwise mind
on that day.
6. Asked for Mr. Lorraine him
- 7.

B. F. McMILLAN, JR.
ATTORNEY AT LAW
803-806 VAN ANTWERP BLDG.
MOBILE, ALABAMA

October 19th, 1934.

Honorable F. W. Hare,
Monroeville,
Alabama.

Dear Judge Hare:-

IVEY VS MARENOUS.

I have your letter of yesterday. I had not answered your former letter fully because it was transmitted to my client who at the beginning of the litigation offered Mr. Marenous \$500.00 and his note which was refused and while it doesn't seem that provision for the return of the consideration has a proper place in the decree, yet I waited for his reply before answering. It has not come yet, probably due to his absence, but in view of your letter I now give you my views:

To determine the matter properly we have to consider the evidence bearing on the point which is this:

Marenous took old man Ivey, now definitely determined to have been insane, from Loxly to Bay Minette to make this deal; The deed was there made and considerable expense incurred and paid out of the \$500.00, and the balance put in the bank which failed a few days thereafter. The money was never actually paid over to Ivey in cash but certain certificates of stocks and deposit were thereafter issued in Ivey's name under decree of this court with which you are familiar, and the consideration in specie is not in the possession of Ivey. These certificates were never withdrawn from the bank by Ivey but were taken from the bank and tendered to Marenous in his attorney's office during the taking of his testimony and are now in this file under agreement for delivery to whomsoever the court may direct them to belong. All this is in evidence before you.

Under Code section 6824 such contracts are not voidable but are absolutely void, under the same conditions as if furnished to an infant, except where they are governed by the provision of section 6822 enacted for the protection of bona fide purchasers but the jury's

verdict now definitely holds that Marenous was not a bona fide purchaser, and the situation is controlled by section 6824 and the sale is void.

The exact ^{facts} do not seem to have been frequently before our Supreme Court except as hereinafter stated, but to my mind the principle has been definitely fixed and established by that court.

The general rule as applied by the courts, (Corp. Jur., Vol. 32, page 736, and Cyc., Vol. 22, page 1210, under sub-caption "Return of Consideration,") seems to be this: Some courts hold that a return or offer to return the consideration is not a condition to a voidance of the contract; others hold that a voidable contract of an insane person cannot be voided where the other party acted in good faith and in ignorance of the insanity, without restoration of the consideration, but all cases hold that restoration is not necessary where the other party knew of the infirmity, where the consideration was not beneficial to the insane person, or where it has been wasted by him.

In other words restoration is never necessary if the party acted in bad faith or if the original consideration cannot be returned in specie, even in a voidable contract, and if the contract is absolutely void as in Alabama, I don't think the restoration would be necessary under any conditions.

Our Supreme Court dealt with the point in Martin vs Cameron, 203 Alabama, 548, where the jury found the grantor of insane mind and that the purchaser, who had paid \$1707.85 for his property, knew it; the court by decree merely cancelled the deed with no provision for the return of consideration, and it is significant that the court in affirming the case uses the language:

"The bill and the proof do not bring the case within the protection of section 3347 of the Code (now section 6824). The grantee had notice of the mental unsoundness of the grantor when the deed was executed."

Keeping in mind that under the statute a crazy man holds the considerations under the same conditions that an infant would, it seems to me that the principle is definitely fixed against the necessity for its return by our court in Bell vs Burkhalter, 176

Alabama, page 62, where complainant attempted to cancel a deed on the ground, (among others) that grantors were as infants when they signed and demurrers raised the point that they did not offer to do equity by returning the purchase money, and Judge Anderson's opinion, while holding that the infant must return the consideration if he has it, says on page 65:

"If he wasted or consumed the consideration received, he is not required either at law or equity to refund it or its equivalent or to place the other party in statu quo.

To the same effect is the holding of our Supreme Court in the McCarty-Greene Motor Company case, 219 Alabama, 211, where the court holds that a minor must restore or offer to restore what he may then have on hand of whatever he received under the contract.

The point is probably more specifically emphasized in the Metropolitan Life Insurance case, 140 Southern, page 752, where the original beneficiary in the policy afterwards changed, claimed that the change was made while the insured was of unsound mind but the insurer had paid the substituted beneficiary without knowledge of the insanity. The court, reversing the case, holds that there could be no question, that the insurer would have been liable if it had paid the substitute with notice of the insanity, that a contract by an insane person is utterly void but in this case the policy had not been assigned to the first named beneficiary and he had not vested rights in the insurance contract until there was a laws and the court significantly uses this language:

"Under our law contracts of an insane person are void even in favor of an innocent purchaser*****The weight of authority in other jurisdictions is that where the contract of an insane person is executed in good faith and for a fair consideration without notice of the insanity the parties must be restored to their original position*****and in line with this manifest need our statutes have made somewhat similar provisions in favor of bona fide purchasers for

value of real estate from an insane person. Sections 6822-6823, but except as protected by such statutes under our authorities, one who contracts with an insane takes nothing though ignorant of his insanity and though he paid value and his contract is valid for no purpose whether executed or executory.

In other words the only protection from the absolute voidness of any contract to anyone is that afforded an innocent purchaser for a valuable consideration by sections 6822 and 6823 of our Code and under the jury's verdict the respondents are not brought within the influence of these protective provisions because they are not purchasers in good faith.

You will see Judge, that I am not arguing an indebtedness vel non of Ivy to Marinous but that such fact would have no place in the provisions of this decree. In other words it is now definitely determined that Ivy was of unsound mind when he signed the deed and that Marinous knew it; It is therefore fixed that he has a vested right in the cancellation of this deed and it would be unthinkable to make the enforcement of this right contingent upon a condition that Ivy might not be able to remove, and the condition should not be incorporated in the decree, and this is especially true when considered in the light of a statute that renders the contract a nullity.

I have read that decisions cited by Mr. Hybart as noted in your letter, some of them are discussed in the foregoing and the others are to my mind inapplicable and certainly do not conflict with my contentions as submitted in the foregoing, for in considering the point we have to keep in mind two things: (1) In taking this deed the respondents did not act in good faith and are therefore without the protective provisions of the statute; and, (2) It cannot be certainly now known that complainant can make restoration.

He cites the case of Blair vs Jones, 201 Alabama, 293, where

a bill was filed to cancel a mortgage on the ground that grantor was of unsound mind and that there was no consideration, but the evidence (for the purpose of the decision) showed that grantor was of sound mind; It further showed that valuable consideration (viz. professional services) was paid and the court, holding that the value of such services could not be inquired into as the case was presented, in affirming the lower court said:

"The fact that a conveyance may be vacated on ground of insanity does not of itself and apart from other considerations relieve complainant from offering to do equity."

That case is differentiated from this case because (1) if the grantor was really insane the grantee would not know it and (2) what was furnished the insane man was in the nature of necessities for which the insane man would have been liable, if not under the mortgage, as a matter of law. The decision rest on the fact that it is not shown the grantor was insane.

Respondents also cite the case of Owens vs Harris, 222 Alabama, 461, where a bill was filed to cancel a mortgage on the ground that it embraced a homestead and there was no acknowledgment by the wife. Relief was refused and the case was affirmed in part (for reasons with which we are not now concerned). No question of insanity arose and the grantor, perfectly sane, received a consideration. Of course, in that case, the grantor could be required to return the consideration actually received. In other words he must do equity. The question is, "What is equity?" and we submit that what might be equitable in dealing with a sane man is determined by an entirely different method than determining the equities of dealings with an insane person.

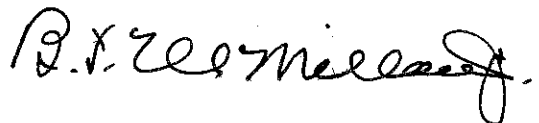
They cite the case of Pike vs Pike, 16 Southern, 689, but

that case does not uphold their contention. The principle now involved was not expressly handled by the decision, but on the other hand Chief Justice Brickell, who wrote the decision, expressly stated that its consideration was not necessary. It is significant, However, that in that case he reversed the lower court, rendered the decision cancelling the deed, and did not require the return of any consideration.

I submit another thought in connection with the matter: No complainant entitled to a cancellation could under any conditions be required to do more than equity; in this case it appears that Ivey was required to pay out of the \$500.00 numerous expenses; this was for Marenous and except for his activities would not have been paid; Ivey was crazy and if the return of \$500.00 should be required it would leave him with these expenses paid out through the cupidity of Marenous. This certainly would not have been equitable even if Ivey had been sane.

The foregoing thoughts were in my mind, Judge, when I wrote the decree submitted to you and further study of the point involved convinces me that the decree itself should make no provision for the return of \$500.00. As stated, however, I am giving you my views as a lawyer without further conference with my client. However, I guess we are both concerned with only the legal feature of the case.

Very truly yours,



ROBERT IVEY, by his next friend,

CHESLIE A. ROBINSON,

Complainant,

-VS-

GEORGE MARINOUS, W. W. MAY and
PETER FRANKOS,

Respondents.

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.....
.....
.....

On the question of Complainant in this cause creating or bringing about the status quo, he will be entitled to relief. I call your Honor's attention to 4 R. C. L., page 512, which states as follows:

"A person suing for rescission is generally required to restore the benefits he has received, not as a condition of acquiring the right to sue, but because of the equitable maxim, that he who seeks equity must do equity, nor is he relieved of such obligation merely because of his inability to make restoration.

In as much as the foregoing maxim applies not only to persons of sound mind, but to incompetent~~s~~ as well. The latter are likewise within the operation of the rule." In support of the foregoing statement as to ~~necessary~~ rules in such cases there is cited by this authority:

Duncan vs. Jeter, 5 Ala. 604;
Grider vs. American Free Hold Land Mtg. Co.,
99 Alabama, 281.
12 Southern, 775;
Hayes vs. Southern Home Bldg & Loan Ass'n,
124, Alabama, 663,
26 So. 527.

In the case of Pike vs. Pike, 16 Southern, page 689, on which the complainant leans so heavily, Chief Justice Brickell intimated that if the proof affirmatively and satisfactorily showed that the defendant had paid to the guardian, or paid for the use of the grantor the sum of FIVE HUNDRED DOLLARS (\$500.00), which he claims to have paid in that case, that would have been a condition precedent to the relief that the sum of money should be repaid as a condition for the rescission or cancellation of the deed there involved. This conclusion is drawn from that part of Judge Brickell's opinion which appears on page 692 of said report.

In Martin vs. Cameron, 203 Alabama, page 548, is to the effect that the estate of a non compos mentis will not be allowed to retain the purchase price and void a conveyance by the incompetent. This last mentioned case has been reapproved in Holman vs. Harper, 223 Alabama, page 101,

in the following language:

"Though we express no opinion on the matter, we may properly suggest the following authorities for consideration upon the question argued in brief, but not presented by the assignment of demurrer."

32 C. J. 748,
Martin vs. Cameron, 203 Alabama, 548;
Mitchel vs. Baldwin, 154 Alabama, 346;
Blair vs. Jones, 201 Alabama, 293;
Bell vs. Burkhalter, 176 Ala. 62;
McCarty-Greene Motor Co., vs. McCluney,
219 Alabama, 211;
Owens vs. Harris, 222 Ala., 461.

In the case of Mitchel vs. Baldwin, Justice Dowdell stated that the point involved here had not been directly decided in any Alabama case that the Court's attention had been called to, but referred to the case of Pike vs. Pike, 16 Southern, 689, and intimated that the proof had been to the effect that the consideration truly paid, that the Court would have decreed a refund of the purchase money before the cancellation of the instrument. He admits that the authorities in other States are in recognizable conflict, but that the weight of authority was to the effect that the purchase money should be repaid. However, after Judge Dodwell having written this opinion, which was only concurred in by two other members of the Court, the majority of the Judges' opinion was to the effect that the question of whether the purchase money should be refunded or not was not involved and reversed and remanded the case on a question of pleading.

MORTGAGE was executed and this fact was so certified on the mortgage or some part of the same. Owens prayed that the mortgage be declared a cloud upon the title to his homestead for the reasons as aforesaid, and prayed that the same be removed. This the Chancellor refused to do holding that before Owens was entitled to relief that he should pay what he justly and honestly owed Harris, and that the equity Court would not lend him its assistance in having said mortgage declared of no force and effect, even though under the Statute and Constitution of the State of Alabama it was a void instrument.

All of the cases which we have been able to find and read, including those referred to in the opinion of Justice Thomas, and the spirit gathered therefrom, that is the Alabama cases, appear to be to the effect that it would be inequitable to permit the grantor, even though he was as crazy as a March Hare, to retain both the purchase money for the property, or the benefits flowing from the transaction, and at the same time restore him to his property by a cancellation of his deed.

Circuit Court, Baldwin County, Ala.,

#1046

IN EQUITY.

Robt. Long by his next friend C. A. Robinson
PLAINTIFF

VS.

W. W. May et al
DEFENDANT

BILL OF COST

	Dollars	Cts.		\$	Cts.
Fees of Register			AMOUNT BROUGHT FORWARD		
Filing each bill and other papers	1	30	For receiving, keeping and paying out or distributing money, etc. 1st \$1,000 1 per ct.; all over \$1,000 and not over \$5,000, 3-4 of 1 per ct.; all over \$5,000 and not exceeding \$10,000, 1-2 of 1 per ct.; all over \$10,000, 1-4 of 1 per ct.	17	55
Issuing each Subpoena	10	50	Receiving, keeping and paying out money paid into court, etc., 1-2 of 1 per ct. of amount received.		
Issuing each copy thereof	40		Each Notice Sent by Mail to Creditors	15	
Entering each return thereof	15		Filing, Receipting for and Docketing each Claim, etc.	25	
For each Order of Publication	1	00	For all entries on Subpoena Docket, etc.	50	
Issuing Writ of Injunction	1	50	For all entries on Commission Docket, etc.	50	
For each Copy thereof	50		Making Final Record, per hundred words	55	50
Entering each return thereof	15		Certified Copy of Decree	1	00
Issuing Writ of Attachment	1	00	Report of Divorce to State Health Office Acts 1915	50	
Entering each return thereof	15		Total Fees of Register		27 55
Docketing each case	1	00	FEES OF SHERIFF		
Entering each Appearance	25		Serving and Returning Subpoena on Deft.	\$1	50
Issuing each Decree Pro Confesso on personal service	1	00	Serving and Returning Subpoena for Witness	21	65
Issuing each Decree Pro Confesso on publication	1	00	Levying Attachment	3	00
Each Order Appointing Guardian	1	00	Entering and Returning same	25	
Any other order by Register	50		Entering and Returning Execution	25	
Issuing Commission to Take Testimony	50		Selling Property Attached	25	
Receiving and Filing	10		Impaneling Jury	75	75
Endorsing each package	10		Executing Writ of Possession	2	50
Entering Order Submitting Cause	50		Collecting Execution for Costs	1	50
Entering any other Order of Court	25		Serving and Returning Sci. Fa., each	65	
Noting all Testimony	50		Serving and Returning Notice	65	
Abstract of Cause, etc.	1	00	Serving and Returning Writ of Injunction	1	50
Entering each Decree	75		Serving and Returning Writ of Exeat	1	50
For Every Hundred Words Over Five Hundred	15		Taking and Approving Bonds, each	1	00
Taking Account on Reference	3	00	Collecting Money on Execution		
Taking Testimony, etc.	15		Making Deed	2	50
Each Report, Five Hundred Words or less	2	50	Serving and Returning Application	1	00
For every Hundred Words Over Five Hundred	15		Serving Attachment, Contempt of Court	1	50
Amount Claimed, Less than Five Hundred Dollars, etc.	2	00	TOTAL FEES OF SHERIFF		14 40
Issuing each Subpoena	25		Recapitulation		
Witness Certificate, each	25		Register's Fees		27
Issuing Execution, each	75		Sheriff's Fees		14
Entering each Return	15		Commissioner's Fees		109
Taking and Approving Bond, each	1	00	Solicitor's Fees		50
Making Copy of Bill, etc.	15		Witness Fees		38
Each notice not otherwise provided for	50		Guardian Ad Litem		5
Each Certificate or Affidavit, with Seal	50		Register's Fees		5
Each Certificate or Affidavit, no Seal	25		Trial Tax	3	00
Hearing and passing on application for Receiver or Trustee	3	00	Recording Decree in Probate Court		
Each Settlement with Receiver or Trustee	3	00	Total		197 55
Examining each Voucher of Receiver or Trustee	10				
Examining each Answer on Exception	3	00			
Recording Resignation or Suggestion of Death of Trustee	75				
Entering each Certificate to Supreme Court	50				
Taking Questions and Answers, etc.	25				
For all other service relating to such proceedings	1	00			
For service in proceeding to relieve minors, etc. same fee as in similar cases.					
Commission on sales, etc.: 1st \$100, 2 percent; all over \$100, and not exceeding \$1000, 1 1/2 per cent; all over \$1,000 and not exceeding \$20,000, 1 per cent; all over \$20,000, 1-4 of 1 per cent.					
Sub Total Carried Forward					

Received payment this _____ day of _____ 193

NOTE: Unless the above costs in this cause are paid within ten days of the present date, execution will be issued and placed in the hands of Sheriff for collection, creating more costs.

Register.

B. F. McMILLAN, JR.
ATTORNEY AT LAW
803-806 VAN ANTWERP BLDG.
MOBILE, ALABAMA

March 2nd, 1934.

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

Dear Judge Hare:-

When I was in Circuit Court at Bay Minette on yesterday while Rickarby was there, I intended to take up then the question of his motion in the case of Swift & Company vs R. L. Rockwell, but when I left you were busy with some other case and I was busy getting submission ready in the cases of Ivey vs Marinous and Valrie vs Valrie and we overlooked it. The more I think of this Rockwell motion the more firmly I am convinced that Rickarby was in court when this case was called, and stated that he did not represent Mr. Totten in handling this case. He certainly made this statement to you in one case where I represented the plaintiff and Totten had filed a plea for the defendant and there is no other case in which this conversation could have occurred. Seeing the situation as I do, I am convinced that the parties knew the case was to be called and from what the Sheriff says I am equally convinced that Rockwell knew that judgment had been rendered and the proceedings now are for no other purpose than to get his real property out from under the judgment lien so he can make a Government Loan and my clients can whistle for their money. As I understand it the motion is now under submission and I do not think any reason has been shown by legal evidence why it should be granted. I wish you would let me know when you rule on same.

RE: Ivey vs Marinous:- #1406; This case stands under submission and I placed all my evidence, plaintiff's note of submission and my brief in a large envelope on yesterday for Mrs. Stone to deliver to you with the court file while you were there. It will not be necessary for you to work on this matter until the 10th because Mr. Hybart and myself have an agreement by which he will probably take the testimony of one other witness whose testimony can be considered by you with the other evidence in the case. I hope however, you will take it up at that time because old man Ivey is approaching 90 years of age and I want to get the matter disposed of if possible during his lifetime.

RE: Sarah Valrie vs Edward Valrie:- #991; This case was also submitted to you on yesterday and Mrs. Stone gave you the Court file which included the evidence in the case. As it now stands it is merely a matter for divorce. Mr. Rickarby originally filed the proceedings, but later with his consent I came in as one of the Solicitors for complainant.

The case was submitted sometime ago and was later set aside, the bill amended and additional evidence taken. The original bill was based on cruelty but was later amended to include adultery. I have taken the additional evidence of Sarah Valrie herself and Rosa Robbins. This additional evidence is merely cumulative on the grounds of cruelty but it is given by a disinterested witness who testifies to facts which, if true, and I think they are, would be sufficient on that ground, but it further shows that after the respondent drove the complainant from her home, a colored woman here named Evelyn Pine, went over to the home and lived there a month during one summer. I do not know whether Beebe & Hall are still working for the defense. They didn't attend the taking of the last testimony, although given due notice and I imagine they are no longer connected with the case although I do not know this for a fact.

At the last term of Circuit Court you stated that you wanted to get rid of these Valrie cases. I do not think you had in mind this particular case then but rather a case on the law docket where Edward Valrie is suing Sarah Valrie for an alleged account. That case will come up at the next call of the common law docket.

Yours very truly,

B. F. McMillen

Mc/M

III

The case concerning auto
on Road the February
24th 1937 is ~~sub~~
unresolved by the
Porter Bureau
for final decision

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

ROBERT IVEY, by his next
friend, Cheslis A. Robinson,

Complainant,

vs

W. W. MAY, et al,

Respondents.

To W. W. May, George Marinous and Peter Frankos and each of them:

Take notice that in the foregoing cause pending in our
Circuit Court of Baldwin County in Equity, interrogatories to be
propounded to each of you and a copy of which herewith issues in
behalf of the complainant, have this day been filed in my office.

Witness T. W. Richerson, Clerk of said Circuit Court
this day of February, 1932.

(CLERK)

ROBERT IVEY, by his next
friend, CHESLIE A. ROBINSON,

Complainant,

vs

W. W. MAY, et al,

Respondents.

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

No. _____

INTERROGATORIES PROPOUNDED BY THE COMPLAINANT TO THE RESPONDENTS AND EACH OF THEM UNDER ARTICLE 10, CHAPTER 290 OF THE CODE OF ALABAMA, 1928.

1. Where does the respondent, Peter Frankos live? What is his occupation? Has he ever lived in Baldwin County? If so, in what part of said county and during what period of time; has he ever been in Baldwin County? If so, when and in what part of the county? Does he own or control any property in Baldwin County and if so, where is it located? Has he ever been engaged in business in Baldwin County and if so, when, where and in what business? What property in Baldwin County is assessed in his name? Where was he and where was his home when the deed purporting to have been made to him by complainant was signed and delivered?
2. Where does the respondent, W. W. May live? What is his occupation? Has he ever lived in Baldwin County? If so, in what part of said county and during what period of time; has he ever been in Baldwin County? If so, when and in what part of the county? Does he own or control any property in Baldwin County and if so, where is it located? Has he ever been engaged in business in Baldwin County and if so, when, where and in what business? What property in Baldwin County is assessed in his name? Where was he and where was his home when the deed purporting to have been made to him by Peter Frankos was signed and delivered?
3. Where does the respondent, George Merinous live? What is his occupation? Has he ever lived in Baldwin County? If so, in what part of said county and during what period of time; has he ever been in Baldwin County? If so, when and in what part of the county? Does he own or control any property in Baldwin County and if so, where is it located? Has he ever been engaged in business in Baldwin County and if so, when, where and in what business? What property in Baldwin County is assessed in his name? Where was he and where was his home when the deeds purporting to have been made by complainant to Peter Frankos and by Peter Frankos to W. W. May were made? What individual filed each of said deeds for record and what individual paid the recording fees for said deeds?
4. Are respondents, Peter Frankos and George Merinous related by blood or marriage? If so, how? Are they engaged in business with each other? If so, how, where and in what business. Are they jointly interested in any business enterprises in Baldwin County and if so, what? Did the respondent, Frankos, ever see the property described in third paragraph of the bill of complaint? If so when? Was he acquainted with the complainant, Robert Ivey? If so, how long had he known complainant and when and how intimately? Did they know each other? Did respondent, Frankos, ever discuss with complainant the purchase of the property described in third paragraph of the bill of complaint? If so, when and where. How many such discussions did they have and who was present?
5. Are respondents, W. W. May and George Merinous related by blood or marriage? If so, how? Are they engaged in business with each other? If so, how, where and in what business? Are they jointly interested in any business enterprise in Baldwin County and if so, what? Did the respondent, May, ever see the property described in third paragraph of the bill of complaint? If so, when?

B. F. McMILLAN, JR.
ATTORNEY AT LAW
803-806 VAN ANTWERP BLDG.
MOBILE, ALABAMA

July 12, 1935

Mr. Robert S. Duck,
Clerk of Circuit Court,
Bay Minette, Ala.

Dear Mr. Duck:

Re: Ivey vs May, et al.

I have yours of June 24th with copy of transcript and give you my idea of certain corrections, some of which are immaterial, others important and some vital. I haven't the pleadings or evidence, but assume these are correctly copied:

- (1) The transcript throughout mis-spells many words. I do not know whether the documents from which they are copied contained these errors but do not think they did. I have checked in the left hand margin of the transcript where I have noted this mis-spelling. It is probably immaterial on appeal but I think you will want to correct the original before the transcript is filed.
- (2) You copy the complaint, answers, amendment and demurrers, (pages 1 to 17 inclusive) but the judge's docket shows the amendment and demurrers thereto were withdrawn when the case was submitted. You fail to put in the record the order withdrawing these papers. I think the order should be inserted next under the pleading on page 17.

I do not know the date of the order, but it was on the date the cause was originally submitted and the judge's docket or your minutes will show this.

- (3) I think next before the order referring the case to a jury you should copy the order submitting the case to the judge and certainly next following you should set out the note of evidence by each of the parties. All of this can be inserted on page 17 by re-writing that page in half space.
- (4) On page 18 you copy the verdict of the jury, but there is nothing to show that this was submitted to the jury at the regular term. It is shown by the judge's order record page 19, but it should also be shown next above the verdict.
- (5) On page 23 you have noted the appeal and I filed it in the Supreme Court, but you have not shown that appellees were served or have waived notice. This will have to be done before that court will take a submission. I am sure the attorneys on the other side will accept notice and I think the proper

Was he acquainted with the complainant, Robert Ivey? If so, how long had he known complainant and when and how intimately did they know each other? Did respondent, May, ever discuss with complainant the purchase of the property described in third paragraph of the bill of complaint? If so, when and where? How many such discussions did they have and who was present?

6. Are respondents, W. W. May and Peter Frankos related by blood or marriage? If so, how? Are they engaged in business with each other? If so, how, where and in what business? Are they jointly interested in any business enterprise in Baldwin County and if so, what? Did the respondent, Merinous ever see the property described in third paragraph of the bill of complaint? If so, when? Was he acquainted with the complainant, Robert Ivey? If so, how long had he known complainant and when and how intimately did they know each other? Did respondent, Merinous, ever discuss with the complainant the purchase of the property described in third paragraph of the bill of complaint? If so, when and where? How many such discussions did they have and who was present?

7. Who furnished the purchase money paid complainant for the property described in the bill of complaint; when was it furnished and to whom was it furnished? In what form was it furnished? Was it deposited in a bank and if so, when and in what bank and in whose name? If the money was furnished by Frankos by check attach the cancelled check or a copy thereof to your answers and mark same Exhibit "A"

8. Who furnished the purchase money paid Frankos for the property described in the bill of complaint when May purchased it? How much was paid for it by May, when was it furnished and to whom was it furnished? In what form was it furnished? Was it deposited in a bank and if so, when and in what bank and in whose name? If the money was furnished by May by check attach the cancelled check or a copy thereof to your answers and mark same Exhibit "B". If you say it was paid by check state when the funds on which said check was drawn were deposited in the bank; who furnished such funds? Was the deposit in the form of checks or currency? If by checks state who signed them and on what bank they were drawn? To what individual was the purchase price paid? Where was it paid? If by check to whom was the check made payable? Where was it deposited and to whose credit? Attach the cancelled check or a copy thereof to your answers and mark same Exhibit "C."

9. Who signed the five hundred dollar note given complainant in part payment for this land? When and where was said note signed? When was it payable? How did it happen that the said note was not secured by a lien on the land? At whose suggestion was this?

10. What individual dictated the deed from complainant to Frankos, a copy of which is attached as Exhibit A to the bill of complaint; what individual wrote it? Who did the attorneys who dictated or prepared the deed represent? Who paid them for their services and where was the payment made? Where was complainant, Robert Ivey when the deed was dictated and prepared? Where was he when he signed it and was it read to him and if so, by whom? What individual presented it to complainant for his signature and what was said to him about the personal property conveyed by the deed?

11. What individual dictated the note from Frankos to complainant for five hundred dollars? What individual wrote it? Who did the attorneys who attended to its preparation represent? Who paid them for their services and where was such payment made? Where was the complainant Robert Ivey at the time? Where was he when the note was delivered to him? What individual delivered it and who was present?

12. How did complainant, Robert Ivey, go from his home at or near Loxley to Hay Minette on the day the deed was signed by him? Who went with him? In whose car did they go? What individuals accompanied him in that car on that trip? What individuals discussed this deal with complainant.

13. What is the reasonable market value of the land described in the third paragraph of the bill of complaint? What improvements are on said land and what is the reasonable market value of such improvements? What was the reasonable market value of the land and of the improvements when the deed from complainant to Frankos was executed and delivered? What would it cost to replace the improvements that were on the land when the deed from complainant to Frankos was executed?

14. For how long and how intimately had the respondent, George Marinous known the complainant, Robert Ivey, previous to the execution and delivery of the deed from the complainant to Peter Frankos? How did it happen that when the respondent, George Marinous took the complainant to Bay Minette to execute the deed he didn't also take some of complainant's sons or other members of his family? Isn't it a fact that the complainant, Robert Ivey, is approximately 80 years old? Isn't it a fact that he is feeble physically and mentally and was not that his condition when the deed to Frankos was signed? Did not the complainant, Robert Ivey, have grown sons living in and around Loxley? Did the respondent, Marinous, ever discuss the proposed deal with them or other members of complainant's family?

15. What was done with the five hundred dollar check and the five hundred dollar note when they were delivered to complainant? Did the respondent, George Marinous ever mention the name Peter Frankos to the complainant? Isn't it a fact that the respondent, George Marinous furnished the purchase money and is the real claimant of this land? Was the amount paid by May for the land more than the amount paid by Frankos for the land and if so, who got the difference?

16. What business is the respondent, W. W. May engaged in and by whom is he employed? What are his duties under such employment and in what way is the respondent, George Marinous interested as owner or contractually in that business? How long and how intimately have the respondents, Marinous and May known each other and what business dealings have they had with each other?

17. What individual employed the attorneys who filed an ejectment suit in the Circuit Court of Baldwin County against Claude Ivey and Mrs. Claude Ivey to recover this land? Isn't it a fact that the respondent, George Marinous was the main factor in commencing said suit and did he not employ the said attorneys? Did Peter Frankos convey the property described in the complaint to W. W. May? If so, state when, for what consideration and attach a copy of the written document to your answers and mark Exhibit "D".

F. E. NELSON

B. F. McMILLAN, JR.,
ATTORNEYS FOR COMPLAINANT.

STATE OF ALABAMA,
COUNTY OF MOBILE.

Before me, Ruth Macdonald, a Notary Public in and for said State and County personally appeared B. F. McMILLAN, JR., who being sworn says on oath that he is of counsel for the complainant in the foregoing cause, that as such attorney he has propounded the foregoing interrogatories to the respondents and that the answers thereto will be material testimony for complainant in said cause.

B. F. McMILLAN, JR.,

Sworn to and subscribed before me this 20th day of February, 1932.

RUTH MACDONALD
Notary Public, Mobile County, Alabama.

in the following language:

"Though we express no opinion on the matter, we may properly suggest the following authorities for consideration upon the question argued in brief, but not presented by the assignment of demurrer."

32 C. J. 748,
Martin vs. Cameron, 203 Alabama, 548;
Mitchel vs. Baldwin, 154 Alabama, 346;

-2-

form would be for them to file in the cause and you will insert on page 23 something like this:

"CAPTION"

We accept notice of appeal to the Supreme Court in the foregoing cause and waive all further forms and notices.

Accepted 11-18-75
Hybart, Heard & Chason,
Attorneys for Respondents.

- Memo*
- (6) The complainant's testimony appears in pages 23-80, but there is nothing to show that this is the testimony of complainant. I think you should show next above the beginning of this testimony on page 13 that this is the testimony offered by complainant by writing at said place "Complainant's Testimony" and the same course could be followed with reference to the respondent's testimony pages 81 et seq.
- (7) I remember that I took the deposition of Dr. Betts at Evergreen, but this does not appear in the transcript and you should insert this next following the other testimony on page 80. As a matter of fact I don't think any of the testimony need have appeared in this record, but the other side insisted on it and if we are going to put it in at all the record should contain it all.
- (8) I note what you say as to the decree of the Circuit Court in cause No. 1030. This is part of complainant's testimony and I think it should appear with and next following complainant's other testimony. It will of course not be necessary to re-write any pages except in one or two instances so that the pages need not be re-numbered and as I have checked this copy with reference to the pages for the purposes of my brief I would rather that none of them would be re-written where it can be avoided.

I will try to come to Bay Minette within the next few days and will go over the matter fully with you when I am there.

Yours truly,

B. F. McMillan, Jr.
B.F. McMillan, Jr.

In as much as the foregoing maxim applies not only to persons of sound mind, but to incompetent as well. The latter are likewise within the operation of the rule." In support of the foregoing statement as to necessary rules in such cases there is cited by this authority:

Duncan vs. Jeter, 5 Ala. 604;
Grider vs. American Free Hold Land Mtg. Co.,
99 Alabama, 281.
12 Southern, 775;
Hayes vs. Southern Home Bldg & Loan Ass'n,
124, Alabama, 663,
25 So. 527.

In the case of Pike vs. Pike, 16 Southern, page 689, on which the complainant leans so heavily, Chief Justice Brickell intimates that if the proof affirmatively and satisfactorily shows that the defendant had paid to the guardian, or paid for the use of the grantor the sum of FIVE HUNDRED DOLLARS (\$500.00), which he claims to have paid in that case, that would have been a condition precedent to the relief that the sum of money should be repaid as a condition for the rescission or cancellation of the deed there involved. This conclusion is drawn from that part of Judge Brickell's opinion which appears on page 692 of said report.

In Martin vs. Cameron, 203 Alabama, page 546, is to the effect that the estate of a non compos mentis will not be allowed to retain the purchase price and devoid a conveyance by the incompetent. This last mentioned case has been reapproved in Holman vs. Harper, 225 Alabama, page 101,

In the case of Blair vs. Jones, 201 Alabama, 293, Justice Thomas speaking for the Court, said:

"It has been held that the fact that a conveyance may be vacated upon the ground, as for example, of the insanity of the grantor, or that the failure of statutory compliances does not of itself and apart from all other considerations relieve the complainant seeking the annulment from offering to do equity." Citing Thomas vs. Holder, 191 Alabama, 142. Douglas vs. Standard Co., 189 Alabama, 223; Coburn vs. Coke, 193 Alabama, 364.

The case of Bell vs. Burkhalter, and McCarty Motor Co., vs. McCluney, are relative to the rights of an infant to keep the fruits of a conveyance, yet at the same time attempt^{ed} to have the same cancelled, in which cases the Court held that this would be highly improper and that an equity Court would not permit its offices to be used for any such purpose. That in other words, a restoration should be a condition precedent to its relief.

In the case of Owens vs. Harris, 222 Alabama, 461, it appears that the proceedings was to cancel a mortgage executed by Owens to Harris, it being the contention of the former that he had executed a mortgage to the latter on his homestead, but that there was no acknowledgment by the wife as required by the Statute. It appeared that his wife was insane and confined in the insane Asylum at the time that the

in the following language:

"Though we express no opinion on the matter, we may properly suggest the following authorities for consideration upon the question argued in brief, but not presented by the assignment of demurrer."

52 C. J. 748,
Martin vs. Cameron, 203 Alabama, 548;
Mitchel vs. Baldwin, 154 Alabama, 346;
Elair vs. Jones, 301 Alabama, 293;
Bell vs. Burkhalter, 176 Ala. 62;
McCarty-Greene Motor Co., vs. McCluney,
219 Alabama, 311;
Owens vs. Harris, 232 Ala., 461.

In the case of Mitchel vs. Baldwin, Justice Dowdell stated that the point involved here had not been directly decided in any Alabama case that the Court's attention had been called to, but referred to the case of Pike vs. Pike, 17 Southern, 689, and intimated that the proof had been to the effect that the consideration truly paid, that the Court would have decreed a refund of the purchase money before the cancellation of the instrument. He admits that the authorities in other States are in recognizable conflict, but that the weight of authority was to the effect that the purchase money should be repaid. However, after Judge Dowdell having written this opinion, which was only concurred in by two other members of the Court, the majority of the Judges' opinion was to the effect that the question of whether the purchase money should be refunded or not was not involved and reversed and remanded the case on a question of pleading.

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Bell vs. Burkhalter, 176 Ala. 62;
McCarty-Greene Motor Co., vs. McCluney,
219 Alabama, 211;
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In as much as the foregoing maxim applies not only to persons of sound mind, but to incompetent as well. The latter are likewise within the operation of the rule." In support of the foregoing statement as to necessary rules in such cases there is cited by this authority:

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Grider vs. American Free Hold Land Mtg. Co.,
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12 Southern, 775;
Hayes vs. Southern Home Bldg & Loan Ass'n,
124, Alabama, 683,
26 So. 529.

In the case of Pike vs. Pike, 16 Southern, page 689, on which the complainant leans so heavily, Chief Justice Brickell intimates that if the proof affirmatively and satisfactorily shows that the defendant had paid to the guardian, or paid for the use of the grantor the sum of FIVE HUNDRED DOLLARS (\$500.00), which he claims to have paid in that case, that would have been a condition precedent to the relief that the sum of money should be repaid as a condition for the rescission or cancellation of the deed there involved. This conclusion is drawn from that part of Judge Brickell's opinion which appears on page 692 of said report.

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ROBERT IVEY, by his next
friend, Cheslie A. Robin-
son,

Complainant,

Vs.

GEORGE MARINOS, W. W. MAY,
and PETER FRANKOS,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

In Equity.

No. 1046.

This matter coming on to be heard, and it appearing to the Court that there is a conflict in the testimony as to whether Robert Ivey was of sound or unsound mind at the time that he executed the alleged deed conveying certain property to the Defendant, Peter Frankos, said conveyance being described and referred to in the bill of complaint in this cause. And there also being a conflict in the evidence as to whether the said Peter Frankos in good faith purchased said property for a valuable consideration from an insane person without notice of such insanity.

And also, there is a conflict in the evidence as to the value of said property.

And the Court being desirous of submitting the aforesaid matters for the consideration of a jury for the Court's information as to said Questions:

It is, therefore, ordered, adjudged and decreed that the following propositions be submitted to a jury at the fall term of the 1934 Circuit Court of Baldwin County, Alabama:-

1. Was Robert Ivey of unsound mind at the time that he executed the conveyance to Peter Frankos which said conveyance is described in the bill of complaint in this cause?
2. Did George Marinos in good faith, for a valuable consideration, and without notice of such insanity, purchase the property involved in this suit?
3. What was the reasonable market value of said property on the 23rd day of November, 1931?

The verdict of the Jury, when ascertained upon these several propositions, will be used as information by the Court.

F. W. HARE

MORTGAGE was executed and this fact was so certified on the mortgage or some part of the same. Owens prayed that the mortgage be declared a cloud upon the title to his homestead for the reasons as aforesaid, and prayed that the same be removed. This the Chancellor refused to do holding that before Owens was entitled to relief that he should pay what he justly and honestly owed Harris, and that the equity Court would not lend him its assistance in having said mortgage declared of not force and effect, even though under the Statute and Constitution of the State of Alabama it was a void instrument.

All of the cases which we have been able to find and read, including those referred to in the opinion of Justice Thomas, and the spirit gathered therefrom, that is the Alabama cases, appear to be to the effect that it would be inequitable to permit the grantor, even though he was as crazy as a March Hare, to retain both the purchase money for the property, or the benefits flowing from the transaction, and at the same time restore him to his property by a cancellation of his deed.

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

ROBERT IVEY, by his next
friend, Cheslie A. Robinson,

Complainant,

vs

W. W. MAY, et al,

Respondents.

