


1148

STATE OF ALABAMA  
BALDWIN COUNTY.

TO ANY SHERIFF OF THE STATE OF ALABAMA -- GREETINGS:

WE COMMAND YOU, that you summon BERTHA M. MORRIS and J. B. BLACKBURN to be and appear before the Judge of the Circuit Court of Baldwin County, Alabama, exercising Chancery Jurisdiction within sixty days after the service of the summons, and there to answer, plead or demur without oath to a bill of complaint lately exhibited by HERLON B. PARKER against the said BERTHA M. MORRIS and J. B. BLACKBURN, and further to do and perform what the said Judge shall order and direct in that behalf, and this the Respondent shall in no wise omit, under penalty, etc. And we further command that you return this writ, with your execution thereon, to our said Court immediately upon the execution thereof.

WITNESS, R. S. DUCK, Register of said Circuit Court, this  
the 29 day of June, 1944.

  
Register.

HERLON B. PARKER, COMPLAINANT  
  
VS  
  
BERTHA M. MORRIS AND  
J. B. BLACKBURN, RESPONDENTS

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

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

Comes your Complainant, Herlon B. Parker, and humbly complaining against the Respondents Bertha M. Morris and J. B. Blackburn, respectfully represents and shows unto your Honor and this Honorable Court as follows:

ONE:

That the Complainant and the Respondents are over the age of twenty one years, and are all bona fide residents of Baldwin County, Alabama.

TWO:

That on October 11th, 1941, the Complainant purchased from the Respondent, Bertha M. Morris, the following described land in Baldwin County Alabama, to-wit:

Southeast Quarter of the Southwest Quarter of Section  
32, Township 7 South Range 4 East, containing 40 acres  
more or less;

That the said Respondent conveyed the property to the said Complainant by full

warranty deed in which a vendor's lien was reserved; that a copy of said deed is hereto attached marked "Exhibit A" and asked to be taken as a part hereof as though herein fully set out; that said deed was filed for record in the office of the Probate Judge of Baldwin County, Alabama, on October 15th, 1941, and appears of record therein in Deed Book 76 NS pages 120-2.

THREE:

That there was an express agreement between the Complainant and the Respondent Bertha M. Morris that the said Respondent would furnish to the Complainant a full and complete abstract of title showing a merchantable fee simple title vested in the said Respondent; that the Respondent has failed and repeatedly refused to furnish the abstract aforesaid.

FOUR:

That the Respondent Bertha M. Morris warranted that she was lawfully seized of an indefeasible title in fee simple in and to said land and that the same were free of all liens and encumbrances; that it was expressly understood between the complainant and the said Respondent that the said Respondent had and held only a tax title to the said lands; that the said Respondent would institute the necessary proceedings in the Chancery Court of Baldwin County, Alabama, to quiet title and perfect the title to said property; that she has failed and repeatedly refused to institute such proceedings or to take any action to perfect or to quiet title to the said land in accordance with the said agreement.

FIVE:

That the Complainant agreed with the Respondent, Bertha M. Morris that he would pay \$25.00 toward the expense of quieting title to said land, and that he did actually pay the said amount to the said Respondent; and that the said \$25.00 is included in and made a part of the purchase price as set out in said warranty deed hereinabove referred to.

SIX:

That, relying on the said warranty deed, the agreement and expressed promises of the Respondent, Bertha M. Morris, the complainant paid the note due

October 11th, 1942, and requested that the said Respondent institute such proceedings as were necessary to perfect her title; that when the note due October 11, 1943, became due the Complainant offered to pay not only the said note due on that date but also the remaining note, the Respondent Bertha M. Morris complying with her agreement and the warranty contained in the said deed to the complainant; that the Complainant has offered and is ready, able, and willing to pay the amount or amounts secured by the said Vendor's lien deed immediately the Respondent Bertha M. Morris complies with her agreement.

SEVEN:

That the Complainant, relying upon the agreement and promise of the Respondent Bertha M. Morris, went into the possession of the said lands conveyed to him by her and has made extensive improvements thereon, and prepared the property to be occupied by him as a permanent home; that but for the promises and fraud practiced upon him by the said Bertha M. Morris he would never have entered into the agreement to purchase said land and paid the purchase price in accordance with the terms and conditions of said conveyance.

