

C. H. MATTHEWS,  
COMPLAINANT  
  
VS  
  
J. A. SIMS,  
RESPONDENT.

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

NO. 1143

Now comes the Respondent and in answer to the Complainant's Bill of Complaint to each count thereof separately and severally says:

1.

He admits the allegation contained in paragraph First.

2.

For answer to paragraph Second he says that he is not advised as to the allegation contained in the paragraph thereof, but does admit that on the 2nd day of October, 1941, C. R. Sims and Roxie Ida Sims, his wife, did by Warranty Deed convey to C. H. Matthews the North half of the Southeast quarter of Section 15, Township 1 South, Range 3 East, containing 79.60 acres more or less, as shown by Deed of record in the office of the Probate Judge of Baldwin County, Alabama, in Deed Book 78 NS page 246; that Exhibit "B" attached to the Complainant's Bill of Complaint is a correct copy of said Deed;

3.

The Respondent admits the allegation contained in paragraph Third;

4.

The Respondent admits the allegation contained in paragraph Fourth;

5.

The Respondent denies the allegation contained in paragraph Fifth, and demands strict proof of same;

6.

The Respondent denies each and every allegation contained in the Complainant's Bill of Complaint, not herein expressly admitted, and demands strict proof of same;

7.

The Respondent for further answer to the Complainant's Bill of Complaint, and praying that this may be taken as his Cross Bill, respectfully presents and shows unto your Honor and this Honorable Court as follows:

a.

That he is the owner of that certain mortgage executed by C. R. Sims and Roxie Ida Sims, his wife, to the First Joint Stock Land Bank of Montgomery, Montgomery, Alabama, conveying the North half of the Southeast quarter of Section 15, Township 1, South, Range 3 East, St. Stephens Meridian in Baldwin County, Alabama, containing 79.60 acres, more or less, together with the indebtedness secured thereby; that the said Mortgage is dated Jan. 1, 1937 and is of record in the office of the Probate Judge of Baldwin County, Alabama, in Mortgage Book 71 pages 122-4; that the said mortgage together with the indebtedness secured thereby was on January 30, 1942, by instrument on record in the office of the Probate Judge of Baldwin County, Alabama, in Mortgage Book 92 pages 343-6, duly transferred and assigned by the First Joint Stock Land Bank of Montgomery to C. A. Thompson; that C. A. Thompson on April 24, 1944, by instrument of record in the office of the Probate Judge of Baldwin County, Alabama, Mortgage Book 100 page 297, transferred and assigned said Mortgage and the indebtedness secured thereby to the Complainant J. A. Sims, who is the present owner of the said Mortgage and the indebtedness secured thereby;

b.

That the said Mortgage from C. R. Sims and Wife to the First Joint Stock Land Bank of Montgomery, which is now owned by the Complainant provides for annual payments beginning with the year 1937 and extending through the year 1951;

c.

That the indebtedness secured by the Mortgage from C. R. Sims

and wife to the First Joint Stock Land Bank of Montgomery and which is now owned by the Complainant, is now, and has been, in default the last payment being made thereon was December 15, 1942;

d.

That the Complainant and his wife, Dorothy Ruth Matthews, on January 2, 1942, executed and delivered to C. R. Sims a Mortgage which is of record in the office of Probate Judge of Baldwin County Alabama, in Mortgage Book 92 page 145, conveying the North half of the Southeast quarter of Section 15, Township 1 South, Range 3 East, containing 79.60 acres, more or less, in Baldwin County, Alabama; that this Mortgage recited " subject to first Mortgage held by the First Joint Stock Land Bank of Montgomery, or their successors, and said Mortgage the undersigned hereby assumes and agrees to pay"; that the said Mortgage also provides "provided always and these presents are upon the express condition that, if the Mortgagor shall well and truly pay to the Mortgagee the sum of \$796.71, according to the tenor and effects of one promissory note of even date, payments to be made \$50.00 on January each year hereafter, with interest at the rate of 6% from date, until the First Joint Stock Land Bank Mortgage is paid, and then the payments to be at the rate of \$100.00 per year"; that the Complainant on January 30, 1943, made a payment of \$50.00 on said Mortgage; that said Mortgage is now in default; that a copy of said Mortgage is hereto attached marked Exhibit "A", and asks to be taken as a part hereof as though herein fully set out;

e.