To W. W. May, George Marinous and Peter Frankos and each of them:

Take notice that in the foregoing cause pending in our
Circuit Court of Baldwin County in Equity, interrogatories to be
propounded to each of you and a copy of which herewith issues in
behalf of the complainant, have this day been filed in my office.

Witness T. W. Richardson, Clerk of said Circuit Court
this day of February, 1933.



(CLERK)

ROBERT IVEY, by his next
friend, CHESLIE A. ROBINSON,

Complainant,

vs

W. W. MAY, et al,

Respondents.

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

No. _____

INTERROGATORIES PROPOUNDED BY THE COMPLAINANT TO THE RESPONDENTS AND EACH OF THEM UNDER ARTICLE 10, CHAPTER 290 OF THE CODE OF ALABAMA, 1928.

1. Where does the respondent, Peter Frankos live? What is his occupation? Has he ever lived in Baldwin County? If so, in what part of said county and during what period of time; has he ever been in Baldwin County? If so, when and in what part of the county? Does he own or control any property in Baldwin County and if so, where is it located? Has he ever been engaged in business in Baldwin County and if so, when, where and in what business? What property in Baldwin County is assessed in his name? Where was he and where was his home when the deed purporting to have been made to him by complainant was signed and delivered?
2. Where does the respondent, W. W. May live? What is his occupation? Has he ever lived in Baldwin County? If so, in what part of said county and during what period of time; has he ever been in Baldwin County? If so, when and in what part of the county? Does he own or control any property in Baldwin County and if so, where is it located? Has he ever been engaged in business in Baldwin County and if so, when, where and in what business? What property in Baldwin County is assessed in his name? Where was he and where was his home when the deed purporting to have been made to him by Peter Frankos was signed and delivered?
3. Where does the respondent, George Merinous live? What is his occupation? Has he ever lived in Baldwin County? If so, in what part of said county and during what period of time; has he ever been in Baldwin County? If so, when and in what part of the county? Does he own or control any property in Baldwin County and if so, where is it located? Has he ever been engaged in business in Baldwin County and if so, when, where and in what business? What property in Baldwin County is assessed in his name? Where was he and where was his home when the deeds purporting to have been made by complainant to Peter Frankos and by Peter Frankos to W. W. May were made? What individual filed each of said deeds for record and what individual paid the recording fees for said deeds?
4. Are respondents, Peter Frankos and George Merinous related by blood or marriage? If so, how? Are they engaged in business with each other? If so, how, where and in what business. Are they jointly interested in any business enterprises in Baldwin County and if so, what? Did the respondent, Frankos, ever see the property described in third paragraph of the bill of complaint? If so when? Was he acquainted with the complainant, Robert Ivey? If so, how long had he known complainant and when and how intimately? Did they know each other? Did respondent, Frankos, ever discuss with complainant the purchase of the property described in third paragraph of the bill of complaint? If so, when and where. How many such discussions did they have and who was present?
5. Are respondents, W. W. May and George Merinous related by blood or marriage? If so, how? Are they engaged in business with each other? If so, how, where and in what business? Are they jointly interested in any business enterprise in Baldwin County and if so, what? Did the respondent, May, ever see the property described in third paragraph of the bill of complaint? If so, when?

Was he acquainted with the complainant, Robert Ivey? If so, how long had he known complainant and when and how intimately did they know each other? Did respondent, May, ever discuss with complainant the purchase of the property described in third paragraph of the bill of complaint? If so, when and where? How many such discussions did they have and who was present?

6. Are respondents, W. W. May and Peter Frankos related by blood or marriage? If so, how? Are they engaged in business with each other? If so, how, where and in what business? Are they jointly interested in any business enterprise in Baldwin County and if so, what? Did the respondent, Merinous ever see the property described in third paragraph of the bill of complaint? If so, when? Was he acquainted with the complainant, Robert Ivey? If so, how long had he known complainant and when and how intimately did they know each other? Did respondent, Merinous, ever discuss with the complainant the purchase of the property described in third paragraph of the bill of complaint? If so, when and where? How many such discussions did they have and who was present?

7. Who furnished the purchase money paid complainant for the property described in the bill of complaint; when was it furnished and to whom was it furnished? In what form was it furnished? Was it deposited in a bank and if so, when and in what bank and in whose name? If the money was furnished by Frankos by check attach the cancelled check or a copy thereof to your answers and mark same Exhibit "A"

8. Who furnished the purchase money paid Frankos for the property described in the bill of complaint when May purchased it? How much was paid for it by May, when was it furnished and to whom was it furnished? In what form was it furnished? Was it deposited in a bank and if so, when and in what bank and in whose name? If the money was furnished by May by check attach the cancelled check or a copy thereof to your answers and mark same Exhibit "B" If you say it was paid by check state when the funds on which said check was drawn were deposited in the bank; who furnished such funds? Was the deposit in the form of checks or currency? If by checks state who signed them and on what bank they were drawn? To what individual was the purchase price paid? Where was it paid? If by check to whom was the check made payable? Where was it deposited and to whose credit? Attach the cancelled check or a copy thereof to your answers and mark same Exhibit "C."

9. Who signed the five hundred dollar note given complainant in part payment for this land? When and where was said note signed? When was it payable? How did it happen that the said note was not secured by a lien on the land? At whose suggestion was this?

10. What individual dictated the deed from complainant to Frankos, a copy of which is attached as Exhibit A to the bill of complaint; what individual wrote it? Who did the attorneys who dictated or prepared the deed represent? Who paid them for their services and where was the payment made? Where was complainant, Robert Ivey when the deed was dictated and prepared? Where was he when he signed it and was it read to him and if so, by whom? What individual presented it to complainant for his signature and what was said to him about the personal property conveyed by the deed?

11. What individual dictated the note from Frankos to complainant for five hundred dollars? What individual wrote it? Who did the attorneys who attended to its preparation represent? Who paid them for their services and where was such payment made? Where was the complainant Robert Ivey at the time? Where was he when the note was delivered to him? What individual delivered it and who was present?

12. How did complainant, Robert Ivey, go from his home at or near Loxley to Bay Minette on the day the deed was signed by him? Who went with him? In whose car did they go? What individuals accompanied him in that car on that trip? What individuals discussed this deal with complainant.

13. What is the reasonable market value of the land described in the third paragraph of the bill of complaint? What improvements are on said land and what is the reasonable market value of such improvements? What was the reasonable market value of the land and of the improvements when the deed from complainant to Frankos was executed and delivered? What would it cost to replace the improvements that were on the land when the deed from complainant to Frankos was executed?

14. For how long and how intimately had the respondent, George Marinous known the complainant, Robert Ivey, previous to the execution and delivery of the deed from the complainant to Peter Frankos? How did it happen that when the respondent, George Marinous took the complainant to Bay Minette to execute the deed he didn't also take some of complainant's sons or other members of his family? Isn't it a fact that the complainant, Robert Ivey, is approximately 60 years old? Isn't it a fact that he is feeble physically and mentally and was not that his condition when the deed to Frankos was signed? Did not the complainant, Robert Ivey, have grown sons living in and around Oxley? Did the respondent, Marinous, ever discuss the proposed deal with them or other members of complainant's family?

15. What was done with the five hundred dollar check and the five hundred dollar note when they were delivered to complainant? Did the respondent, George Marinous ever mention the name Peter Frankos to the complainant? Isn't it a fact that the respondent, George Marinous furnished the purchase money and is the real claimant of this land? Was the amount paid by May for the land more than the amount paid by Frankos for the land and if so, who got the difference?

16. What business is the respondent, V. W. May engaged in and by whom is he employed? What are his duties under such employment and in what way is the respondent, George Marinous interested as owner or contractually in that business? How long and how intimately have the respondents, Marinous and May known each other and what business dealings have they had with each other?

17. What individual employed the attorneys who filed an ejectment suit in the Circuit Court of Baldwin County against Claude Ivey and Mrs. Claude Ivey to recover this land? Isn't it a fact that the respondent, George Marinous was the main factor in commencing said suit and did he not employ the said attorneys? Did Peter Frankos convey the property described in the complaint to V. W. May? If so, state when, for what consideration and attach a copy of the written document to your answers and mark Exhibit "D".

F. F. NELSON,

B. F. McMILLAN, JR.,
ATTORNEYS FOR COMPLAINANT.

STATE OF ALABAMA, |
COUNTY OF MOBILE. |

Before me, Ruth Macdonald, a Notary Public in and for said State and County personally appeared B.F. McMILLAN, JR., who being sworn says on oath that he is of counsel for the complainant in the foregoing cause, that as such attorney he has propounded the foregoing interrogatories to the respondents and that the answers thereto will be material testimony for complainant in said cause.

B. F. McMILLAN, JR.,

Sworn to and subscribed before me this 16th day of February, 1932.

RUTH MACDONALD
Notary Public, Mobile County, Alabama.

520
360
150
210

HYBART & CHASON
ATTORNEYS AT LAW
BAY MINETTE, ALABAMA

370
150
520

C. L. HYBART
J. CHASON

JANUARY EIGHTH, 1936.

Hon. Robert S. Duck,
Clerk Circuit Court,
Bay Minette, Alabama.

Dear Bob:

You requested that I advise you what witnesses appeared in our office, and the amount of mileage for each. Their names and mileage are as follows:-

Dr. R. A. Hall, 26 miles each way, or a total of 52 miles, and 1 day's attendance; 410

Albert Keuler, 22 miles each way, or a total of 44 miles, and 1 day's attendance; 370

Lewis William Lacey, 22 miles each way, or a total of 44 miles, and 1 day's attendance; 370

F. C. Griffin, 22 miles each way, or a total of 44 miles, and 1 day's attendance; 370

Jerome Seay, 22 miles each way, or a total of 44 miles, and 1 day's attendance; 370

J. C. Grimes, 22 miles each way, or a total of 44 miles, and 1 day's attendance; 370

F. W. Friskhorn, 22 miles each way, or a total of 44 miles, and 1 day's attendance; 370

Dr. J. F. Bryars, no mileage, 1 day's attendance. 150

Yours very truly, 5780

HYBART & CHASON,

BY J. Chason

JC:G.

2780
2500
5280

Jury List First Week, Sept. 10, 1934.

NO.	NAME	OCCUPATION	ADDRESS
1	Charles Bill,	Farmer,	Loxley
2	Thomas Steele, Jr.,	Farmer,	Bon Secour
3	Cleveland Bell,	Farmer,	Lillian
4	Edwin Green,	Farmer,	Loxley
5	James D. Seay,	Farmer,	Loxley
6	Robert M. Rabon,	Naval Stores,	Rabon
7	Arthur Alms,	Farmer,	Elberta
8	Max Krossen,	Farmer,	Elberta
9	Jacob Frank,	Farmer,	Elberta
10	Dewey Slocumb,	Farmer,	Barnwell
11	Charles Street,	Farmer,	Point Clear
12	Samuel De Paula,	Merchant,	Elberta
13	James Alex Dean,	Farmer,	Stapleton
14	Joseph E. Brown,	Merchant,	Foley
15	John Russell,	Mill Man,	Loxley
16	Herbert Koelling,	Electrician,	Perdido Beach
17	Reuben Bryars,	Timberman,	Stockton
18	Walter Dana,	Fisherman,	Point Clear
19	Fred Strehle,	Ice man,	Elberta
20	Sim Parker,	Fisherman,	Bon Secour
21	Alvin Johnson,	Farmer,	Barnwell
22	W. Joe Hall,	Cattleman,	Bay Minette
23	Robert S. Duck,	Salesman,	Bay Minette
24	Henry Peadar,	Farmer,	Bay Minette
25	H. Pete Jones,	Merchant,	Bay Minette
26	Bolden G. Taylor,	Farmer,	Bay Minette
27	Thomas W. Trawick,	Truckman,	Bay Minette
28	Robert M. Newton,	Millman,	Bay Minette
29	Walter Jones,	Farmer,	Bay Minette
30	Clarence Eiland,	Millman,	Bay Minette
31	James T. Bradley,	Clerk,	Bay Minette
32	Claude F. Kersh,	Salesman,	Bay Minette
33	Thomas J. Davidson,	Meat Market,	Bay Minette
34	W. Gaither Hobbs,	Filling Station,	Bay Minette
35	Reginald Rex Dolive, Sr.,	Butcher,	Loxley
36	Blane C. Dickman,	Salesman,	Bay Minette
37	Dennis C. Byrne,	Mechanic,	Bay Minette
38	Edwin C. Hand,	Insurance,	Bay Minette
39	Robert E. Lawson,	Produce,	Bay Minette
40	Terry D. Huggins,	Bookkeeper,	Bay Minette
41	John N. Standard,	Merchant,	Bay Minette
42	W. Silsbee Alexander,	Naval Stores,	Bay Minette

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~~J. H. ...~~

this day in came the parties by their
attorneys, and upon motion of the complainant made orally in
open court; it is, ordered and adjudged by the court that the
complainant be and is hereby allowed to withdraw from the
cause, the amendment to the bill of complaint filed in this
cause on the 30th day of December, 1933. And this day in open
court came the respondents by their attorneys and, complainant
having in open court withdrawn the amendment to his bill, there-
upon on motion of respondents made orally in open court; it is
therefore ordered and adjudged by the court that respondents be
and are hereby allowed to withdraw from this cause the demurrers
filed by them to the bill of complaint as amended on the 31st
day of December, 1934.

ROBERT IVEY, by his next
friend, CHESLIE A. ROBINSON,

Complainant,

vs

W. W. MAY, et al,

Respondents.

↓
↓
↓ IN THE CIRCUIT COURT OF
↓ BALDWIN COUNTY, ALABAMA.
↓ IN EQUITY No. _____
↓

INTERROGATORIES PROPOUNDED BY THE PLAINTIFF TO
W. P. BETTS, WHO RESIDES AT EVERGREEN, ALABAMA.

1. State your name, residence and occupation. Are you a graduate of an accredited school of medicine? Do you practice medicine and if so state when, where and how long you have practiced.
2. Have you in your practice had occasion to treat patients troubled with senile debility? Have you had occasion to treat patients afflicted with mental infirmities. If so to what extent.
3. Do you know Mr. Robert Ivey of Loxley, Alabama? If so, how long have you known him and how intimately? Did you know him throughout the year 1931? What was his mental condition during that time? Was he in your opinion, capable of understanding business transactions during that year or was he in your opinion able to transact business intelligently

B. F. McCreary
ATTORNEY FOR COMPLAINANT.

It is agreed that the answers to the foregoing inter-
rogatories and such cross-interrogatories as may be filed may be
taken before Bernay James acting as commissioner. Issuance of
commission and all further forms and notices are waived.

Dated this 10th day of May, 1932.

B. F. McCreary
ATTORNEY FOR COMPLAINANT
Hybart, Heard & Chason
ATTORNEY FOR RESPONDENTS.

ROBERT IVEY, by his next
friend, Cheslie A. Robinson,

Complainant.

Vs.

W.W.MAY, et al,

Respondents.

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

NO. _____

Personally appeared before me Burnie Jones,
the Commissioner acting under and by the terms of the
agreement of Solicitors of record, attached to the
interrogatories returned herewith, W.F.Betts, a witness
for the Complainant in the above entitled cause, who be-
ing first duly sworn by me to speak the truth, the whole
truth and nothing but the truth, deposes and says:

To Interrogatory No. 1, he sayeth: My name
is W.F.Betts, I reside at Evergreen, Alabama, and am
engaged in the practice of medicine. I am a graduate in
Medicine of Tulane University, located at New Orleans,
Louisiana, I graduated in the year 1892. Tulane Univer-
sity is an accredited school of medicine. I have
practiced medicine regularly since I was graduated. I
practiced a short time in Louisiana, then went to Meri-
dian Mississippi, where I practiced about two years, then
I went from Meridian, Mississippi to Burnt Corn, Alabama,
in 1895 and practiced there until 1900, when I came to
Evergreen, Alabama, and since 1900 I have practiced medi-
cine at Evergreen, Alabama.

To Interrogatory No. 2, he sayeth: In my practice
I have had occasion to treat patients troubled with senile
debility, I could not say how often I have had such cases
but they have occurred from time to time throughout my
practice. My practice has at all times been a general
practice of medicine and in such practice I have from time
to time treated patients afflicted with mental infirmities,

ROBERT IVKY, By his next
friend, CHESLIE A. ROBINSON,

Complainant,

-vs-

W. W. MAY et al,

Respondents.

IN THE CIRCUIT COURT-IN EQUITY

STATE OF ALABAMA

BALDWIN COUNTY.

Now come the Defendants and demur to the Bill of Com-
plaint as last amended, and for grounds of demurrer say:-

FIRST:

That said Bill of Complaint as last amended does not
contain equity.

SECOND:

That said Bill of Complaint as last amended does not
show that any of the Defendants or their agents were conscious
of the mental infirmities of Robert Ivky at the time of the sale
or purchase of the lands involved therein.

THIRD:

That it is not alleged that the said Robert Ivky did
not agree in writing to the plans of the re-organization of the
Baldwin County Bank.

FOURTH:

It is not averred that the said Robert Ivky did not
agree in writing or otherwise to accept Certificates of stock and
Certificates of Deposit as to the funds that he had on hand at
the time said Baldwin County Bank went into liquidation and its
affairs were taken over by the Superintendent of Banks for the
state of Alabama.

FIFTH:

No reason is shown as to why said Bank stock or certi-
ficates of Deposit mentioned therein should be in any way charged
up to the Defendants or either of them, or that they should be
required to accept said certificates in satisfaction of any ob-
ligation that the said Robert Ivky might have against them.

Robert Head & Son
Solicitors for Respondents.

Robert Ivey, by his next
friend, Cheslie A. Robinson,
Complainant,

VS

W. W. MAY, GEORGE MARINOUS AND
PETER FRANKOS,
Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

In Equity

We accept notice of appeal to the Supreme Court in the foregoing
cause and waive all further forms and notices.

January 14th, 1935.

Hybart a. Chason

Robert Ivey, by his next
friend, Cheslie A. Robin
son, Complainant.

vs

George Marinous, W. W. May
and Peter Frankos, Respondents.

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* Circuit Court; Baldwin County.
* Equity No 1046.
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The Complainants hereby give notice of and take an appeal to the
supreme Court from the decree filed in said Cause of towit January
14 1935.

A. V. McMillan
Solicitor for Complainants.

The undersign hereby acknowledge themselves as security for costs
of appeal in the foregoing Cause. Dated this January 14 1935.

C. A. Robinson

R. H. Jany

J. Robinson

Approved
Feb 11 1935
Robert Ivey
Cheslie

Robert Ivey, by his next
friend, Cheslie A. Robinson,
Complainant,

VS

W. W. MAY, GEORGE MARINOUS AND
PETER FRANKOS,
Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

In Equity

We accept notice of appeal to the Supreme Court in the foregoing
cause and waive all further forms and notices.

January 14th, 1935.

Hybart a. Chason

Robert Ivey, by his next
friend, Cheslie A. Robin
son, Complainant.

vs

George Marinous, W. W. May
and Peter Frankos, Respondents.

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* Circuit Court; Baldwin County.
* Equity No 1046.
*

The Complainants hereby give notice of and take an appeal to the
supreme Court from the decree filed in said Cause of to wit January
14 1935.

R. V. McMillan
Solicitor for Complainants.

The undersign hereby acknowledge themselves as security for costs
of appeal in the foregoing Cause. Dated this January 14 1935.

C. A. Robinson
R. H. May
J. Robinson

Approved
Feb 11 1935
Robert Ivey
Cheslie

ROBERT IVEY, by his next
friend, CHESLIE A. ROBINSON,

Complainant,

-vs-

GEORGE MARINOUS, W. W. MAY,
and PETER FRANKOS,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

No. 1046.

This cause coming on to be heard was submitted on pleadings and proof as noted by the Register, and, being of the opinion that the issues of fact involved in the cause and presented by the order herein set forth should, for the assistance of the Judge, be considered and passed upon by a Jury, the said Judge did, on to-wit; the 22nd day of August, 1934, entered in said cause an order in words and figures as follows, viz:

"This matter coming on to be heard, and it appearing to the Court that there is a conflict in the testimony as to whether Robert Ivey was of sound or unsound mind at the time that he executed the alleged deed conveying certain property to the Defendant, Peter Frankos, said conveyance being described and referred to in the bill of complaint in this cause. And there also being a conflict in the evidence as to whether the said Peter Frankos in good faith purchased said property for a valuable consideration from an insane person without notice of such insanity.

And also, there is a conflict in the evidence as to the value of said property.

And the Court being desirous of submitting the aforesaid matters for the consideration of a jury for the Court's information as to said questions:

It is, therefore ordered, adjudged and decreed that the following propositions be submitted to a jury at the fall term of the 1934 Circuit Court of Baldwin County, Alabama:-

1. Was Robert Ivey of unsound mind at the time that he executed the conveyance to Peter Frankos which said conveyance is described in the bill of complaint in this cause.

2. Did George Marinous in good faith, for a valuable consideration, and without notice of such insanity, purchase the property involved in this suit?

3. What was the reasonable market value of said property on the 23rd day of November, 1931?

The verdict of the Jury, when ascertained upon these several propositions, will be used as information by the Court.

F. W. HARE."

The cause was, at the regular Fall Term 1934, of the Circuit Court of Baldwin County, Alabama, regularly set for trial on the law side of the Court before a Jury in said Court for their verdict on the issues so submitted, on September 11th, 1934, ~~xxxx~~

Thereupon on to-wit; September 11th, 1934, that being a regular day of the regular fall Term of the Circuit Court of Baldwin County, Alabama, the cause was called for such trial and both complainant and respondents announcing themselves ready for trial, a Jury was duly empanelled and sworn and the issues were submitted to them by agreement on the depositions heretofore taken and testimony ore tenus in open Court, and the questions numbered 1 - 2 and 3 as hereinafter set forth, were by agreement between the parties written out and submitted to the jury for their verdict and answers; The Jury after hearing all the evidence, on their oaths rendered and filed in court their verdict and answers to said questions in words and figures as follows:

Question 1. Was Robert Ivey of unsound mind at the time he executed the conveyance to Peter Frankes?

Answer: Robert Ivey was of unsound mind on said date.

Question 2. Did George Marinous in good faith, for a valuable consideration, and without notice of the insanity of Robert Ivey, if such insanity existed, purchase the property in this suit?

ANSWER: No.

Question 3. What was the reasonable market value of the property involved on the 23rd day of November, 1931?

ANSWER: \$500.00.

CHAS. STREET

Foreman.

It appears affirmatively from the original bill of Complaint that on November 23, 1931, the respondent, Marenous, paid to Ivey \$500.00 in cash as a part of the consideration and also delivered to him the note of Peter Frankes for \$500.00.

It appears from the testimony that this money was deposited in the bank to the credit of Ivey, and the note is surrendered to the Court for disposition by order of the Court. Further in the original bill it is averred that complainant had tendered to the respondent the \$500.00, and explicitly offers to do equity. This offer of restitution also appears from the evidence, and was made before and after suit commenced.

By amendment to the bill of complaint, filed December 30, 1933, complainant recited the failure, liquidation and re-organization of the bank in which the money and note were deposited, and the issuance by the bank to Robert Ivey of Stock and a certificate of deposit for this money (and other money) deposited in the name of Robert Ivey at the time of the bank failure. In this amendment complainant takes the position that as a matter of law, the respondent, Marenous, is entitled to restitution of the consideration paid, but insists that he is entitled only to the identical consideration in its present form; that is to say, that Marenous is entitled only to the said certificates of stock and certificate of deposit for what it may be worth. It does not appear that Marenous has enjoyed any of the income, rents, or profits of the estate, but to the contrary.

The question here squarely presented of the right of restitution is a difficult one for the Court, notwithstanding the position assumed by complainant in his pleadings. The identical question was argued before the Supreme Court in the recent case of Holman vs. Harper, 223 Ala. 100, 134 So. 863, but unfortunately for the purposes of this decision was not decided by the Court because not properly presented by assignment of demurrer. Among the authorities cited in the Holman v. Harper case is the case of Martin vs. Cameron, 203 Ala. 548, 84 So. 270, wherein it is unequivocally stated that the estate of a non compos mentis will not be allowed to retain the purchase price and avoid a conveyance by the incompetent. While

it may be insisted that this statement was not absolutely necessary to a decision in that case, yet the facts there were essentially identical with the facts of this case, and the statement quoted is certainly an expression of the opinion of the Supreme Court on the question under consideration. Especially is this true when we consider the following statement of the law in Summers vs. Jordan, 220 Alabama, 402, 125 Southern 642:

"Though the mortgage may be void for that or any other reason, a court of chancery will not, on a bill filed for the purpose by the mortgagor, declare it void, without requiring the mortgagor to restore to the mortgagee the amount of the value of the consideration of it, if such consideration consisted of an advance of money or other things of value made by the mortgagee upon the security of such mortgage at or after its execution".

In view of complainant's own interpretation of the law as stated in the pleadings referred to, which interpretation was evidently founded upon the authorities cited in the opinion in the Holman case, supra, and feeling bound to follow the clearly expressed opinion in the Martin vs. Cameron case, I am of the opinion, and so hold, that respondent, Marenous, should be placed in statu quo as a condition precedent to the cancellation of the deed to him; and that he is entitled to a return of the money paid, with interest, and not to the identical consideration in its present changed condition, for which charge he is not shown to be in any way responsible.

The conscience of the Chancellor being enlightened by the verdict of the jury as to a proper decision of the principal questions of fact involved in this case, upon a consideration of said verdict, and of the pleading and evidence in the case as noted by the Register, I am of the opinion that complainant is entitled to relief upon condition above indicated.

The Register will enroll the following:

D E C R E E:

ROBERT IVEY, by his next
friend, CHESLIE A. ROBINSON,
Complainant,

Vs.
GEORGE MARINOUS, W. W. MAY and
PETER FRANKSO
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.
NO. 1046.

This cause coming on to be heard is submitted for final decree on the pleadings and proof as noted by the Register, and upon consideration thereof, I am of the opinion that complainant is entitled to relief.

It is, therefore, ORDERED, ADJUDGED, AND DECREED, by the Court that Robert Ivey was of unsound mind at the time of the execution and delivery by him of the deed to Peter Frances under which deed the respondent, George Marenous, now claims title to the property described in said deed, and that the said George Marenous is not entitled to protection as an innocent purchaser for value under Section 6822 of the Code of Alabama.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the complainant is entitled to have said deed from Robert Ivey to Peter Frances, dated November 23rd, 1931, and recorded in Deed book 52 N. S. page 104, Probate Office, Baldwin County, Alabama, and subsequently deeds from Peter Frances to W. W. May, and from W. W. May to George Marenous, conveying the same property, declared null and void by this court upon first doing equity in the premises by paying into the registry of this court for the use of said George Marenous the purchase price paid by him of \$500.00, with interest from November 23, 1931, ascertained by the Court to be the sum of \$623.00. It is, therefore, further ordered, adjudged and decreed by the Court that upon the payment to the register of the Court, within ninety days from the date of filing of this decree, by said Robert Ivey, or on his behalf, the said sum of \$623.00, the said register shall immediately mark said three deeds cancelled and nullified on the records thereof in said Probate Office, referring to this decree as his authority for so doing; and the said George Marenous, upon the payment to him of said sum of money, is directed to surrender up to said register each of said three deeds to be marked cancelled by said register by authority of this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the payment of said sum of \$623.00 by complainant is a condition precedent to relief under this decree, and should said sum not be paid to the Register of this Court within *or if appealed, within ninety days from judgment on appeal* ninety days from the filing of this decree, the said three deeds above mentioned and set out are not to be affected by this decree.

IT IS FURTHER ORDERED By the Court that the Register deliver to complainant for the use of Robert Ivey the certificate of stock and certificate of deposit in the Baldwin County Bank and that he deliver to the respondent, Peter Francos, on demand, the note executed in his name of November 23, 1931, all of which papers are introduced in evidence and in the file.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that all costs of this proceeding, both at law and in equity, be taxed against respondents, for which let execution issue.

Done at Monroeville, Alabama, this 5th day of January, 1935.

F. W. Hare

Judge.

ROBERT IVEY, By his next
friend, Cheslie A. Robin-
son,

Complainant,

-vs-

GEORGE MARINOS, W. W. MAY
and PETER FRANKOS,

Respondents.

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

This matter coming on to be heard, and it appearing to the Court that there is a conflict in the testimony as to whether Robert Ivey was of sound or unsound mind at the time that he executed the alleged deed conveying certain property to the Defendant, Peter Frankos, said conveyance being described and referred to in the bill of complaint in this cause. And there also being a conflict in the evidence as to whether the said Peter Frankos in good faith purchased said property for a valuable consideration from an insane person without notice of such insanity.

And also, there is a conflict in the evidence as to the value of said property.

And the Court being desirous of submitting the afore-said matters for the consideration of a jury for the Court's information as to said questions:

It is, therefore, ordered, adjudged and decreed that the following propositions be submitted to a jury at the fall term of the 1934 Circuit Court of Baldwin County, Alabama:-

1. Was Robert Ivey of unsound mind at the time that he executed the conveyance to Peter Frankos which said conveyance is described in the bill of complaint in this cause?

2. Did George Marinos in good faith, for a valuable consideration, and without notice of such insanity, purchase the property involved in this suit?

3. What was the reasonable market value of said property on the 23rd day of November, 1931?

(page two)

The verdict of the jury, when ascertained upon these several propositions, will be used as information by the Court.

J. M. Nare

1st Div. 864

Baldwin
Circuit Court

(In Equity)

Robert Ivey, pro ami

vs.

W. W. May, et al

Come the parties by attorneys and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the Court, it is considered that the decree of the Circuit Court in so far as it decreed that the conveyances specified in said decree were null and void is affirmed. That part of the decree holding as the condition precedent to the cancellation of said conveyances, and return to appellee George Marinous \$500.00 paid by him with 8% interest thereon from November 23, 1931 is in error and the decree in this respect is corrected and the restitution limited to requiring the delivery to the said Marinous of the bank stock and certificate of deposit in the Baldwin County Bank and the return of the Peter Frankos note. As thus corrected, the decree is affirmed.

It is further ordered that the appellant Robert Ivey, by next friend, be allowed 90 days from this date within which to deliver to the Register of the Circuit Court of Baldwin County for the said Marinous the said bank stock and a similar period of time within which to deliver to the Register the said note for Peter Frankos with power in the Circuit Court to extend the time upon sufficient excuse therefor shown to the Court. It is also considered that the appellees, W. W. May, George Marinous and Peter Frankos pay the costs accruing in this cause in the Circuit Court, for which execution may issue and that the said appellees pay the costs of appeal of this Court and of the Circuit Court.

STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 864

Robert Bey, *pro am*, Appellant, v.

W. W. May, et al, Appellee,

From Baldwin Circuit Court. In Equity

The State of Alabama,
City and County of Montgomery.

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages ~~numbered from one to~~ inclusive, contain a full, true, and correct copy of the decree rendered Dec. 19, 1935 by

said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, this the 21st day of

December 1935

Robert F. Ligon

Clerk of the Supreme Court of Alabama.

Question 1. Was Robert Ivey of unsound mind at the time he executed the conveyance to Peter Frankos?

Ans: Robert Ivey was of unsound mind on said date.

Question No. 2. Did George Marinous in good faith, for a valuable consideration, and without notice of the insanity of Robert Ivey, if such insanity existed, purchase the property in this suit?

Ans: No.

Question No .3 What was the reasonable market value of the property involved on the 23rd day of November, 1931?

Ans: \$35,000.00

Chas. Street -
J. J. J. J. J.

BALDWIN

The State of Alabama, ~~Mobile~~ County

ROBERT IVEY, by his next friend,
CHESLIE A. ROBINSON, Complainant

BALDWIN
Circuit Court of ~~Mobile~~ County

No. 1046 VS.

IN EQUITY

W. W. MAY, et al., Defendant

The Complainant respectfully

requests the oral examination of the following named witnesses
on his behalf/viz.: in rebuttal of testimony of respondents,

Charles A. Robinson,

Claude Ivey

H. H. Levins,

Clarence Fuller,

W. W. May

said witnesses reside in the County of Baldwin,
State of Alabama

Ruth Macdonald,

who resides at Mobile, Alabama,

is suggested as a suitable person to be appointed Commissioner to take depositions
of said witnesses on such oral examination.

A. S. Remmelong

Solicitor for Complainant,

NOTE OF EVIDENCE

No. 1046

ROBERT IVEY, by his next friend,

Cheslie A. Robinson,

Complainant,

VS.

W. W. MAY, et als.

Respondents.

At the hearing of this cause the following note

of evidence was taken to-wit:

FOR COMPLAINANT

1. Original Bill and exhibits thereto
2. Deposition of D. S. Comstock
3. Deposition of Cheslie A. Robinson and exhibits thereto
4. Deposition of J. C. Griffin,
5. Deposition of Dr. H. W. Jordon
6. Deposition of W. B. Solley
7. Deposition of Claude Ivey
8. Deposition of Percy Hall
9. Deposition of Robert M. Mahler
10. Deposition of M. B. Dewey
11. Deposition of R. A. Apperson
12. Deposition of Cheslie A. Robinson and exhibits thereto
13. Deposition of W. J. Richberg
14. Deposition of H. H. Levins
15. Deposition of J. O. Driskell
16. Deposition of H. W. Wilson
17. Deposition of Leonard Nahls
18. Deposition of C. C. Fuller
19. Deposition of C. A. Robinson and exhibits thereto
20. Deposition of D. W. Fields
21. Deposition of J. H. Morris
22. Deposition of Claude Ivey ~~and exhibits thereto~~
23. Deposition of Edward Tunstall
24. Deposition of Dr. W. F. Betts.

25. Agreement of parties dated August 31-1932. (depositions)
26. Agreement of parties dated December 14 1933. (depositions)
27. Agreement of parties dated December 14 1933. (depositions)
28. Complainants demand of respondents for production of deeds and respondents acceptance and agreement dated August 21 1932.

29. Deed from Robert Ivy to Peter Frankos, dated Nov. 23-1931
30. Deed from Peter Frankos to W.W. May. dated Feb'y - 1932
31. Deed from W.W. May to George Marinous, dated July 22-1932

32 - Matter to respondents to produce transcript
3 and endorse acceptance of service

- 33 - Return of Circuit Court in Cause No 1030

H. H. Montgomery as Capt. of Bureau Investigator
The Boone County Clerk

Attest:

Register.

ROBERT IVHEY, by his next
friend, Cheslie A. Robinson,
Complainant,

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

-VS-

W. W. MAY, GEORGE MARINOS
and PETER FRANKOS,

Respondents.

Now comes Peter Frankos and for answer to the Bill of

Complaint in this cause says: "

FIRST:

In answer to the first paragraph of the Bill of Complaint
he admits the allegations contained therein.

SECOND:

Respondent is not advised as to the age of Robert Ivey,
but denies that at the time he entered into the transaction men-
tioned in said Bill of Complaint that said Ivey was of unsound
mind, and states the fact to be that the said Ivey was capable of
attending to the business affairs mentioned therein; that he had
no knowledge of any fact that would lead him to believe that the
said Ivey was of unsound mind at the time of said transaction to
any extent, and certainly not to the extent that he was incapable
of attending to the business affairs mentioned in said Complaint.

Respondent admits that for the last several years that
said Ivey has resided near Loxley, Baldwin County, Alabama, on the
lands mentioned in the third paragraph of said Bill of Complaint,
but denies that the said lands are very valuable and with the im-
provements thereon are worth approximately Six Thousand Dollars,
or any such amount, or anything in the neighborhood of that amount.
Respondent further says that said lands, together with the im-
provements, together with the property mentioned in paragraph
three of said Complaint in value would not, at the time of the
conveyance herein mentioned, exceed the value of One Thousand Dol-
lars.

THIRD:

Respondent for answer to paragraph three of the said
Bill of Complaint says that on, to-wit, November 23rd, 1931, that

(page four)

sum greatly less than its value. Respondent admits that proceedings in ejectment have been commenced in this Court by W. W. May to secure possession of the property, and Respondent further shows that May, having become unwilling to proceed further with the contract, made the deed to George Marinov as heretofore mentioned to said property. Your Respondent further shows unto your Honor that Robert Ivey has become dissatisfied, so he is informed, with the said trade, if he is of that frame of mind, by the influence and connivance of his two sons, who, for some purpose best known to themselves, have brought about this controversy between Respondents and the said Robert Ivey. That at the time of the trade the said Robert Ivey was perfectly satisfied; that your Respondent nor George Marinov know of any impairment of his mental facilities; that he was capable of entering into the contract and did so enter into said contract willingly, and that the consideration paid to the said Robert Ivey was a reasonable and fair price for said property.

Having answered the aforesaid Bill of Complaint Respondent respectfully requests that he be now discharged with his reasonable costs that he has been caused to expend unjustly.

Hyatt, Heard & Chasen
Solicitors for Respondent.

ROBERT IVEY, by his next
friend, Cheslie A. Robin-
son,

Complainant,

-vs-

W. W. MAY, GEORGE MARINOS,
and PETER FRANKOS,

Respondents.

IN THE CIRCUIT COURT-EQUITY SIDE

STATE OF ALABAMA

BALDWIN COUNTY.

Now comes W. W. May, and for answer to the Bill of Com-
plaint in this cause, says:-

FIRST:

Your Respondent, W. W. May, admits the allegations con-
tained in the first paragraph of the Original Bill of Complaint.

SECOND:

In answer to Paragraph Two of said Bill of Complaint,
Respondent denies that Robert Ivey was and is of unsound mind to
the extent that he was and is incapable of attending to business
affairs.* Respondent admits that the said Robert Ivey resides at
or near Loxley, in Baldwin County, Alabama, but denies that the
lands described in the third paragraph of said Bill of Complaint
are worth approximately Six Thousand Dollars (\$6000.00), but says
that the property mentioned in the third paragraph of said Bill
of Complaint is worth around One Thousand Dollars (\$1000.00).

THIRD:

In answer to the third paragraph of the Bill of Complaint
Respondent says that he is not advised as to what took place at
Bay Minette between George Marinos and the Complainant relative to
the preparation of a conveyance to the property mentioned in the
Bill of Complaint, but alleges that on or about November 23rd,
1931, Robert Ivey approached Respondent and George Marinos relative
to a sale of said property mentioned in said Complaint, and offer-
ed to take the sum of One Thousand Dollars (\$1000.00) for the same.
Your Respondent further shows unto your Honor that he, himself, was
desirous of securing this property, and that the said George Mari-
nos agreed to purchase the same for One Thousand Dollars (\$1000.00)
and let him have it for that amount, plus the interest, and that

(page one)

FIFTH:

Your Respondent further shows unto your Honor in answer to Paragraph Five of said Bill of Complaint; that after he acquired the title to the property in accordance with his agreement with George Marininos, that he commenced an Action of Ejectment in the Circuit Court of Baldwin County, Alabama, against Claude Ivey, son of Robert Ivey, who for some reason unknown to your Respondent has caused, judging from the Bill of Complaint in this cause, Robert Ivey to become dissatisfied with the trade heretofore mentioned relative to said land. Your Respondent further shows unto your Honor that he is not litigious by nature; that he has no desire to get into a law suit with anybody, and that since the filing of this suit by the Complainant that he has by Deed conveyed said property to the said George Marininos, and that the said George Marininos being a party to this suit that the Court, through George Marininos, can adjust the whole controversy.

Having answered the Bill of Complaint in this cause Respondent, W. W. May, asks that he be discharged with his reasonable costs.

Robert W. May
Attorneys for Respondent.