EIGHT:

That the Respondent, Bertha M. Morris, acting by and through her attorney J. B. Blackburn, has given notice of foreclosure of said lien reserved in the deed from the Respondent, Bertha M. Morris to the Complainant; that copy of said notice is hereto attached marked "Exhibit B" and asked to be taken as a part hereof as though herein fully set out.

NINE:

That in the event that the Complainant's title should fail, the Respondent Bertha M. Morris has no property out of which he could collect damages or to enforce his rights under the warranty contained in the deed from the said Bertha M. Morris to him.

TEN:

That the Complainant offers to do equity and to abide by any judgments and decrees of this Court.

WHEREFORE, the premises considered, your Complainant prays

that the said Bertha M. Morris and J. B. Blackburn be made parties respondent to this bill of complaint, and required to answer, plead or demur to the same within the time and under the penalties prescribed by law and the practice of this Honorable Court; that this Honorable Court will enter a temporary injunction prohibiting the said Bertha M. Morris or her attorney J. B. Blackburn or any other person from foreclosing the said mortgage or in any manner changing or altering the status quo of said property until the Respondent, Bertha M. Morris has complied with her agreement and the terms and conditions of said warranty deed given by her to the complainant.

Complainant further prays that your Honor will, by proper order and decree, establish the rights of the complainant, and that the Respondent, Bertha M. Morris be required to comply with the terms and conditions of her agreement, and that she immediately institute such proceedings as may be necessary to perfect her title and deliver to the complainant a full and complete abstract of title; or in the event she should fail or refuse for a period of thirty days to comply with the terms and conditions of the decree of the Court, that this Complainant be authorized and directed to prepare such abstract and to institute such proceedings as may be necessary to perfect title to said lands, and that the costs thereof be deducted against the balance due by the Complainant to the Respondent, Bertha M. Morris, on the purchase price of said land.

Complainant further prays that your Honor will make and enter such orders and decrees as may be necessary to ascertain the balance, if any, due by the complainant to the Respondent, Bertha M. Morris, and that upon payment of said amount the said Bertha M. Morris be required to release the vendor's lien contained in the warranty deed herein described or, in the event that the said lien is foreclosed, to convey the said property to the complainant, and that in the event she should fail or refuse to so release the said lien or to convey the property, that the Register of this Court be authorized, directed, and empowered to enter such release or convey the property to the complainant.

Complainant further prays that if he is mistaken in the relief prayed for, that this Honorable Court will give and grant unto him such

relief as he may be entitled to receive under the allegations of his bill of complaint, and that your Honor will give and grant unto him such other, further, different and general relief as he may be in equity and good conscience entitled to receive, and as in duty bound he will ever pray.

Herlon B. Parker  
Complainant.

BEEBE & HALL

By [Signature]  
Solicitors for Complainant.

STATE OF ALABAMA  
BALDWIN COUNTY.

Before me, the undersigned authority in and for said County, in said State, personally appeared Herlon B. Parker who is known to me, and who, having been by me first duly sworn deposes and says: he has read and understands the allegations contained in the foregoing complaint and that the same are true.

Herlon B. Parker

Sworn to and subscribed before me on this the 10 day of June, 1944.

My Commission Expires Sept. 10, 1947

[Signature]  
Notary Public, Baldwin County, Alabama.

TO THE REGISTER OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA:

Upon the Complainant entering into bond with security, in the sum of \$ \_\_\_\_\_ payable to and approved by you, and conditioned according to law, let an injunction issue according to the prayer of the Bill.

\_\_\_\_\_  
Judge.

EXHIBIT "A".

DEED WITH VENDOR'S LIEN.

STATE OF ALABAMA  
BALDWIN COUNTY.