That the Complainant has failed or refused to comply with the terms and conditions of said Mortgage within the payments due on the First Joint Stock Land Bank of Montgomery or on the principal indebtedness secured by the said Mortgage and has permitted both of said Mortgages to become and remain in default;

f.

That the Mortgage from C. R. Sims to the First Joint Stock Land Bank of Montgomery was in the principle sum of \$800.00; that there still remains due and unpaid on said Mortgage the sum of \$508.94 together with interest;

g.

That at the time the Complainant purchased the land herein described from C. R. Sims, he paid \$50.00 in cash and since that time has paid only \$50.00, leaving a payment due on said Mortgage of \$746.71 together with interest;

h.

That the Complainant is now and has been since he purchased the said property from C. R. Sims, in the actual possession thereof; that he has failed or refused to make payments on either of said Mortgages; that the improvements thereon are depreciating in value; that if the Complainant is permitted to occupy and enjoy said premises for the duration of the War the value thereof will decrease and the property probably not be worth the indebtedness secured by the said Mortgage;

WHEREFORE the Respondent prays that this be taken as his Cross Bill and that due and proper notice hereof be given the Complainant as required by law, and that he be required to plead, answer or demur to the same within the time and under the penalties prescribed by law and practice of this Honorable Court.

Complainant further prays that upon a hearing hereof, this Honorable Court will grant unto the Respondent, Cross Complainant, a decree authorizing and empowering him to foreclose said Mortgage now owned by him, and that he be granted such other further different and general relief which in equity and good conscience he may be entitled to receive, and he will ever pray.

BEEBE & HALL

BY *W. L. Beebe*  
Solicitors for Respondent,  
Cross Complainant

EXHIBIT "A"

MORTGAGE DEED WITH POWER OF SALE

THE STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS: that C. H. MATTHEWS and DOROTHY RUTH MATTHEWS, his wife, hereinafter called Mortgagors, in consideration of the sum of SEVEN HUNDRED NINETY-SIX AND 71/100 DOLLARS to them in hand paid by C. R. SIMS, hereinafter called Mortgagee, the receipt whereof is hereby acknowledged, do each by these presents grant, bargain, sell and convey unto said Mortgagee, C. R. Sims, his heirs and assigns forever, all

The North half of the Southeast quarter of Section fifteen (15), Township one (1) South of Range Three (3) East, containing 79.60 acres, more or less,

subject to a first mortgage held by the First Joint Stock Land Bank of Montgomery, or their successors, which said Mortgage the undersigned hereby assumes and agrees to pay.

TOGETHER WITH ALL AND SINGULAR the tenements, rights, privileges and appurtenances, to said described premises in anywise belonging. TO HAVE AND TO HOLD the same forever.

PROVIDED ALWAYS and these presents are upon the express condition that, if the said Mortgagor shall well and truly pay to the Mortgagee the sum of seven hundred ninety six and 71/100 according to the tenor and effect of one promissory note of even date, payments to be made \$50.00 on January each year hereafter, with interest at the rate of 6% from date, until the First Joint Stock Land Bank Mortgage is paid, and then the payments to be at the rate of \$100.00 per year. And shall also discharge all the duties imposed upon said Mortgagee, by this Mortgage, then these presents shall become void, otherwise to remain in full force. In event of default in the payment at maturity of said Mortgage debt, or any amount secured hereby Mortgagee, C. R. Sims, is hereby authorized to sell said property, at auction, for cash, after giving notice by advertisement, once a week for three consecutive weeks, in any newspaper then published in Baldwin County, Alabama, to make proper