(page two)

in his opinion and judgment that the said Robert Ivey was capable of looking after the affairs mentioned in said Bill of Complaint and that he did not attempt on that occasion, or on any other occasion, to defraud or treat the said Ivey unfairly in the transaction mentioned in said Bill of Complaint or in any other transaction; that the said Robert Ivey came to George Marinos, a partner of your Respondent, with the proposition to sell the property mentioned in paragraph three at and for the sum of One Thousand Dollars; that at that time and since your Respondent has had an agreement with the said George Marinos relative to the purchasing for him and the said Marinos properties located and situated in Baldwin County, Alabama, and that at that time W. W. May, who was working for George Marinos, one of the Respondents in this cause so your Respondent was advised, conceived the idea that he would like to have this property and that he would like to move out in the Town of Loxley, where he was then and there residing, and start a chicken farm and truck farm thereon, and that your Respondent, on this being made known to him by the said George Marinos, then and there agreed to convey said property to the said May described in paragraph three. That your Respondent is advised that the said Robert Ivey at his suggestion and request came to Bay Minette with the said George Marinos for the purpose of having the papers prepared relative to the conveyance of said lands, and that said papers were prepared in Bay Minette without any undue influence, connivance or fraud, intentional or otherwise. That said Ivey executed the same voluntarily and that in the procuring of the deed to said property said deed was taken in the name of your Respondent, who resides in Chicago, Illinois, and your Respondent emphatically denies that it was his purpose, or George Marinos' purpose, to acquire title to Complainant's property for less than one-fifth its value, or that it was in furtherance of any fraudulent or unlawful purpose of acquiring Complainant's property for a nominal consideration. Your Respondent further says that said transaction was open and aboveboard, with-

(page two)

(page three)

out any knowledge of any mental unsoundness of the Complainant, or without any information or knowledge that would have lead him to believe that the Complainant was of unsound mind; that the consideration agreed upon was commensurate with the value of the property and solely for the purpose of meeting the wishes of the Complainant, and that the said conveyance to W. W. May was for the purpose of permitting or allowing the said W. W. May to secure a place that he desired; in this your Respondent followed the wishes of his partner, George Marinos, and that as aforesated they were partners and had a good many deals together, and that having unbounded confidence in the said George Marinos he was glad to carry out any agreement or understanding that the said George Marinos had with the said W. W. May, and that in pursuance to the request of George Marinos he conveyed said property to the said W. W. May, which, since said time, your Respondent is advised that the said W. W. May reconveyed said property to George Marinos.

FOURTH:

Answering the fourth paragraph Respondent admits that a Deed was executed by him conveying said property to W. W. May pursuant to the request of George Marinos, as heretofore outlined; that your Respondent denies that said W. W. May in any transaction was acting as his agent, servant or employee, and states that said Deed to the said W. W. May was not in pursuance of any fraudulent scheme to defraud Complainant of his property on the theory that the said May, or that he, said Peter Frankos, were bona fide purchasers for value. That the said transaction between him and said Ivey was open, fair and aboveboard, and was based on a consideration equivalent to the value of the property mentioned in said Bill of Complaint as having been conveyed.

FIFTH:

Respondent denies any fraudulent scheme on his part, or on anyone else's part connected with this transaction, to acquire the title to said property mentioned in said Bill of Complaint, and secure possession of Complainant's property for a

(page three)

The court charges the jury that in order to render a deed void because of the mental incapacity of the grantor the test is whether he had sufficient capacity to understand in a reasonable manner the nature and effect of the act he was doing, and if in this case Mr. Ralston Gray did not have such capacity his deed would be void.

RECORDED
01918

~~Revised~~

Reversed

J. W. Hare

Judge

STATE OF ALABAMA, |
 |* IN THE CIRCUIT COURT OF SAID COUNTY,
COUNTY OF BALDWIN. | IN EQUITY No. _____

TO THE HONORABLE F. W. HARE, JUDGE :-

Humbly complaining, Robert Ivey, by his next friend, Cheslie A. Robinson, as complainant, brings this bill of complaint against W. W. May, George Marinous and Peter Frankos as respondents, and respectfully shows:

FIRST.

Complainant and respondents are each and all over the age of twenty-one years; complainant and the respondents W. W. May and George Marinous reside at or near Loxley in Baldwin County, Alabama, and the respondent, Peter Frankos resides in Chicago, Illinois and his post office address there is 26 Water Market.

SECOND.

Complainant, Robert Ivey, at the time of the happening of the matters and things herein alleged was an old man in his 80th year and was then and is now in a feeble physical condition and because of his advanced years and physical infirmities was and still is of unsound mind to the extent that he was and is incapable of attending to business affairs; for the past twelve years he has resided at or near Loxley in Baldwin County, Alabama, on the land described in third paragraph hereof, which land, complainant alleges is very valuable and with the permanent improvements thereon is worth approximately six thousand dollars.

THIRD.

On to-wit; November 23rd, 1931, the respondent, George Marinous, who knew of his mental and physical condition, went with complainant to Bay Minette, Alabama, and while there the said Marinous went to the office of his attorneys and in complainant's absence caused a written deed of conveyance to be prepared purporting to convey to the respondent, Peter Frankos that certain property in Baldwin County, Alabama, particularly described as follows, viz:

"Lots One (1), Two (2), Three (3) and Four (4) in Block Eleven (11) of the W. C. Dinwiddie Addition to the Town of Loxley, Alabama, as per Plat thereof recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Miscellaneous Record 1, page 110;

Also, all that tract of land lying to the West of the Louisville and Nashville Railroad in the West half of the Northeast quarter of the Northwest Quarter ($W\frac{1}{2}$ of $NE\frac{1}{4}$ of $NW\frac{1}{4}$) of Section Fourteen (14) Township Five (5) South of Range Three (3) East;

Also, the Northwest quarter of the Northwest Quarter of Section Fourteen (14) in Township Five (5) South of Range Three (3) East, excepting and reserving therefrom all that certain parcel of land lying to the East of the Louisville and Nashville Railroad, being in the Northeast Quarter of the Northwest Quarter of the Northwest Quarter ($NE\frac{1}{2}$ of $NW\frac{1}{4}$ of $NW\frac{1}{4}$) of said Section Fourteen (14) Township Five (5) South, Range Three (3) East, excepting twenty (20) feet off the North end for a public highway, which said parcel of land was deeded to Albert N. Bliss by Deed dated February 8th, 1916, and recorded in Deed Book 22 N. S., page 86 of the Baldwin County Records, being the same property conveyed by T. R. Crumpler and wife to J. C. Griffin on November 3rd, 1917, by Deed recorded in Deed Book 26 N. S., pages 532-3 of the Baldwin County Records; Also, excepting therefrom the following described land heretofore sold by Robert Ivey to C. H. Schutte, doing business as Baldwin Ice & Storage Company: From the Northwest corner of Section 14 tp. 5 South, Range 3 East, Baldwin County, Alabama, run East along Section line 1029.5 feet to its intersection with the west right of way line of L & N Railroad, for point of beginning, thence West 90 feet, thence South 13 degrees, 33' East 512 feet, thence East 227 feet to west right of way line of L & N Railroad, thence Northwestwardly along said right of way 557.5 feet to point of beginning, containing one and eighty-hundredths acres of land and being a fractional part of northwest quarter of Northwest Quarter of said Section Fourteen;

Also excepting therefrom the following described tract of land heretofore sold by Robert Ivey to Claude T. Ivey and being described as follows: Beginning at a stake one hundred seventy (170) feet south of the Northwest Quarter of the Northwest Quarter of Section Fourteen, Township Five South, Range Three East, and twenty (20) feet East of the Section line running South from said stake, run South eleven hundred forty-five (1145) feet to a stake, thence East six hundred sixty (660) feet to a stake, thence North eleven hundred forty-five (1145) feet to a stake, thence west six hundred sixty (660) feet to point of beginning, Containing seventeen (17) acres more or less, lying and being in the Northwest Quarter of the Northwest Quarter of Section fourteen (14) Township Five South, Range Three East in Baldwin County, Alabama.

Also, one tractor disc, together with tools, and any and all other framing machinery now belonging to me and located on this land; Also my interest or equity in that certain sprayer owned by myself, M. B. Dewey and others, said interest being a one-fourth interest."

and after preparing said deed the said George Marinous brought the written document to complainant and procured him to sign and deliver the same and after such delivery the said George Marinous filed the document in the office of the Probate Judge of Baldwin County, Alabama, where it was recorded and now stands recorded on the public records of said county in Deed Book 52 N.S., pages 104-5 A copy of the said deed is attached to and made part of this bill

of complaint and is marked Exhibit A, but complainant is informed and believes and upon such information and belief states that the said Peter Frankos was not the real purchaser of the property but that the said George Marinous, for the purpose of acquiring title to complainant's property for less than one-fifth its value, took advantage of complainant's impaired physical and mental condition and used the name of Peter Frankos as grantee in the deed in furtherance of his fraudulent and unlawful purpose of acquiring complainant's property for a nominal consideration. Complainant alleges that at the time he signed the document, he did not have sufficient mental powers to understand in a reasonable manner the nature and effect of the act he was doing.

Complainant further alleges that while the document mentions a consideration of one dollar and other good and valuable considerations, the sum of one thousand dollars in cash was offered for the land and no mention was ever made of the personal property covered by the conveyance; that of the amount offered the sum of five hundred dollars represented by a check drawn on the Baldwin County Bank by the said George Marinous and an unsecured note for five hundred dollars purporting to have been made by the said Peter Frankos were delivered to complainant at the said bank and both were left there.

FOURTH.

Complainant is informed and believes and upon such information and belief states that after the happening of the matters and things hereinabove alleged the said George Marinous caused another deed purporting to have been made by the said Peter Frankos and conveying the said property to the respondent W. W. May, to be executed and he further avers that the said W. W. May is and was indirectly an agent, servant or employee of the said George Marinous, paid nothing for the said conveyance and is not a bona fide claimant as purchaser of the said property, but the deed made to him was a further step in the fraudulent scheme to defraud complainant of his property on the theory that the said May was the bona fide purchaser for value and not responsible for the fraudulent acts perpetrated upon complainant in the procurement of the deed from him.

FIFTH

Complainant is informed and believes and therefore states that the acts hereinabove alleged were in pursuance of a fraudulent scheme to acquire the title to and secure possession of complainant's valuable property for greatly less than its value and that proceedings in ejectment have been commenced in this court in the name of the respondent, W. W. May, to accomplish that end and he further alleges that since discovering the fraud perpetrated upon him complainant has offered to return the considerations paid for the said deed signed by him and that respondents refuse to re-convey the property and complainant now offers to do equity as may be determined by decree of this Honorable Court.

PRAYER FOR PROCESS.

The premises considered, complainant prays that your Honor will take jurisdiction of the cause made by this bill of complaint and that by proper process issuing to them from this court the said W. W. May, George Marinous and Peter Frankos be made parties defendant hereto and be required to answer the charges herein made in all things as required by the rules and practice of this court.

PRAYER FOR RELIEF.

Complainants further pray that respondents and each of them be enjoined from further interfering with the possession and enjoyment of the property by complainant, his agents and employees, until final determination of the cause made by this bill of complaint; that upon the hearing of this cause your Honor will order, adjudge and decree that the deed of conveyance herein referred to and a copy of which is hereto attached as Exhibit A was procured by fraud and is a nullity; that the said Peter Frankos acquired nothing thereby and the said W. W. May acquired nothing by his alleged deed from Peter Frankos; that the respondents and neither of them and all persons claiming under them by virtue of the aforesaid deeds and each and all of them have ^{no} title to said land and that they be required to re-convey the property described in the aforesaid respective deeds, to complainant within thirty days from this date and failing therein, that the Register of this court be required to execute and deliver a deed conveying said property to this com-

plainant all right, title and interest of the respondents and each and all of them and all persons claiming under them through them by virtue of the aforesaid deeds or if it should appear that respondents or any one or more of them are in fact innocent purchasers for value, your Honor will order a reference to ascertain the value of the property covered by the deed, copy of which is attached as Exhibit A at the time of its delivery and will enter a decree requiring the respondents to pay to complainant the difference between the market value of said property at the time of sale and the amount actually paid therefor, with interest thereon, and will declare a lien in favor of complainant to secure said balance.

Complainant prays for such other, further and different relief as in equity and good conscience may be due him in the premises.

F. J. Nelson

B. P. McMillan
SOLICITORS FOR COMPLAINANT

FOOT NOTE: The respondents and each of them are required to answer each and every allegation and paragraph of the foregoing bill of complaint but oath thereto is hereby expressly waived.

F. J. Nelson

B. P. McMillan
SOLICITORS FOR COMPLAINANT

STATE OF ALABAMA, |
COUNTY OF CONECUH. |

Before me, J. F. Pierce, a Notary Public in and for said State and County personally appeared Cheslie A. Robinson, who is known to me and who being sworn says on oath that he is informed and believes and on such information and belief states that each and every allegation and paragraph of the bill of complaint to which this affidavit is attached is true.

Cheslie A. Robinson

Sworn to and subscribed before me this 17th day of February, 1932.

J. F. Pierce
Notary Public, Conecuh County, Alabama.
Conecuh

STATE OF ALABAMA,

WARRANTY DEED.

BALDWIN COUNTY.

THIS INDENTURE, made and entered into on this the 23rd day of November, 1931, by and between ROBERT IVEY, a widower, of the first part, and PETER FRANKOS, of the second part, WITNESSETH:-

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration in hand paid to party of the first part by party of second part, receipt whereof is hereby acknowledged, party of first part has and by these presents does hereby GRANT, BARGAIN, SELL AND CONVEY unto the party of the second part, the following described real property in Baldwin County, Alabama, viz:-

Lots One (1), Two (2), Three (3) and Four (4) in Block Eleven (11) of the W. C. Dinwiddie Addition to the Town of Loxley, Alabama, as per Plat thereof recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Miscellaneous Record 1, page 110;

Also, all that tract of land lying to the West of the Louisville & Nashville Railroad in the West half of the Northeast Quarter of the Northwest Quarter ($W\frac{1}{2}$ of $NE\frac{1}{4}$ of $NW\frac{1}{4}$) of Section Fourteen (14) Township Five (5) South of Range Three (3) East;

Also, the Northwest Quarter of the Northwest Quarter of Section Fourteen (14) in Township Five (5) South of Range Three (3) East, excepting and reserving therefrom all that certain parcel of land lying to the East of the Louisville & Nashville Railroad, being in the Northeast Quarter of the Northwest Quarter of the Northwest Quarter ($NE\frac{1}{4}$ of $NW\frac{1}{4}$ of $NW\frac{1}{4}$) of said Section Fourteen (14) Township Five (5) South, Range Three (3) East, excepting twenty (20) feet off the North end for a public highway, which said parcel of land was deeded to Albert N. Bliss by Deed dated February 8th, 1916 and recorded in Deed Book 22 N. S., page 86 of the Baldwin County Records, being the same property conveyed by T. R. Crumpler and wife to J. C. Griffin on November 3rd, 1917, by Deed recorded in Deed Book 26 N. S., pages 532-3 of the Baldwin County Records; Also, excepting therefrom the following described land heretofore sold by Robert Ivey to C. H. Schutte, doing business as Baldwin Ice & Storage Company: From the Northwest corner of Section 14 Tp. 5 South, Range 3 East, Baldwin County, Alabama, run East along section line 1029.5 feet to its intersection with the west right of way line of L. & N. Railroad, for point of beginning, thence West 90 feet, thence South $15^{\circ} 33'$ East 512 feet, thence East 227 feet to west right of way line of L. & N. Railroad, thence Northwestwardly along said right of way 557.5 feet to point of beginning, containing one and eighty-hundredths acres of land and being a fractional part of northwest quarter of Northwest Quarter of said Section Fourteen;

Also excepting therefrom the following described tract of land heretofore sold by Robert Ivey to Claude T. Ivey and being described as follows: Beginning at a stake one hundred seventy (170) feet south of the Northwest Quarter of the Northwest Quarter of Section Fourteen, Township Five South, Range Three East, and twenty (20) feet East of the section line running south from said stake, run South eleven hundred forty-five (1145) feet to a stake, thence East six hundred sixty (660) feet to a stake, thence North eleven hundred forty-five (1145) feet to a stake, thence West six hundred sixty (660) feet to point of beginning. Containing seventeen (17)

Exhibit A

Also, one tractor disc, together with tools, and any and all other framing machinery now belonging to me and located on this land; Also my interest or equity in that certain sprayer owned by myself, M. B. Dewey and others, said interest being a one-fourth interest.

TO HAVE AND TO HOLD unto the said party of the second part, his heirs and assigns, FOREVER. And the party of the first part, for himself and his heirs, executors and administrators, hereby covenants and warrants to and with party of second part, his heirs and assigns, that he is seized of an indefeasible estate in fee simple in and to said property; that he has a good right to sell and convey the same as herein contained; that he will guarantee the peaceable possession thereof; that said property is free from all liens and encumbrances and that he will and his heirs, executors and administrators shall forever warrant and defend the same unto the party of the second part, his heirs and assigns, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the party of the first part hereunto sets his hand and affixes his seal on the day and year first above written.

WITNESSES: ROBERT x IVEY SEAL
his mark

J. F. BRYARS, M. D.

L. D. WHATLEY

STATE OF ALABAMA,

BALDWIN COUNTY.

I, R. C. HEARD, a Notary Public in and for said County in said State, hereby certify that Robert Ivey, a widower, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and Notarial Seal hereto affixed by me this 23rd day of November, 1931.

(affix seal)

R. C. HEARD
Notary Public, Baldwin
County, State of Alabama.

IN THE STATE OF ALABAMA, COUNTY OF BALDWIN .

ROBERT IVEY, by his next
friend, CHESBIE A. ROBINSON,

Complainant,

vs

W. W. MAY, et al,

Respondents.

¶

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IN THE CIRCUIT COURT OF SAID

COUNTY, IN EQUITY No. 1 0 4 6.

Complainant amends the original bill by adding thereto next following the paragraph numbered "FIFTH," Paragraph numbered $5\frac{1}{2}$ and ~~by amending the Payer~~ as follows, viz:

$5\frac{1}{2}$

Complainant alleges that the note and the Five Hundred Dollars paid by respondent, Peter Frankos; or by George Marinous purporting to act for him, were deposited in the Baldwin County Bank and never withdrawn therefrom by complainant; A short time after the happening of the matters and things hereinabove alleged, the said Baldwin County Bank went into liquidation and its affairs were taken over by the Superintendent of Banks for the State of Alabama, and placed in charge of a liquidating agent appointed by him; Thereafter during the latter part of the year 1932, the bank was re-organized and under decree of the Circuit Court of Baldwin County, Alabama, and under the plan of re-organization, certificates of stock and certificates of deposit in said Bank were issued to persons whose names appeared on the records of said Bank as depositors and the officers of the re-organized bank prepared for issuance to Robert Ivey 6 and 495/1250 shares of said bank stock of the par value of Twelve and 50/100 (\$12.50) dollars, and certificate of deposit for Two Hundred thirty-nine and 86/100 (\$239.86) dollars, but the said complainant never withdrew these certificates or note from the said bank and never knew of same having issued, but said documents remained in the bank until withdrawn for use as evidence in this cause.

Complainant is informed and believes and therefore states that under all facts herein stated the respondent is entitled only to these certificates and note in lieu of the original payment and note made as set forth in THIRD Paragraph hereof, in full satisfaction of his claim against Complainant, Robert Ivey, but Complainant offers to do equity and if it should be decreed that complainant must return the five hundred dollars instead of said amount and documents he will do so but he submits that the respondent is entitled to only the actual proceeds of payment made by him and the said certificates and note reflect the actual proceeds of said payment. Except as modified by this amendment the original bill as filed remains unchanged.



ATTORNEY FOR COMPLAINANT.

DEPOSITION OF W. D. STAPLETON,
Witness for Respondents

Direct Examination by C. L. Hybart.

Q. This is Judge W. *W* Stapleton?

A. Yes, sir.

Q. You live in Bay Minette, Judge?

A. Yes, sir.

Q. You know Mr. Robert Ivey? Do you know Mr. Robert Ivey?

A. Yes, sir.

Q. He live at Loxley?

A. He lives at Loxley.

Q. How long have you known him?

A. I would say ten, twelve or fifteen years.

Q. During that time was he a customer of the Baldwin County Bank?

A. Yes, sir.

Q. You were President of that Bank, werent you?

A. Yes, sir.

Q. And during the time you have known him, you had a good many business transactions with him?

A. Yes, sir.

Q. You ever notice anything out of the ordinary with him?

A. No, sir.

Q. You see him on November 23rd, I believe it was, 1931, the day he executed this deed to George Marinous?

A. I don't remember the date. I remember the time he executed the deed.

Q. You see him on that day.

A. Yes, sir.

Q. You notice anything out of the ordinary then?

A. No, sir.

Q. Now, Judge, what you have seen and know of him, would you say that on that day in November, the day he executed the deed, he was a man of sound or unsound mind?

A. I would say a sound mind.

Q. Ever seen him a time you would say he was of unsound mind?

A. No, sir.

Q. You acquainted with this seventeen acres of land in suit?

A. Yes, sir.

Q. At Loxley?

A. Yes, sir.

Q. You own considerable land in Baldwin County, don't you, Judge? And you have for the last ten years bought and sold land all over Baldwin County?

A. Yes, sir.

Q. And know sections?

A. Yes, sir.

Q. You know the values of the land?

A. Yes, sir, in Baldwin County.

Q. Judge, in your opinion, was a thousand dollars a reasonable price for this piece of land involved in this suit, on November 23rd, 1931?

A. I should think so, a reasonable price.

cross-Examination by B. F. McMillan, Jr.,

Q. Judge, how old is the old man, Ivey?

A. Getting up in age. Don't know exactly.

Q. Have the appearance of being over eighty?

A. No, sir. I should think he was seventy-something.

Q. Seventy-what?

A. Seventy three or four.

Q. You don't know his age?

A. No, sir.

Q. On crutches?

A. No, sir.

Q. Never saw him on crutches?

A. No, sir.

Q. Was he that day in the bank?

A. No, sir.

Q. Where did he have his transaction you spoke of on November 23rd?

A. In the bank.

Q. Come into the bank office?

A. Up here? I don't know.

Q. The firm of Hybart, Heard and Chason attended to the business?

A. I don't know about that.

Q. Didn't see them there that day?

A. No, sir.

Q. See Dr. Bryars there?

A. No, sir.

Q. Dr. Bryars didn't come to examine the mental condition of Mr. Ivey?

A. Not while I was there.

Q. How long were you there?

A. Well, I saw him at the bank in that office and didn't pay attention because Mr. Hall transacted most of the business

Q. You didn't pay much attention to him on the day he transacted this deal?

A. Well, I spoke to him?

Q. Then you went out?

A.- No, I just spoke to him.

Q. The old man was almost blind, wasn't he?

A. Couldn't see very good.

Q. When was he paralysed?

A. I don't know that he was ever paralysed.

Q. You never heard of it? His being paralysed?

A. No, sir.

Q. Were you in the bank the whole time he was there?

A. I don't know. I couldn't say.

Q. Paper signed in the bank?

A. I don't know where it was signed. All of them were in that office talking about it and I didn't actually see the paper signed.

Q. Where were the papers written?

A. I don't know where.

Q. Who wrote them?

A. I don't know.

Q. You ever been in his house?

A. No, never been in the house.

Q. When was the house built?

A. I couldn't say.

Q. What sort of house is it?

A. Concrete Block.

Q. What ~~was~~ ^{would} it cost to build a house like that? Like he had there?

A. I don't know, never examined it closely.

Q. The value of the piece of land would depend on the value of the house, wouldn't it to a very large extent?

A. To a certain extent.

Q. Well, to a large extent, wouldn't it? A piece of land with a \$3500.00 house on it is worth \$3500.00 more than the same piece of land without the house on it, isn't it?

A. I don't know if you could get that for it.

Q. You wouldn't know what it would cost to build that house?

A. No, sir.

Q. What would it cost to clear the land, Judge?

A.- Well, it costs anywhere from five to fifteen dollars to an acre.

Q. You wouldn't know what it cost to clear that land?

A. Yes.

Q. It was cleared?

A. Yes, sir.

--

Mr. Hybart: Mark one day's attendance for Judge Stapleton.

STATE OF ALABAMA,)
COUNTY OF BALDWIN.)

By virtue of an agreement between the parties in the case of Robert Ivey, by his next friend, Cheslie A. Robinson, vs W. W. May, et al, pending in the Circuit Court of Baldwin County, Alabama, in Equity, the undersigned, acting as commissioner has caused W. D. Stapleton, a witness for the respondents in said cause to come before her at Bay Minette, Alabama, on the 14th day of December, 1934, and said witness was duly sworn true answers to make on oral examination by Charles Hybart as Solicitor for Respondents and B. F. McMillan, Jr., as Solicitor for Complainant and did testify as hereinafove set forth.

Answered and sworn to before me this 14th day of December, 1934.



COMMISSIONER

ROBERT IVEY, by his next friend,
CHESLIE A. ROBINSON,

Complainant,

-vs-

PETER FRANKOS ET AL,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

No. 991.

We hereby agree that the testimony of W. W. May, a witness on behalf of Respondent, may be taken before Tyler Goodwin, acting as Commissioner; issuance of commission and the signature of the witness to his testimony and all further forms and notices are hereby waived.

Dated this 24th day of February, 1934.

B. F. Williams
Solicitor for Complainant.

Wyatt, Henderson
Solicitors for Respondents.

ROBERT IVEXY, by his next friend,
CHESLIE A. ROBINSON.

Complainant,

Vs.

W. W. MAY, ET AL.

RESPONDENT.

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

INTERROGATORIES TO BE PROPOUNDED TO W. W. MAY, WHO RESIDES IN
MONTGOMERY, ALABAMA, AND WHOSE PRINCIPAL PLACE OF BUSINESS IS 26
SOUTH COMMERCE STREET IN THAT CITY, AND WHO IS A MATERIAL WITNESS
FOR THE RESPONDENTS IN THE AFORESAID CAUSE.

1. Please state your name, age and residence.

Are you acquainted with Robert Ivey? Are you acquainted with George
Marinous? If so, where does the said Robert Ivey live? Where does
the said George Marinous live?

2. Are you acquainted with the property involved in
this suit? Were you acquainted with the property involved in
this suit at the time that the said Robert Ivey sold or conveyed
the same to Peter Frankos?

3. Did you have a conversation with George Marinous
relative to your purchase of this property about the time that the
said Robert Ivey conveyed said property to the said Peter Frankos.
If so, please state what that conversation was, and whether it was
agreed and understood that you were to become the owner of said
property and that the said Peter Frankos or George Marinous were to
convey the same to you.

4. Did the said Peter Frankos, or George Marinous
convey said property to you? Did you authorize an ejectment suit to
be ~~knought~~ brought for said property? What was the understanding
between you and the said George Marinous relative to your becoming
the purchaser of the property involved in this suit?

5. After the litigation was started relative to
this property, did you decide to reconvey the property to any one?

If so, who, and what was said between you and the party to whom you conveyed the same? Please give full details of this conversation.

6. Was there any threats made by any one to you, or that you heard of in regard to your owning this property?

7. Did you have a conversation with G. A. Robinson in regard to this property? What did you tell him in said conversation in regard to said ejection suit and the consideration of the deed to you and your knowledge relative to the deed? What prompted this statement by you, if anything, to the said Robinson, if you had such a conversation? Please give in detail your conversation, if any, with G. A. Robinson in regard to this property, and also what Robinson had to say about the matter, if anything, and what induced your statement relative to the same, if anything?

Thos. Lott, Wend O. Chason
Solicitors for Respondents.

Respondents suggests the name of Hon. R. Tyler Goodwin, Attorney at Law, Montgomery, Alabama, as being a suitable person to act as Commissioner in taking the depositions of the aforesaid witness, W. W. May.

Thos. Lott, Wend O. Chason
Solicitors for Respondents.

ROBERT IVEY, by his next friend,
CHESLIE A. ROBINSON,

Complainant,

-vs-

W. W. MAY, et al.

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY No. 1046.

OBJECTIONS AND CROSS-INTERROGATORIES BY COMPLAINANT TO THE INTER-
ROGATORIES PROPOUNDED BY THE RESPONDENT TO GEORGE MARINOUS:-

1. Complainant objects to direct interrogatory Numbered 5 and separately to each of the questions asked in said interrogatory on the following grounds each of which is severally and separately assigned:-

- A. The question calls for immaterial testimony;
- B. The question calls for incompetent testimony;
- C. The question calls for hearsay evidence.
- D. If the question is intended to impeach testimony of Complainant's witnesses or anyone of them the proper predicate isn't laid.

2. Complainant objects to interrogatory Numbered 6 on the same grounds assigned to interrogatory numbered 5 and on the further grounds that if the question attempts to show threats by anyone other than complainant, it could in no way bind complainant.

3. Complainant objects to Interrogatory Numbered 7 and to each separate question therein asked on the same grounds assigned in objections to interrogatory numbered 5 and especially to that part of said interrogatory asking what prompted the witness to make the statement referred to because it calls for the inner working of the witness's mind and it affirmatively appears that what was in his mind was not disclosed.

Without waiving the foregoing objections but insisting thereon, complainant propounds the following cross-interrogatories to the said witness, W. W. May:

1. Were you not working with or for George Marinous in November of 1931? What was your connection with him and with the business operated by him and how long had you been so connected? What was the connection between George Marinous and Peter Frankos at that time? What was your connection with Peter Frankos? Was Peter Frankos connected with or interested in George Marinous business at Loxley and if so, how? How long have you known Robert Ivey and isn't it a fact that he was a very old man, had had a stroke of paralysis and couldn't travel except on crutches or by the help of others?

2. Where were you when George Marinous took Robert Ivey to Bay Minette to have this deed made? Did he not take Robert Ivey to Bay Minette in his, Marinous, car? Who went from Loxley to Bay Minette in said car? Did you at the time know the purpose of the trip to Bay Minette?

3. Have you arranged with George Marinous to purchase this land from him if he acquired the deed from Robert Ivey and for what price? Had Robert Ivey previously offered to sell you the land and if so at what price? How did it happen that you desired to purchase the land from Marinous instead of from Robert Ivey? Did you ever have any conversation with Peter Frankos with reference to this? Did you prepare the deed to you from Peter Frankos or have same prepared or did Marinous do this? What individual signed the deed purporting to have been made by Peter Frankos to you? Was it not George Marinous? What individuals negotiated the transaction between you and Peter Frankos? Was it not George Marinous? What individual recorded the deed from Peter Frankos to you? Was it not George Marinous. Did you ever see the deed from Peter Frankos to you? Was it ever delivered to you? If so, who delivered it? Was it not George Marinous?

4. State in detail who you first negotiated with for the purchase of this land and in detail what was done. Did you, after discovering that a deed had been made from Ivey to Marinous state to the latter that you wished you had known Ivey would sell the land because you would have purchased it? Were you purchasing it for an investment? Is it not a fact that you knew nothing in the world about the land having been transferred to you until George Marinous told you it had been so transferred? Is it not a fact that George Marinous negotiated the deal between Robert Ivey and Peter Frankos and then negotiated the deal between yourself and Peter Frankos and were not deeds made from Ivey to Peter Frankos and from Peter Frankos to you? To whom were they delivered? Is it not a fact that you didn't pay one dime for the deed to you? If you made a payment, how much did you pay and to whom was it paid and how was it paid?

5. Did you not re-convey any interest you had in this property to George Marinous? When was this done? Who attended to having it done? Is it not a fact that George Marinous went to his attorney's office, had the deed made and told you to go by there and sign it and that you would go by there and sign it and not one cent was paid you for doing so? Is it not a fact that you simply signed the paper left for you to sign in the office of Hybart, Heard & Chason, Attorneys for George Marinous and that you didn't even know what you were signing?

6. If you say you authorized the ejectment suit brought against Mr. Ivey's son, who did you give this authority to? Was not this engineered by George Marinous? Isn't it a fact that you didn't instruct the attorneys, Hybart, Heard & Chason to file such suit? If you did, when did you give such instructions, where did you give such instructions and to what individual were such instructions given. After the litigation was started, did you instruct anyone to stop it? If so when did you so instruct, where did you so instruct and to what individuals were such instructions given?

7. If you have said that threats were made by anyone to you, state who was present when such threats were made. Where were you at the time?

8. If you have said that you did have a conversation with C. A. Robinson regarding this property state where this conversation was had and who was present. Is it not a fact that you do not claim this land or any part of it? Is it not a fact that you have never claimed the land or any part of it?

B. J. McMillan
ATTORNEY FOR COMPLAINANT.

ROBERT IVEY, by his next friend,
CHESLIE A. ROBINSON,

Complainant

vs/

PETER FRANKOS ET AL,
W.W. May

Respondents

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.
No. 991.

Before me as Commissioner to take his testimony,
this the 2nd day of March, 1934, personally appeared W.W. May,
who being by me first duly sworn, deposes and says:

That the answers he makes hereinafter are true
and correct to the best of his knowledge and recollection.

Answering interrogatory No 1.

Witness says my name is W.W. May, my age 41 years
old and I reside at 517 Yancey St. Montgomery, Alabama. I have
seen Robert Ivey several times; I know George Marinos well.
The said Robert Ivey lives in various places, sometimes at
Loxley in Baldwin County, and sometimes at Repton, Alabama, with
his children. George Marinos lives at Loxley, Alabama.

Answering interrogatory No 2.

I know the property involved in this suit, and knew
it when Robert Ivey sold it to Peter Frankos.

Answering interrogatory No 3.

I did have a conversation with George Marinos about
the purchase of this property when Robert Ivey conveyed it to
Peter Frankos; George Marinos told me that he had bought it
and that he would sell it to me at the same price that he had
paid for it, which was \$1000.00. It was understood and agreed
that the said property was to be conveyed to me by Peter Frankos
or George Marinos.

Answering interrogatory No 4.

It is my best recollection that Peter Frankos conveyed
this property to me by deed. I did not authorize an ejectment
suit to be brought for said property. The understanding between
George Marinos and me was that I was to take the property and
pay him for it whenever he got the title to the property clear.

Answering interrogatory No 5.

It is my best recollection that I did decide to convey the property and my best recollection is that I conveyed it to either Peter Frankos or George Marinos. I do not recollect which one of the two. All the talking I had about the matter was with George Marinos. I just don't recall name of grantee in my deed. I told George Marinos that there was so much stew being raised about the property and that it was so mixed up, I did not want to keep it. One of old man Ivey's boys named Ion came over to the feed house where I was and raised so much ruckus with me, that I decided I would not have anything to do with it.

Answering interrogatory No 6.

Threats were made to me by Ion, son of old man Ivey. These threats were not about any particular matter except concerning buying land from his father, Robert Ivey. He said his father was not able to make a deal.

Answering interrogatory No 7.

I do not know C.A. Robinson. I cannot therefore say that I had a conversation with him about this ejectment suit. I do not recollect having a conversation with anybody about an ejectment suit for this property with any one by the name of C.A. Robinson.

Answering cross interrogatories:

No 1. I was working with George Marinos in 1931. We were handling pecans and there was no connection that I knew of between George Marinos and Peter Frankos at that time. Peter Frankos was in Chicago. I did not have any connection with Peter Frankos. I did not know him then. So far as I know Peter Frankos was not interested with George Marinos in business at Loxley. I have seen Robert Ivey and knew he was an old man. I don't know anything about his having a stroke of paralysis. When I saw him he was not walking on crutches nor being helped by anybody else.

No 2. I don't know where I was when George Marinos took Robert Ivey to Bay Minette to have this deed made. The fact

is that this was done before I knew anything about it. I don't know whether he took him to Bay Minette in his car or not. I did not know about the trip to Bay Minette nor the purpose of the trip.

No 3. I arranged with George Marinos to purchase the land from him if he acquired the deed from Robert Ivey and price was \$1000.00. Robert Ivey had never offered to sell me the property at any time. The reason I wanted to purchase the land from George Marinos was because he owned it when I first knew about it. I never had any conversation with Peter Frankos in reference to this. I never prepared any deed at all. I reckon Peter Frankos signed the deed to me that he made to me. I know nothing to the contrary. It was not George Marinos. George Marinos was the man that was handling the trade to me and he got the deed from Peter Frankos. I think it was done by some lawyer in Bay Minette I don't recollect whether I paid for it or somebody else paid for it. It was delivered to me by Mr. Heard, Attorney in Bay Minette.

No. 4. My first negotiations in this matter was made by George Marinos. I was buying land to live on. If I had known Robert Ivey would sell the land I would have bought it from him as quickly as I would have from George Marinos. I just wanted the place from the party who had the title. I made the trade before the land was transferred to me. George Marinos was the one who negotiated the deal for me. I wanted the title to the property and got him to get the matter from Peter Frankos. It seems that Peter Frankos had told George Marinos to get some lands that would make a good investment for him. When I heard he had gotten it I then tried to buy it. The only man I knew in the transaction was George Marinos as he was handling the matter for me. I did not pay any money as the understanding was that I was to pay for the whole thing when it was cleared up. /
No 5.
I don't recollect to whom I re-conveyed my title to the land. This was done sometime after I got the deed. It was done through same lawyer who delivered me the original

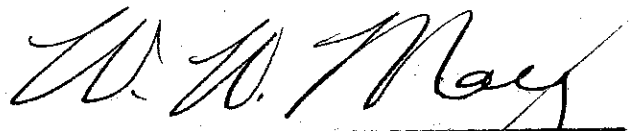
I did not pay anything for it and I went to the office of Mr. Heard and signed the deed there. I don't recall who told me to go there, whether Mr. Heard or somebody else. I knew I was signing a deed and I knew I was signing a deed to either George Marinos or Peter Frankos, my best recollection was to Peter Frankos.

No. 6. I did not authorize an ejectment suit against Mr. Ivey's son. I was not concerned in that except that I wanted the property if the matter could be arranged so I could get possession of it. I have no distinct recollections about instructions concerning an ejectment suit. My best recollection is that I told Mr. Heard or some other attorney there that I wanted it stopped as far as I was concerned. I do not remember the exact time this took place but it was some time after I executed the deed back to either Frankos or Marinos.

No 7. When young Ion Ivey made threats at me Jim Grimes and George Marinos were present. We were all at a seed house of the Loxley Grain Company in Loxley.

No 8. I do not recall having any connection with C.A. Robinson. I don't know C.A. Robinson. I do not claim this land but I do claim the right to buy the land when the title gets cleared up. I had that agreement with George Marinos. I got a deed to it and thought the matter would be alright, but I did not want to get mixed up in trouble after threats were made to me by Mr. Ivey's son.

IN WITNESS whereof, I the said W.W. May, have signed the foregoing testimony both on direct interrogatories and cross interrogatories.

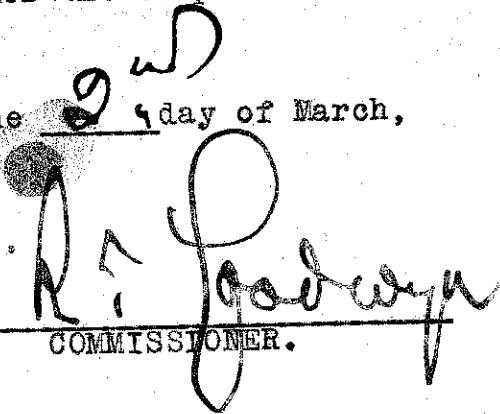


I, R.T. Goodwyn, duly appointed Commissioner to take the testimony of W.W. May, a witness in behalf of respondents, said testimony to be taken under an agreement entered into by Solicitor for complainant and solicitor for respondents, do hereby certify that the said W.W. May was called before me as said Commissioner

at four o'clock on March 2nd, 1934 in my office, and the direct and cross interrogatories respectively were each propounded to him and that his answers thereto are the answers above given as responsive to the respectively named interrogatories both direct and cross and I further certify that I am neither kin nor have I any connection with the witness nor either of the attorneys; nor with either the complainant or respondents.