conveyance to purchaser, and the proceeds to apply first to the payment of the costs of said sale, including a reasonable attorney's fee; second to the payment of said Mortgage debt and any sums herein provided for, the balance, if any, to be paid over to said Mortgagor, Mortgagee may bid and purchase said property at such sale and in that event the auctioneer conducting the sale is authorized in the name of the Mortgagor and as his attorney in fact to make deed to Mortgagee. Mortgagors agree to pay such reasonable attorney's fees as may be incurred by the Mortgagee, in the collection of said Mortgage debt, or otherwise by reason of any default on the part Mortgagor covenants that he's seized in fee simple of said property, that it is free from all incumbrances; that he will warrant the same to Mortgagee, and to the purchaser thereof against the lawful claims of all persons.

IN WITNESS WHEREOF the said Mortgagors have hereunto set their hands and seals this 2nd day of January, A.D. 1942.

C. H. Matthew (Seal)  
Dorothy Ruth Matthews (Seal)

STATE OF ALABAMA  
BALDWIN COUNTY

I, Ort H. Ertzinger, a Notary Public in and for said County and State hereby certify that C. H. Matthews and Dorothy Ruth Matthews, his wife, whose names are signed to the foregoing conveyance and who are known to me, acknowledged before me, on this day that being informed of the contents of the conveyance they each executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 3rd day of March, A.D. 1942.

SEAL

Ort H. Ertzinger

STATE OF ALABAMA  
BALDWIN COUNTY

I, Ort H. Ertzinger, a Notary Public in and for said County and State, do hereby certify that on the 3rd day of March, 1942, came before me the within named Dorothy Ruth Matthews, known to me to be the wife of the within named C. H. Matthews, who being examined separate and apart from her husband, touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord and without fear, constraint or threats on the part of the husband.

In witness whereof, I hereunto set my hand and official seal this 3rd day of March, A.D. 1942.

SEAL

Ort H. Ertzinger

Filed ; March 14, 1942  
Recorded: Mortgage Book 92 page 145.

ANSWER AND CROSS BILL

C. H. MATHEWS,  
COMPLAINANT

VS

J. A. SINS,  
RESPONDENT.

1143  
**RECORDED**

ANSWER AND CROSS BILL

C. H. MATTHEWS  
COMPLAINANT

VS

J. A. SIMS,  
RESPONDENT.

*Filed July 21 1944*  
*R. J. Smith*



MOTION TO STRIKE AND DEMURRER

C. H. MATTHEWS,  
Complainant and  
cross respondent  
vs.  
J. A. SIMS,  
Respondent and  
Cross-complainant.

:  
: IN THE CIRCUIT COURT OF  
: BALDWIN COUNTY, ALABAMA.  
: IN EQUITY. NO. 1143  
:

Now comes the Complainant and cross respondent, C. H. Matthews and files this his motion to strike from the Cross Bill and answer of the respondent and cross complainant paragraphs numbered (d), (e), and (g) and as grounds therefor assigns the following:

1. That the matters contained in said paragraphs are not germane to the issues involved between the parties to this action.
2. That the matters contained in said paragraphs are not relevant to the issues involved in this cause.

And now further comes the complainant and cross respondent and not waiving his motion heretofore filed and hereto annexed, but insisting upon the same, and demurs to the Answer and Cross Bill of the respondent and cross complainant, and as grounds therefor assigns the following:

1. That said cross Bill contains no equity.
2. That said cross bill fails to show that the ability of the complainant to pay the mortgage of the respondent was not affected by his military service.
3. That said cross bill fails to allege that the Complainant is well able, in spite of his military service, to pay the said mortgage indebtedness.
4. That said cross bill fails to allege any facts which give the court jurisdiction to decree a foreclosure.
5. That said cross bill fails to allege sufficient facts to

give the court jurisdiction to decree a foreclosure.

6. That said cross bill fails to show that the ability of the complainant to pay the said mortgage was not affected by his military service.

*Home & Hadette*  
\_\_\_\_\_  
SOLICITORS FOR COMPLAINANT  
AND CROSS RESPONDENT

C. H. MATTHEWS,  
COMPLAINANT,

VS.

J. A. SIMS,  
RESPONDENT.

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

) IN EQUITY. NO \_\_\_\_\_.

TO THE HON. F. W. HARE, JUDGE OF THE TWENTY FIRST  
JUDICIAL CIRCUIT OF THE STATE OF ALABAMA. SITTING IN EQUITY.

Now comes the Complainant, C. H. Matthews, humbly com-  
plaining of the Respondent, J. A. Sims in a matter as will here-  
inafter appear and represents and shows unto your Honor as  
follows:

FIRST: That the Complainant is a bona-fide resident of Baldwin  
County, Alabama, but that at the present time he is a member of  
the armed forces of the United States of America and is stationed  
at Newport Army Air Field and is a member of the armed services  
and has been such since the 31st day of October, 1942, and that  
the Respondent is a bona-fide resident of Baldwin County, Alabama.

SECOND: Complainant represents unto your Honor that on, to-wit,  
the 4th day of October, 1941, he entered into a purchase agree-  
ment with C. R. Sims who is the father of J. A. Sims by virtue  
of which contract he bound himself to buy the following described  
property, to-wit:

The N $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 15, Township 1 South, Range  
5 East containing 79.61 acres more or less and a copy of the said  
purchase agreement is hereto attached and marked Exhibit "A"  
to this Bill of Complaint and that on, to-wit, the 7th day of  
October, 1941, C. R. Sims and Roxie Ida Sims executed to him the  
said C. H. Matthews a Warranty Deed which said Warranty Deed is  
recorded in Deed Book 78, Page 246 of the records of the Probate  
Judge of Baldwin County, Alabama, a copy of said deed is hereto  
attached and is marked Exhibit "B" to this Bill of Complaint.

That at the time of the purchase of said property the said C. H. Matthews assumed a mortgage indebtedness by C. R. Sims to the Joint Land Bank of Montgomery, Alabama, dated January 1, 1937, and recorded in Mortgage Book 71, Page 22-24 of the records in the Office of the Judge of Probate of Baldwin County, Alabama.

THIRD: The Complainant represents that this instrument was assigned by the Joint Land Bank of Montgomery, Alabama, by instrument dated January 30, 1942, to C. A. Thompson which said instrument is recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Mortgage Book 92 at Page 346 and that C. A. Thompson by an instrument dated April 24, 1944, and filed for record in the Office of the Judge of Probate of Baldwin County, Alabama, assigned the said mortgage to J. A. Sims, who is the son of C. R. Sims, the person from whom the Complainant purchased this property.

FOURTH: Complainant further represents and shows unto your Honor that the Respondent, J. A. Sims well knowing that the Complainant is a member of the armed forces of the United States of America and well knowing that the Complainant has an interest in said land and is in possession thereof and is making his home and keeping his family on the said land is seeking to foreclose said mortgage under and by virtue of the power of sale contained in the said mortgage, having given notice in the Baldwin Times, a Newspaper published at Bay Minette, Baldwin County, Alabama, on, to-wit, the 18th day of May, 1944; the 25th day of May, 1944; and the 1st day of June, 1944; that he, the said J. A. Sims is proceeding to foreclose the said mortgage in accordance with the terms and conditions contained in the said mortgage, a copy of which being hereto attached and marked Exhibit "C" to this Bill of Complaint.

pray, etc. etc..