WITNESS my hand this the 2nd day of March,

1934.


COMMISSIONER.

Commissioner's fee 5⁰⁰
Supplies and 2⁵⁰

7⁵⁰

ROBERT IVEY, by his next
friend, CHESLIE A. ROBINSON,

Complainants,

vs

W. W. MAY, et al,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY No. 1046

BRIEF AND ARGUMENT FOR COMPLAINANT.

Complainant sues to set aside a deed procured from him by George Marinous in the name of Peter Frankos (as Grantee) on the ground of fraud, the fraud consisting of his taking advantage of complainant's enfeebled and mental condition, to cancel a deed from Frankos to W. W. May and to quiet title in Complainant. May has since deeded the land to Marinous so that the only parties now interested in the proceedings are Complainant and George Marinous.

STATEMENT OF THE EVIDENCE.

The facts, either admitted or about which there is no dispute are that Robert Ivey is an old man, upwards of eighty

years and lives at Loxley in Baldwin County, Alabama, where the land is located and which is and has been his home for many years; it is practically in the heart of the Town, has a concrete block house in good condition on it and is surrounded by a Satsuma Orange Grove of about twenty acres.

On November 23rd, 1931, George Marinous brought Complainant to Bay Minette, and Marinous went to his attorney's office, had a deed prepared and then he and the attorney came back to where complainant was and had him sign away all the property he had, including this home, for an alleged consideration of One thousand dollars, five hundred dollars of which was then deposited in the savings department of the Baldwin County Bank and a note payable one year later was given complainant for the balance; this note was not signed by Peter Frankos, the Grantee, but his name was signed thereto by Marinous. It bears no interest and is not secured by a lien or otherwise. The deed is a simple warranty deed made by Marinous' attorney at Bay Minette and twenty dollars was then paid by old man Ivey for its execution. When the facts became known to complainant's family they immediately attempted to get Marinous to give back the land and offered him what he had paid and Marinous refused.

The only issues of fact on which there is dispute are as to the condition of Ivey's mind when the deed was made and the value of the land. Complainant's evidence on these points is given by his physicians, his neighbors and the county officials as follows, viz:

CHESLIE A. ROBINSON, a son-in-law of Mr. Ivey, who lives at Range, Alabama, and in whose home Mr. Ivey spends considerable time, testifies on August 31st, 1932: Mr. Ivey is between eighty eighty-one years old. In January of 1931, he had a stroke of paralysis. Before that his mind was not entirely normal but it was much worse after the stroke and was impaired practically all the time thereafter, although sometimes he would seem better but he has transacted no business since the stroke. After that and even before, one of his sons looked after his affairs and the old man spent his time among his children. The witness looked after his affairs in Conecuh County, because Mr. Ivey couldn't do this himself. The place covered by his deed to Frankos, has been Mr. Ivey's home place since 1919 and is the only property he owns and the deed covers everything he had. Under present conditions the place is worth about thirty-five hundred dollars and was worth that in November of 1931. In normal times it would be worth at least five thousand dollars. The house is in good condition and approximately twenty-one acres are cultivated in oranges. Mr. Ivey cannot get about without help and his physical condition has been bad since his stroke. He is unable to walk. The witness bases his statement that Ivey's mental condition is bad on things that have come up and shown that he didn't know what he was doing. For instance he would say the lightning knocked off the roof of his house when, as a matter of fact, no such thing occurred; That a bunch of Mexicans were cutting his pecan trees and making swings in and burning the boughs of the trees, that they cut the trees, dig out a piece of the trunk and put the trees back on the stumps. That Ivey would frequently be at witness' home and think he was somewhere else and witness could not make him realize where he was. After making the deed Ivey told witness he did not sell the place but sold another place and later said he did not know anything about the deed. At another time he said Marinous carried him to Bay Minette and didn't read the deed to him. That there were two papers of the same kind and he thought he sold the other place. Witness further stated that Ivey's mind has been in this condition practically ever since his stroke; that some days he talks with more sense than at other times but there is hardly a day since the stroke when his mind has been clear and he was never perfectly clear after the stroke. That everyone in Loxley knew of Mr. Ivey's mental condition and Marinous must have known it. His mind was better sometimes than at others but it was in such condition that he never bought anything of value without some of his children going with him. Witness doesn't know how many orange trees were on the place but about twenty acres are in cultivation. After the stroke of paralysis Calude Ivey got the other sons of Ivey to move in and help him and when Ivey came to visit witness his sons always brought him. After Marinous got the deed from Ivey, witness discussed the matter with Marinous and told him Ivey's mental condition and he took the old man there with him and tried to get Marinous to re-convey the land and get his money back but Marinous refused. This was a few days after the deed was made and before this bill was

years and lives at Loxley in Baldwin County, Alabama, land is located and which is and has been his home for years; it is practically in the heart of the Town, has a block house in good condition on it and is surrounded by Satsuma Orange Grove of about twenty acres.

On November 23rd, 1931, George Marinous brought complainant to Bay Minette, and Marinous went to his attorney's office, had a deed prepared and then he and the attorney went back to where complainant was and had him sign away the property he had, including this home, for an alleged price of One thousand dollars, five hundred dollars of which was deposited in the savings department of the Baldwin County Bank and a note payable one year later was given complainant for the balance; this note was not signed by Peter Frankos, but his name was signed thereto by Marinous. It bears interest and is not secured by a lien or otherwise. The balance of a simple warranty deed made by Marinous' attorney at the time and twenty dollars was then paid by old man Ivey for the deed. When the facts became known to complainant's attorney he immediately attempted to get Marinous to give back the deed and offered him what he had paid and Marinous refused.

The only issues of fact on which there is dispute are as to the condition of Ivey's mind when the deed was made and the value of the land. Complainant's evidence on these points is given by his physicians, his neighbors and the following, viz:

filed. Later another son of Mr. Ivey went with Marinous and told him Ivey was not capable of and asked him if he was willing to pay what Marinous did not then pretend he had paid the but rather admitted he had bought it for much Mr. Ivey at that time had an account in the F A short time after this deal, a bank statement \$181.00 there. He had five or six thousand to Loxley.

In 1930 and 1931, he did not have his own checks and gave witness some. He paid dollars Marinous gave him in the bank on save (5 - 11)

On later examination on May 18th testified that a freeze did kill some of the but that they were re-planted and since the been killed and possibly a fourth of them are witness was with Ivey about two weeks before was made for a period of about two weeks and was then very poor. Witness then carried I and about eleven o'clock at night his daughter quiet him and witness went to him and Ivey he had any money to put it under his head rob him; that they had already robbed him of the men was tall, another wore a broad third did not have a head. Mr. Ivey's wife that his mind was at unrest and sometimes though she were with him. (Plaintiff's testimony)

After respondents had taken testimony witness was again examined in rebuttal and stated that Dr. R. A. Hail, a witness never treated Mr. Ivey that Witness knew never knew of Ivey's being intimate with to the Gulf Ice and Coal Company which he Ivey had sold that Company two acres off place for one thousand dollars; that it of land as the home place. He further testified to Peter Frankos dated November 23rd, 19 Book 52 N. S., page 104; that since that has talked to the respondent, W. W. May, ness the deed to him was made without consent that the ejectment suit

drawn for evidence in this case and complainant is willing to return them. At the time of these transactions May was working for Marinous and witness on one occasion about February 15th, 1932, went to see him at Marinous' store. May didn't seem to know what to say and called Marinous and the witness then told Marinous that he, witness, had come his last time to pay back the five hundred dollars and Marinous told witness if he wanted to enter suit and have the deed set aside he could do so and keep the five hundred dollars, (Plaintiff's testimony pages 49-53)

CLAUDE IVEY, a son of complainant, says: That in the morning of the day his father went to Bay Minette he told witness he was going to Bay Minette with George Marinous, the Greek, and witness then went to see Marinous, told him what his father had said and also that if his father was going to attend to business, one of the boys would have to go with him and Marinous answered that he knew of no business Ivey was going to attend and did not tell the witness about the proposed land deal. The witness doesn't think his father knew what he was doing that morning; that his mind had been a blank since his stroke the preceding January (this was the son to whom the witness, Hail testified he had made a deed for) and the witness says that deed was made in the summer of 1930, when his father's mind clearer but the deed was not recorded at that time. The value of the land deeded to Marinous was about \$4,000.00 and on the day the deed was made, Mr. Ivey's mind was childish. After the deed of paralysis his mind seemed bad all the time. (Plaintiff's testimony pages 19-22.)

Later in testifying in rebuttal, this witness lived with his father, testified that Dr. Hail was never his father's physician. That Dr. Jordan was his physician and neither Dr. Hail nor Albert Keuler were intimate with his father. (Plaintiff's testimony pages 59-61).

DR. H. W. HORDON, a physician of Robertsdale, who is admitted by the State of Alabama as a competent expert and has been Ivey's personal physician for five years says: "Ivey had a stroke of paralysis in January of 1931 and his mental condition then has been blank; at times he hardly knows anything and times is incapable of judging and in the opinion of witness has been capable of making or knowing the nature of a business deal and mentally he is very

DR. W. F. BETTS, a physician at Evergreen, who has known Mr. Robert Ivey for thirty-five years and practiced in his family and knew him throughout the year 1931, and during the time he was at Range, Alabama, stated that during the year 1931, Robert Ivey was suffering from senile debility which affected his entire system including his kidneys, his heart and resulted in hardening of the arteries and this condition affected his brain and mental condition. At times his mental condition was not quite as bad as at other times; but at all times during 1931, his mental condition was affected to some extent. It was a case of general physical break-down from old age resulting in weakening his mentality and is what is commonly called "second childhood." The witness did see Ivey during 1931 from time to time and his mental condition would be better and worse and there could have been times when he might understand the nature of business transactions and at other times he would not. He was throughout the year in a weakened mental condition so that he would be more easily imposed upon than if normal. At times in the witness opinion, he could have understood business transactions but his condition was such he could be easily influenced or prevailed upon to do things more easily than when in a normal condition. (Plaintiff's testimony pages)

W. B. SOLLEY, who lives a mile and three quarters from Loxley and about a mile from Mr. Ivey, has known the latter for eleven years and has seen him regularly and visited him after he got sick. He has known him intimately since his stroke and says: "Since then he has had very little mind, you might say none, and wouldn't have known enough since then to make a deal. He is very weak physically and mentally and has been crazy ever since the stroke." Witness did not talk to him the day of his deal with Marinous but talked to him at his home the day before the day he heard he had made the deed, and carried him to town to get some tobacco. Ivey could not get into the buggy without help but by pulling and pushing the witness finally got him in. (That on the way witness talked and Ivey mumbled but they reached Marinous store and Ivey and Marinous stepped into a little back room and talked; Witness could not hear what they said but when they came out Marinous told Ivey, "I'll see that you get a way," or "I'll fix a way to go O. K." Witness did not know what they were talking about but Ivey was at that time what witness would call a crazy man. He had just a child's mind and after they got back to Ivey's house, the latter said he was going to sell his place for one thousand dollars to get something to eat but witness saw the condition of his mind and thought nothing of it. The place is worth infinitely more than one thousand dollars. Witness doesn't know its value now but a year ago it was worth four or five thousand dollars or seven thousand dollars with a building on it. (Plaintiff's testimony pages 16-19)

J. C. GRIFFIN, of Loxley, who has known and lived within a quarter of a mile from Robert Ivey fifteen or twenty years and sold him the land, says: "Ivey is very old and feeble. About seven or eight months ago (witness says on cross-examination this was in the fall of 1931) when Ivey was going away, he insisted on seeing witness before he went and when they brought him to witness's house

he went back of the garage and said he was mixed up about his place. That someone tried to make him believe it was on the other side of the Railroad and he wanted to know where it was. (Witness says on cross-examination that he had noticed things about Ivey's mind before this) At another time in the barber shop he told witness that people were cutting his pecan trees to get the pecans and then they set the trees back on the stump, and that he would talk at random; (The witness says on cross-examination that he saw then that Ivey's mind was gone and remarked it to others) That Ivey had had a stroke of paralysis about a year and a half ago and since then while there are times when he will talk alright and his mind appears clear, he would then ramble as though his mind was gone. Two or three years ago this property was worth at least \$5,000.00; Ivey tried to sell it for \$8500.00 and in 1930 came down to \$6500.00, which was his lowest figure. (Plaintiff's testimony pages 11-14)

H. H. LEVINS, who lives at Loxley since 1918 is telegraph operator and station agent there and has been with the L & N thirty-five years, has known Mr. Ivey since witness moved to Loxley and says: Witness has at times seen Mr. Ivey when he was sure his mind was badly unbalanced. He offered to sell witness his place several times at a much higher figure than the last offer when he offered to sell it for a surprising amount, \$2,000.00. This was a month before witness heard Ivey had sold the place to Marinous but witness considered it worth more than Ivey offered it for and would not purchase because he didn't think it would stand. He didn't think Ivey was mentally competent to make a trade. The place would have been a bargain at two thousand dollars and witness had part of the money and could have gotten the balance. For two or three years witness is positive Ivey's mind was not right and he has not seen Ivey when he thought his mind was right. Few, if any sales have been made around Loxley but witness thinks the Ivey place is worth as much as it ever was. (Plaintiff's Testimony pages 37-40.

J. O. DRISKELL, who lives at Loxley and has known Mr. Ivey for ten years says: Ivey's mind began to get bad in 1929 and 1930 and when he had a stroke it got worse. His mind goes and comes. Witness runs a barber shop ~~at~~ and times Ivey would come there and not remember where he was. He would talk at random and he has been like that since 1929 or 1930 and has gotten worse. The last time Ivey was at witness's place he thought he was at Monroeville or Repton. Witness shaved Ivey the day before he made this deed to Marinous and he remembers it because when he saw Marinous carry Ivey up there that morning his mind was very poor. In answer to respondent's question: "Sometime his mind cleared up and then go bad?" the witness answered, "The experience I had, it stayed bad."

This witness further testified that Marinous taking Ivey to Bay Minette and getting this deed from him has been the subject of talk around Loxley. And in witness's opinion Ivey was not capable on the morning he went with Marinous to Bay Minette of

understanding a transaction of this kind although the witness did not actually talk to Ivey that morning. (Plaintiff's testimony pages 40 to 42)

W. P. HALL, who has lived at Loxley all his life except for the last nine years when he has lived at Daphne eleven miles away, but also maintained a home at Loxley, has known Ivey for twelve years intimately and he says: In his opinion Ivey's mind throughout 1931 was very poor. He is something over eighty years old and is feeble physically and mentally and in November of 1931, he could not have understood a business transaction. Witness doesn't think his mind was in condition to follow the details of any business transaction and he thinks his mind is unsound from the peculiar things witness noticed about him and the foolish things he said. His mind has been that way ever since his stroke three or four years ago and his son, Claude, lives with and looks after him and witness thinks attends to most of his business. Witness doesn't know that he saw Ivey on November 23rd, 1931, but is a justice of the peace and about that time made a deed from Ivey to his son but doesn't think Ivey understood the transaction but his other children were with him and witness drew the deed knowing that Ivey did not know what he was doing and he doesn't think he was capable of executing it although witness certified that he signed it voluntarily but two of the other sons said it was alright. Witness thinks the place is worth about five thousand dollars. (Plaintiff's testimony pages 23 to 25)

M. B. DEWEY, who has known Mr. Ivey ten or twelve years well and lives between one-half and three-quarters of a mile from him and of whom Ivey had been a customer says: Ivey isn't capable of doing any business and hardly knows witness at times and for the past couple of years has inquired of others who witness is; That Ivey could not recognize witness's voice; That his trouble was just the breaking down of old age. His mentality was slipping. He was non compos mentis; would ask the same question over and over again and when he would later in the day see witness would ask the same question again. In witness opinion the Ivey place at Loxley was worth about four thousand dollars in November of 1931. The buildings are good and the house cost twenty-five hundred dollars. In 1931 there were orange trees on it and Irish potatoes were raised on it. Witness doesn't know how many orange trees but knows they bore fruit because witness bought some of it. He doesn't know if there were any land sales in 1931, but values hadn't materially depreciated. (Plaintiff's testimony pages 27 to 29.)

ROBERT MAHLER, the Post Master at Loxley and engaged in the real estate business there had known Ivey about ten years and he says: While witness doesn't know him intimately he has seen him every day and talked to him in ordinary conversation. Witness hasn't seen him for a year but Ivey's mind was very poor when witness saw him last and it was not very good in November of 1931, and in witness's opinion he was not capable of carrying on a business deal. Witness

saw Ivey in November of 1931 but doesn't know the day he executed the deed or whether witness saw him that day: He noticed the peculiar things about Ivey in ordinary conversation. He would drift from one subject to another. Sometimes would want to go fishing with witness and the next time would not even know witness. He could not keep on any one subject. Some land around Loxley has sold about that time for thirty or forty dollars an acre and land was not selling much in 1931. Some sold at a low price. Witness knows the Ivey place and in his opinion it is worth between five and six thousand dollars. (Plaintiff's testimony pages 25-27)

D. S. COMSTOCK of Loxley, has known and lived within a mile of Mr. Ivey for twelve years and up to a year ago saw him every day; says: For the last two years he has been childish and rambled in his conversation, going from one subject to another so that it was hard to get him to stay on one subject. His talk was very disconnected. Witness cannot say he saw Mr. Ivey on November 23rd, 1931, but he was in that feeble condition before that date. He looked to be about seventy-five years old and is very feeble. He hasn't engaged in any business for several years.

Mr. Ivey's place is practically in the heart of Loxley and about a quarter of a mile from the depot; about two years ago Ivey valued it at \$8,000.00, and under the present conditions it is worth about half that. It is a six or seven room house built of concrete blocks about fourteen years ago and is in good condition. The place is cultivated in orange and other trees. (Plaintiff's testimony pages 1 to 4)

W. S. J. RICHBERG, who lives one and a half miles east of Loxley and has known Mr. Ivey intimately six years says: Since his stroke Mr. Ivey's mind has been very weak. He has not been able to carry on a business conversation and in witness's opinion his mind is gone and has been gone since his stroke. One day he would know him and next day he wouldn't. For a few minutes he would have lucid intervals. Witness has visited Ivey since the stroke and once he stayed with him one hour and a half. Ivey was very feeble and was unconscious and did not know witness at all. He was in bed and in a trance-like. Since then witness has seen him in passing and in the last two years has seen him six or eight times at his place walking around on crutches. Sometimes Ivey would speak and sometimes he wouldn't and at this point the following examination occurred:

- Q. by Respondent: "His mind was some days good and sometimes wasn't?"
A. "Yes,"
Q. by Complainant: "You mean his mind was alright?"
A. "No, just a few minutes you could get in a conversation with him and tell it mighty quick."
Q. by Respondent: "You wouldn't be prepared to swear he didn't have his mind alright ordinarily?"
A. "No, sir, because I wasn't with him."
Q. by Complainant: "But you know the times you were with him it was

only momentarily he was alright?"

A. "Yes, sir."

(Plaintiff's testimony pages 34-37)

H. W. WILSON, who has lived at Loxley and known Mr. Ivey since his stroke of paralysis says: Since his stroke Ivey's mind has been about like a child's. He couldn't carry on a conversation. On one occasion he said a lot of monkeys had cut down his trees and he would start talking and keep on after the party he was talking to had left. He would sometimes talk a little sense and again he wouldn't. Witness didn't talk to him the day he went to Bay Minette and signed the deed but saw him go by in the car and since Ivey had this stroke it is the subject of general knowledge around Loxley that his mind was gone and from what he knows of him, witness doesn't think Ivey would be capable of keeping the details of a sale of land in his mind. (Plaintiff's testimony pages 43-45)

G. C. FULLER, who has lived at Loxley since 1924 and known Ivey during that time says: Witness didn't come in contact with Ivey awfully much before his stroke but Ivey seemed then to be evasive and in a fog. Witness didn't come in contact with him very much after the stroke but knows there was considerable deterioration from what he was before, but he doesn't know his mental condition when he signed the deed. Witness knows the Ivey place, his own place is three or four blocks from it and in witness's opinion the Ivey place should be worth three or four thousand dollars in normal times. (Plaintiff's testimony pages 47-48)

LEONARD NALLS, who lives at Repton says: Witness knows the time when he heard Ivey made a deed to Marinous. He saw Ivey about that time and cannot say he was mentally balanced. He seemed very weak physically and mentally. His mind comes and goes and he seems worse sometimes than at others but is bad all the time. (Plaintiff's testimony pages 45-46)

D. W. FIELDS, lives two miles north of Loxley and has known Mr. Ivey both before and after his stroke of paralysis says: When witness first came to Loxley Ivey was alright and seemed to witness "to be getting on some," but after the stroke he wouldn't know witness when he met him in the street and it seemed to witness his mind was completely gone. Witness would at times help carry him home and when he would tell Ivey his name, he wouldn't remember witness. Witness can't tell whether Ivey's mind was better sometimes than at others, but every time witness has seen him since the stroke he was off. (Plaintiff's testimony pages 53-56)

J. H. MORRIS, who has lived at Loxley twenty years and knows Mr. Ivey says: In opinion of witness and of all men witness has heard talk, the condition of Ivey's mind is bad. Witness cannot say it was completely gone but was in such shape he was incapable of doing business. Witness cannot say that Ivey's eyesight is bad because witness is himself blind but he is a neighbor of and visited Ivey frequently and talked to him in 1931. Sometimes he stayed three hours and in answer to the question by respondent: "His mind would clear up at times wouldn't it?" answered, "No, it didn't seem clear. At times you couldn't make him understand. He wouldn't know who I was." The witness stated that Ivey could carry on a conversation to some extent but would be at random and would talk about two or three things and jump from one thing to another. Witness doesn't know the condition of his mind at Bay Minette but knows his mind was gone before November 23rd, 1931, and has been gone ever since that date. (Plaintiff's testimony pages 56-59.)

R. A. APPERSON, who has lived at Loxley for thirty-five years and known Mr. Ivey since 1920, says: Witness has known Ivey intimately for the past six years and was one of his nearest neighbors, living about an eighth of a mile from him. In last part of 1930, or first part of 1931, Ivey had a stroke but witness doesn't think he has been in his right mind for the last five years and knows that in October of 1931, his mental condition was not such that he could understand a business transaction. Witness would frequently send one of his children to take him back home. Witness can't swear he saw him November 23rd, 1931, but saw him just about every day. Witness operates a filling station and never did business with Ivey but Ivey would come to his place and talk and in ten minutes would not know where he was or how to get home. He asked where he lived and talked about some of his children not within one hundred miles. He went about by himself but sometimes his people had to come after him. Sometimes when his daughter, Mrs. Grant, came for him for supper, she would have to argue with him to get him to go and one night he would not go until witness took him home. Witness saw Ivey about October 23rd, 1931, and has seen him since and he says his physical and mental condition was about the same and was of a continuous nature. In witness's opinion Ivey's place is worth from forty-five hundred to six thousand dollars but no land around Loxley was sold in 1931 except that witness sold one hundred acres of wild land, seventeen acres of which were cleared with a six-room house and a barn on it, for forty-two dollars per acre. This land was three miles out from Loxley. Witness thinks that times were better in the first part of 1931 than in the last of that year.

E. S. TUNSTALL, connected with the Tax Assessor's office at Bay Minette says: Witness has known Ivey for the last seven years and in his opinion Ivey's mind has been off at times since his stroke and he hasn't been capable of attending to business in the last three years. He is very old and hasn't signed his assessment in three years. Loxley is eighteen miles from Bay Minette and witness would see Ivey two or three times a year and talk to him. It seemed

to witness that his mind was better sometimes than at other times but witness didn't see him on November 23rd, 1931. Every time witness has seen him in the last three years his mind seemed bad. He can't say whether it was better at sometimes than at others. (Plaintiff's testimony pages 60-62.)

Respondent's evidence on these points is given by himself and witnesses as follows, viz:

DR. R. A. HAIL, of Robertsdale says he graduated in medicine in Tennessee and has been doing a general practice forty-three years and reckons he has known complainant since he came here in 1924, and saw him every few days and talked with him, just meeting and speaking to him in a general way. He noticed nothing peculiar about him and thinks his mind was as good as anybody's but thinks he has cataracts. Witness made a specialty of mental diseases about twenty years ago when he studied for six months in Chicago. He has never lived in Loxley or practiced for either of the parties and is not intimate with anyone. He knows when complainant had a stroke but did not attend him and doesn't now know when it was but doesn't think complainant has been feeble since. Witness would just meet him and pass on by. He is a busy man and sizes up a man in three seconds. He can't tell where he saw complainant except that it was in Loxley and might have been in Keuler's. He thinks a thousand dollars would be a fair price for the property in November, 1931. (Respondent's testimony, pages 1-5)

ALBERT KEULER, has been engaged in the garage business at Loxley eight years. He says he knows both Marinous and Ivey and sold Ivey gas and oil and cashed his checks. He knew him in November of 1931, and before and noticed nothing peculiar about him except his eyesight and thinks his mind was sound when he sold this property to Marinous. Witness doesn't know whether ~~Marinous~~ had a car or whether witness sold him gas, oil and parts since 1929. When he cashed complainant's checks, witness filled them out and showed complainant where to sign. He doesn't know that complainant had a stroke of paralysis or has been in good health since 1930, but thinks he used crutches. Witness has known this land since he moved to Loxley and thinks a thousand dollars was a fair price but he never bought any land, doesn't know what it would cost to build the house, doesn't know the value of the house, was never engaged in the real estate business and never heard of Dr. Hail being engaged in the real estate business. He heard several people discussing this Marinous deal but doesn't know who they were except that he remembers Claude Ivey saying the price was low. He has heard that the Ice Company bought two or three acres of this land or had an option on it but doesn't know whether the price was a thousand dollars. (Respondent's testimony, pages 5-10)

LOUIS WILLIAM LACEY, has lived at Loxley for twenty years and farms there, says: Witness was in the garage business for several years and sold complainant gas, oil and parts but went out of that business since 1923 or 4 and hasn't had any business dealings with complainant since 1929; He lived about a mile from him. He also knows Marinous and bugs, feed from him. He talked to complainant frequently and noticed nothing peculiar about him and in his opinion his mind was sound. Complainant had a nice orange orchard but it was killed in 1923 or 1924. He doesn't know what percentage of the trees was killed; He knows about when complainant had a stroke but didn't go to his place, but the fact was generally known. He doesn't know whether complainant has since gone on crutches. There has been no market for property in three years and a thousand dollars would be a good price for this property. Witness never purchased any property himself but had some given to him by his aunt; He has never been in the real estate business; Doesn't know what it would cost to build Ivey's house but it would cost about seven dollars an acre to clear land. Witness went to the house on the day before he was testifying to get his wife's dress. This was the first time he had been there in a year and a half. He has been there about two or three hundred times in his life but doesn't know how many times since 1930. (Respondent's testimony pages 10-17)

GEORGE MARINOUS, says: He has lived at Loxley and known complainant ten years. In 1931 witness and Peter Frankos were partners and complainant's daughter worked in and complainant traded at witness's store all the time. He was a very close friend and trusted the witness with everything. Witness never saw anything strange about him and thinks his mind is sound. Complainant offered to sell his land several times, the last time in 1931. He came to witness's store grumbling about numerous matters and said he wanted to sell his place and go live with Dan, that Claude makes him pay for everything he does. Witness told him he couldn't buy the property but knew of a man in Chicago who probably would. He wrote the man that he was buying the property and told him to send his note and check. Ivey came back to know if he had sold and witness told him to come back Monday. Early Monday morning he was there waiting for witness to get the deeds. In the meantime the day before Ivey's deed was made, the son asked witness where he was going with the old man and witness told him his father wanted to sell the land and they were going to make the deed; that Claude told him his father was not capable of transacting business and witness said, "Alright, I'll talk to the old man." He told him what Claude had said and Ivey said, "The land is mine and you can get some doctors to examine me and I will pay them." Witness then came with him to his attorney, Heard's office, explained the situation to him and Heard said, "Well, we will get a doctor to examine him." That the old man told Heard he wanted him to get a doctor and he called the Cashier of the bank, Orrie Hall (who is now dead) and told him, "You know that I am good." Heard called Dr. Bryars to examine Ivey and witness explained the case to Mr. Stapleton and Stapleton said it "didn't seem a bad idea." That witness, Heard, and Mr. Chason, his law partner, Dr. Bryars and Orrie Hall were in the room examining complainant and when he came out, witness said, "What is it Mr. Heard?" and Heard answered, "Just

as sound as a dollar. We don't see anything wrong with him. Witness then told Heard to make the deeds and went in there. Complainant gave Mr. Hall the money and told him where to put it. He paid him five hundred dollars and gave a five hundred dollar note which witness signed in Frankos' name until the other came in from Frankos. The next morning complainant came to witness and said, "The boys are going to come over here and give you trouble and I want you to take me to Bay Minette; I want to tell Mr. Orin Hall and if anything comes up pay the expenses." On the first trip he had Orrie Hall pay the taxes and the next day he told witness what was going on and that he didn't want this respondent to get into trouble. Everything was alright until the boys talked to the old man and may be the old man realized that he should have consulted them. Witness never saw the complainant any more. Late in the afternoon Robinson, Complainant's son-in-law, came to witness and tried to show him that he was doing wrong. He said witness had robbed the old man and took the property and asked witness if he wouldn't give his money back and witness said he would not unless they paid two hundred dollars for expenses. They refused to pay this amount. Witness was buying this property for Peter Frankos who lived in Chicago and was still his partner. He says further that when W. W. May heard he had bought the place he wanted it and witness told him to come to him and buy it. That Grimes had told witness he didn't want to stay in Baldwin County but after the deed was made to May said he wished he had known it and he would have bought it. They gave May a deed and let him take the place but when this action was filed May said he wasn't going to court and witness told him to turn the place over to him.

Further testifying the witness said he knew the property in 1931. That he owned property in Loxley and knew the value. It is not a real estate agent and there was not much of a sale for property in 1931. In witness's opinion one thousand dollars was a fair price for property at that time.

On Cross-Examination he stated that all of the respondents were over twenty-one and under forty-seven years of age when this bill was filed. Complainant was pretty old and feeble. Witness guesses that complainant had had a stroke of paralysis because he went around on crutches but this was a year or two ago and he was getting better all the time. Witness knew complainant's physical condition and brought him to Bay Minette to witness's lawyer. Complainant did not go to Heard's office because he couldn't get up the steps, but witness and complainant came to Bay Minette in witness's car and witness had the deed drawn to Peter Frankos, in Heard's office and brought it down for Ivey to sign. Ivey told witness to put in everything, as he wanted to get out of there and mentioned certain machinery and horses and mules but he didn't know where the machinery was. After the deed to Frankos was made witness prepared the deed from Frankos to W. W. May and a deed from W. W. May to witness to get May out of trouble. He doesn't remember whether he left the deed from May to himself at Bay Minette and to May to come by and sign it or not but R. C. Heard drew the deed. I was always running around in witness's store and sometimes worked for him and was working for him in the shipping season of 1931. Wi

JEROME SEAY, who lives at Loxley and is an employee of Marinous, says he was working for Marinous in 1931, and he knows Robert Ivey, has known him for fifteen years, often had conversations with him and never noticed anything out of the ordinary. He remembers when Marinous bought this land, that Ivey came there two or three different times and talked to Marinous about it and told him he wanted to sell but that Marinous didn't care to buy. He heard the time they agreed to make the trade and heard Ivey say the boys didn't want him to sell, but Ivey said he needed the money. He didn't hear Marinous tell him what Claude had said about it but did hear him say he would get a doctor to examine him, and witness would say Ivey was then of sound mind. Ivey couldn't walk good and used crutches. Witness saw him regularly until the last year or two but doesn't remember the dates but it was after he had the stroke. He did see Ivey's son talk to Marinous after Ivey himself talked to him but doesn't know what they were talking about but Ivey said he was going to get a doctor. Ivey's mental condition was the subject of discussion before the trade was made and two or three of the boys talked to Marinous after the trade was made but he doesn't know what they were talking about but heard they were talking about Ivey's mental condition and witness had heard two or three people talking about Ivey's condition. He never heard Mr. Ivey say anything to Marinous about Claude's beating him or about him having to pay Claude. He knows the property which is at the edge of Loxley. In 1931 things were dull and in his judgment a thousand dollars was a fair price. The witness has never been in Mr. Ivey's house or examined it and has never seen it except from a distance. Witness never built a house like this one or had one built and hasn't the remotest idea what it would cost or what it would cost to plant the fruit trees. Witness was not summoned to the hearing but came at the request of Marinous. (Respondent's testimony pages 34-40.)

JAMES GRIMES, who lives at Loxley, works for and is a partner of respondent, says he has known Robert Ivey twelve years and up to the last year or so, saw and talked to him frequently. He guesses he saw him in the latter part of 1931, and didn't notice anything peculiar and from his transactions would say that Ivey's mind was sound on November 23rd, 1931. He would want rock bottom prices and would take a day to decide to buy. He said that Ivey tried to sell the property to witness and to many others for one thousand dollars, dozens of times but the witness didn't know the dates except that it was about five years ago. That he tried to sell to anyone he had a conversation with, and in answer to question as to whom they were, gave no names. Witness has bought a little real estate in Loxley and heard of others buying but in 1931 real estate was low and still is. In witness' opinion a thousand dollars would be a fair price for the property. Ivey raised oranges on it every year but witness thinks that they had not been attended to in the last couple of years and are gone. In 1930 Ivey bought fertilizer and paid with checks on the Baldwin County Bank. Witness would fill out the checks and Ivey would sign them. Witness never visited Ivey but was there three or four years ago. He doesn't know what it would cost to build the house but it would cost five dollars per acre to clear the land. Witness has heard that Ivey was paralyzed about two years

ago and he has been on crutches since. It was before this he tried to sell the land. (Respondent's testimony, pages 40-48)

F. W. FRISKHORN, who lives at Loxley, says he has known complainant about ten years and saw him last about May, 1931, when he was ill and had a few words with him and noticed nothing out of the way. Witness has heard he had a stroke. (Respondent's testimony, pages 48-50)

DR. J. F. BRYARS, says he graduated at the Mobile Medical College in 1905, and has practiced medicine since then. He farms, hunts, fishes, and practices medicine some. He met and examined Robert Ivey for about ten minutes in the bank when his mentality was questioned about two years ago, but doesn't remember the date. He had never seen him before or since and the examination consisted only in asking questions. Witness was called by telephone to make the examination by Mr. Heard of Hybart, Heard and Chason and Mr. Heard paid ten dollars for it. He doesn't know who was present or what questions were asked. He has never made a specialty of mental diseases and there is a whole lot he doesn't know about them, but doesn't think more than ten minutes is necessary for an examination. Whether paralysis weakens the mind depends on its location and if Ivey had been paralyzed witness couldn't tell it but he didn't ask. Ivey was not on crutches but was walking around the office. Then the witness says that witness was sitting down the whole time. The witness was called because the parties wanted to see whether Ivey was mentally capable of making a trade but witness didn't ask him anything about the trade. The doctor says that in his professional opinion the man was mentally sound and able to enter into a business transaction. (Respondent's testimony, pages 50-54)

W. D. STAPLETON, who lives at Bay Minette says he has known Robert Ivey ten or fifteen years when he was a customer at the bank and had a good many business deals with him and never noticed anything out of the ordinary. He remembers when he executed the deed, (but later says he didn't see him sign the deed) and noticed nothing out of the ordinary but that Orrie Hall attended to most of his business and witness did not pay any attention. Witness did not know or ever hear that he was paralysed and would say that he was of sound mind. He never saw him on crutches and he was not on crutches on November 23rd, 1931. Witness saw him in the bank then but didn't know what part of the bank and doesn't know if Hybart, Heard and Chason attended to the business and he didn't see them there. Witness owns considerable land in Baldwin County and is acquainted with this land and in his opinion one thousand dollars was a reasonable price for it but witness has never been in the house, doesn't know when it was built or what it cost and never examined it closely; That the value of land depends to some extent on the value of the house on it and it cost from five to fifteen dollars per acre to clear the land. This land was cleared.

No difficult principles of law are presented by this case and we think that complainant under the evidence is entitled to a decree and submit the following:

POINTS AND AUTHORITIES.

- A. Contracts of an insane person are void.
Code Section 6824
Alexander vs Livingston, 206 Alabama, 186.
- B. The test of the sufficiency of complainant's mental capacity to make the deal is whether he had sufficient capacity to understand in a reasonable manner the nature and effect of the act he was doing.
Hall vs Britton, 216 Alabama, 265 (Sub Sec.2)
- C. Equity has jurisdiction to cancel a deed executed by an insane person.
Hall vs Britton, supra,
Pike vs Pike, 104 Alabama, 642,
16 Southern, 689
Kirby vs Arnold, 191 Alabama, 263.
- D. The bill was properly filed in the name of Complainant by his next friend.
Code 6519,
Hall vs Britton, supra.
- E. While the burden of proving the mental incapacity of Grantor at the time the business was transacted is on complainant, yet if it is once shown and is not tracable to a cause in its nature temporary, this mental incapacity is presumed to continue and the burden of removing the presumption is on him asserting the validity of the act done.
Pike vs Pike, 104 Alabama, 642.
- F. If it is shown in this case that Ivey, because of his age and mental weakness was in such condition prior to the act, he could not reasonably understand the nature of the transaction and such mental incapacity is not tracable to a temporary cause. The burden on the respondents of showing sanity is not met by showing that prior and subsequent to the act Ivey was temporarily sane. A lucid interval in its nature is temporary and uncertain and no presumption arises of its continuance for a month, a day or even an hour. The protection of persons mentally weak requires that evidence of a lucid interval be examined with careful scrutiny and each case must

depend on its own facts and circumstances.

Pike vs Pike, supra.

G. A conveyance of realty for a grossly inadequate consideration by unfair advantage taken of Grantor's mental weakness will be set aside on application reasonably made.

Walling vs Thomas, 133 Alabama, 426,
Kirby vs Arnold, 198 Alabama, 263.

H. A deed given for a grossly inadequate consideration by unfair advantage taken of Grantor's great mental weakness, although not amounting to absolute incapacity will be set aside on reasonable application.

Pool vs Menifee, 205 Alabama, 531.

I. This deal was engineered by Marinous, who, through mesne conveyances is disclosed to be the real purchaser. Therefore no bona fide purchaser's interest is involved. He cannot insist on the return of any money he may have paid unless complainant has that money in hand, and Marinous will be required to take the proceeds, viz: the bank's certificates, if he acted fraudulently in the premises.

Pike vs Pike, 104 Alabama, 642

J. If restoration of the purchase price is necessary, the offer made by Ivey and Marinous' refusal operates as a waiver of tender.

Smith vs Thomas, 201 Alabama, 442,
Pike vs Pike supra.

Gayle Miller v. Gray circa 206 A 586

ARGUMENT.

I respectfully submit that under this evidence it is impossible to reject the theory that an outrageous advantage was taken of old man Robert Ivey's mental weakness by George Marinous who himself says that the old man trusted him in everything, when Marinous adopted and carried through a plan to acquire all the old man had; his home, his farm and his means of livelihood, for

by discussing all the evidence in detail but I do want to submit that the evidence of the respondent and those who testify for him does not consist with reason and is not of a nature to impress a tribunal with its sincerity or with the idea that the witnesses, however honest they may be, are disinterested or in a position to know the truth of what they say.

In a case of this kind it stands to reason that the medical experts, if they are in a position to know, are more nearly equipped to intelligently present the case to the court and I shall discuss their testimony in substantial detail:

Dr. Jordon has been complainant's personal physician for five years, was with him when he had the stroke of paralysis before this deed was made and has treated him ever since for everything he had and while he doesn't specifically recall that he saw him on November 23rd, 1931, he does know as to his mental condition ever since the preceding January when he had the stroke; that it is permanent and that the witness saw him every month and knows from having seen him before November 23rd, and up to now that during all that time the old man's mind was a blank and that he was practically an imbecile because of the degeneration of old age.

Dr. W. F. Betts of Evergreen was complainant's physician before he came to Loxley and treated him while he was at Range, Alabama, throughout the year 1931, and he says that complainant was suffering from senile debility, a general break-down from old age which affected his brain and that while he might at times have understood the nature of a business deal, he would at all times be easily imposed upon. In connection with this testimony we call the court's attention to the testimony of W. B. Solley,

who went with complainant to Marinous store the day before the deal was made, saw Marinous take complainant into a side room and when they came out heard Marinous tell the old man, "I'll fix a way." It will be recalled that on this trip to Marinous store the old man could hardly talk but only mumbled and had just a child's mind and to the testimony of Claude Ivey, who, after testifying that his father's mind was a blank since the stroke in January, stated that this mental condition was continuous. As against this testimony by disinterested physicians who are in a position to and did know the facts, we have the testimony of Dr. Hail, who says he studied mental diseases for six months twenty years ago, never treated or was intimate with complainant or ever saw him except in passing; is a busy man and says he sizes up a man in three seconds; and of Dr. Bryars who never saw complainant except for ten minutes in his life and was then paid ten dollars by respondent's lawyer to examine complainant and see if he understood the trade he was about to make, asked him only a few questions which he has now forgotten except that he knows he didn't ask him anything about the trade and now testifies to an environment then existing entirely at variance with what the other witnesses say. I submit that the inaccuracy and worthlessness of any such examination clearly appears when the doctor says that he didn't even discover the admitted facts, that respondent had been paralysed or went about on crutches.

In submitting what I have said I am not unmindful of the law that originally the burden rests on him who alleges insanity to prove it, nor am I overlooking the requirement that such facts must exist at the moment the act is done, but I also have in mind that it isn't necessary to show the actor was a raving maniac but only that he couldn't reasonably understand the act he was doing and

further that while complainant has the original burden of proof, this burden shifts when it is shown that mental incapacity once existed and is not tracable to a temporary cause and submit that the ravages of old age do not vanish and when shown to be the cause of mental incapacity the burden has shifted to respondents. The well-reasoned case of Pike vs Pike cited above clearly supports this proposition where Chief Justice Brickell says:

"If insanity is not tracable to a cause in its nature temporary, the presumption is of its continuance and the burden of removing this presumption devolves upon the party affirming the validity of the act done."...the effect of such evidence is to invert the order of proof and presumption and cast upon the other party the burden of showing the execution of conveyance was during a lucid interval, that there was a restoration of the Grantor to his faculties enabling him to comprehend intelligently the nature and character of the transaction in which he was engaged and evidence that prior thereto and subsequent there to the Grantor had intermissions of the derangement cannot be made the basis of an inference that he was sane at the execution of the conveyance. A lucid interval is ~~not~~ in its nature temporary and uncertain and there can be no legal presumption of its continuance for a month, a day or an hour. The protection of the insane requires that such evidence be examined with jealous scrutiny, otherwise fraud and imposition will be practiced upon them with impunity ... there must be clear, convincing evidence of the intermission of the insanity and that the act proceeds from the unaided volition of the party ... the manner of performing the act, the circumstances attending it, whether the act is in itself rational or irrational in accordance with conduct of ordinary prudence and intelligence, afford strong evidence of the presence or absence of a lucid interval." I respectfully submit that the respondent hasn't met his burden.

I further submit that the evidence of respondent and the several laymen who testified for him, is not free from suspicion and disinterestedness and that their testimony does not emanate from persons in a position to know whereof they speak or free from bias.

For instance, Albert Keuler says he knew complainant by selling him gas and oil in 1931, and then says he doesn't know whether complainant had a car since 1929; he says that one thousand

dollars would be a fair price for the property and then says he never bought any land, doesn't know what it would cost to build a house and knows nothing of its value.

Louis William Lacey says he knows complainant through selling him gas, and oil and considered his mind sound in 1931 but the witness sold him this gas and oil while witness was in the garage business and he went out of that business in 1923 or 1924. How well he knew the complainant and was capable of adjudging his mental condition is shown when he says he didn't even know the admitted fact that complainant went about on crutches since his stroke in 1931, besides which the witness couldn't have sold him gas and oil in that year because the complainant didn't have a car since 1929. Then the witness says one thousand dollars would be a fair price for the property and admitted he has never purchased any property or been in the real estate business and that he didn't know what it would cost to build the house. He says the orchard was killed in 1924, but if so, he didn't know that it was replanted or how many orange trees are now on it and he knows nothing that would enable him to calculate the value of the property. This witness buys his feed stuffs from respondent.

F. C. Griffin says he knew the complainant in 1931 through selling him gas, oil and parts, ~~and~~ while it is undisputed that Ivey had no car and had no use for these since 1929. The witness says it seems like he remembers Ivey's having a stroke of paralysis but he doesn't know the date. All the evidence shows that this fact was generally known around the town of Loxley and yet the witness says he noticed nothing peculiar about Mr. Ivey when the Marinous deed was made. This witness does Marinous Garage work.

Jerome Seay says he never noticed anything out of the ordinary with Ivey and that he was of sound mind and yet Ivey was admittedly a paraletic on crutches since January of 1931, and had to be helped everywhere he went. The witness says he heard the parts of the conversation in Marinous' store between Marinous and complainant but his mind is strangely blank on everything that occurred there that might be a benefit to the Complainant in this case. From what this witness says, complainant had for years been trying to sell this land for one thousand dollars to everyone he met. A fact which, if true, would in itself show that Ivey was an imbecile, and testimony strangely at variance with the testimony of Mr. Levins, the telegraph operator, that Ivey had previously been asking very much more for the land and only a month before Marinous got it, was offered it at the astounding figure of two thousand dollars. The witness further says that a thousand dollars was a fair price and yet he had never been in the house, had seen in only from a distance, had never built a house like it and hadn't the remotest idea of its value or the cost of the fruit trees. This witness is Marinous' employee.

James Grimes says that Ivey's mind was sound in November of 1931, but he only guesses that it was in the latter part of that year he saw Ivey and the witness later says that he doesn't know but only heard Ivey had been paralysed two years before and says that Ivey's mind was sound because sometime, he doesn't say when, he wanted rock bottom prices and would take a day to make a purchase. He imputes the same rashness to the old man as his friend, Seay does, when he says that he tried to sell the land to

witness and many others for one thousand dollars dozens of times. Apparently the old man was obsessed with a "madness to sell" for the last five years, and it was in this situation their patron, Marinous, took occasion to buy from the man he says trusted him in everything. This witness likewise says one thousand dollars was a fair price and yet he never visited the place, doesn't know anything about the building, nor how many orange trees are bearing. This witness works for and is a partner of Marinous and while he says he refused to purchase, he contradicted Marinous, who says that the witness stated to him in substance that he wished he had known the place was for sale so he could have bought.

The witness, Friskhorn, says that in his opinion Ivey's mind was sound, yet the last time the witness saw him was in the preceding May when he had a few words with him while complainant was ill. It has been years since the witness had a business transaction with complainant and his relations with him were when they were fishing together but Ivey hasn't fished since his stroke in January of 1931, and clearly the witness hadn't seen him since that time because he had only heard about the stroke. It pretty clearly appears that witness hadn't seen this complainant during 1931 at all.

It remains only to analyze the testimony of "JUDGE STAPLETON". He freely testifies that on the occasion inquired about Mr. Ivey's mind was, in his opinion, sound and that the property was well sold for one thousand dollars, yet it appears from his further testimony that he had nothing to do with this transaction. He says that he has had many business transactions with complainant in the bank and noticed nothing out of the ordinary on this occasion and yet it later appears that Oppie Hall, who didn't testify, attended

to all of Ivey's bank matters and that the witness never paid any attention to him and didn't even notice that Ivey was paralysed or went about on crutches on the date inquired about; He didn't even know that Heard and Chason or Bryars were there and didn't recall any of the facts the other witnesses stated. In regard to the value it appears that he had never been in Ivey's house, had never seen it except from a distance, has no idea of what it would cost to build and we submit that the Judge's testimony as to Ivey's mental condition and as to the value of his property is worth just a little less than nothing.

I am not going to discuss in detail Marinous' own testimony except to submit to the court that it is mildewed with inaccuracies and improbabilities. He pretends that he didn't want to purchase and yet he brings the old man to his own lawyer at Bay Minette to make a deed after he had been told that Ivey's mind was in such condition he couldn't make a trade; He pretends that he was in no hurry to close the deal and put it off on the pretense that he wanted to hear from his friend, Frankos in Chicago and he goes to Bay Minette and is in such a hurry to close the deal that he didn't wait for Frankos note but signed Frankos' name to the note himself, thereby giving to complainant an absolutely worthless paper. He pretends that the property was not worth more than he was giving and yet he represented to his Chicago friend that it was a good investment. He pretends that he was at all times willing to deal fairly with Ivey and yet he refused to accept the purchase price back the day after the deed was made unless the Ivey boys would pay him two hundred dollars pretended expenses for closing the deal, whereas it is clearly shown by his own checks that Ivey himself had paid these expenses.

We further submit that the devious and mysterious ways he took to acquire the property himself is strongly spiced with the suggestion that he knew Ivey's mind wasn't right and thought that by adopting this method he would inject a bona fide interest that would be proof against attack.

As against such evidence complainant has introduced the testimony of just exactly eighteen disinterested witnesses who are in a position to know and who did know that Ivey's mind was so enfeebled he couldn't carry on the details of this business deal and that the property involved was worth vastly more than one thousand dollars, even if Marinous had paid that amount, and the deed should be set aside.

Complainant has offered and still offers to do equity but he has brought into this court a chain of evidence that shows manifest fraud and while under the law he will pay the actual money, Marinous caused to be placed on savings deposit in the Baldwin County bank, yet since such fraud existed and Marinous is in no sense an innocent party, he should be required to accept in full satisfaction the proceeds of the money, viz, the bank certificates.

I believe the cases cited sustain that contention.

Respectfully submitted,

B. J. Remillard

*I delivered a copy of this brief
to Mr. R. H. ... of ...
on March 1st 1934*

Me...

B. F. MCMILLAN, JR.
ATTORNEY AT LAW
803-806 VAN ANTWERP BLDG.
MOBILE, ALABAMA

February 18th, 1935.

Mr. Robert S. Duck,
Clerk of Circuit Court,
Bay Minette, Alabama.

Dear Mr. Duck:-

STATE VS RICHERSON.

I have yours of the 16th with reference to the subject matter. I note the concluding sentence of the first paragraph. When the transcript is completed I want to see the original as well as have the copy. The usual practice is for the attorney for appellant to file the transcript in the Supreme Court but I want to be sure to see it in this case because I want to check with you some of the entries.

IVEY VS MAY.

I note the second paragraph of your letter. You will of course follow the caption in the commencement of the transcript as in any other case and issue the pleadings. My recollection of the way this will come down is this:

- (1) Original bill;
- (2) Answers of the several respondents;
- (3) Amendment to the original bill;
- (4) Demurrer to the amended bill;
- (5) Order withdrawing the amendment and demurrers;
- (6) Decree;
- (7) Note of evidence;
- (8) Final decree;
- (9) Evidence;
- (10) Certificate by the clerk.

I would suggest, however, that when you get ready to start on this record you let me know and I will come to Bay Minette and we will outline preparation of the transcript together. I think this is essential because there are a great many documents in this case that should not go into the transcript.

Yours truly

B. F. McMillan, Jr.

BFM/im

I N D E X

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.

FALL TERM, 1934

ROBERT IVEY,
By his next friend,
CHESLIE A. ROBINSON,

vs.

W. W. MAY ET AL.

Tried before the Hon. F. W. Hare,
Judge Presiding, and a Jury, on
Tuesday, September 10th, 1934.

A P P E A R A N C E S :

FOR THE PLAINTIFF:

HON. B. F. McMILLAN,

FOR THE DEFENDANT:

MESS. HYBART, HURD AND CHASON.

TRANSCRIPT OF THE EVIDENCE:

=====

THE COURT: Gentlemen of the jury, I want to make this preliminary statement: This case is an equity case, one that was submitted to me for decision on testimony taken by depositions, that is, on paper, and the case seemed to me to be rather difficult, and one that the court needed enlightenment

2 on, and I suggested to the parties that the matter be submitted to a jury to determine three questions that will be submitted to you, and that the parties use the depositions which had already been taken and any other testimony that they saw fit to take before the jury orally, so as to present the entire question or questions to the jury as fully and completely as possible. Now the attorneys representing the plaintiff and the defendant will state their respective contentions and the issues that will be submitted to you. You can go to the jury, gentlemen:

CHESLIE A. ROBINSON, a witness for the plaintiff, having been first duly and legally sworn to speak the truth, the whole truth and nothing but the truth, doth depose and say as follows:

DIRECT EXAMINATION, by Mr. McMillan:

Q. Your name is Cheslie A. Robinson?

A. Yes, sir.

Q. Mr. Robinson, did you know Mr. Robt. Ivey?

A. Yes, sir.

Q. Where is Mr. Ivey?

A. I don't know just where he is; he is not able to be out. He is staying with some of his folks- not able to get out of the house.

Q. What kin are you to Mr. Ivey?

A. Son in law?

Q. How long have you known him?

A. Practically all my life- I will say 25 years, at least.

Q. How old is Mr. Ivey?

A. He is around 83 years old.

Q. On August 31, 1932, he was about eighty years old, wasn't he?

MR. HYBART: We object to him leading the witness.

THE COURT: I think that's a plain deduction.

Q. How intomately and for how long had you been intimately associated with and thrown Mr. Ivey?

A. Since 1919- would be twelve years.

Q. Had Mr. Ivey- Mr. Robert Ivey- had a stroke of paralysis?

A. Yes, sir.

Q. When?

A. In January, 1931.

Q. Afyer his stroke of paralysis, what was his apparent mental condition?

A. Well, his mind was blank. He had no mind at times. Of course, he would apparently talk for a minute or two with a little sense, and then go off on something had no sense to it

Q. You say he talked something had no sense to it- what did he say?

A. So many different things I could not begin to-- in other words everyday there was something different, but I might recall some of the things he would say.

Q. Well, recall them?

A. One thing was that he - in fact he told me at my place just about a month before he made this deed to Mr. Merinous, he told me that ~~his sons~~ his sons, Claude and Aaron ~~Maxxaxons~~ who were the parties living with him at the

time, would not take care of his place and he was going to get rid of his place, and he offered to sell it to me for \$750. because they would not take care of it and let the Mexicans cut down the trees, get up in the trees, the clearing on the place, and cut down the trees and place them back on the stumps and at other times he would imagine that people were living without any heads and without any arms and along about that time, I remember, he come in to breakfast and contended he slept on a pile of ear corn all night, didn't have a bed to sleep in- so many different things at different times- something new every day.

Q. Tell it so the jury can understand the situation. Tell what he said and did.

A. You mean things that occurred?

Q. All that he said and did.

A. Well, one thing, he said in regard to this transaction, along about the time----

Q. (By Mr. Hybart= You mean afterwards?

A. Right after this transaction-

MR. HYBART: We object to anything right afterwards.

THE COURT: I sustain the objection.

Q. How long after this transaction?

A. Well, within the next week or ten days.

MR. MCMILLAN: I respectfully insist that would be competent.

THE COURT: I will allow him to testify.

MR. HYBART: We except.

Q. Go ahead.

A. He stated that he didn't sell but one of his places. That he discussed selling the place but that he didn't sell the other place.

Q. How many places did he have?

A. He didn't have buu the one place and he was up ay my place then. I carried him up there some ten days after this and he said he had a place up there and he was continuously talking about farming, said he wanted to farm and wanted a home and wanted a wife.

Q. How old was he?

A. He was 81- around 81- nearly 81.

Q. Go ahead.

A. And you can't make him reason---

MR. HYBART: We object.

THE COURT: I sustain the objection.

Q. Go ahead.

A. And another time at my place about that time he told me when he came in to dinner, there was a railroad in front of my house about thirty yards, there was a woman had been walking up and down that railroad all morning carrying a baby in her arms and asked me to bring her in and see if that baby wasn't hungry.

Q. Was there a woman going up and down out there?

A. No, sir.

Q. Go head.

A. I can't recall anything particular except he would continuously talk to himself, or be by himself talking to some one else

and he would claim them to be some of his old friends, a man named Carter he used to fish with was with him and he would talk to ~~him~~ him.

Q. And the man wasn't there?

A. No, sir. And one night he told me that an old negro of his, Tom Bird, spent the night with him and I could hear him talking all during the night - that he spent the night with him and he pushed him off of the bed and they had a big argument about it. And as a matter of fact there wasn't anybody in the room with him.

Q. You said he said they let the Mexicans cut the trees down?

A. Yes, sir.

Q. Were there any Mexicans around there?

A. No, sir.

Q. What was that about putting the trees back on the stumps?

A. He said they would cut a piece out of the trunk of the tree and set the tree back back on the stump and out some gum around it so it would grow.

Q. Had anything like that occurred?

A. No, sir. And he tried to get Claude and Aaron to shoot them and run them off and they wouldn't do it and I asked him why he didn't do it? and he said he was too feeble.

Q. Up to the time he had that stroke in January, 1931, what was the condition of his mind?

A. Well, his mind was growing dimmer before that time

MR. HYBART; We move to exclude that his mind was growing dimmer before that time.

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That is a conclusion of the witness and the witness is not qualified to make it.

THE COURT: I overrule the motion.

MR. HYBART: We except.

Q. Go ahead.

A. For something like four years I had been with Mr. Ivey atleast four times a year. I will say sometimes more..

Q. You mean before 1931?

A. Well, from 1920 on to the present, and during 1926, '27 and 1928, a few years previous to this, I would come down to his place and we would go fishing and he would come to see me and we would go fishing. I like to fish and that was his hobby, and I noticed he would make foolish remarks to a certain extent- not like he does now---

MR HYBART: We move to exclude that.

THECOURT: I understand the rule to be with respect to a layman that he can give testimony as to sanity or insanity after first stating the facts on which he bases his conclusion and I don't know of any law law that permits him to make a comparative statement. I will reverse my ruling and exclude from this jury the statement of the witness that his mind had become dimmer.

MR. MCMILLAN: We except.

Q. You say you have been going fishing with him since ~~1919~~ nine-

teen when?

A. Since 1920.

Q. On up to the time he was paralyzed?

A. Yes, sir.

Q. Now up to a year or two before he was paralyzed what did he do or say to suggest the condition of his mind? I am talking about the two years before his paralysis?

A. Well, I could not recall any identical words he spoke.

Q. Just the substance of it. You can tell that, can't you?

A. Well, no, I don't know nothing more than at that time his wife was living.

Q. When did she die?

A. She died, I believe it was January, 1930- 1929 or 1930- ~~XXXXX~~ February, I mean, 1930, I believe. But he would make foolish statements---

MR. HYBART: We move to exclude that he made foolish statements.

THE COURT: That's a conclusion. I will exclude that statement.

MR. MCMILLAN: We except.

Q. What were those statements?

A. I can't recall any of them.

Q. What was the apparent effect on his mind of his wife's death?

A. He was grieved----

MR. HYBART: We move to exclude that he was grieved.

THE COURT: I overrule the motion.

MR. HYBART: We except.

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Q. I could hear him in his room at night talking as if he was talking to his wife after her death.

Q. That was before his stroke?

A. And afterwards, too.

Q. And afterwards, too?

A. Yes, sir.

Q. Now after he had this stroke in January, 1931, did he go fishing any more?

A. Not that I know of- yes, I think several of us, myself and two of his sons carried him on the river once and set him down by a hole- he could sit down.

Q. How did he get about after this stroke?

A. On crutches.

Q. You speak of these rambling statements he made, did he make them worse after his stroke?

A. Yes, sir.

Q. Did that condition continue, did that condition continue up to now?

A. Yes, sir.

Q. During those conditions who looked after his business?

A. His son Claude, principally and his other son, Aaron, who was living with him.

Q. He spent his entire time with his folks?

A. Yes, sir, he gas about five children in Conecuh Ciunty and he would come and spend a few weeks with them.

Q. This deed he executed to Mr. Franco, did that cover all of the property he had in Baldwin County?

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xxx

A. Yes, sir, the same property he bought when he originally went there. And in addition about four or five town lots and all his personal property and plow utensils.

Q. Do you remember when he sold this one, the piece he sold, if he sold another piece?

A. It was about a week or ten days after the deed was made.

Q. He never had but one piece?

A. No, sir.

Q. Did he ever at any time have more than one piece?

A. Not in Baldwin County. He owned considerable land in Conecuh County.

Q. Mr. Robinson, do you know whether he ever attended to any business unless his boys were with him?

A. Nothing more than he would possibly go to the stores there in Loxley where people were supposed to know him and knew his condition or he would go and get cash or buy a little merchandise or smoking tobacco and ask them to make out a check and he would sign it in a way that you or anyone who was not familiar with it could not have told you who it was

MR. HYBART: We object and move to exclude that.

THE COURT: Yes, it is excluded

MR. MCMILLAN: We except.

Q. How much land was involved in this deed he made to Mr. Franco?

A. About 23 acres in the town lots and additions.

Q. About how long had he had that land?

A. He had had it for 12 years; he bought it in 1919.

Q. How much land was in the tract originally bought?

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A. 43 acres in the homestead.

Q. 43 acres?

A. More or less.

Q. But at the time he made this deed he only had 23 acres of that?

A. Yes, sir

Q. Who did he convey the other piece to?

A. He first sold a small lot off of the northeast corner.

Q. Adjoining this?

A. Off of his homestead. I don't remember who-

THE COURT: You mean transactions prior to this time?

MR. MCMILLAN: Yes, sir. My purpose is to show the value.

MR. HYBART: It has to be limited to about the time-

THE COURT: I don't think that's the way to do it. The only reason I am letting it in is because I want to get on as fast as I can.

MR. MCMILLAN: (Argues)

THE COURT: I don't think that is the way to prove it.

Q. Had he sold- you say he sold two acres?

A. About in 1930, I believe- something like that. Within two years from the time he made this deed he sold two acres to the Gulf Ice and Cold Storage Co.

Q. Adjoining this land?

A. A part of this tract.

Q. What did he get for that tract?

MR. HYBART: We object.

THE COURT: I sustain the objection.

MR. MCMILLAN: We except. Your Honor rules I can't show what he sold a part of this land for?

THE COURT: Yes, sir.

MR. MCMILLAN: If I show it is the same character of land?

THE COURT: Yes, sir.

MR. MCMILLAN: We except.

THE COURT: It involves too many questions and cumbars up the record. What I want the jury to tell me is what was the value of this 23 acres of land at the date of the deed from Mr. Iver to Mr. Franco, not what the value of the other land was.

MR. MCMILLAN: The only thing I am trying to do is to get the record straight so your Honor will understand the import of these questions. I am just going to ask him if the piece he sold was the same kind of land as this.

THE COURT: Just put down that the Court refuses to permit any inquiries as to the nature of the other land or the price received for

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it for the reasons already explained.

- Q. How did this land lie with reference to the town of Loxley?
- A. It was something like a quarter from the heart of the little town- you might say on the edge of town.
- Q. How far from the depot?
- A. It is not over a quarter; I will say a quarter of a mile and it lay on the old Pensacola and Mobile Highway; it ran right by the north line, and the town lots were---
- Q. What sort of land was that?
- A. A black loam land, I suppose.
- Q. Was it cultivated and fenced?
- A. All under fence except these town lots.
- Q. What was it cultivated in?
- A. In orange trees, practically all of it.
- Q. What improvements were on that land?
- A. There is a dwelling house built of concrete blocks, that is, of the hollow air SPACED type. The main body of the house is about forty feet long and twenty four feet wide with a kitchen on the back something like 12 by 14 and also with a porch on the front and back and concrete pillars built out of the same kind of material; has a double floor in it, floored with edge GRAIN flooring and the walls are plastered and over head plaster, six rooms down stairs and a metal roof of some kind, and two rooms up stairs and a kind of an attic with two bed rooms, and I would judge there is about ten or twelve nice pecan trees, bearing pecan trees and about the same number of pear trees and they have a barn and two or

three other small outbuildings.

Q. What sort of barn is it?

A. I judge it would be worth---

Q. Not what it is worth-

A. Just a frame building with an overhead, something like 16 by 20, I guess.

Q. And about a dozen pecan trees and pear trees and the rest in oranges?

A. Yes, sir.

Q. Were they bearing in 1931?

A. They were not a perfect stand; I forget the date of the freeze that killed out some of those oranges. At that date there wasn't more than half of the trees living. They were replanted after the freeze. He replanted some but he was still cultivating the entire orchard.

Q. You are thoroughly familiar with the house and premises there are you not?

A. Yes, sir.

Q. In your opinion what was the value of that in November 1931?

MR. HY BART:

We object; this witness is not shown to be competent as a witness. Seems to me a man who is going to give an opinion on the value of land should know something about the value in that community.

THE COURT:

He will have to state he knows the value in that community.

Q. Are you familiar with the value of houses of that kind?

THE COURT: In that community?

Q. In that community?

A. Not any more than I have taken and gone into the expense of building a house of that kind.

Q. And the values of that house?

A. Yes, sir.

Q. You have inquired about?

A. Yes, sir.

Q. What was the value?

MR. HYBART: We object.

THE COURT: I think you will have to qualify that to knowing the value in that community.

Q. Did you make your investigation in that community?

A. Yes, sir.

Q. Down at Loxley?

A. Yes, sir.

Q. In that community where that house is?

A. Yes, sir.

THE COURT: The question is what it would cost to build it.

Q. What was the value of it?

MR. HYBART: We object.

THE COURT: I sustain the objection.

MR. MCMILLAN: We except.

Q. What would it cost to build that house?

A. In 1931?

Q. Yes.

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A. Around two thousand dollars, twenty five hundred to two thousand dollars.

Q. You don't know the value of the land itself?

A. I know the sale price, the price at which Mr. Ivey bought it in my opinion--

Q. You haven't made investigations around there?

A. No, sir not recently.

CROSS EXAMINATION. By Mr. Hybart:

Q. You live where?

A. Range, Ala.

Q. In Conecuh County?

A. Yes, sir.

Q. How far from Loxley?

A. 71 miles.

Q. How many times did you go down into Baldwin County or to Mr. Ivey's during the year 1931?

A. About four times.

Q. When is the last time you were down there in 1931?

A. In that year- 1931?

Q. Yes?

A. ~~XXXXXX~~ I came ~~more~~ more than four times that year due to the fact of this conflict arising. I judge I was there six or eight times during the year 1931.

Q. Did you see Mr. Robert Ivey on Nov. 3, 1931?

A. No, sir.

Q. When had you seen him before that time?

A. I saw him- brought him ~~to~~ from my place to his home the latter

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part of October, I think, so I had seen him within fifteen days

Q. Now Mr. Ivey was a man whose mind would come and go, wouldn't it?

A. Well, he would apparently seem brighter at times but he didn't have his right mind.

Q. But he would have lucid intervals, wouldn't he?

A. No, sir.

Q. You testified in this case before, didn't you?

A. Yes, sir.

Q. Before the commissioner?

A. Yes, sir

Q. Didn't you testify then that he sometimes had lucid intervals?

A. No, sir. I will amend that answer by saying that if I remember right, I said that his mind was better at times than at others but I didn't say he had lucid intervals.

Q. And his mind was sometimes better than it was at others?

A. Yes, sir

Q. He was a man had a bank account?

A. Yes, sir.

Q. Kept his own money?

A. Yes, sir.

Q. And paid his bills?

A. ~~xxxxxx~~ Well, he signed checks when other people drew them but he didn't know what they drew them for.

Q. And he would give you checks and you would cash them?

A. Yes, sir, I have cashed his checks.

Q. And you would get the money on them?

A. Some of his sons in law or some of them---

Q. I didn't ask you about that.

A. Yes, sir.

Q. You would cash his checks and get the money on them?

A. Yes, sir.

Q. Was he at your house at the time the president of the Bank came to get him to assign some stock?

A. Yes, sir.

Q. He fixed that up, didn't he?

A. Yes, sir.

Q. In the Evergreen Bank?

A. Yes, sir.

Q. He attended to that?

A. Yes, sir.

Q. You are taking a great deal of interest in this business, aren't you?

A. Nothing unusual, I don't think.

Q. You are interested in the result of the suit?

A. Yes, sir.

Q. Now you never did live around Loxley down there, did you?

A. No, sir.

Q. You never bought and sold any land around there?

A. No, sir.

Q. Do you know what the financial or economic condition was around there at that time- in 1931?

A. No, sir.

Q. Did you know whether there was any property being bought around there at that time?

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A. No, sir, not around Loxley.

Q. Do you know whether that is the year the Loxley Bank closed?

A. No, sir

Q. And the Robertsdale Bank closed and the Silver Hill Bank closed?

A. No, sir.

Q. About these orange trees, wasn't it a fact that practically all of those orange trees were killed by the freeze?

A. No, sir.

Q. When was the freeze- what year?

A. Well, there were two or three. The one that was the worst- the worst one was really in 1928, but the grove was entirely replanted from that freeze, and if I remember right, also 1929 or 1930--

Q. Do you know whether oranges were selling for anything in the year 1931 or not?

A. They sold for about around \$2 per bushel.

Q. Were there any oranges made on that---?

A. I handled a number of the oranges myself- sold them myself- sold them to other merchants in the community.

Q. How many oranges were made on that place that year?

A. I can't say.

Q. How many did you handle?

A. I judge I handled 10 or 12 bushels.

Q. How much of them did you sell to the other merchants?

A. I don't know

Q. You have no judgment about the number; all told you handled?

A. I have handled them--

- Q. I am talking about 1931.
- A. I have handled them several years so that particular year I can't say.
- Q. You can't say whether you handled any at all or not?
- A. Yes, sir, I handled them every year.
- Q. And in your best judgment it was about ten or twelve bushels?
- A. That I retailed myself and in addition to that I handled a quantity of others to other merchants.
- Q. But you have no idea what that was?
- A. I have an idea.
- Q. Got any judgment?
- A. I would think I sold fifty or seventy five bushels. I didn't handle all that came off of the place. He shipped to other places.
- Q. When was that house built?
- A. I can't tell you.
- Q. It was an old house in 1919, wasn't it?
- A. From the appearance of the house it was built about 1919 or somewhere near there.
- Q. When was it that Mr. Ivey bought the place?
- A. He bought it in 1919.
- Q. And the house was on the place when he bought it?
- A. Just previous to that; it appeared new then
- Q. You don't know when it was built?
- A. No, sir.
- Q. When was the first time you saw the place?
- A. I saw the place, I reckon, in December, 1919.

Q. Now you say you sold these oranges. Who did you pay the money to?

A. I don't know whether I paid it directly or mailed it. If I paid it I paid it to Mr. Ivey- atleast him and Claude- they were both interested in the oranges.

Q. But you sent it to Mr. Ivey?

A. I don't remember about that.

Q. What is your best recollection?

A. You mean the fall of 1931?

Q. Yes, sir, the fall of 1931?

A. I didn't pay any of that to Mr. Ivey.

Q. You didn't pay any of that to him?

A. No, sir.

Q. Who shipped them to you?

A. Claude Ivey and his brother.

Q. What did you do with the money?

A. I paid it to them.

Q. How did you pay it?

A. Either in cash or checks.

Q. Have you any checks at home if you paid it in checks?

A. If I paid it in checks, I have.

RE DIRECT EXAMINATION, by Mr. McMillan:

Q. How many years did you handle these oranges?

A. I have handled a portion of the oranges raised on that place ever since they began shipping oranges off of it- I judge six years or eight, something like that.

Q. Are you in the mercantile business?

A. Yes, sir.

Q. Did you say other merchants there handled his oranges?

A. Yes, sir.

Q. How many stores did you furnish?

A. One year, I believe in the fall of 1930, I furnished a number of stores in Repton and Evergreen with his oranges, but this particular year I only furnished Repton and Lennox, about five other stores.

Q. Then these trees were bearing and the oranges were being marketed after the 1928 freeze?

A. Yes, sir.

Q. You say you think the house was built in 1919?

A. No, sir, it was built prior to that but not so long prior to that date.

Q. A house built out of concrete blocks don't decay, does it?

MR. HYBART: We object.

THE COURT: I sustain the objection.

MR. McMILLAN: We except.

THE COURT: I think anybody else knows as much about that as he does.

Q. He asked you if you are not interested in this case. Your wife is a daughter of Mr. Ivey?

A. Yes, sir.

Q. And you are interested on her account?

A. Yes, sir, and on the other childrens' account as well and not on my own account because my wife's part if we should

realize anything would only be 1-11ths.

MR. HYBART: We move to exclude that.

THE COURT: Proceed with the case.

Q. Who did you pay for the last oranges that were shipped to you and marketed, who did you pay?

A. I beg your pardon, he asked for 1931. I paid---

MR. HYBART: We object to who he paid for the last ones.

THE COURT: I overrule the objection

MR. HYBART: We except.

A. I paid Claude and Aaron Ivey.

Q. They were sons of Mr. Robt. Ivey?

A. Yes, sir.

Q. And the ones that shipped the oranges?

A. Yes, sir.

Q. He asked you about cashing checks that Mr. Ivey had signed.

Who drew the checks- who filled in the bodies of the checks?

A. I did.

Q. Were his sons there at the time?

A. Not exactly- at times one of them would come with him when he came to my place.

Q. He asked you about how long before this deed was made, which was November 23rd, 1931---

THE COURT: November 3rd, you say?

MR. MCMILLAN: No, sir, it is the 23rd.

THE COURT: All right, go ahead.

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Q. How long prior to that had you seen Mr. Ivey?

A. Within fifteen days- the latter part of October. I answered that it was the 3rd-- the latter part of October when I brought him home.

Q. How long after the deed was made that you saw him?

A. I saw him, I believe it was on Sunday, and the deed was made on Monday, oneweek.

Q. Was his mind on both of those occasions in the condition---?

MR. HYBART: We object.

THE COURT: I sustain the objection; that's not in rebuttal.

MR. MCMILLAN: We except.

Q. Do you know who Mr. Ivey's physician was?

A. Yes, sir.

Q. Who was it?

A. Dr. H. W. Jordon.

Q. How long had he been his physician?

A. I will say five years.

Q. And continued on up to the present time?

A. When he was at Loxley, yes, sir. When he is in Conecuh County he uses Dr. W. R. Carter at Repton, or Dr. Betts, at Evergreen.

RE CROSS EXAMINATION, by Mr. Hybart:

Q. You don't know whether he has any other doctor at Loxley besides Dr. Jordon, do you?

A. I have been there and seen Dr. Jordon there.

Q. You wouldn't testify that during your absence he didn't have some other doctor, would you?

A. No, sir.

RE DIRECT EXAMINATION, By Mr. McMillan:

Q. Did you ever see any other doctor there?

A. No, sir. There wasn't any other doctor there when his wife died or was sick.

MR. MCMILLAN: We desire to introduce the depositions of Dr. Betts and the depositions of Dr. Jordon.

J. C. GRIFFIN, a witness for the plaintiff, having been first duly and legally sworn to speak the truth, the whole truth and nothing but the truth, doth depose and say as follows:

DIRECT EXAMINATION, by Mr. McMillan:

Q. What is your name?

A. J. C. Griffin.

Q. Where do you live?

A. Loxley.

Q. How long have you been living at Loxley?

A. About 18 or 19 years.

Q. Do you know Mr. Robert Ivey?

A. Yes, sir.

Q. How long have you known him?

A. Ten or twelve or fourteen years- I don't remember exactly how long.

Q. How far did you live from him?

A. A quarter and a half- about a half a mile.

Q. Have you been living in that distance of him for the past 10 or 12 years?

A. Yes, sir.

Q. And have you known him intimately?

A. Yes, sir

Q. Do you know how old he is?

A. Not exactly; I understand he is around eighty. He has told me his age but I have forgotten.

Q. Does he appear to be very old?

A. Yes, sir, he appears to be older than that.

Q Does he appear to be feeble?

A. Very feeble.

Q. How long has he been old and feeble?

A. Three and a half to four years or four and a half that he has been very feeble- maybe five years. I don't remember exactly how long he has been so feeble.

Q. Did you know him when he had his ~~stroke of paralysis~~ stroke of paralysis?

A. Yes, sir.

Q. Since that stroke of paralysis what has been-- up to the time of that stroke of paralysis what was his condition in the preceding year?

MR. HYBART: You mean physically?

MR. MACMILLAN: Physically, yes.

A. You mean getting around?

Q. Yes?

A. He was reasonably active but he has never been very stout since I have known him.

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didn't know whether it was on the east or west side. He didn't know which side- they had got him balled up. He didn't know which side it was on and wanted me to tell him. He lives right by the railroad.

Q. And that was in the spring of 1931?

A. My recollection is it was in the spring of 1931. Either the spring of 1931 or the fall of 1930, but I think it was the spring of 1931, my best recollection.

Q. Where was he at the time he was talking to you?

A. Right at the back of my garage in front of my house.

Q. Up to that time had you noticed anything about his conduct?

A. A number of times.

Q. In what way?

A. Well, one day he was talking to me- two or three different times he was talking about his pecan trees and he said somebody was cutting down his pecan trees and getting the pecans off and setting them back on the stumps and were injuring his pecan trees and he didn't like it.

Q. Had anybody cut his trees down?

A. No, sir.

Q. Do you remember who he said was cutting them down?

A. He didn't say. He just said somebody- talked as if he didn't know who it was.

Q. And you say he had several conversations of that nature?

A. Yes, sir, he talked to me a number of different times about the trees being cut down.

Q. Was that before the spring of 1931?

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- A. Well, it was- some was before and some was after.
- Q. Have you continued to see him from that time up to now?
- A. Yes, sir. I haven't seen him to talk to him now for about a year. I reckon maybe more than a year. I have seen him but I haven't talked with him- his mind is so bad.
- Q. How does the old man get about?
- A. He gets about on crutches when he gets about- did the last time I saw him getting around.
- Q. You said you rememberen when he had the stroke of paralysis, sisen't you?
- A. Yes, sir.
- Q. That was in January, 1931?
- A. January- November or December or January- right along the last part of 1930 or the first part of 1931, the best of my recollection. I can't say as to the time.
- Q. Has he talked at random since then more than he did before?
- MR. HYBART: We object; that calls for the conclusion of the witness.
- THE COURT: I sustain the objection.
- MR. MCMILLAN: We except.
- THE COURT: You can ask him if there was any change in his conduct and conversation before and after the stroke.
- Q. Q. Was there any change in his conversation and conduct after the stroke from what it had been prior to the stroke?
- MR. HYBART: We object- calls for the conclusion conclusion of the witness,

THE COURT: I overrule the objection.

MR. HYBART: We Except.