Harne & Hadnett  
SOLICITORS FOR COMPLAINANT

*Exhibit "A"*

This purchase contract made and entered into on this 4th day of October, 1941, by and between C. R. Sims as owner and C. H. Matthews, as purchaser, witnesseth that for and in consideration of the sum of Fifty and no/100 (\$50.00) dollars, cash in hand paid, the receipt whereof is hereby acknowledged; the undersigned owner does hereby agree and bind himself to sell and the undersigned purchaser does hereby agree and bind himself to purchase the lands hereinafter described, upon the following terms and conditions, to-wit:

The total purchase price of said land is \$1600.00 (Sixteen Hundred Dollars) the said purchaser has this day paid the sum of (\$50.00) in cash as above set forth; the said purchaser does this day assume, and hereby agrees to pay a certain mortgage against said farm held by the First Joint Stock Land Bank of Montgomery, on which said mortgage there is now an admitted unpaid balance of \$605.74. The said mortgage held by the First Joint Stock Land Bank is to be paid each year as the payments on same become due and the purchaser agrees not to allow the same to become delinquent in the future.

The purchaser hereby agrees and binds himself to pay to the owner the sum of \$50.00 cash each year hereafter, same to be paid on January 1st of each year, together with interest at the rate of 6% on all unpaid balances as of January 1st each year.

The purchaser also agrees to pay any and all tax assessments levied against the said land promptly when the same fall due; also agrees to keep an old line fire insurance policy on the buildings on premises and to pay the premiums on same promptly. Should the purchaser fail to make the payments to the First Joint Stock Land Bank or to pay the taxes or the insurance premiums, then the said C. R. Sims may pay the same and any monies which he may have to pay shall be and become a part of the debt due said C. R. Sims and shall bear interest at the rate of 6% per annum and shall all be paid by the said C. H. Matthews before he shall be entitled to clear title to the said premises.

In addition to the \$50.00 this day paid by C. H. Matthews

In addition to the \$50.00 this day paid by C. H. Matthews, he shall pay to the said C. R. Sims, the sum of \$150.00 additional money on January 2nd, 1942, which two sums shall constitute the down payment to said Sims of \$200.00. When the full sum of \$200.00 has been paid, then the said C. R. Sims will execute and deliver a warranty deed to said C. H. Matthews, and receive from said Matthews, a mortgage to cover the remaining portion due to said C. R. Sims.

The said C. H. Matthews is have immediate possession of the premises and shall remain in such possession so long as the payments on the said place are kept up. The said Matthews shall not cut or remove any timber from the premises so long as there is money due the said First Joint Stock Land Bank or said C. R. Sims; and the said Matthews shall also keep and maintain the improvement on the place in their present state of repair, reasonable wear and tear excepted; and shall also keep the terraces back of the barn in their present condition.

The said C. R. Sims, out of the money received from said Matthews or from his own funds, shall make the payment due the First Joint Stock Land Bank on December 1st, 1941.

The said Matthews shall have the right to anticipate any and all payments to come due and interest shall be figured only on unpaid balances each time a payment is made. After the said Matthews has paid off the amount due the First Joint Stock Land Bank, then he is to increase his payments to said C. R. Sims to \$100.00 per year until the entire unpaid balance has been liquidated.

The premises covered and intended to be bound by this contract is described as follows; to-wit;

The North half of the southeast quarter of section fifteen (15), township one (1) south, range three (3) east, containing 79.60 acres, more or less and being the same property purchased by said C. R. Sims from the First Joint Stock Bank.

Exhibit B

THE STATE OF ALABAMA, }  
BALDWIN COUNTY. }

KNOW ALL MEN BY THESE PRESENTS; That for and in consideration of the sum of ONE (\$1.00) DOLLAR and other good and valuable consideration to them in hand paid by C. H. Matthews the receipt whereof is hereby acknowledged C. R. Sims and Roxie Ida Sims, his wife do grant, bargain, sell and convey unto the said C. H. Matthews the following described lands situated in Baldwin County, Alabama, to-wit:

The North half of the southeast quarter of section fifteen (15), township one (1) south range three (3) east of St. Stephens Meridian, containing seventy-nine and sixty hundredths (79.60) acres, more or less.

TO HAVE AND TO HOLD to the said C. H. Matthews his heirs and assigns forever.