A. There was considerable change.

Q. In what respect?

A. Well, he didn't seem to have any mind; didn't seem to know what he was talking about. He talked like what I would call a crazy man---

MR. HYBART: You will have to state what he said, Mr. Griffin. What he said and did that showed any peculiarities or that he was not in a normal condition, if there was any such thing. And I exclude his statement as to whether he did or did not have any mind at the time. The law, as I understand it, permits a non-expert, such as Mr. Griffin, to state facts or any peculiarities or abnormalities and after they make such statement then they can give their opinion based on that statement and the acquaintance they have with the party.

Q. What did he do or say? I don't mean his exact words, but state what you base your opinion on.

A. I base it on the conversation he would use and the way he would handle it.

Q. What were those conversations?

A. As I stated, a sane man would not----

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MR. HYBART: We object to that and move to exclude it.

THE COURT: I exclude that gentlemen.

Q. Say what he did do.

A. He talked about them cutting down his pecan trees when nobody had touched them and he talked about he didn't know where his place was and he knew all about it when he was sane, but when his mind-----

MR. HYBART: We move to exclude all of that.

THE COURT: I will exclude his statement about when he was sane and when he was not sane and what his mind did.

A. If I can't tell it, what happened---

THE COURT: One minute; I have attempted to explain to you that the law ~~debatiscyc~~ permits you to detail to the jury any conduct or any conversation, any words of Mr. Ivey that in your judgment were evidence of the fact that he was not ~~normalk~~, mentally, but not to give your opinion as to his sanity or insanity or whether or not it was worse at one time than another, but simply to state these abnormalities, those peculiarities and then you can on that base your conclusion as to whether he was sane. Do I make myself clear?

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A. I guess so. I have already stated, though--

THE COURT: That's what I think myself- that he
has already stated it pretty fully.

Q. Did he continue to talk about the line about what you have
stated?

MR. HYBART: We object.

THE COURT: I will permit him to show within ~~an~~ a
reasonable time after the deed- within
a short time after the deed, but not
any remote period.

MR. MCMILLAN: I am asking him before the deed- after
the stroke and before the deed.

THE COURT: I will permit you to ask when those
conversations were had.

Q. When were those conversations had and how many times were
they had?

A. As many times as I saw him. About every time I saw him he was
talking along those same lines.

MR. HYBART: We move to exclude his statement that
he was talking along those same lines.

THE COURT: I overrule your motion.

MR. HYBART: We except.

A. On the lines about cutting down his pecan trees and----

THE COURT: I understand that.

A. And also he was always wanting to sell me the place and want
ing me to sell it for him.

Q. How much did he want for that place?

A. He paid \$4700 for it--

MR. HYBART: We move to exclude that statement.

THE COURT: That statement of the witness is excluded, gentlemen.

Q. How much did he want for the place?

MR. HYBART: We object.

A. He wanted \$7500 for it one time--

MR. HYBART: We object to that if your honor please unless it is within the time.

THE COURT: What is the purpose of it?

MR. MCMILLAN: The purpose is to show how much the old man valued his place at and then to show if he would value it down from that price to \$1000 it shows the condition of his mind.

THE COURT: I think from your standpoint you have already proved- atleast offered evidence tending to prove that at that time he was not able to farm and didn't farm an opinion so I will sustain the objection.

CROSS EXAMINATION, by Mr. Hybart:

Q. You are the father of Fred Griffin?

A. Yes, sir.

Q. He lives at Loxley?

A. Yes, sir.

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Q. He was acquainted with Mr. Ivey, also?

A. Yes, sir.

Q. What business is he in down there?

A. He runs a garage down there.

Q. Now Mr. Ivey, you saw him in 1931 around on the streets of Loxley, didn't you?

A. Yes, sir. Occasionally he would come up there.

Q. And you would see him in the stores there?

A. No, sir, I don't remember that I ever did, but I have seen him sitting on that bench by the barber shop.

Q. Did you ever have any business transactions with him in 1931?

A. No, sir.

Q. Never took any of his checks?

A. No, sir.

Q. You know whether he had a bank account or not?

A. No, sir.

Q. You say this conversation about his place- not knowing where his place was- where was that- where were you?

A. Where was the conversation?

Q. Yes, sir?

A. Right in front of my house in the back end of my garage.

Q. When was that?

A. The best of my recollection it was in the spring of 1931.

Q. Who was present?

A. Nobody but his son.

Q. His son?

A. Aaron was standing at the gate; he brought him there.

Q. And left with him?

A. Yes, sir.

Q. How long was he there?

A. Not but a few minutes.

Q. What else did you talk about?

A. Nothing more than Mr. Ivey and his son called me put there and I went out there and when I got out there Mr. Ivey was still in the car and he said, papa wanted to talk to me; "I have been trying to get him to go up the country and he wont go till he sees you" and I went out to the car and Mr. Ivey would not talk to me. He got his crutches and I helped him out of the car and he said he wanted to talk to me privately and he hobbled back in the back of my garage and that's where I had the conversation with Mr. Ivey.

Q. Was your son Fred present there?

A. No, sir, that's my private garage. Fred's garage is a mile from there up town.

Q. When was the next time you had a conversation with him?

A. I don't remember; some time after that - a few months after that, up town; he had gone to get a shave in the barber shop and he was on the bench in front of the barber shop.

Q. Who was present?

A. I don't remember whether there was anybody present or not.

Q. Isn't it a fact that Mr. Ivey at times had lucid intervals and that his mind was better at times than at others?

A. Yes, sir, it was some better at times, but he never was right the way I saw it.

Q. You don't know what the condition of his mind was on Nov. 23 1931, do you?

A. I don't remember that I saw him on that date.

Q. Do you remember when you had seen him prior to that time?

A. No, sir, not to be exact; it had been a few weeks prior to that time.

H. H. LEVINS, a witness for the Plaintiff, having been first duly and legally sworn to speak the truth, the whole truth and nothing but the truth, doth depose and say as follows:

DIRECT EXAMINATION, by Mr. McMillan:

Q. This is Mr. H. H. Levins?

A. Yes, sir.

Q. Where do you live, Mr. Levins?

A. I live at Loxley.

Q. What is your occupation?

A. Station agent for the L&NRRCo.

Q. Do you know Mr. Robert Ivey?

A. Yes, sir.

Q. Did you ever have any conversations with him during the year 1931?

A. Yes, sir.

Q. Will you state to the jury what those conversations were?

A. One thing in my mind at the present time is about trying to sell me his place he owned there just south of Loxley.

Q. What did he tell you about the reason he wanted to sell it?

A. He told me he didn't have any use for the place and he wanted to get shed of it.

Q. What else did he say? Say anything about any pecan trees?

A. Yes, sir, he come there on this particular occasion and told me he wanted me to get the sheriff to come and go with him down there and arrest somebody, he didn't seem to know who, that was cutting down his pecan trees. He told me that they had cut down the biggest one he had and taken everything off of it and set it back up on its stump.

Q. How did he look while he was talking to you?

A. He looked to me like a man out of his mind, unbalanced, glass eyed, glazed eyed, you might call it.

Q. And that was some time about the middle of 1931?

A. Seems to me it was about June.

Q. You say he looked glassy eyed?

A. Yes, sir.

Q. He had had his stroke then?

A. Yes, sir.

MR. MCMILLAN: I am just introducing the witness on that point and I will use his deposition on the other point.

CROSS EXAMINATION, by Mr. Hybart:

Q. When was this when he came down?

A. I don't understand the question.

Q. When was it he came to your place?

A. Somewhere about 9 or 10 o'clock in the morning, some time in June.

Q. What year?

A. 1931.

Q. You say he told you he wanted to sell his place?

A. Yes, sir.

Q. You know whether he had had a drink or two or not?

A. I don't suppose he had.

Q. That makes you glass eyed sometimes, don't it?

A. Yes, sir, if you take enough of it.

Q. You don't know whether he had taken one or not?

A. No, sir. In fact I don't know that he ever taken a drink.

Q. Did he tell you any other reason why he wanted to sell his place except about his pecans? (Interruption)

Q. Did he tell you any other reason why he wanted to sell his place except about his pecan trees?

A. Nothing except what I told Mr. McMillan.

MR. MCMILLAN: Reads depositions.

GEORGE MERINOUS, the defendant, being sworn as a witness in behalf of the defendants, to speak the truth, the whole truth and nothing but the truth, doth depose and say as follows:

DIRECT EXAMINATION, by Mr. Hybart:

Q. At the time that you all were coming up here with Mr. Robert Ivey on the day that the deed was executed, did Mr. Claude Ivey say anything about wanting to come with you?

A. No, sir, not that I know of.

CROSS EXAMINATION, by Mr. McMillan:

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Q. Your answer is "not that you know of"?

A. Yes, sir.

Q. In your deposition you stated you put in that note that when Franco's note arrived you would substitute it, didn't you?

A. They requested me to give them another and I told them the only thing I can do is to--

Q. Didn't you state you wrote it in that note? ~~xxxxx~~

A. In the note- what---?

Q. That you were to substitute your note, the note you signed Franco's name to?

A. Yes, sir, by George Merinous.

Q. You are sure about that?

A. Yes, sir, my recollection I am.

Q. That's the note, isn't it? (hands witness paper)

A. Yes, sir.

Q. There is no "by George Merinous" in that is there?

A. No, sir.

Q. You wrote Peter Franco's name here at the bottom, didn't you?

A. Yes, sir.

Q. You also stated that you were to pay him interest on the note, didn't you?

A. I was--

Q. Didn't you? Were you to pay him interest? The note says for \$500 a year, don't it?

A. Yes, sir.

Q. Now this is the deed you took from the old man, isn't it?

A. Yes, sir.

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Q. Who wrote the name of Robert Ivey there?

A. Unless my attorney I wouldn't know.

Q. You know your attorney's handwriting, don't you?

A. I do not.

Q. You don't know his handwriting?

A. I wasn't in there.

Q. How do you know this is the deed he made then?

A. I don't know; I was outside when the deed was made.

Q. You know Robert Ivey's handwriting?

A. Yes, sir.

Q. Where is it?

A. Here it is.

Q. You have got up here "Robert Ivey, his mark". Who wrote that?

A. You can ask my attorney.

Q. You don't know?

A? No, sir, I don't.

Q. You gave a check for \$500 and a note without interest for another \$500?

A. Yes, sir.

Q. And you signed that note Peter Franco, didn't you?

A. Yes, sir.

Q. And that note didn't bear interest, did it?

A. I didn't pay any attention to that. Whether it did or not.

Q. And the old man was not protected by a vendor's lien for that \$500 was he?

THE COURT: Aren't the papers in evidence.

MR. MCMILLAN: I will introduce them. That's all.

A. I really don't know.

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Q. If during the year 1931 Mr. Ivey was suffering from general physical debility and that condition effected his entire system and practically every organ in his body and his kidneys and jeart were effected and he was suffering from what is commonly known as hardening of the arteries and this condition effected his brain and mental condition would he ever recover from it?

A. No, sir.

Q. In your opinion that is impossible?

A. It is impossible.

CROSS EXAMINATION, by Mr. Lybart:

Q. You practice down at Robertsdale?

A. Yes, sir.

Q. How long have you been oracticing down there? Or how long have you been practicing?

A. 22 years.

Q. You have had experience in mental diseases?

A. I have had about what any other ordinary practitioner has.

THE COURT:

Gentlemen it is agreed that the date of a certain deed executed by Mr. Ivey mentioned in the depositions was Aug. 14, 1930.

STATE OF ALABAMA, BALDWIN COUNTY.

I HEREBY CERTIFY that the above and foregoing is a true and correct transcript of the evidence upon the trial of the cause therein mentioned. IN TESTIMONY WHEREOF I have hereunto set my hand on this the 5th day of February, 1935.

W. S. Lupton
Special Court Reporter, Circuit of
Court of Baldwin County, Alabama.

ROBERT IVEY, by his next
friend, CHESLIE A. ROBINSON,

Complainant,

-vs-

W. W. MAY et al,

Respondents.

IN THE CIRCUIT COURT--IN EQUITY

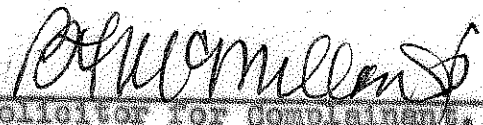
STATE OF ALABAMA

BALDWIN COUNTY.

No. _____

In the foregoing cause it is agreed that the testimony of the following witnesses:- Dr. R. A. Hail, Albert Keuler, Lewis William Lacey, George Marinos, F. C. Griffin, Jerome Seay, J. C. Grimes, F. W. Frickhorn, Dr. J. P. Bryars, may be taken before Mary F. Green, acting as commissioner, in shorthand. She is to take down the questions and answers and to transcribe them. Issuance of commission, all forms and notices and the signatures of the witnesses to their respective depositions are hereby waived; each party to be furnished with a copy of the testimony so taken.

Dated this 29th day of November, 1953.


Solicitor for Complainant.


Solicitors for Respondents.

TESTIMONY OF DR. R. A. HAIL. DIRECT EXAMINATION BY MR. HYBART,
ONE OF THE ATTORNEYS FOR RESPONDENTS.

Q: What is your name?

A: R. A. Hail.

Q: Dr., where do you live?

A: Robertsdale.

Q: Mr. McMillan, do you admit he is a graduate of a medical college?

Mr. McMillan: Better prove it.

Q: Doctor, are you a graduate of a medical college?

A: I am a graduate of the University of Tennessee.

Q: Medical College, doctor?

A: Yes sir.

Q: How long have you been practicing medicine?

A: Forty-three years.

Q: Where are you located at present?

A: Robertsdale, Alabama.

Q: Doctor, do you know Mr. Robert Ivey?

A: Yes sir.

Q: How long have you know him?

A: Oh, I reckon since he came down here, about 1924, I don't recollect when he came exactly.

Q: You've known him since 1924?

A: Yes sir.

Q: Since that time have you seen him frequently?

A: Yes sir, every few days.

Q: Talked with him?

A: Yes sir, in a general way, see him and speak to him.

Q: Doctor, have you ever noticed anything peculiar about him?

A: Not a thing in the world that I could tell.

Q: Doctor, in your opinion, is he a man of sound mind or unsound mind?

A: I think his mind is as good as anybody's.

Q: Think it is as good as anybody's?

A: Yes sir. Of course the old man is old and can't see good. Has cataracts I think.

Q: Would that be your opinion as to his mind on the 23rd day of November, 1931?

(page two)

A: Yes sir. His mind then ought to be better than it is now. Of course, he is an old man.

Q: Now, Doctor, do you know this piece of property that is involved in this litigation?

A: Yes sir, I have known it for about twenty years.

Q: Do you know of any property being bought and sold in that neighborhood?

A: No sir, I don't know of any property being sold in the last four years.

Q: Prior to that time, then?

A: Yes sir.

Q: In your judgment, Doctor, would \$1000.00 be a fair price for the property in November, 1931?

A: Yes sir. After the oranges were killed it was no property at all, just land with a house on it.

CROSS EXAMINATION BY MR. McMILLAN, ATTORNEY FOR COMPLAINANT.

Q: Doctor, what is the character of your practice?

A: I do a general practice, anything that comes along.

Q: Ever make a specialty of studying mental diseases?

A: Yes sir, to some extent.

Q: When and where?

A: In Chicago.

Q: How long since you were in Chicago?

A: Oh, about twenty years.

Q: That's the extent of your examination of that kind of practice?

A: Yes sir.

Q: How long did you practice in Chicago.

A: I didn't practice, I studied.

Q: How long did you study in Chicago?

A: Six months.

Q: Were you admitted to the profession, medical profession, in Chicago?

A: I was in the hospital studying.

Q: Just as a student?

A: I wasn't a student, I was taking post-graduate training.

Q: You had never practiced up to that time?

A: Why of course I had. I have been practicing forty-three years.

Q: Since you have been in Robertsdale you have been operating a drug store, haven't you?

A: No sir.

(page two)

(page three)

Q: Interested in any drug store?

A: I had a little stock, but that was all.

Q: Was your office ever in a drug store?

A: No sir.

Q: How far is Robertsdale from Loxley?

A: Four and a half miles.

Q: Did you ever live in Loxley?

A: No sir.

Q: You were never physician for Mr. Ivey, were you, or any of his family?

A: Yes, I have for Claude.

Q: His son?

A: Yes sir.

Q: That's all?

A: Yes sir.

Q: Are you physician for Mr. Marinos?

A: I have never done any practice for Mr. Marinos.

Q: Any of his people?

A: No sir.

Q: Your observation of Mr. Ivey was merely casual?

A: Well, it was just meet him and speak to him.

Q: Never were intimate with him?

A: No, I'm not right close up to him or anything. I'm not intimate with George Marinos. I'm not intimate with anybody.

Q: You're not intimate with anybody?

A: No sir, It is just business with me.

Q: How old a man was Mr. Ivey?

A: Oh, I'd take Mr. Ivey to be around seventy-five or eighty years old; that's what I'd take him to be.

Q: You've had no opportunity to know anything about his exact age, have you?

A: About what?

Q: His exact age?

A: No sir, I could not tell.

Q: Did you know him when he had a stroke of paralysis?

A: I did not attend him when he had one.

Q: Did you know about it?

(page three)

(page four)

A: Yes sir.

Q: When was that?

A: I can't tell you.

Q: Since he had that stroke he has been very weak and feeble, hasn't he?

A: I don't think so. I see him walking around the town.

Q: Who did you see him walking around in town with?

A: Well I just saw him on the street.

Q: Anyone supporting him?

A: No sir.

Q: Speak to him?

A: Yes sir.

Q: That's the extent of it, you would meet him and pass on by, didn't you?

A: Yes sir.

Q: Isn't it a fact that he has used crutches ever since he had the stroke?

A: Well I have seen him one time with crutches. I don't know if he uses them yet.

Q: Do you know whether or not that is the only time since he had that stroke you have ever seen him?

A: No sir.

Q: Have you any specific recollections of seeing him since then?

A: Yes. I was in Loxley four times yesterday. I can't keep account of the times I have seen him. I can't keep a record of when I meet him.

Q: You are a busy man and working, and have no time to notice particularly people that you meet?

A: Why of course. I meet you and I size you up in three seconds. I know your condition in three seconds.

Q: Is that the way you size up Mr. Ivey?

A: Oh well, I speak to him just like I am speaking to you.

Q: Is that the way you size up Mr. Ivey?

A: No sir, by talking to him.

Q: Do you stop and talk to him?

A: When I met him standing on the streets in town I would stand and talk to him a while.

Q: And you have no specific recollections of seeing him on any particular occasion since 1931? You may have seen him after that or you may not?

A: Oh, I have seen him a good many times since 1931.

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Q: Where?

A: In Loxley.

Q: Do you remember what part?

A: No, I could not tell you what part. It might have been over at Keulers, or it might have been across the street.

Q: Where was he when you saw him with crutches, do you remember?

A: No sir.

Q: Do you remember particularly whether you ever saw him with crutches more than once or not?

A: No sir, I know I saw him once on crutches, and I asked and they said he had a stroke.

Q: And insofar as you recall, that is the only time you ever saw him with crutches?

A: Yes sir.

Mr. Hybart: What is your mileage, Doctor.

Dr. Hail: Twenty-six miles. Mr. McMillan: Were you subpoenaed?

A: No.

TESTIMONY OF ALBERT KEULER. DIRECT EXAMINATION BY MR. HYBART.

Q: Your name, please?

A: Albert Keuler.

Q: Where do you live, Mr. Keuler?

A: Loxley.

Q: How long have you lived down there?

A: Lived at Loxley eight years, and lived the balance of my life about three miles north of Loxley.

Q: Do you know Mr. George Marinos?

A: Yes sir.

Q: Do you know Mr. Robert Ivey?

A: Yes sir.

Q: How long have you known Mr. Ivey?

A: I don't know just the years, but ever since he moved there.

Q: Do you have any recollection about the number of years, to your best judgment?

A: Eight or ten years, I imagine.

Q: What business are you engaged in?

A: Garage business.

Q: How long have you been engaged in the garage business?

A: I have just owned the place three years the 28th of October, but I have been in the garage business ever since I finished school eight or ten years ago.

Q: During the time that you have known Mr. Ivey have you had any

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business transactions with him?

A: Yes sir.

Q: What was the nature of this business?

A: Gas and oil, and tractor parts.

Q: You mean you sold him gas and oil and tractor parts?

A: Yes sir.

Q: Did you ever cash any checks for him?

A: Yes sir.

Q: Many?

A: Well quite a few, I don't know just how many, but now and then.

Q: His checks?

A: Yes sir.

Q: What Bank?

A: Baldwin County Bank.

Q: Now you knew him in November, 1931?

A: Yes sir.

Q: And you knew him before that?

A: Yes sir.

Q: About how long?

A: Oh, I don't know, ever since he lived in Loxley.

Q: Had business transactions with him before that time?

A: Yes sir.

Q: Have any conversations with him?

A: Yes sir.

Q: Many?

A: Well most every time he come to town if he was that way ~~he~~ I always talked with him.

Q: Talked with him?

A: Yes sir. He was quite a fisherman and I used to talk to him about it.

Q: During those times did you ever notice anything peculiar about him?

A: Nothing, unless it was his eyesight.

Q: Knowing him as you did, business transactions you had with him, would you say he was of sound mind or unsound mind on November 1931?

A: Well I think he was of sound mind, at least I transacted business with him up until that time.

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Q: Do you know the time he said he sold this property to Mr. Marinos?

A: Yes sir, about that time.

Q: Would you say he was of sound mind about that time?

A: Yes sir I think so. I think just a few days before that he cashed a check.

Q: Did you notice anything out of the ordinary?

A: No sir.

Q: Were those checks his checks?

A: Yes sir.

Q: Drawn by him?

A: Yes sir.

Q: Now are you acquainted with this property here that Mr. Marinos was said to have bought?

A: Yes sir.

Q: How long have you known that property?

A: Well, ever since he has moved there.

Q: Do you know of property bought and sold down in that neighborhood?

A: Well, of a piece my wife bought.

Q: Do you know of anybody else buying any?

A: No sir, I don't remember any.

Q: At that time or prior to that time?

A: No sir, I don't know of any. I know real estate was cheap and I know of some tried to sell.

Q: But you never heard of any sales?

A: No sir.

Q: And your wife bought some property about that time?

A: Just a small house and lot in Loxley, about the first of '32.

Q: Property was low priced then?

A: Yes sir, awful low.

Q: You know about how many acres of land in this place?

A: Well, originally 20 acres in that piece.

Q: Any part been sold off?

A: Well I have heard an ice company had either bought three acres or had an option on three acres.

Q: Now in your judgment was a thousand dollars a reasonable price for that property in November, 1931?

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A: Yes sir.

Q: That was a fair price for it?

A: Yes sir, I would think so.

CROSS-EXAMINATION BY MR. McMILLAN.

Q: Did you ever hear of the ice company paying a thousand dollars for 2 acres of the land?

A: No sir.

Q: Unimproved?

A: No sir.

Q: You don't know what they paid do you?

A: No sir, I don't.

Q: What would it cost to build the house that is on that land?

A: I don't know.

Q: You don't know the value of the house then, do you?

A: No sir, I don't.

Q: You were never engaged in a real estate business, were you?

A: No sir.

Q: Never heard of this man Dr. Hail being engaged in a real estate business did you?

A: Well I never heard of it, he might have.

Q: You say you knew about the trade with Marinos, who told you about the trade between old man Ivey and Marinos?

A: Well, I have heard several discussing it.

Q: Who did you hear discussing it?

A: Well I don't know just off hand. I heard Claude say something about it.

Q: You heard Claude Ivey?

A: Yes.

Q: What did Claude say?

A: Well he seemed to think it was a low figure and he said his dad wasn't capable of signing a deed was about all.

Q: That's about what the others you heard discussing it said, wasn't it?

A: No I can't say I heard anybody else say that?

Q: Mr. Marinos ever tell you about it?

A: No sir.

Q: Are you in business with Marinos?

A: No sir.

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Q: Have you ever been?

A: No sir.

Q: Fix his cars?

A: Yes sir, I have worked on his cars.

Q: He uses your garage doesn't he?

A: Some, not altogether.

Q: You do know it is a fact that Mr. Robert Ivey hasn't had a car since 1929?

A: Since 1929? Well he might not, but I don't know.

Q: Your gas and oil business was for his car wasn't it?

A: Well I have the car that he had and it has a '30 model tag on it. I don't know whether the car belonged to Claude or Mr. Ivey but that's the car the gas and oil was furnished for, unless he went with somebody fishing, then he put it in some other car.

Q: Has he been fishing since 1929?

A: I don't remember exactly.

Q: You don't remember whether you have had any gas and oil or other business since then do you?

A: Well I have cashed checks for him since then.

Q: Who wrote the checks and filled in the checks for him?

A: Well I made it, filled them out.

Q: You know you did fill them out?

A: Yes sir.

Q: So you would write the check out, write the drawees name and the amount, and show him where the line was and he would sign it?

A: I suppose he could have filled the checks out but it would take him considerable time.

Q: Do you remember the old man had a stroke of paralysis?

A: No sir, I don't.

Q: You don't remember that?

A: No sir.

Q: You know the old man has been in feeble health since 1930?

A: Well he may not have been in good health.

Q: He would come around town on crutches didn't he?

A: Well I believe he did go on crutches a little, but I don't know whether he did all the time.

Q: You don't know whether he did all the time?

A: Once or twice I know he did.

Q: You don't recall whether you noticed him without the crutches since 1930 do you?

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A: No sir, I don't know. I just saw him in the barber shop with crutches one time and had a talk.

Q: In what name do you do business?

A: Baldwin County Garage Company.

Q: You never bought any land around Loxley, did you?

A: No sir, I haven't myself.

RE-DIRECT EXAMINATION BY MR. HYBART.

Q: Mr. Keuler what did Mr. Ivey tell you when you filled the checks out?

A: Well he would come in and have to have some money and ask if I would cash a \$5.00 or \$10.00 check. He only had a few places he went to have checks cashed I suppose. That's about all.

Q: Tell you to fill it out?

A: Oh, yes, sure. It would take too much time for him to see to fill it out. His eyesight was bad. If I didn't have the blank place just right he wouldn't be able to see the line sometimes.

Q: And he would tell you what he wanted, and the amount of money, and ask you to fill it out and then he would sign it?

A: Yes sir.

Q: You never noticed anything wrong or peculiar about him?

A: No sir.

Mr. Hybart: What is your mileage, Mr. Keuler?

A: 22 miles.

Mr. McMillan: Were you summoned? Did you have a subpoena?

A: No, I was not subpoenaed.

TESTIMONY OF LEWIS WILLIAM LACEY. DIRECT EXAMINATION BY MR. HYBART.

Q: Your name, please sir?

A: Lewis William Lacey.

Q: Where do you live, Mr. Lacey?

A: Loxley.

Q: How old are you?

A: Thirty-nine.

Q: How long have you been living at Loxley?

A: Around twenty years.

Q: What business are you in down there Mr. Lacey?

A: Farming now.

Q: Have you been in any other business besides that?

A: Garage business, 7 years.

Q: You were 7 years in the garage business and then started farming?
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A: Yes sir.

Q: Do you live in the town of Loxley or in the country?

A: About a half a mile due west.

Q: Do you know Mr. Robert Ivey?

A: Yes sir.

Q: How far do you live from him?

A: About a mile I would say between the two places.

Q: Do you know Mr. George Marinos?

A: Yes sir.

Q: How long have you known Mr. Robert Ivey?

A: I have known him practically ever since he moved to Loxley, I can't say just how long.

Q: During that time you have seen him frequently?

A: Yes sir.

Q: Had conversations with him?

A: Yes sir.

Q: Did you ever notice anything peculiar about him?

A: No sir.

Q: On November 23rd, 1931, would you say that Mr. Ivey, knowing him as you do, would you say that he was of sound or unsound mind?

A: Yes sir. I would say that he was in sound mind myself.

Q: Now during the time that you have known Mr. Ivey have you had business transactions with him?

A: Yes, when I was in the garage business I had quite a bit of business with him.

Q: Buy gas and oil from you?

A: Yes & I sold him tractor and farm machinery parts.

Q: What did he raise on his farm if anything?

A: Raised a little of everything. Had a nice orchard at the time he started.

Q: Nice orchard of what?

A: Oranges.

Q: That orchard been killed?

A: Yes, the same as mine.

Q: When was it killed Mr. Lacey?

A: As I remember it, it froze in sections after the big freeze.

Q: When was the big freeze?

A: Back in '24 or '23, somewhere along in there, about 3 years ago.

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Q: During that time who marketed or sold his oranges?

A: Well as I remember it Mr. Ivey would go up the country and take orders up there and Claude would ship to where he told him to ship them.

Q: Now did he look after his place there Mr. Lacey?

A: Yes sir, he tended to all as far as I could tell, did all the paying and did the other business.

Q: Did he draw checks?

A: Yes sir. He paid me on the dot.

Q: Are you on your place down there?

A: No sir, I live with my father and mother.

Q: Do you know of property being bought and sold around Loxley since you have been there?

A: Yes sir.

Q: Was there any market for property there in 1931?

A: There hasn't been any set market for three years. Values-of

Q: Values of land been low down there?

A: There hasn't been any value, just whatever you could get for a piece.

Q: Now in your judgment was a thousand dollars a fair price for this property of Mr. Ivey's on November 23rd, 1931?

A: As I understand the property that was left, he gave Claude a twenty as I understand it, could anybody tell me how much was there? If that was the piece left I think that a thousand dollars was a fair price at that time.

Q: Is that the place the house was located upon?

A: Yes sir.

Q: And as I understand it he sold out a piece to an ice company in the corner leaving about how many acres?

A: As I understand it, 17 acres.

Q: That's the property you understand Mr. Marinos bought?

A: Yes sir.

Q: You say in your opinion a thousand dollars would have been a good price at that time?

A: Yes sir.

Q: Oranges had been killed on that property?

A: Yes sir, as far as commercial value they were nothing.

CROSS EXAMINATION BY MR. McMILLAN.

Q: You never purchased any land there yourself?

A: I had some give to me.

Q: Had some given to you, where?

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A: On the highway.

Q: Who gave it to you?

A: My aunt.

Q: Who is your aunt?

A: Annie E. Lacey.

Q: You never purchased any land?

A: No sir.

Q: Not in the real estate business there are you?

A: No sir.

Q: Never have been?

A: No sir.

Q: What would it cost to build Mr. Ivey's house?

A: That's something I can't tell you, I'm no contractor.

Q: You have no idea of what it would cost to build a house like that?

A: Well it would cost you 10¢ a block for what they used at that time.

Q: How many blocks in it?

A: I can't tell you.

Q: Have you ever been in the house?

A: Yes sir.

Q: When?

A: I was in there yesterday.

Q: For the purpose of testifying today?

A: No sir, absolutely not.

Q: What was the occasion for your going in there yesterday?

A: Claude's wife had finished a dress for my wife and I went after it.

Q: You didn't do anything but go into the house?

A: That's all.

Q: Before that how long since you have been in there?

A: I would say one and a half years.

Q: What did you go there then for?

A: I went down there to visit Claude.

Q: How many times have you been in that house in your life?

A: Oh maybe two or three hundred.

Q: How many times have you been in that house since 1930?

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A: No sir, never heard anything about it.

Q: These trees you talk of, what percentage of them were killed, do you know?

A: No sir.

Q: All of them were not killed were they?

A: No sir, not all.

Q: Did you ever go over Mr. Ivey's fields after the freeze?

A: Yes sir.

Q: With him?

A: Not with him, with Claude.

Q: These checks that you talk about Mr. Ivey drawing, that was before 1929 you said?

A: Yes sir.

Q: How old a man is Mr. Ivey?

A: That's something I can't tell you. He carries his age mighty well to me.

Q: You say there is no set market for land, what do you mean by set market?

A: Well say ten or fifteen years ago you couldn't hear of a piece of land sold for anything less than \$25.00 to \$50.00.

Q: And those conditions kept up until when?

A: Well I would say when these banks started going bad and everything.

Q: And the depression is what stopped sales of land?

A: Well I don't think the depression had any more to do with it than the crops failing and no money.

Q: Do you think that's what caused it?

A: I would say it was.

RE-DIRECT EXAMINATION BY MR. HYBART.

Q: Mr. Lacey, Mr. McMillan asked you when you saw Mr. Ivey last and you told him about 8 months ago. You mean you talked with him?

A: Yes sir.

Q: You had a conversation with him at that time. Did you notice anything peculiar?

A: Nothing except his eyes. He couldn't see good.

Q: Nothing about his mind?

A: Personally I haven't seen a thing. I haven't talked with him lately but at that time I didn't see a thing.

Q: At that time you would say he was of sound mind?

A: It is my idea he was.

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man Ivey signed it, and Mr. Hall went into the Courthouse and pay his taxes, and the next day we come back again he told Mr. Hall such and such a thing is going on and I don't want George to get into trouble because I wanted to sell the land, and if anything comes up I want you to take the money from my account and pay the expenses. Well everything was all right until the boys come in and talk to the old man, and maybe the old man realizes that he should have consulted the boys, etc., and from then I never saw the old man any more. Later on Mr. Robinson come up there.

Q: What Robinson?

A: Mr. G. A. Robinson.

Q: He came up there, what did he say?

A: He told me why did I do that, and I told him the reason, and they tried to show me I was doing wrong, etc. I told him I do not do no wrong. They went out saying I rob him and took the property away from him, and I told him I had no such intention. I told him I bought the property and that settled it. They said won't you take your money back, and I says no I won't unless you pay \$200.00 more for the expenses. They said they would not pay \$200.00 more for the expenses and I says that's perfectly all right and they left. That's it.

Q: When this party you were buying this property for, who was it?

A: Mr. Frankos, Peter Frankos.

Q: Where does he live.

A: He lives in Baldwin County now.

Q: Where was he then?

A: In Chicago.

Q: And you were partners in business?

A: Yes sir, we still are.

Q: Still are partners in business?

A: Yes sir.

Q: Afterwards was that property conveyed to anybody else?

A: May, W. W. May. When he heard I bought the place he says "I like to stay here and I like to have the property. Why didn't you tell me something". And I says "Mr. May, Mr. Ivey come to me to buy the place. I want to Grimes and I says Grimes you need a home and you aint got no home". Grimes told me he don't want it. And May says to me he want to have a place, he want to stay in Baldwin County. Well Isays, "I didn't know it. When Mr. Ivey come to me I come to Grimes and I told him he aint got no home why don't you buy that home from Mr. Ivey". He says "George you know my condition. I aint got no money and I can't buy the house." I offered Grimes to buy the house for him. Well Grimes says that he don't want to get into no obligations at that particular time. I says I wish I had known it I would have bought it for you. Well he says "I would like to buy it". I says, "Peter will give us a deed. We will buy the place".

Q: Give who a deed?

A: Give May a deed and let him take the place. That was all about W. W. May. Well when the action come in they got a suit against W. W. May. He ways, "I aint going to court" and I says "Turn it over to me and I will fix it." I don't like that busi-

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Q: And were when this bill was filed, weren't you?
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Q: And it was while you were here that you had a deed drawn to Peter Frankos wasn't it?

A: Yes sir.

Q: Peter Frankos had money for investment and this trade was made for investment for Peter Frankos?

A: I bought it for Mr. Frankos and then May like to have the place and consequently I offered it to May if he want it he can have it.

Q: Where was the deed drawn?

A: In the first floor of the Baldwin County Bank.

Q: Where was it written out I mean. It was written on the type-writer wasn't it?

A: I guess it was. Mr. Heard he took the data down there and bring it up here and made the deed.

Q: And brought it down for Mr. Ivey to sign?

A: Yes sir.

Q: Who was there?

A: Mr. Ivey, Orrie Hall, Mr. John Chason and me.

Q: And it was signed and delivered to you was it?

A: Yes.

Q: And then you filed it in the Probate Court for record? That's true isn't it?

A: Mr. McMillan I really don't know because Mr. Heard did that work and I can't say.

Q: Mr. Frankos never did sign the note did he?

A: I got the note of Mr. Frankos in my hands but I never had the opportunity to do anything because when the legal transaction began they got my note signed P. E. Frankos by George Marinos.

Q: You signed the name Peter Frankos to the note and delivered it to the Bank didn't you?

A: That was the understanding with Mr. Ivey that he will accept that note until the original note come in and I got the original note in my files.

Q: And the note and the money were put in the Bank were they not, that morning?

A: Yes sir.

Q: And been there ever since insofar as you know?

A: The only thing I know that Mr. Ivey turned the money to Mr. Hall and told him to place it in his private account.

Q: The purchase price was a thousand dollars, of which \$500.00 was paid and a note for \$500.00 given?

A: Yes sir.

Q: That note was not secured by Vendor's Lien on the property or any other security, was it?

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A: Yes sir.

Q: Do you live in the town of Loxley or in the country?

A: About a half a mile due west.

Q: Do you know Mr. Robert Ivey?

A: Yes sir.

Q: How far do you live from him?

A: About a mile I would say between the two places.

Q: Do you know Mr. George Marinos?

A: Yes sir.

Q: How long have you known Mr. Robert Ivey?

A: I have known him practically ever since he moved to Loxley, I can't say just how long.

Q: During that time you have seen him frequently?

A: Yes sir.

Q: Had conversations with him?

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Q: Did you ever notice anything peculiar about him?

A: No sir.

Q: On November 23rd, 1931, would you say that Mr. Ivey, knowing him as you do, would you say that he was of sound or unsound mind?

A: Yes sir. I would say that he was in sound mind myself.

Q: Now during the time that you have known Mr. Ivey have you had business transactions with him?

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Q: What did he raise on his farm if anything?

A: Raised a little of everything. Had a nice orchard at the time he started.

Q: Nice orchard of what?

A: Oranges.

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Q: When was the big freeze?

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A: As I understand it, 17 acres.

Q: That's the property you understand Mr. Marinos bought?

A: Yes sir.

Q: You say in your opinion a thousand dollars would have been a good price at that time?

A: Yes sir.

Q: Oranges had been killed on that property?

A: Yes sir, as far as commercial value they were nothing.

CROSS EXAMINATION BY MR. McMILLAN.

Q: You never purchased any land there yourself?

A: I had some give to me.

Q: Had some given to you, where?

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A: On the highway.

Q: Who gave it to you?

A: My aunt.

Q: Who is your aunt?

A: Annie E. Lacey.

Q: You never purchased any land?

A: No sir.

Q: Not in the real estate business there are you?

A: No sir.

Q: Never have been?

A: No sir.

Q: What would it cost to build Mr. Ivey's house?

A: That's something I can't tell you, I'm no contractor.

Q: You have no idea of what it would cost to build a house like that?

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Q: How many times have you been in that house in your life?

A: Oh maybe two or three hundred.

Q: How many times have you been in that house since 1930?

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A: No sir, never heard anything about it.

Q: These trees you talk of, what percentage of them were killed, do you know?

A: No sir.

Q: All of them were not killed were they?

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Q: Did you ever go over Mr. Ivey's fields after the freeze?

A: Yes sir.

Q: With him?

A: Not with him, with Claude.

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A: Nothing except his eyes. He couldn't see good.

Q: Nothing about his mind?

A: Personally I haven't seen a thing. I haven't talked with him lately but at that time I didn't see a thing.

Q: At that time you would say he was of sound mind?

A: It is my idea he was.

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Q: What Robinson?

A: Mr. G. A. Robinson.

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A: He told me why did I do that, and I told him the reason, and they tried to show me I was doing wrong, etc. I told him I do not do no wrong. They went out saying I rob him and took the property away from him, and I told him I had no such intention. I told him I bought the property and that settled it. They said won't you take your money back, and I says no I won't unless you pay \$200.00 more for the expenses. They said they would not pay \$200.00 more for the expenses and I says that's perfectly all right and they left. That's it.

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A: Mr. Frankos, Peter Frankos.

Q: Where does he live.

A: He lives in Baldwin County now.

Q: Where was he then?

A: In Chicago.

Q: And you were partners in business?

A: Yes sir, we still are.

Q: Still are partners in business?

A: Yes sir.

Q: Afterwards was that property conveyed to anybody else?

A: May, W. W. May. When he heard I bought the place he says "I like to stay here and I like to have the property. Why didn't you tell me something". And I says "Mr. May, Mr. Ivey come to me to buy the place. I went to Grimes and I says Grimes you need a home and you aint got no home". Grimes told me he don't want it. And May says to me he want to have a place, he want to stay in Baldwin County. Well I says, "I didn't know it. When Mr. Ivey come to me I come to Grimes and I told him he aint got no home why don't you buy that home from Mr. Ivey". He says "George you know my condition. I aint got no money and I can't buy the house." I offered Grimes to buy the house for him. Well Grimes says that he don't want to get into no obligations at that particular time. I says I wish I had known it I would have bought it for you. Well he says "I would like to buy it". I says, "Peter will give us a deed. We will buy the place".

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Q: And brought it down for Mr. Ivey to sign?

A: Yes sir.

Q: Who was there?

A: Mr. Ivey, Orrie Hall, Mr. John Chason and me.

Q: And it was signed and delivered to you was it?

A: Yes.

Q: And then you filed it in the Probate Court for record? That's true isn't it?

A: Mr. McMillan I really don't know because Mr. Heard did that work and I can't say.

Q: Mr. Frankos never did sign the note did he?

A: I got the note of Mr. Frankos in my hands but I never had the opportunity to do anything because when the legal transaction began they got my note signed P. E. Frankos by George Marinos.

Q: You signed the name Peter Frankos to the note and delivered it to the Bank didn't you?

A: That was the understanding with Mr. Ivey that he will accept that note until the original note come in and I got the original note in my files.

Q: And the note and the money were put in the Bank were they not, that morning?

A: Yes sir.

Q: And been there ever since insofar as you know?

A: The only thing I know that Mr. Ivey turned the money to Mr. Hall and told him to place it in his private account.

Q: The purchase price was a thousand dollars, of which \$500.00 was paid and a note for \$500.00 given?

A: Yes sir.

Q: That note was not secured by Vendor's Lien on the property or any other security, was it?

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A: On the highway.

Q: Who gave it to you?

A: My aunt.

Q: Who is your aunt?

A: Annie E. Lacey.

Q: You never purchased any land?

A: No sir.

Q: Not in the real estate business there are you?

A: No sir.

Q: Never have been?

A: No sir.

Q: What would it cost to build Mr. Ivey's house?

A: That's something I can't tell you, I'm no contractor.

Q: You have no idea of what it would cost to build a house like that?

A: Well it would cost you 10¢ a block for what they used at that time.

Q: How many blocks in it?

A: I can't tell you.

Q: Have you ever been in the house?

A: Yes sir.

Q: When?

A: I was in there yesterday.

Q: For the purpose of testifying today?

A: No sir, absolutely not.

Q: What was the occasion for your going in there yesterday?

A: Claude's wife had finished a dress for my wife and I went after it.

Q: You didn't do anything but go into the house?

A: That's all.

Q: Before that how long since you have been in there?

A: I would say one and a half years.

Q: What did you go there then for?

A: I went down there to visit Claude.

Q: How many times have you been in that house in your life?

A: Oh maybe two or three hundred.

Q: How many times have you been in that house since 1930?

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Q: Did you go to his place then?

A: No sir.

Q: Is it pretty well generally known around Loxley that he had a stroke?

A: Yes sir.

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A: No sir, never heard anything about it.

Q: These trees you talk of, what percentage of them were killed, do you know?

A: No sir.

Q: All of them were not killed were they?

A: No sir, not all.

Q: Did you ever go over Mr. Ivey's fields after the freeze?

A: Yes sir.

Q: With him?

A: Not with him, with Claude.

Q: These checks that you talk about Mr. Ivey drawing, that was before 1929 you said?

A: Yes sir.

Q: How old a man is Mr. Ivey?

A: That's something I can't tell you. He carries his age mighty well to me.

Q: You say there is no set market for land, what do you mean by set market?

A: Well say ten or fifteen years ago you couldn't hear of a piece of land sold for anything less than \$25.00 to \$50.00.

Q: And those conditions kept up until when?

A: Well I would say when these banks started going bad and everything.

Q: And the depression is what stopped sales of land?

A: Well I don't think the depression had any more to do with it than the crops failing and no money.

Q: Do you think that's what caused it?

A: I would say it was.

RE-DIRECT EXAMINATION BY MR. HYBART.

Q: Mr. Lacey, Mr. McMillan asked you when you saw Mr. Ivey last and you told him about 8 months ago. You mean you talked with him?

A: Yes sir.

Q: You had a conversation with him at that time. Did you notice anything peculiar?

A: Nothing except his eyes. He couldn't see good.

Q: Nothing about his mind?

A: Personally I haven't seen a thing. I haven't talked with him lately but at that time I didn't see a thing.

Q: At that time you would say he was of sound mind?

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A: He lives in Baldwin County now.

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Q: And you were partners in business?

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Q: And it was signed and delivered to you was it?

A: Yes.

Q: And then you filed it in the Probate Court for record? That's true isn't it?

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A: The age of Mr. Frankos is 47 at that time, and I guess W. W. May 28 to 30 years old.

Q: How old was Mr. Ivey at the time he made this deal?

A: Pretty old and feeble, Mr. McMillan.

Q: Pretty old and feeble. Feeble both physically and mentally wasn't he?

A: No sir, not mentally, but physically.

Q: Over 80 years old wasn't he?

A: Maybe 75 or 78.

Q: And before that he had had a stroke of paralysis?

A: Well, I guess it was stroke of paralysis. He went around on crutches some and not able to come up stairs.

Q: And that was sometime about the year 1930 he had that stroke wasn't it?

A: I think it was sometime before, maybe a year or two, but the old man was better and better all the time, more able to go about after he had the stroke.

Q: You have known the old man pretty intimately?

A: Known the old man what? I don't understand the word intimately.

Q: You knew him well?

A: Yes sir.

Q: And he trusted you?

A: Trust me, yes sir.

Q: And you knew of his physical condition at that time didn't you?

A: Yes sir.

Q: And you brought him to Bay Minette didn't you?

A: Yes sir.

Q: Mr. Heard was your lawyer wasn't he?

A: Yes sir.

Q: And when you got Mr. Ivey here you took him to Mr. Heard's office, didn't you?

A: No I did not. We didn't bring him up here but transacted the business in the bank.

Q: Because he couldn't get up the stairs?

A: That's it. He may could but we have to help him.

Q: Who came up here with you and Mr. Ivey?

A: Nobody, Mr. McMillan, but myself.

Q: In your car?

A: Yes sir, in my car.

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ness if I could help it. They told me I was trying to do the wrong thing and that's one thing I don't do.

Q: Mr. Marinos you know that property out there?

A: Yes I do.

Q: You knew it in 1931.

A: Yes.

Q: And you own^{ed} property in Loxley, both personal and real property?

A: Yes sir.

Q: Do you know the value of real property down there?

A: Well I am not real estate agent but about what it is worth, yes.

Q: In 1931 was there much of a sale for property down there Mr. Marinos?

A: No sir, not much of a sale.

Q: In your opinion was a thousand dollars a fair and reasonable price?

A: It was a fair price.

Q: For that property in 1931?

A: Yes sir, a fair price.

Q: At the time you bought it?

A: Yes sir. I thought it was a pretty fair price.

Q: Pretty fair price?

A: Yes, for both parties concerned.

Q: And what you were doing was to help the old man out?

A: That was my first intention, absolutely nothing else but that, and I did prove it by offering the place back to the boys.

Q: And during this time you never noticed anything peculiar about the old man?

A: No sir, and I never go into any trouble that way until Claude step in my place and say his father not capable to transact any business and I asked Mr. Ivey and he says "The property is mine and not the boys, and I am able to transact this business, and I want you to get a doctor to examine me".

Q: And Dr. J. F. Bryars here at Bay Minette was called to examine him?

A: Yes sir. He told us to get two doctors and we told Mr. Heard to get two doctors and examine the man.

CROSS EXAMINATION BY MR. McMILLAN.

Q: Mr. Marinos you and Mr. W. W. May and Mr. Peter Frankos are all over 21 years of age?

A: We are, yes sir.

Q: And were when this bill was filed, weren't you?
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man Ivey signed it, and Mr. Hall went into the Courthouse and pay his taxes, and the next day we come back again he told Mr. Hall such and such a thing is going on and I don't want George to get into trouble because I wanted to sell the land, and if anything comes up I want you to take the money from my account and pay the expenses. Well everything was all right until the boys come in and talk to the old man, and maybe the old man realizes that he should have consulted the boys, etc., and from then I never saw the old man any more. Later on Mr. Robinson come up there.

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A: He lives in Baldwin County now.

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He says, "The land is mine. You can get some doctors to examine me and I pay the doctors". Well when the old man spoke like that I came over here to Mr. Heard and says, "this is the case, this man here wants to sell some property and I got man to buy the property. His boy come in this morning and told me his father is not able to transact business. What do you think about it?" "Well," he says, "We will have a doctor examine him". The old man says to Mr. Heard, "I want you to get a doctor and examine me" and he call Mr. Hall, Cashier of the Bank, Orrie Hall, over there and says "Mr. Hall, you know that I am good. You know that you transact my business". So Mr. Heard called Dr. Bryars, he was trying to get Dr. Chason but couldn't, so he took Dr. Bryars to examine Mr. Ivey. I wasn't in there so I went in to Mr. Stapleton, he was in his private office, and I told him the case and says what does he think and he says old man Ivey was trying to sell me his place time and time again.

(Mr. McMillan objects. Mr. McMillan and Mr. Hybart have an agreement that all objections can be made on the submission to the Judge to the answers of the witnesses or to the questions propounded or anyother legal objections to the testimony.)

Q: Mr. Marinos what conversation did you have with Mr. Stapleton, Mr. Devan Stapleton?

A: During the time which the examination was going on in the first floor of the bank I walked in to Mr. Stapleton and told him what it was all about. I says, the old man come over there and so and so happened and he wants me to buy his place. What do you think about it? I says I think I'm gonna buy and relieve the old man. Well, he says, don't seem a bad idea. I went ahead and Mr. Heard and Mr. John Chason and Dr. Bryars and Orrie Hall were all in the room examining Mr. Ivey. When they come out I says, "What is it Mr. Heard"? He says "Just as sound as a dollar, we don't see anything wrong with him".

Q: Then you went ahead and made the deal?

A: He told Mr. Heard to make the deeds. They make the deeds themselves. The only thing I went in there and he called Mr. Hall and gave him the money and he told him where to put the money. I think he put it on his private account.

Q: That was Mr. Ivey told Mr. Hall where to put his money?

A: Yes sir.

Q: How much money did you pay him?

A: \$500.00.

Q: And \$500.00 on a note?

A: Yes sir, and the note I don't have from the man yet, and he take my signature until the other note comes in we will exchange the notes.

Q: In other words you executed a note for Peter Frankos by you for \$500.00 and paid \$500.00 in money?

A: Yes sir, and I put in the note until I get him Peter Frankos' note. The next day, the next morning, the old man come to me and says "George, I'm sorry I am putting you to trouble". He says, "The boys are going to come over here and give you trouble and I want you to take me to Bay Minette immediately". I says "what will we do?" He says "I wanted to sell my land and you do me the favor and I want to tell Mr. Orrie Hall that if anything comes up to pay the expenses", the very same words Mr. Ivey tell Orrie Hall when I bring him here. He called Mr. Hall outside and make that statement. In the meantime before we left the first day he had Mr. Orrie Hall to pay his taxes and Mr. Hall made a check and old

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A: Yes sir. He was a very close friend and he trusted me with everything. When I mean everything I mean sign his checks or anything he wants he come in the store and tell me his troubles.

Q: During that time did you notice anything peculiar about Mr. Ivey?

A: No sir, never did.

Q: Never saw him do any strange things?

A: No sir, never did.

Q: Well now from what you saw of him would you, in your opinion, say he was of sound or unsound mind?

A: Absolutely sound mind.

Q: Mr. Robert Ivey owned this piece of land that is in dispute?

A: Yes sir, that's what he says.

Q: Did he offer to sell it to you.

A: He did. He did offer to sell to me two or three times during the period which I know the man.

Q: Did he offer to sell it to you in 1931?

A: Yes, that was the last time.

Q: Well did you fix the price on it or did he fix the price?

A: I never did fix the price. I never told the old man that I want the land.

Q: Now leading up to this transaction here, just state what happened between you two.

A: Mr. Ivey used to come in every so often, and especially just come over there, he is a great fish eater, and come over there sometimes to eat a little sardine, get a little stuff and sit down, and when he wants money say "George, I want \$5.00", so I made check, he could write very little, just little scratches, and that was it, until one morning, if I remember right it was on Thursday, the old man came to me and said, "I am sick and disgusted and want to leave and my boy Claude treats me very bad, and I got a boy Dan who likes me and I will go there, and Claude he beats me." Yes sir, that was the old man's words, and he says I want to sell my place and go live with Dan. He says everything Claude does over there to putting in posts or nail I have to pay him. He says I am paying my taxes, I pay everything, and I have to pay him for everything he does in the orchard, and says I am getting tired and I want to go back and live with Dan. I says to Mr. Ivey I can't buy the property, I don't want it. He says I want you to help me sell the property, I want to leave. I says I know a man in Chicago I call and try to sell the property. Well I didn't call, but I just wrote the man and told him I was buying this property for him which I know was good for \$1000.00. I says send me your note for \$500.00 and \$500.00 cash, and Mr. Ivey come back to know if I know anything about the place and I didn't, so I said come over Monday Mr. Ivey and we will know, and Mr. Ivey was there early in the morning before I got up Monday morning, waiting for me to get up and make the deeds. In the meantime Claude come over there and says, "Where you going with the old man?". I says, "Your father wants to sell the land" and I says, "We are going over there to make the deeds". He says, "You know my father not capable to transact business" and I says "It is all right I will talk to the old man". I want to the old man and says, "Claude told me that you are not able to transact the business and we better drop it".

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A: Well I would say when these banks started going bad and everything.

Q: And the depression is what stopped sales of land?

A: Well I don't think the depression had any more to do with it than the crops failing and no money.

Q: Do you think that's what caused it?

A: I would say it was.

RE-DIRECT EXAMINATION BY MR. HYBART.

Q: Mr. Lacey, Mr. McMillan asked you when you saw Mr. Ivey last and you told him about 8 months ago. You mean you talked with him?

A: Yes sir.

Q: You had a conversation with him at that time. Did you notice anything peculiar?

A: Nothing except his eyes. He couldn't see good.

Q: Nothing about his mind?

A: Personally I haven't seen a thing. I haven't talked with him lately but at that time I didn't see a thing.

Q: At that time you would say he was of sound mind?

A: It is my idea he was.

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Q: Ever since then he has been on crutches, hasn't he?

A: Well, I saw him not long ago on the porch, I couldn't say whether he was on the crutches.

Q: Couldn't say that his mind was good either could you?

A: I haven't talked with him for practically eight months.

Q: Your business dealings with Mr. Ivey were what, gas and oil?

A: I sold him gas and oil, tractor parts, farm machinery.

Q: That has not been since 1929 has it?

A: No sir.

Q: You haven't had any business dealings with him since then have you?

A: No sir, the only time I saw him he apologized for not recognizing me. His eyes were bad he said. But as far as I could tell we carried on a conversation.

Q: What does it cost to clear land and plant it in those fruit trees?

A: Well, when times were good I had some cleared for \$7.00 an acre.

Q: Planted?

A: Planted them myself, thirty acres.

Q: Is that all you know about the cost of clearing land and planting?

A: Well, it's like everything else, it's like all business, you get what you can.

Q: Is that your only means of knowing what it cost to clear and plant that land?

A: Well I have seen others have land cleared.

Q: Do you know what they paid for it?

A: Yes. Twenty acres cleared by Mr. Corte joining our place.

Q: What Corte?

A: A. A. Corte & Sons.

Q: Where?

A: On the highway going to Mobile.

Q: Whereabouts on the highway?

A: About a mile from town.

Q: From Loxley?

A: Yes sir. About a half mile beyond where I live, west.

Q: Mr. Lacey do you know anything about Mr. Ivey claiming that some spaniards or other people came in and cut down his trees?

A: No sir, I don't believe I do.

Q: Never heard anything like that?

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A: Well that's pretty hard to say off hand. I didn't check down every time that I went in there, I could hardly tell you off hand.

Q: How long since you've been in the garage business?

A: Well let me see, it was in '25 or '26, somewhere along there that I quit.

Q: What garage was it?

A: My own.

Q: Who owns the garage now?

A: Sherrill Oil Company.

Q: Who owned it before then?

A: I did.

Q: Did you ever rent the place from Mr. Marinos?

A: No sir.

Q: Are you in business with Mr. Marinos or have you ever had business dealings with him?

A: I have had business dealings with him, I buy feed.

Q: Buy it yet?

A: Yes sir.

Q: What sort of feed?

A: Cow feed.

Q: How much do you buy?

A: Let me see, I give him \$10.00 cash yesterday.

Q: Are you in debt to Mr. Marinos?

A: Not that I know of, I might be a dollar or two, I couldn't say.

Q: How long have you been engaged in doing that kind of business with Mr. Marinos?

A: Ever since he had been in the feed business.

Q: How long was that?

A: I can't tell you.

Q: Does he have all your feed business?

A: No sir.

Q: Do you know when Mr. Ivey had a stroke of paralysis?

A: No, I don't. I know about when it was.

Q: Did you go to his place then?

A: No sir.

Q: Is it pretty well generally known around Loxley that he had a stroke?

A: Yes sir.

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Mr. McMillan: You were not subpoenaed here, you just came with the Marinos crowd didn't you?

Mr. Lacey: I don't know what you mean.

Mr. McMillan: Was a subpoena issued for you?

A: No sir.

Mr. Hybart: Mr. Lacey what's your mileage?

A: Around 20 miles.

TESTIMONY OF GEORGE MARINOS. DIRECT EXAMINATION BY MR. HYBART.

Q: This Mr. George Marinos?

A: Yes sir.

Q: Where do you live Mr. Marinos?

A: Loxley.

Q: How old are you?

A: 42 years old.

Q: How long been living in Loxley?

A: Ten years.

Q: Do you know Mr. Robert Ivey?

A: Yes sir, I do.

Q: You know Mr. Peter Frankos?

A: Yes sir.

Q: Did you have any business connection with Mr. Peter Frankos in 1931?

A: Yes sir.

Q: What connection did you have with him?

A: Partners.

Q: How long have you known Mr. Robert Ivey?

A: About 10 years, since the time he come to Baldwin County. His daughter used to work for me.

Q: In your store?

A: In the store, yes sir.

Q: Did you have any business transactions with him at the time you knew him?

A: Yes sir. He traded with me all the time.

Q: During that time you knew him did he have a bank account?

A: Yes sir.

Q: Did you cash checks on the bank?

A: Yes sir.

Q: During that time did you have any conversation with him?

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A: Yes sir. He was a very close friend and he trusted me with everything. When I mean everything I mean sign his checks or anything he wants he come in the store and tell me his troubles.

Q: During that time did you notice anything peculiar about Mr. Ivey?

A: No sir, never did.

Q: Never saw him do any strange things?

A: No sir, never did.

Q: Well now from what you saw of him would you, in your opinion, say he was of sound or unsound mind?

A: Absolutely sound mind.

Q: Mr. Robert Ivey owned this piece of land that is in dispute?

A: Yes sir, that's what he says.

Q: Did he offer to sell it to you.

A: He did. He did offer to sell to me two or three times during the period which I know the man.

Q: Did he offer to sell it to you in 1931?

A: Yes, that was the last time.

Q: Well did you fix the price on it or did he fix the price?

A: I never did fix the price. I never told the old man that I want the land.

Q: Now leading up to this transaction here, just state what happened between you two.

A: Mr. Ivey used to come in every so often, and especially just come over there, he is a great fish eater, and come over there sometimes to eat a little sardine, get a little stuff and sit down, and when he wants money say "George, I want \$5.00", so I made check, he could write very little, just little scratches, and that was it, until one morning, if I remember right it was on Thursday, the old man came to me and said, "I am sick and disgusted and want to leave and my boy Claude treats me very bad, and I got a boy Dan who likes me and I will go there, and Claude he beats me." Yes sir, that was the old man's words, and he says I want to sell my place and go live with Dan. He says everything Claude does over there to putting in posts or nail I have to pay him. He says I am paying my taxes, I pay everything, and I have to pay him for everything he does in the orchard, and says I am getting tired and I want to go back and live with Dan. I says to Mr. Ivey I can't buy the property, I don't want it. He says I want you to help me sell the property, I want to leave. I says I know a man in Chicago I call and try to sell the property. Well I didn't call, but I just wrote the man and told him I was buying this property for him which I know was good for \$1000.00. I says send me your note for \$500.00 and \$500.00 cash, and Mr. Ivey come back to know if I know anything about the place and I didn't, so I said come over Monday Mr. Ivey and we will know, and Mr. Ivey was there early in the morning before I got up Monday morning, waiting for me to get up and make the deeds. In the meantime Claude come over there and says, "Where you going with the old man?". I says, "Your father wants to sell the land" and I says, "We are going over there to make the deeds". He says, "You know my father not capable to transact business" and I says "It is all right I will talk to the old man". I went to the old man and says, "Claude told me that you are not able to transact the business and we better drop it".

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A: I am really not able to tell you whether it was or not.

Q: Did Mr. Ivey tell you to have the personal property put in that transaction?

A: He told me to put everything. He told me to put everything. He told me he wants to get out of there. He mentioned machinery and one sprayer he pay certain amount of money and five orange growers they chip in and bought sprayer one time, and he says you can have that part of it but I don't know who has got it because I never kept up with it.

Q: He didn't specifically mention any property but just says put in everything?

A: Yes sir, he told us, specified article by article, except so and so and so and so. The horses, mules, or whatever it was he just bought he don't want to go in there.

Q: After this deed was made to Peter Frankos you had a deed prepared from Peter Frankos to W. W. May, didn't you?

A: Yes sir, I did.

Q: Then you had a deed prepared from W. W. May to you, didn't you?

A: Yes sir. Because W. W. May was afraid to face the music and didn't want to get into trouble and I thought I get him out of trouble.

Q: And you had a deed made from W. W. May to you?

A: Yes sir, to relieve the man of trouble.

Q: You came to Bay Minette and had that deed drawn and left here and had W. W. May to come by here and sign it, didn't you?

A: I really don't remember.

Q: Who drew that deed?

A: Mr. R. C. Heard.

Q: What was your connection with W. W. May in business or otherwise at the time of that transaction?

A: We didn't have no connection. W. W. May was individual, was always running around in the store and stay with us, and sometimes worked for us in the shipping season, and pay the man \$50.00 a month.

Q: You say he worked for you during the shipping season?

A: Yes, he worked that shipping season, 1931.

Q: W. W. May paid no money for the deed, did he?

A: I really don't remember because I didn't deliver no deed.

Q: You never received a nickle from W. W. May for that deed and Mr. Frankos received no money for it?

A: Nobody. He just says I like to have the place and stay here, and I said all right.

Q: How much did he promise to give you for the place?

A: We do not expect to get any more, I offered it to two or three fellows for thousand dollars.

Q: But the next morning when the Ivey boys came there you wanted them to pay you \$200.00 more didn't you?

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A: Yes, I asked them \$200.00 for the trouble and expense.

Q: W. W. May commenced an ejectment against the Iveys to put them off of that property didn't he?

A: I think he did.

Q: Who employed the attorneys to do that?

A: Mr. McMillan, I don't remember.

Q: To the best of your knowledge didn't you?

A: To the best of my knowledge I told Mr. Heard to chase them out of there and that just pulled me in the game.

Q: And you say that the next morning they came back and wanted to give you your money and note back and you wouldn't take it because you wanted \$200.00 more?

A: I told Mr. Robinson and the boys that I bought this for another man, and I says he may consider to turn it over to you for \$200.00 for expenses and trouble.

Q: They came back and offered to give you back the note and money and you refused to take it unless they gave you \$200.00 for the trouble?

A: Yes sir.

Q: No note signed by Mr. Frankos has ever been given to Ivey, or anybody for Ivey?

A: We never had the opportunity because they start the litigation and they got my note with Peter Frankos name on it, but the original Frankos Note I got in my hands.

Q: These checks you speak of Mr. Ivey drawing, who wrote the name?

A: He wrote the name.

Q: He wrote the name?

A: He sign the check but we fill the checks out.

Q: Now when you came here on that morning with Mr. Ivey and employed Mr. Heard what time did you get to Bay Minette?

A: Was about 10 o'clock in the morning.

Q: How long did it take you to complete your negotiations?

A: I guess about 2 o'clock, about 2 hours I guess.

Q: Nothing was done except to draw the deeds was there and pay the taxes?

A: Yes sir.

Q: And you employed Mr. Heard to draw that deed, didn't you?

A: Not me, Mr. Ivey paid him \$10.00.

Q: How do you know he paid him \$10.00?

A: I was right there.

Q: How did he pay that \$10.00?

A: I think in cash. (page twenty-five)

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Q: Memory pretty clear about that?

A: Mr. McMillan I remember the \$10.00, but my recollection really is not very clear on that.

Q: Look at the check which I show you dated November 23rd, 1931 payable to R. C. Heard and signed Robert Ivey. Isn't that the check he paid Mr. Heard?

A: Yes sir, but this check represents the fees of the lawyer and Mr. Heard paid the fees of the doctor.

Q: Mr. Ivey paid all that?

A: Yes sir, that check represents the doctor's fees and Mr. Heard's fees.

Mr. McMillan: The Complainant exhibits the check above referred to and asks the commissioner to mark the same Exhibit "A".

Q: Now you say when was it that Mr. Ivey's children came there and told you that the father wasn't capable of attending to business?

A: That was the morning before we come over here.

Q: The morning before you come over here?

A: Yes sir. That was Mr. Claude Ivey.

Q: The old man's mental condition was the subject of discussion with you and his sons before you made the deed?

A: It was not mentioned at all about the mental condition, the only thing the boy stepped in and said "Where you going with my father?" I said to Bay Minette to sell this land, and he says "Don't you know my father not in condition to sell that property", and I said no, and I said to Mr. Ivey we will not go down there because your son says you are not capable to sell that property.

Q: Was that the day you came here?

A: Yes, the very same morning, and that was the morning when Mr. Ivey says "Don't bother yourself about that, we will have a doctor examine me".

Q: That was the day before you came here?

A: No sir, the very same morning.

Q: Had you had a discussion with him the day before that?

A: No.

Q: So when you brought him here you took him to a doctor?

A: At his own request.

Q: To see as to his mental condition?

A: To see if the boy knows what he is talking about.

Q: So the question of whether he knew what he was talking about and whether he knew what he was doing was a matter of discussion with you all that morning?

A: Absolutely.

Q: You knew then that it was claimed that he wasn't mentally able---

A: But his sons they don't want him to sell the place and the old man says that was the only reason he wants to sell the place be-

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cause he don't want Claude to impose on him so much.

Q: Was the old man with the boys the next morning when they came to your place?

A: No, I don't remember the old man being with the boys.

Q: Do you remember the old man being there claiming that there was never anything but the real estate sold? Any such thing as that ever said?

A: I don't remember because the old man and I not discuss it any more.

Q: Was Mr. Heard present at this examination?

A: Yes sir, Mr. Heard, Mr. Orrie Hall and John Chason.

Q: That's two of your lawyers in this litigation?

A: Yes sir, Heard & Chason.

Q: Were they both present that day?

A: Yes sir, Orrie Hall and Dr. Bryars also.

Q: The old man was in a hurry to come to Bay Minette next day to close the deal?

A: Not the next day, all those things happened one day.

Q: He was in a hurry to get off before the boys stop the deal?

A: No sir, the boys don't know nothing about the deal. After the transaction Claude come over here and want to have the Sheriff put me in jail because I am trying to take the property away.

Q: Was that here in Bay Minette.

A: Right here.

Q: He wanted the Sheriff to put you in jail because you are trying to take the property away. That was the day the deed was made. Was it the next day after that that he offered you the money back?

A: The old man never did. The boys and Mr. Robinson, his son-in-law, I think the next day in the afternoon, because the morning Mr. Robert Ivey come to me and he wants to protect me against the mob that they were talking about, they were talking pretty hard against me in the house--

Q: The mob, talking about a mob?

A: That's the way the old man represented it. He says "My boys they are figuring to come over here and jump on you and I want to protect you?"

Q: How did he protect you?

A: He come to Bay Minette and told Orrie Hall to protect me if anything come up?

Q: Who was present?

A: Mr. Orrie Hall, who unfortunately is dead.

Q: Was that at Bay Minette?

A: Right here.

Q: When was that?

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A: The day after the deed was made.

Q: When was it he told the Sheriff to protect you?

A: Told Mr. Hall, not the sheriff.

Q: When was that?

A: The next day, the old man at 6 o'clock was waiting for me.

Q: Did you bring him to Bay Minette?

A: I did, and he offered to pay me for that.

Q: Just you and Mr. Ivey?

A: Yes sir.

Q: Do you know how old Mr. Ivey was?

A: I really don't, but he was a pretty old man.

Q: Did you know that he had been paralyzed?

A: Yes sir, I did.

Q: That was a well known fact around Loxley wasn't it?

A: It was, for the people he had any connections.

Q: After his paralysis he was very feeble wasn't he?

A: He was feeble but not in mind, mind pretty active.

Q: How many times did Claude tell you his father wasn't capable?

A: Just once that morning when he saw the old man he was tracing up and I told him he was gonna sell that property.

Q: Did Claude ask you not to deal with him?

A: No, he says, "don't you know my father not able to transact any business"?

Q: And in the face of that you brought the old man to Bay Minette?

A: No sir, in the face of that I told the old man we stop right there, and the old man says "It's mine, I own it, not my boy, and if you want to get doctors to examine me, I pay it".

Q: And you did bring him to Bay Minette?

A: I did bring him to Bay Minette and do all I could to help the old man, and when I did it I did it purely for that. The old man was crying when he says that, too.

Q: What individual went to see Dr. Bryars to have the examination made?

A: Mr. McMillan, I don't know, Mr. Heard I guess, I was nowhere near.

Q: Do you know that the purchase price that was paid and the Note were put in the Baldwin County Bank?

A: Yes, now I don't know about the Note, but I know the money was turned over to Mr. Orrie Hall and he got instructions what to do with the money.

Q: You operated the Loxley Produce Company?

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A: I am a partner.

Q: What nationality are you Mr. Marinos?

A: I am a citizen of United States.

Q: But what nationality are you, greek?

A: Yes, I am Greek descendant.

Q: Mr. Marinos, the complainant offers you, tenders to you, your note and the proceeds of that \$500.00 that was deposited in the Baldwin County Bank, are you willing to accept it in satisfaction of your claims?

A: Right now? Mr. McMillan I tell you, it is my desire if I ever repossess the place I will offer it to the boys for the same amount I paid, I don't want them to think I am trying to deprive them of anything like that, but am I supposed to stand this attorney's fees? I will accept my money back, plus the attorney's fees, if that is satisfactory to the boys.

Q: Your attorney's fees?

A: Yes.

Q: Well, we aint gonna pay them. You refused to accept this the next day after the transaction was had, didn't you?

A: They offered me just like you offer to me now, and I was feeling that I was entitled to something more.

Q: You wanted \$200.00 more?

A: To cover the expenses, if they would have give me \$100.00 I would have accepted.

Q: But you asked for \$200.00?

A: \$200.00, yes.

Q: You also refused this on February 15th following the transaction didn't you?

A: Not as I know of. Didn't I offer it to you this spring? I told him I don't want your place. I don't want to rob you out of anything what you got.

RE-DIRECT EXAMINATION BY MR. HYBART.

Q: Mr. Marinos on the day after the deed was made you say that about six o'clock in the morning Mr. Robert Ivey was waiting for you?

A: Yes sir, he generally never come before seven or eight o'clock.

Q: To tell you what his boys were saying?

A: To tell me what the boys said they were going to do to me.

Q: They came to see you after that?

A: Yes, I brought the old man to see Orrie Hall to do what he like to do and then I took him back.

Q: Did they, the boys, come to see you then?

A: Yes sir.

Q: How many of them came down there to see you?

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A: Mr. Hybart, I can't very well say, but Mr. Robinson will answer that question much better than I can. I guess about five or six or seven.

Q: When they came there did they come in an even frame of mind or were they rowdy?

A: I thought they would wipe the floor up with me from what I heard the day before, that I was gonna rob the boys. I got scared to tell you the truth.

Q: Did they talk bad to you? What did they say to you?

A: I don't remember, Mr. Hybart. When a man is cool minded he can remember, but then I was kinda excited, I tell you the truth. I told Mr. Grimes I was coming over here and have Mr. Stuart have a protective for me.

Q: And that was when you offered to take \$200.00 plus the \$1000?

A: Yes sir. I told him I make the deed to the other fellow and I have to offer some inducement to him, and in the meantime certain amount of expenses.

Q: And when was it Claude came to Mr. Stuart to have you put in jail?

A: The very same day.

Q: What day?

A: When we was drawing the deed. And I met Stuart and I tell it, it is the truth, he says "What do you think of that, he wanted to put you in the jail, and he was full of whisky and I told him to go home or I would lock him in", and he says his father got more sense than he has.

Q: Did you see Claude Ivey up here?

A: Yes sir. I saw him and Mrs. Grant, which is his sister, together in Bay Minette.

Q: In Bay Minette, what time?

A: Yes sir, at 2 o'clock in the afternoon.

Q: Did you have any conversation with him?

A: No sir. They didn't talk to me nor I to him.

Q: Mr. Marinos, I notice in this transfer some personal property, tractor disk and two or three other items. What was the value of that property in November, 1931, the personal property?

A: What personal property.

Q: This personal property mentioned in this conveyance, "Also 1 tractor disc, together with tools and any other farm machinery now belonging to me"?

A: I wouldn't give him \$25.00 if I had to buy it separately. He was giving up everything he said and get out.

Q: What about the sprayer there, Mr. Marinos?

A: He had some partners, I don't know when they bought it, they bought a sprayer machine, four or five fellows, 1 day one use it and next day another. The old man gave me his part if I like to have it, but I don't know where it is nor did I try to find out.

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Q: And you say a thousand dollars was a fair and reasonable value for what you bought from the old man at that time?

A: Yes sir, a fair price.

RE-CROSS BY MR. McMILLAN.

Q: You never took possession of any of the personal property did you?

A: No sir.

Q: You never paid taxes on the place, did you?

A: No.

Q: Never have assessed it, have you?

A: No sir, never have.

RE-RE DIRECT BY MR. HYBART.

Q: This litigation came up soon after you bought the place, didn't it?

A: Yes sir.

Q: This contention on the part of these parties came up right after you bought the place and litigation followed right afterwards?

A: Yes sir.

TESTIMONY OF F. C. GRIFFIN. DIRECT EXAMINATION BY MR. C. L. HYBART.

Q: Your name, please sir?

A: Fred, F. C. Griffin.

Q: Where do you live, Mr. Griffin?

A: Loxley.

Q: How old are you?

A: 35.

Q: Do you know Mr. Robert Ivey?

A: Yes sir.

Q: How long have you known him?

A: Ever since he came to Loxley, I don't remember how long.

Q: Have any business transactions with him?

A: We had some along, yes sir.

Q: Cashed any checks for him?

A: Yes sir.

Q: What sort of business transactions did you have?

A: Gas and oil, I was operating a service station.

Q: Did you have any business with him in 1931?

A: About that time and on back before that +

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Q: Did you talk with him frequently?

A: Everytime I saw him. He used to come to my place every once in a while.

Q: Did he come out to your place on business?

A: He used to come out there and tell us to cash checks, or tell us to take some gasoline, or sometimes the boys would get a little stuff and he usually paid for it himself.

Q: At the time that you notice had these transactions did you notice anything peculiar about him?

A: No sir.

Q: You saw him in 1931 about the time this property was bought?

A: I don't know the date the property was bought.

Q: Well when you heard it was bought?

A: Yes sir.

Q: Talk to him?

A: Yes sir.

Q: Notice anything peculiar about him?

A: No sir.

Q: Well would you say he was a man of sound mind or unsound mind?

A: I thought his mind was sound last time I talked to him.

Q: That's your judgment?

A: Yes sir. Of course he is a little bit old and feeble.

Q: But you never noticed anything out of the ordinary about his mind?

A: No sir, I did not.

CROSS EXAMINATION BY MCMILLAN.

Q: You are a son of J. C. Griffin of Loxley, aren't you?

A: Yes sir.

Q: Your father was intimately acquainted with Mr. Robert Ivey wasn't he?

A: Well they were good friends as far as I know.

Q: And your father was more intimate with him than you were?

A: Yes sir.

Q: Knew him a good deal better and they were together a good deal more?

A: Yes sir.

Q: Your father lives right by him?

A: Within about a quarter of a mile.

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Q: Do you remember the time when the old man, before 1931, didn't know whether his place was on the east or the west of the road, do you remember about that?

A: No sir, I didn't know anything about it.

Q: Do you remember about something cutting his trees down, thought spaniards were cutting his trees down?

A: No sir.

Q: Do you remember when he had a stroke of paralysis?

A: Seems like I remember about him having a stroke or something being the matter.

Q: It just seems like it, but you don't remember?

A: No sir, I don't recall. I know he was sick at Mrs. Grants.

Q: When was that?

A: I don't remember the date.

Q: You don't remember whether these transactions with the old gentlemen were before or after 1931 do you?

A: Well we had plenty of them before, and I think as late as the latter part of 1931.

Q: You are not sure?

A: I would have to check my records to tell.

Q: These checks you speak of, did you write them out?

A: Yes sir. I always wrote them and he signed them. He requested you to write the check and he would sign it. I have cashed lots of checks for Mr. Ivey.

Q: You don't remember whether before the year 1931 the old man said that he wanted \$500.00 for his place, but he wouldn't take less than \$6500.00, did you ever hear of that?

A: No sir, I never did. He never talked selling his place to me at all. He might have talked to my father.

Q: Are you in business with your father?

A: No sir.

Q: Were you?

A: No sir.

Mr. Hybart: Mr. Griffin what's your mileage?

A: 20 miles.

Mr. McMillan: Were you summoned here or did you come at the request of Mr. Marines?

A: He called me up a few minutes ago and told me to come up here. I didn't know what he wanted so I came up.

Mr. McMillan: Had he talked to you before about this?

A: No sir.

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(page thirty-four)

Mr. McMillan: Talk to you about it today?

A: No sir, only just called me over the telephone and asked me to come up here, something about Mr. Ivey. The only thing I know about it was one day I told him I heard he had bought the Ivey place and he told me he had.

Q: You and George friends?

A: Fairly friendly. This is the first time I have seen him in about a month. We are both in business in Loxley.

Mr. McMillan: What sort?

A: He is in the merchandise and feed business and I am in the garage and service station business.