And we do covenant with the said C. H. Matthews that we are seized in fee of the above described premises; that we have the right to sell and convey the same; that the said premises are free from all incumbrances; and that we will, and our heirs executors and administrators shall forever WARRANT AND DEFEND the same to the said C. H. Matthews, and to his heirs and assigns, against the lawful claims of all persons whomsoever.

Witness our hands and seals this 7th day of October,  
1941.

C. R. Sims L.S.

Roxie Ida Sims L.S.

Witness:

Ort H. Ertzinger



STATE OF ALABAMA, }  
BALDWIN COUNTY. }

I, Ort H. Ertzinger, a Notary Public in and for said County and State, hereby certify that C. R. Sims and Roxie Ida Sims, his wife whose names are signed to the foregoing conveyance and who are known to me, acknowledged before me, on this day, that being informed of the contents of the conveyance they each executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 7th day of October, A. D. 1941.

Ort H. Ertzinger

(SEAL)

STATE OF ALABAMA, }  
BALDWIN COUNTY. }

I, Ort H. Ertzinger, a Notary Public in and for said County and State, do hereby certify that on the 7th day of October, 1941, came before me the within named Roxie Ida Sims known to me to be the wife of the within named C. R. Sims who being examined separate and apart from her husband, touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of the husband.

In Witness Whereof, I hereunto set my hand and official seal this 7th day of October, 1941.

Ort H. Ertzinger

(Seal)

Exhibit C

**FORECLOSURE NOTICE**

Default having been made and continuing in the payment of the indebtedness secured by that certain mortgage executed by C. R. Sims and Roxie Ida Sims, his wife, to the First Joint Stock Land Bank of Montgomery, dated January 1st, 1937, and of record in the office of the Probate Judge of Baldwin County, Alabama, in Mortgage Book 71, pages 122-4, and which was by the First Joint Stock Land Bank of Montgomery, by instrument dated January 30th, 1942, duly assigned to C. A. Thompson by instrument of record in the office of the Probate Judge of Baldwin County, Alabama, in Mortgage Book 92 page 346, and which C. A. Thompson assigned to J. A. Sims by instrument dated April 24th, 1944, and filed for record in the office of the Probate Judge of Baldwin County on April 24th, 1944, the undersigned as owner of the said mortgage and the indebtedness secured thereby will, on June 19th, 1944, at auction for cash, at the Court House at Bay Minette, Alabama, sell the following described lands, situated in Baldwin County, Alabama, to-wit:

North half of the Southeast Quarter of Section 16, Township 1 South Range 3 East, containing 79.60 acres, more or less.

the said sale to be made and the proceeds thereof applied in accordance with the terms and conditions contained in said mortgage.

J. A. SIMS, Transferee and owner of the said Mortgage and the indebtedness secured thereby.  
BEEBE & HALL, Attorneys. 17-316

Motion to Strike  
Demurred to  
Cross Bill.

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C H Matthews  
vs  
Comp.

J. A. Sims  
Recept

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Circuit Ct

Batum Co. aka

an equity

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Filed 8-10-44

F. S. Duck

Register

C. H. MATTHEWS :  
COMPLAINANT : IN THE CIRCUIT COURT OF  
VS: : BALDWIN COUNTY, ALABAMA.  
J. A. SIMS : IN EQUITY. NO. \_\_\_\_\_  
RESPONDENT :

BRIEF AND ARGUMENT FOR COMPLAINANT ON DEMURRER TO ANSWER  
AND CROSS BILL OF THE RESPONDENT.

FRANK G HORNE  
SOLICITOR FOR COMPLAINANT.

P O I N T S   A N D   A U T H O R I T I E S

SECTION 590 of TITLE 50 of U. S. C. A. STAY OF ENFORCEMENT OF OBLIGATIONS, LIABILITIES, TAXES, ETC.

(1) A person may, at any time during his period of military service or within six months thereafter, apply to a court for relief in respect of any obligation or liability incurred by such person prior to his period of military service or in respect of any tax or assessment whether falling due prior to or during his period of military service. The Court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability or to pay such tax or assessment has not been materially affected by reason of his military service, may grant the following relief:

(a) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of such obligation during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period equal to the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant, or any part of such combined period, subject

to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, as the case may be, in equal installments during such combined period at such rate of interest on the unpaid balance as is prescribed in such contract, or other instrument evidencing the obligation, for installments paid when due, and subject to such other terms as may be just.