Q: Do you do his work?

A: Some, not all.

TESTIMONY OF JEROME SEAY. DIRECT EXAMINATION
BY MR. HYBART.

Q: What is your name?

A: Jerome Seay.

Q: Where do you live?

A: Loxley.

Q: Do you know George Marinos?

A: Yes sir.

Q: Are you in his employ?

A: Yes sir.

Q: What position do you occupy?

A: I work in the store.

Q: Were you working for him in 1931?

A: Yes sir.

Q: Do you know Mr. Robert Ivey?

A: Yes sir.

Q: How long have you known him?

A: Why I don't know just how long, ever since he moved to Loxley.

Q: About how long ago has that been?

A: Well, 15 years maybe, I can't say for sure.

Q: Good while ago?

A: Yes sir, a long time.

Q: Well during the time that you have known him have you had conversations with him often?

A: Yes sir. I've seen him regular up until the last year.

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(page thirty-five)

Q: Have business transaction with him?

A: He was coming in the store where I was working buying stuff.

Q: Now during that time did you ever notice anything out of the ordinary about him?

A: No sir.

Q: Nothing peculiar with him?

A: No sir, he always seemed to be all right.

Q: Do you remember about the time Mr. Marinos bought this place from him?

A: Yes sir.

Q: Do you know how many times he came to see Mr. Marinos before Mr. Marinos traded with him?

A: No sir, I'm not sure, but he come two or three different days.

Q: Did you hear him talking to Mr. Marinos about it?

A: Yes sir, I didn't hear him every time, but twice I heard him I know.

Q: What did he say in those conversations about buying or rather selling his place?

A: Well, I heard him tell Mr. Marinos he wanted to sell it. Mr. Marinos told him he didn't care to buy.

Q: Do you know about the time they agreed to trade?

A: Well I heard part of that.

Q: What part did you hear?

A: Mr. Ivey said that the boys didn't want him to sell it, but he was gonna sell it anyway, he needed the money and that he was able to transact his own business.

Q: Did you hear Mr. Marinos tell him anything about what Claude said to him?

A: No, I don't believe I heard him say just what Claude said to him. I heard part of it and had to get out in the store and didn't hear any more.

Q: Did you hear anything said about any doctor?

A: Mr. Ivey said he would get a doctor to examine him and see if he was all right.

Q: Now on that day, on November 23rd, 1931, the date the deed was made, from your knowledge of Mr. Robert Ivey and what you knew of him, and what you had observed in your transactions and conversations with him, would you say he was of sound mind or unsound mind?

A: I would say he was of sound mind.

Q: Do you know this place out there that Mr. Ivey sold to Mr. Marinos?

A: Yes sir.

Q: How long have you known that place?

(page thirty-five)

(page thirty-six)

A: Well I knew when the place was built up.

Q: How far is it from Loxley?

A: Right in the edge of Loxley.

Q: Right in the edge of Loxley?

A: Yes sir.

Q: In 1931 things were pretty dull around down there in Loxley so far as land selling, weren't they?

A: Yes sir.

Q: Do you know of property being bought and sold there in Loxley since you have been there?

A: Not very much. I have known of very little.

Q: Have you bought any yourself?

A: No sir.

Q: In your judgment was \$1000.00 a reasonable and fair price for that property at that time?

A: Yes sir, I think it was.

CROSS EXAMINATION BY MR. McMILLAN.

Q: When and how many times have you been in Mr. Ivey's house?

A: I have never been right in the house. I have been to the gate and in the yard, but not inside the house.

Q: You never examined the house to see how it was built inside?

A: No sir, not inside.

Q: On the outside either except from a distance?

A: That's all, just to look at it from the outside.

Q: Mr. Ivey has been in feeble health ever since he had a stroke of paralysis, hasn't he?

A: Well, he couldn't walk good.

Q: Been that way ever since?

A: As far as I knew, couldn't walk good.

Q: Whenever he did walk he walked on crutches, didn't he?

A: Yes sir.

Q: You haven't seen him regularly since his stroke of paralysis have you?

A: Well I saw him regularly up until the last year or two.

Q: Do you remember the exact date?

A: No, I don't.

Q: Was that before or after he had his stroke?

A: Afterwards.

Q: When he came in the store and bought anything he would pull

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(page thirty-seven)

out all the money he had in his hand and let you take it out. Had to transact business that way?

A: No sir. Not with me he didn't.

Q: You say you heard Marinos talking to Ivey about selling the place?

A: Yes sir. I heard Mr. Ivey ask Mr. Marinos about buying the place.

Q: And then Ivey's sons told Marinos that Ivey was not in condition to make a trade?

A: Well, the morning they was talking in there I was busy in the store and they were in the office.

Q: The morning who was talking?

A: Mr. Ivey's son and Mr. Marinos.

Q: Did you see them talking there before the trade was made?

A: No sir.

Q: Was it the next day after the trade was made?

A: I can't say, because I don't know.

Q: Was it about that time?

A: Somewhere near that time, I can't say.

Q: When was it you heard Mr. Ivey say that he would have a doctor examine him as to his mental condition, was that before or after the trade?

A: Before, when he was trying to get Marinos to buy.

Q: Mr. Ivey's mental condition was the subject of discussion before the trade, wasn't it?

A: Yes sir, there was some talk about it.

Q: You know there was some talk about his mental condition and whether he was capable of making a trade?

A: Yes sir. I heard Mr. Marinos and Mr. Ivey talking about it.

Q: That was before the trade was made?

A: Yes sir. Right after it was made I heard the sons talking to Mr. Marinos wife, not to Marinos.

Q: You heard Marinos talking to him about his mental condition before the trade was made, and then you heard Ivey's sons talking to Marinos's wife after the trade was made. Did he talk to Mr. Marinos?

A: I didn't hear him, but there was two or three boys talking to Mr. Marinos after the trade was made.

Q: Who told you about that?

A: I didn't hear the conversation, but they took Mr. Marinos in the store and talked to him.

Q: Do you know they were talking about Ivey's mental condition?

A: No sir.

(page thirty-seven)

(thirty-nine)

A: Yes sir.

Q: Been working for him ever since?

A: Yes sir.

Q: Did you ever build a house?

A: Well, I have, it's been some time ago though.

Q: Did you ever build a house like this one?

A: No sir.

Q: Did you ever have one built?

A: No sir.

Q: Then you haven't the remotest idea what it would cost to build that house, do you?

A: No sir, I have never been in to look at it.

Q: What would it cost to clear and plant that land? in fruit trees?

A: I don't know, I never put out any fruit trees.

RE-DIRECT EXAMINATION BY MR. HYBART.

Q: Mr. Witness, you spoke about some conversations that you heard between Mr. Marinos and Mr. Robert Ivey, did you hear all of those conversations?

A: No sir, I didn't hear all of them.

Q: Didn't hear all of them?

A: No sir.

Q: Do you remember Mr. Claude Ivey coming there to the store on the day that the trade was supposed to have taken place? And do you recall a conversation that he had with Mr. Marinos?

A: No sir, I do not. I remember him coming in there, but I don't remember the conversation.

Q: Between Mr. Marinos and Mr. Ivey?

A: No sir, I do not remember the conversation between them.

RE-CROSS EXAMINATION BY MR. McMILLAN.

Q: Do you remember positively that Mr. Robert Ivey's son was talking to Mr. Marinos about his father being mentally unable to make a trade?

A: Well the conversation that I remember was after this was made, and I think there was three of the boys in there and they were talking in the office. Of course I didn't hear but a word once in a while.

Q: About their father's mind being gone?

A: They wasn't satisfied with the deal. Of course they said he wasn't able to handle this business, I remember that all right, but that was after the deal was over.

RE-RE DIRECT EXAMINATION BY MR. HYBART.

Q: Do you recall the conversation between Mr. Marinos and Mr.

(page thirty-nine)

(thirty-nine)

A: Yes sir.

Q: Been working for him ever since?

A: Yes sir.

Q: Did you ever build a house?

A: Well, I have, it's been some time ago though.

Q: Did you ever build a house like this one?

A: No sir.

Q: Did you ever have one built?

A: No sir.

Q: Then you haven't the remotest idea what it would cost to build that house, do you?

A: No sir, I have never been in to look at it.

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Q: Didn't hear all of them?

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A: Well the conversation that I remember was after this was made, and I think there was three of the boys in there and they were talking in the office. Of course I didn't hear but a word once in a while.

Q: About their father's mind being gone?

A: They wasn't satisfied with the deal. Of course they said he wasn't able to handle this business, I remember that all right, but that was after the deal was over.

RE-RE DIRECT EXAMINATION BY MR. HYBART.

Q: Do you recall the conversation between Mr. Marinos and Mr.

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(page thirty-six)

A: Well I knew when the place was built up.

Q: How far is it from Loxley?

A: Right in the edge of Loxley.

Q: Right in the edge of Loxley?

A: Yes sir.

Q: In 1931 things were pretty dull around down there in Loxley so far as land selling, weren't they?

A: Yes sir.

Q: Do you know of property being bought and sold there in Loxley since you have been there?

A: Not very much. I have known of very little.

Q: Have you bought any yourself?

A: No sir.

Q: In your judgment was \$1000.00 a reasonable and fair price for that property at that time?

A: Yes sir, I think it was.

CROSS EXAMINATION BY MR. McMILLAN.

Q: When and how many times have you been in Mr. Ivey's house?

A: I have never been right in the house. I have been to the gate and in the yard, but not inside the house.

Q: You never examined the house to see how it was built inside?

A: No sir, not inside.

Q: On the outside either except from a distance?

A: That's all, just to look at it from the outside.

Q: Mr. Ivey has been in feeble health ever since he had a stroke of paralysis, hasn't he?

A: Well, he couldn't walk good.

Q: Been that way ever since?

A: As far as I know, couldn't walk good.

Q: Whenever he did walk he walked on crutches, didn't he?

A: Yes sir.

Q: You haven't seen him regularly since his stroke of paralysis have you?

A: Well I saw him regularly up until the last year or two.

Q: Do you remember the exact date?

A: No, I don't.

Q: Was that before or after he had his stroke?

A: Afterwards.

Q: When he came in the store and bought anything he would pull

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(page thirty-seven)

out all the money he had in his hand and let you take it out. Had to transact business that way?

A: No sir. Not with me he didn't.

Q: You say you heard Marinos talking to Ivey about selling the place?

A: Yes sir. I heard Mr. Ivey ask Mr. Marinos about buying the place.

Q: And then Ivey's sons told Marinos that Ivey was not in condition to make a trade?

A: Well, the morning they was talking in there I was busy in the store and they were in the office.

Q: The morning who was talking?

A: Mr. Ivey's son and Mr. Marinos.

Q: Did you see them talking there before the trade was made?

A: No sir.

Q: Was it the next day after the trade was made?

A: I can't say, because I don't know.

Q: Was it about that time?

A: Somewhere near that time, I can't say.

Q: When was it you heard Mr. Ivey say that he would have a doctor examine him as to his mental condition, was that before or after the trade?

A: Before, when he was trying to get Marinos to buy.

Q: Mr. Ivey's mental condition was the subject of discussion before the trade, wasn't it?

A: Yes sir, there was some talk about it.

Q: You know there was some talk about his mental condition and whether he was capable of making a trade?

A: Yes sir. I heard Mr. Marinos and Mr. Ivey talking about it.

Q: That was before the trade was made?

A: Yes sir. Right after it was made I heard the sons talking to Mr. Marinos wife, not to Marinos.

Q: You heard Marinos talking to him about his mental condition before the trade was made, and then you heard Ivey's sons talking to Marinos's wife after the trade was made. Did he talk to Mr. Marinos?

A: I didn't hear him, but there was two or three boys talking to Mr. Marinos after the trade was made.

Q: Who told you about that?

A: I didn't hear the conversation, but they took Mr. Marinos in the store and talked to him.

Q: Do you know they were talking about Ivey's mental condition?

A: No sir.

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Robert Ivey in which he told Mr. Robert Ivey what Claude had said?

A: Well, now, I am not positive about that, because that morning I didn't hear all of that conversation. Mr. Marinos and myself was in the store and they went in the office and of course I didn't hear it all.

Q: What morning are you talking about, the morning the deal was made?

A: Either time, of course what I told you was just what part of the conversations I heard.

Q: And what you have told is the part of the conversations you heard?

A: Yes sir.

Mr. Hybart: What's your mileage?

A: Twenty miles.

Mr. McMillan: Were you summoned or did you come at the request of Mr. Marinos?

A: Mr. Marinos asked me to come.

TESTIMONY OF JAMES GRIMES. DIRECT EXAMINATION BY MR. C. L. HYBART.

Q: Your name, please sir?

A: James Grimes.

Q: Where do you live?

A: Loxley.

Q: What is your age?

A: 35.

Q: Do you know Mr. George Marinos?

A: Yes sir.

Q: Have any business connections with him?

A: Yes sir.

Q: What's your connection?

A: We work together there in the feed store.

Q: Do you know Mr. Robert Ivey?

A: Yes sir.

Q: How long have you known him?

A: Twelve years I guess it is.

Q: During those 12 years have you seen him frequently?

A: Up to the last year or so.

Q: Year or so?

A: Yes sir.

Q: See him in 1931? (page forty)

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A: Yes sir.

Q: Latter part of the year, November, 1931?

A: I guess. Whenever he was there I always saw him.

Q: During that time you have seen him you have had frequent conversations with him?

A: I always come around and talked to him.

Q: Have any business transactions with him?

A: Used to sell him feed.

Q: Sell it to him in 1930?

A: Whatever he used.

Q: During that time did you ever notice him doing anything peculiar?

A: No sir.

Q: Ever notice anything out of the way with him? As far as his mind was concerned?

A: No sir. When he went to buy merchandise he always wanted rock bottom prices.

Q: From your transactions with him and from your relations with him, would you say he was a man of sound or unsound mind on November 23rd, 1931?

A: Yes sir.

Q: Which, sound or unsound?

A: Sound mind.

Q: And you say whenever you had any business transactions with him he always wanted rock bottom prices?

A: Yes sir. Take him a day to decide to buy.

Q: Long before he closed this deal with Mr. Marinos for this property did you hear through anyone that this property was for sale?

A: He tried to sell it to me.

Q: Tried to sell it to you. For the same price it was sold to Mr. Marinos?

A: Yes sir.

Q: Now since you have been in Loxley there have you bought and sold any property, real estate?

A: Oh just a little.

Q: You have heard of other people buying and selling it, haven't you?

A: Yes sir.

Q: In 1931 real estate was on a pretty low limb down there, wasn't it?

A: It still is.

Q: Still is. In your judgment was a thousand dollars a fair and

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(page thirty-seven)

out all the money he had in his hand and let you take it out. Had to transact business that way?

A: No sir. Not with me he didn't.

Q: You say you heard Marinos talking to Ivey about selling the place?

A: Yes sir. I heard Mr. Ivey ask Mr. Marinos about buying the place.

Q: And then Ivey's sons told Marinos that Ivey was not in condition to make a trade?

A: Well, the morning they was talking in there I was busy in the store and they were in the office.

Q: The morning who was talking?

A: Mr. Ivey's son and Mr. Marinos.

Q: Did you see them talking there before the trade was made?

A: No sir.

Q: Was it the next day after the trade was made?

A: I can't say, because I don't know.

Q: Was it about that time?

A: Somewhere near that time, I can't say.

Q: When was it you heard Mr. Ivey say that he would have a doctor examine him as to his mental condition, was that before or after the trade?

A: Before, when he was trying to get Marinos to buy.

Q: Mr. Ivey's mental condition was the subject of discussion before the trade, wasn't it?

A: Yes sir, there was some talk about it.

Q: You know there was some talk about his mental condition and whether he was capable of making a trade?

A: Yes sir. I heard Mr. Marinos and Mr. Ivey talking about it.

Q: That was before the trade was made?

A: Yes sir. Right after it was made I heard the sons talking to Mr. Marinos wife, not to Marinos.

Q: You heard Marinos talking to him about his mental condition before the trade was made, and then you heard Ivey's sons talking to Marinos's wife after the trade was made. Did he talk to Mr. Marinos?

A: I didn't hear him, but there was two or three boys talking to Mr. Marinos after the trade was made.

Q: Who told you about that?

A: I didn't hear the conversation, but they took Mr. Marinos in the store and talked to him.

Q: Do you know they were talking about Ivey's mental condition?

A: No sir.

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(page forty-one)

A: Yes sir.

Q: Latter part of the year, November, 1931?

A: I guess. Whenever he was there I always saw him.

Q: During that time you have seen him you have had frequent conversations with him?

A: I always come around and talked to him.

Q: Have any business transactions with him?

A: Used to sell him feed.

Q: Sell it to him in 1930?

A: Whatever he used.

Q: During that time did you ever notice him doing anything peculiar?

A: No sir.

Q: Ever notice anything out of the way with him? As far as his mind was concerned?

A: No sir. When he went to buy merchandise he always wanted rock bottom prices.

Q: From your transactions with him and from your relations with him, would you say he was a man of sound or unsound mind on November 23rd, 1931?

A: Yes sir.

Q: Which, sound or unsound?

A: Sound mind.

Q: And you say whenever you had any business transactions with him he always wanted rock bottom prices?

A: Yes sir. Take him a day to decide to buy.

Q: Long before he closed this deal with Mr. Marinos for this property did you hear through anyone that this property was for sale?

A: He tried to sell it to me.

Q: Tried to sell it to you. For the same price it was sold to Mr. Marinos?

A: Yes sir.

Q: Now since you have been in Loxley there have you bought and sold any property, real estate?

A: Oh just a little.

Q: You have heard of other people buying and selling it, haven't you?

A: Yes sir.

Q: In 1931 real estate was on a pretty low limb down there, wasn't it?

A: It still is.

Q: Still is. In your judgment was a thousand dollars a fair and

(page forty-one)

(page forty-two)

reasonable price for that property out there that Mr. Marinos purchased from Mr. Ivey?

A: Yes sir.

Q: Did Mr. Ivey ever have any oranges on that place?

A: He had a crop every year.

Q: Crop every year. What became of the orange trees?

A: You mean now?

Q: Yes. Any there now?

A: I don't know. There's some on there, but I think that they haven't been tended to and are about all gone.

Q: Did the freeze down there effect his orchard?

A: Yes sir.

Q: Who handled his oranges for him?

A: The last year he had any I bought part of them.

Q: Who did you buy them from?

A: The old man. He paid for his fertilizer.

Q: When was that?

A: 1930.

Q: Oranges marketed in the fall?

A: October, 1930.

Q: He bought his own fertilizer?

A: Yes sir.

Q: Paid for it?

A: Yes sir.

Q: Did he have a checking account, did he give checks?

A: Yes sir. On this bank up here.

Q: On the Baldwin County Bank?

A: Yes sir.

CROSS EXAMINATION BY MR. BEN McMILLAN.

Q: Who filled out the checks that he gave?

A: I~~is~~ generally filled them out.

Q: You never saw the old man fill one out did you?

A: Check? No, I don't guess I ever did.

Q: You would draw the check, show him where to put his name and he would put his name there?

A: Oh, he knew where to put his name.

Q: You say that in 1935, this year, the trees are gone for lack of attention?

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A: Well, for the last couple of years they have not had any fertilizer put to them. I don't guess there's been any since 1930. Up to that time they were in good shape, bearing trees.

Q: You say up to that time they were what you would call good trees?

A: Pretty fair, they wasn't what you would call good trees.

Q: Did you visit Mr. Ivey's home frequently?

A: No sir.

Q: Did you visit it at all?

A: No sir.

Q: Have you ever been in it?

A: I have been in there.

Q: When?

A: Three or four years ago.

Q: With whom?

A: Mr. Ivey.

Q: The old man?

A: Yes sir.

Q: You have no idea what the building of that house cost, have you?

A: I don't know when it was built. It would be according to the time it was built as to what it would cost.

Q: What does it cost to clear that land and plant those fruit trees that he had planted there?

A: I am having forty acres cleared now for \$5.00 per acre.

Q: And planted?

A: No sir, only cleared.

Q: How many of those acres have you had cleared?

A: I am through with that forty now.

Q: You say the old man tried to sell the place to you?

A: Dozens of times.

Q: He tried to sell it to a great many people?

A: Yes sir.

Q: He was just obsessed with the idea of selling his place, wasn't he?

A: He told me he didn't get any rent. He had to pay the expenses and everything. A fence just was put in and he had to pay for that, and he wanted to get rid of it.

Q: You say he tried to sell it to you dozens of times. When did he first try to sell it to you?

A: I don't remember.

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Q: About how long?

A: About five years.

Q: When did he start putting a price on his place?

A: Well, I can't say Mr. McMillan.

Q: You don't know what he was asking for his place five years ago?

A: I don't.

Q: You don't know what he was asking for his place four years ago, do you?

A: He offered it to me one time for a thousand dollars. That was after he had deeded half of it to Claude.

Q: When was that?

A: I don't recall. I wasn't interested in buying it at no price.

Q: Was that before or after he was paralyzed he tried to sell his place?

A: I don't know when he was paralyzed. I don't know when that happened.

Q: You know he was paralyzed, don't you?

A: No sir, never heard of it.

Q: Never heard he was paralyzed?

A: Oh yes, a year or two ago I understand he had a stroke.

Q: Well was it after that he tried to sell the place to you?

A: No, before.

Q: How long before?

A: Everytime he talked to me he tried to sell his place.

Q: Everytime he talked to you?

A: Not every time. No.

Q: But in every conversation he had with you he wanted to sell that place?

A: Not every one. I used to go fishing with him.

Q: He was in very much better physical condition then than he was after the stroke?

A: I never saw any difference in him. Oh, now, of course, in the last year or two, he is feeble.

Q: He hasn't been fishing since his stroke, has he?

A: I don't know when he had it.

Q: He goes around on crutches now, doesn't he?

A: Yes sir.

Q: He has been going on crutches ever since he had the stroke?

A: I don't know when he had it.

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Q: Who are the other people he was trying to sell the place to?

A: Anyone he come in conversation with.

Q: Do you know anything about him trying to sell the place to J. C. Griffin?

A: I guess if he talked to Mr. Griffin he tried to sell it to him.

Q: What makes you think that if he talked to Mr. Griffin he tried to sell the place.

A: He was in the real estate business.

Q: J. C. Griffin was in the real estate business wasn't he?

A: He was at that time.

Q: And he was familiar with land values at that time, wasn't he?

A: Yes.

Q: And he is very much more familiar with land values than you are, isn't he?

A: That's not my business.

Q: Mr. J. C. Griffin is very much more familiar with land values down there than you are, isn't he?

A: Well we both live in the same country.

Q: But you are not engaged in business that would require you to know any land values, are you?

A: If we find any the right price we buy it.

Q: You are not engaged in a business that requires you to know land values?

A: I know if a man wants more than it is worth I ain't gonna buy it.

Q: Are you engaged in a business or have you ever been engaged in a business down there that enables you to know the values of land?

A: Well, I am farming.

Q: Is that the extent of your knowledge.

A: I know the value of land all right.

Q: How many pieces of land did you buy in 1931?

A: Not any.

Q: How many did you buy down there in 1932?

A: Two or three.

Q: Where did you buy it?

A: Around Loxley.

Q: How far from Loxley?

A: One piece right in town and some within a mile and a half.

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Q: Who did you buy it from?

A: One piece from the bank down there.

Q: At an auction sale?

A: No.

Q: From the Baldwin County Bank?

A: Yes sir.

Q: Was that after the Baldwin County Bank closed its doors?

A: No, since they re-opened.

Q: Ever since that time the Baldwin County Bank has been trying to sell its lands?

A: I imagine they are.

Q: And you got that for a good price?

A: I don't know whether it was a good price or not.

Q: How far from Loxley is that piece of land?

A: One and a half miles.

Q: Any improvements?

A: No sir.

Q: Any fruit trees on it?

A: No, it's wood land.

Q: Tisn't cleared land, is it?

A: Cleared now.

Q: It wasn't cleared when you bought it?

A: No.

Q: This Ivey land is cleared, isn't it, under cultivation?

A: Yes sir.

Q: Inclosed in fence, isn't it?

A: Its got a fence around it.

Q: Got the old man's home on it?

A: Got a house on it.

Q: That's where the old man lives isn't it?

A: I don't think he lives there now.

Q: But he has been living there for 12 or 15 years?

A: Something like that.

Q: In your opinion the old man is of sound mind yet?

A: It has been a year since I saw him.

Q: About how much longer since you've seen the old man?

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A: I can't recall, possibly a year or so. I don't think he has lived down there for a year.

Q: Might have been three years?

A: No sir.

Q: Might have been two years?

A: A year, I would say.

Q: Was it in the spring or the fall or the summer or the winter?

A: I don't recall. When he was in the barber shop is when I remember.

Q: You just remember seeing him in the barber shop and that's the last time you've seen him?

A: Yes sir.

Q: On crutches then, wasn't he?

A: Yes sir.

Q: Now you say you used to sell him fertilizer, that was for fertilizing his fields, wasn't it?

A: His trees.

Q: And you say that was your business with him, wasn't it?

A: Yes sir.

Q: He hasn't fertilized those trees since 1930?

A: Not that I know of.

Q: So that you haven't had any business dealings with him since 1930?

A: No sir.

Q: You say you are engaged in business with Mr. George Marinos?

A: I work with him, yes sir.

Q: Been working with him how long?

A: Six or seven years.

Q: What is your business with Mr. Marinos?

A: We buy produce and farm.

Q: Then you're a farmer, aren't you?

A: Kind of.

Q: You are partners?

A: Yes sir.

RE-DIRECT EXAMINATION BY MR. HYBART.

Q: You say you saw the old gentleman in the barber shop the last time you saw him?

A: Yes sir.

Q: Have a conversation with him?

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(page forty-eight)

A: Yes sir.

Q: See anything peculiar about him?

A: No sir.

Q: In your judgment was he of sound mind at that time?

A: Carried on a good conversation.

Q: In your judgment was he of sound mind at that time?

A: Yes sir.

RE-CROSS EXAMINATION BY MR. McMILLAN.

Q: His eyes were all right at that time? He had no trouble recognizing you?

A: You mean Mr. Ivey? You mean in the barber shop? No, he was getting a shave and I went up and spoke with him.

Q: He was being shaved at the time you had this conversation with him?

A: Yes sir.

Q: How long did you talk with him?

A: A few minutes. I asked him where he was living.

RE-RE DIRECT EXAMINATION BY MR. HYBART.

Q: Do you recall Mr. Marinos coming to you and asking you to buy this place?

A: Yes sir.

Q: For \$1000.00?

A: Yes sir.

Q: What did you say to him?

A: I told him I wasn't able right then.

Q: That was before Mr. Marinos bought the place?

A: Yes sir, a good while before he bought it.

Mr. Hybart: What's your mileage?

A: About 20 miles.

Mr. McMillan: Were you summoned?

A: No.

TESTIMONY OF F. W. FRISKHORN. DIRECT EXAMINATION BY MR. HYBART.

Q: Your name, please sir?

A: F. W. Friskhorn.

Q: Where do you live?

A: Loxley.

Q: How old are you?

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A: 40.

Q: Do you know Mr. George Marines?

A: Yes sir.

Q: Are you connected with him in business in any way?

A: No sir.

Q: Do you know Mr. Robert Ivey?

A: Yes sir.

Q: How long have you known him?

A: I judge about ten years.

Q: During the time that you have known him have you been with him?

A: Yes sir.

Q: Fished with him?

A: Many a time.

Q: Had conversations with him?

A: Yes sir.

Q: When was the last time that you saw Mr. Ivey, Mr. Friskhorn?

A: About the month of May, I judge, in '31.

Q: Was that after his sickness?

A: He was ill at the time, yes sir.

Q: Did you have a conversation with him then?

A: Yes sir, a few words.

Q: Did you have any business transactions with him?

A: Yes sir, before he was ill, years back.

Q: During all those conversations and transactions that you have had with him did you notice anything peculiar about his mental condition.

A: In our conversations I never noticed anything out of the way, no sir.

Q: Well, any other way, did you notice anything peculiar about him?

A: No sir, he acted common.

Q: Now in your opinion the last time you saw him, and during the times that you saw him, was Mr. Ivey a man of sound or unsound mind?

A: Well I would call him sound.

Q: That's your best judgment?

A: That's my idea.

Q: That's your opinion?

A: That's mentally, of course.

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Q: That's what we're talking about, his mind.

CROSS-EXAMINATION BY MR. McMILLAN.

Q: Mr. Friskhorn, you haven't had any fishing trips with him since his stroke of paralysis, have you?

A: No sir.

Q: He hasn't been able to go fishing since that time, has he?

A: I couldn't say that.

Q: Now when you talked with him in that conversation he was sick?

A: To the best of my recollection he was ill at the time.

Q: Was he in bed?

A: No, I saw him out on crutches.

Q: To the best of your recollection he was ill from this stroke he had had, wasn't he?

A: I had heard he had a stroke, yes sir.

Q: So assuming that stroke was in January, 1931, he had been ill since that time up to the following May, and he as then ill, wasn't he?

A: Yes, he must have been.

Q: And he has been ill ever since, hasn't he?

A: I haven't seen him since he come back from Texas.

Q: You haven't seen him since May of 1931, have you?

A: To the best of my recollection I can't recall that I have seen him.

Mr. Hybart: What's your mileage?

A: 20 miles.

Mr. McMillan: Were you subpoenaed or did you come as a friend of Mr. Marinos?

A: I was asked to come with Jimmie Grimes.

Mr. McMillan: With Jimmie Grimes, that's Mr. Marinos' partner?

A: They may be partners, I don't know. He is the man that just testified here a few minutes ago, J. C. Grimes.

TESTIMONY OF DR. J. F. BRYARS. DIRECT EXAMINATION BY MR. HYBART.

Q: This Dr. J. F. Bryars?

A: Yes sir.

Q: Dr., you a practicing physician at Bay Minette?

A: Yes sir.

Q: How long have you been practicing medicine?

A: Since 1905.

Q: Graduate of what institution?

A: Mobile.

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Q: Medical College of Mobile?

A: Yes sir.

Q: Do you know Mr. Robert Ivey?

A: I met him.

Q: Did you make an examination of him in November 1931?

A: I don't remember the date, but I examined him.

Q: Do you remember what year?

A: It was around two years ago.

Q: Two years ago?

A: Yes sir.

Q: Where did you make this examination, Doctor?

A: Down in the office in the Bank.

Q: Were they having a transactions there that day between he and Mr. Marinos?

A: Someone, I don't know who it was with. I think it was with that gentleman over there wasn't it?

Q: And you were called in to make the examination?

A: Yes sir.

Q: And did you make an examination of his mental condition?

A: Yes sir.

Q: In your judgment on that day, your professional judgment and opinion, on that day was he a man of sound mind?

A: He was.

Q: And able to enter into a business transaction?

A: He was.

CROSS EXAMINATION BY MR. McMILLAN.

Q: What did you say you do?

A: I farm, hunt birds, fish, practice medicine some too.

Q: What proportion of your time do you devote to practicing medicine?

A: Most of it.

Q: What proportion do you devote to farming?

A: Very little.

Q: What time do you devote to hunting birds?

A: Been once this year.

Q: What proportion do you devote to fishing?

A: Been three times this season.

Q: A farming doctor, aren't you?

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(page fifty-two)

A: Got my boys at it, yes sir.

Q: You say the old man was down at the Bank when you examined him?

A: Yes sir.

Q: Who went to get you to examine him?

A: My recollection is I was called over telephone.

Q: Who called you?

A: I think it was Mr. Heard.

Q: Of Hybart, Heard & Chason?

A: Yes sir.

Q: Mr. Heard paid you for it?

A: Yes.

Q: How much did he pay you?

A: I got \$10.00.

Q: Dr. Bryars, had you ever seen old man Ivey before?

A: Never had.

Q: How long did it take you to complete your examination?

A: I didn't put it down, I don't remember. I just talked to him.

Q: Just about how long?

A: About ten minutes.

Q: Did you do anything else besides talk to him?

A: No sir, I did not.

Q: How long did you talk to him?

A: About ten minutes.

Q: Who was present?

A: I don't know who it was, I don't remember.

Q: Mr. Ivey's mental condition was the subject of your investigation?

A: Yes sir, whether or not he was normal.

Q: His mentality was being questioned, wasn't it?

A: Yes.

Q: And there was a question whether he was capable mentally of making a business transaction?

A: My judgment was he was at that time.

Q: There was a question in the minds of the people, though, as to whether he was capable of making a business transaction?

A: Might have been, I don't know.

Q: Don't you know there was? (page fifty-two)

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Q: You say that it isn't necessary to keep a man under observation for longer time than ten minutes to say the least?

A: I don't think so.

Q: You are not a specialist in that sort of thing, are you?

A: No sir.

Q: Doctor, I want to ask you this, a stroke of paralysis has a tendency to weaken a man's mental condition, doesn't it?

A: It depends on the locality of the hemorrhage.

Q: Do you know whether this old man was paralytic or not?

A: Couldn't tell it.

Q: Did you ask him?

A: No.

Q: What did you ask him?

A: I don't remember. It has been two years, I don't know what I asked him now.

Q: Did you ask him anything about his mental condition?

A: No, I didn't.

Q: Ask him anything about his trade?

A: I don't know whether I did or not.

Q: Was he sitting down or standing up when you talked to him?

A: Sitting down when I was talking to him.

Q: The whole time?

A: Yes sir.

Mr. Hybart: Give him one days attendance.

Mr. McMillan: Were you subpoenaed?

Dr. Bryars: No.

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Robert Ivey in which he told Mr. Robert Ivey what Claude had said?

A: Well, now, I am not positive about that, because that morning I didn't hear all of that conversation. Mr. Marinos and myself was in the store and they went in the office and of course I didn't hear it all.

Q: What morning are you talking about, the morning the deal was made?

A: Either time, of course what I told you was just what part of the conversations I heard.

Q: And what you have told is the part of the conversations you heard?

A: Yes sir.

Mr. Hybart: What's your mileage?

A: Twenty miles.

Mr. McMillan: Were you summoned or did you come at the request of Mr. Marinos?

A: Mr. Marinos asked me to come.

TESTIMONY OF JAMES GRIMES. DIRECT EXAMINATION BY MR. C. L. HYBART.

Q: Your name, please sir?

A: James Grimes.

Q: Where do you live?

A: Loxley.

Q: What is your age?

A: 35.

Q: Do you know Mr. George Marinos?

A: Yes sir.

Q: Have any business connections with him?

A: Yes sir.

Q: What's your connection?

A: We work together there in the feed store.

Q: Do you know Mr. Robert Ivey?

A: Yes sir.

Q: How long have you known him?

A: Twelve years I guess it is.

Q: During those 12 years have you seen him frequently?

A: Up to the last year or so.

Q: Year or so?

A: Yes sir.

Q: See him in 1931?

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A: Yes sir.

Q: Been working for him ever since?

A: Yes sir.

Q: Did you ever build a house?

A: Well, I have, it's been some time ago though.

Q: Did you ever build a house like this one?

A: No sir.

Q: Did you ever have one built?

A: No sir.

Q: Then you haven't the remotest idea what it would cost to build that house, do you?

A: No sir, I have never been in to look at it.

Q: What would it cost to clear and plant that land? in fruit trees?

A: I don't know, I never put out any fruit trees.

RE-DIRECT EXAMINATION BY MR. HYBART.

Q: Mr. Witness, you spoke about some conversations that you heard between Mr. Marinos and Mr. Robert Ivey, did you hear all of those conversations?

A: No sir, I didn't hear all of them.

Q: Didn't hear all of them?

A: No sir.

Q: Do you remember Mr. Claude Ivey coming there to the store on the day that the trade was supposed to have taken place? And do you recall a conversation that he had with Mr. Marinos?

A: No sir, I do not. I remember him coming in there, but I don't remember the conversation.

Q: Between Mr. Marinos and Mr. Ivey?

A: No sir, I do not remember the conversation between them.

RE-CROSS EXAMINATION BY MR. McMILLAN.

Q: Do you remember positively that Mr. Robert Ivey's son was talking to Mr. Marinos about his father being mentally unable to make a trade?

A: Well the conversation that I remember was after this was made, and I think there was three of the boys in there and they were talking in the office. Of course I didn't hear but a word once in a while.

Q: About their father's mind being gone?

A: They wasn't satisfied with the deal. Of course they said he wasn't able to handle this business, I remember that all right, but that was after the deal was over.

RE-RE DIRECT EXAMINATION BY MR. HYBART.

Q: Do you recall the conversation between Mr. Marinos and Mr.

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A: Well I knew when the place was built up.

Q: How far is it from Loxley?

A: Right in the edge of Loxley.

Q: Right in the edge of Loxley?

A: Yes sir.

Q: In 1931 things were pretty dull around down there in Loxley so far as land selling, weren't they?

A: Yes sir.

Q: Do you know of property being bought and sold there in Loxley since you have been there?

A: Not very much. I have known of very little.

Q: Have you bought any yourself?

A: No sir.

Q: In your judgment was \$1000.00 a reasonable and fair price for that property at that time?

A: Yes sir, I think it was.

CROSS EXAMINATION BY MR. McMILLAN.

Q: When and how many times have you been in Mr. Ivey's house?

A: I have never been right in the house. I have been to the gate and in the yard, but not inside the house.

Q: You never examined the house to see how it was built inside?

A: No sir, not inside.

Q: On the outside either except from a distance?

A: That's all, just to look at it from the outside.

Q: Mr. Ivey has been in feeble health ever since he had a stroke of paralysis, hasn't he?

A: Well, he couldn't walk good.

Q: Been that way ever since?

A: As far as I know, couldn't walk good.

Q: Whenever he did walk he walked on crutches, didn't he?

A: Yes sir.

Q: You haven't seen him regularly since his stroke of paralysis have you?

A: Well I saw him regularly up until the last year or two.

Q: Do you remember the exact date?

A: No, I don't.

Q: Was that before or after he had his stroke?

A: Afterwards.

Q: When he came in the store and bought anything he would pull

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A: I don't. They just asked me to examine him.

Q: What was the occasion?

A: Whether he was mentally competent to sign a paper.

Q: And that is what you talked to him ten minutes to see whether he was capable?

A: Yes sir.

Q: And you got \$10.00 from Mr. Heard for talking to him?

A: Yes sir.

Q: Mr. Heard was his lawyer?

A: I judge he was.

Q: Did you ever make any specialty of mental diseases?

A: No sir.

Q: Might little you know about it?

A: Whole lot I don't know about it.

Q: Might little you do know, might little any doctor knows unless he specializes, and as a matter of fact to properly gauge a subject or a victim's mental condition and render an intelligent opinion, you must keep that man under observation a considerable while, mustn't you, any doctor?

A: Well at that time, for the only time I saw him, in my opinion he was normal.

Q: Was he on crutches?

A: No sir. He was not.

Q: Didn't have any crutches?

A: No sir.

Q: Who brought him up here?

A: I don't know, he was in the Bank when I saw him.

Q: Did you see him walk around any?

A: Yes, he walked around in the office down there.

Q: In the Bank office?

A: Yes sir.

Q: You didn't see him outside the Bank office?

A: Saw him at the Bank door.

Q: See him standing up?

A: Yes sir.

Q: At the Bank door.

A: At the back door of the Bank.

Q: Is that where you examined him?

A: No sir.

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Richard

BAY MINETTE, ALA. 11/23 - 1931 No. 

BALDWIN COUNTY BANK 61-258

Richard \$ 20⁰⁰

Twenty 20/100 DOLLARS

Richard Gray