(b) In the case of any other obligation, liability, tax, or assessment, a stay of the enforcement thereof during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of such period of military service or the date of application, as the case may be, in equal periodic installments during during such extended period at such rate of interest as may be prescribed for such obligation, liability, tax, or assessment, if paid when due, and subject to such other terms as may be just.

(2) When any court has granted a stay as provided in this section no fine or penalty shall accrue during the period

the terms and conditions of such stay are complied with by reason of failure to comply with the terms or conditions of the obligation, liability, tax, or assessment in respect of which the stay was granted. Oct. 17, 1940, c. 888, Sec. 700, as added October 6, 1942, c. 581, Sec. 18, 56 Stat. 777.

#### A R G U M E N T.

The original Bill of Complaint in this cause sought relief from an obligation incurred by the Complainant prior to his period of military service and sought to invoke the provisions of the Soldiers and Sailors Relief act of 1940, as amended.

As we view the matter the only propositions involved are:

- (1) Is the Complainant a member of the Armed Forces of the United States of America?
- (2) Did the liability or obligation on his part exist prior to the time he entered into the Armed Forces?
- (3) Is the ability of the Complainant to pay the obligations materially affected by his military service?

We think that the Bill of Complaint contained sufficient allegations to apprise the Court that he was at the time of filing his petition, that is the complainant, a member of the Armed Forces of the United States of America. We also think that it is clear that the Bill of Complaint or petition discloses that the obligation or liability on

on the part of the complainant existed prior to the date of his entry into the Armed Forces of the United States of America, to-wit; October 31, 1942.

Then the only other proposition left is the question of whether or not his income and ability to pay was materially affected by his entry into service. The wording of the statute seems to us to make it clear that it shall be presumed that military service materially affects the ability of a soldier or sailor to pay an obligation and he who seeks to attack a stay must allege facts which show to the court that the ability of the defendant to pay the obligation or liability are not materially affected by his military service.

The matters alleged<sup>in</sup>/Paragraphs "D", "E" and "G" of the Answer and Cross Bill of the Respondent are in nowise matters which are material in the absence of averments that the ability of the complainant to pay has not been materially affected by his military service.

On the whole the cross bill and answer are lacking in equity on account of the absence of allegations of facts which disclose that the ability of the complainant to pay the liability or obligation incurred by him prior to his entry in to the Armed Forces of the United States was not materially



affected by the service. We think that all courts judicially know that civilians are better paid and are in better position to take care of obligations than those engaged in the military service in behalf of their Country.

The soldiers and sailors acts were passed to take care of just such matters as those posed in this action and the purpose was to let the soldier engage in his arduous tasks without the thought that the roof could be taken from over the heads of his loved ones while he was away imperilling his life for the National defense.


We fail to see any matters set out in the Answer and cross bill of the respondent which are in any real sense the answers to/gravamen of the Bill of Complaint.

Respectfully submitted,

  
FRANK G. HORNE  
Solicitor for complainant.

I certify that I have mailed a carbon copy of the foregoing Brief and Argument to Hon. Hubert M. Hall, Attorney at Law, BayMinette, Alabama.

This 22<sup>nd</sup> day of February, 1945.

  
Solicitor for Complainant.

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA,  
BALDWIN COUNTY

CIRCUIT COURT BALDWIN COUNTY  
No. ~~XXXX~~ 1143  
June. TERM, 1944

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon J A Sims.

to appear and plead, answer or demur, within thirty days from the service hereof, to the Complaint filed in  
the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against

J A Sims. Respondant.  
Defendant

by C H Matthews.  
Complainant.

Witness my hand this 24th day of June, 1944

R. S. Duck  
R S Duck. Register.