THIS INDENTURE made and entered into, in duplicate, this 3rd day of December, 1940, by and between Bertha M. Morris, hereinafter called the grantor, and the one part, and Herlon B. Parker, hereinafter called the grantee, on the other part, witnesseth:

That for and in consideration of the sum of FIFTY & 00/100 (50.00) DOLLARS to her in hand paid by the grantee, receipt of which is hereby acknowledged and in consideration of the further sum of FOUR HUNDRED SEVENTY FIVE & 00/100 (\$475.00) DOLLARS with interest thereon at the rate of six per cent (6%) per annum from the date hereof, to be paid by the grantee and secured by vendor's lien herein retained, all as hereinafter more particularly set forth, the Grantor, subject to the terms and conditions hereinafter written, hereby GRANTS, BARGAINS, SELLS AND CONVEYS to the grantee, all of the following described real estate situated in the County of Baldwin, State of Alabama, to-wit:

The Southeast Quarter (SE $\frac{1}{4}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ) of Section Thirty Two (32) Township Seven (7) South Range Four (4) East, containing 40 acres, more or less .

TO HAVE AND TO HOLD the above described lands unto the grantee, his heirs and assigns, forever.

The Grantor, for herself and her heirs does hereby covenant and agree with the grantee, his heirs and assigns, that she is lawfully seized of an indefeasible title in fee simple in and to said lands; that the same is free and clear from all liens and encumbrances and that she has good right and lawful authority to sell the same and that she will, and her heirs shall, forever warrant and defend the title to and possession of said lands unto the grantee, his heirs and assigns, forever, against the lawful claims of all persons whomsoever.

The unpaid portion of the purchase money amounting to the principal sum of FOUR HUNDRED SEVENTY FIVE & 00/100 (475.00) DOLLARS is evidenced by four promissory notes of the Grantee, of even date herewith, ONE HUNDRED EIGHTEEN & 75/100 (\$118.75) DOLLARS due one year after date; ONE HUNDRED EIGHTEEN & 75/100 (\$118.75) DOLLARS due two years after date; ONE HUNDRED EIGHTEEN & 75/100 (\$118.75) DOLLARS due three years after date and ONE HUNDRED EIGHTEEN & 75/100 (\$118.75) DOLLARS due four years after date, with interest at the rate of six per cent (6%) per annum payable annually.

It is agreed and understood that to secure the prompt payment of the debt evidenced by said note, and the annual installments and interest thereon when and as the same respectively fall due, and to secure the faithful performance by the grantee of all the covenants and agreements herein made by him, the grantor hereby reserves and retains a vendor's lien upon the property herein conveyed.

The Grantee hereby promises, agrees and binds himself that so long as any part of the purchase money or any interest thereon remains unpaid he will do, perform, and be bound by the following:

1. Pay when the same become due all taxes and assessments made on or against said lands and property herein, and hereby, conveyed for the year 1941 and subsequent years.
2. Insure the buildings on said land against fire and storm in an insurance company suitable to the grantor in an amount not less than the amount remaining unpaid of the note hereinbefore mentioned with policies made payable to the grantor and the grantee as their interests may appear and to pay premiums upon such policies of insurance.
3. Not to commit nor permit waste to be committed on the premises.
4. That if the grantor, upon the happening of any default hereunder,

resort to litigation for the foreclosure of the vendor's lien herein retained or the recovery of any sum of money hereby secured or agreed to be paid by the grantee, or for the enforcement of any right herein given to or retained by her, or employ an attorney to collect the said sums, or to enforce said rights, he, the grantee, will pay all reasonable cost, expense and attorney's fees thus incurred, and all such cost, expenses and attorneys fees shall be secured by the lien herein reserved and retained and may be included in any judgment or decree rendered in connection with such litigation. If the grantee should fail to perform any of the duties herein agreed to be performed by him, the grantor may, at her election, perform the same at the cost and expense of the grantee, and for any sum expended by the grantor in or about the performance of the same she shall have an additions lien secured by these presents.

5. Should the grantee make default in the payment in full of any of said notes, or any annual installment of interest thereon when and as the same respectively fall due, or fail to pay before the same becomes delinquent any taxes assessed on or against said lands and the property hereby conveyed, or fail to procure and pay for insurance as herein provided, or make default in the performance of any of the other obligations herein imposed upon him, and should any one or more of said default continue for a period of thirty days, the whole of the amount of the principal sum remaining unpaid shall, at the election of the grantor, become immediately due and payable and the grantor shall have the right to sell the property herein and hereby conveyed at public outcry before the court house of Baldwin County, Alabama, to the highest bidder for cash after first giving notice of the time, terms and place of sale by advertisement containing a description of the property to be sold once a week for three consecutive weeks in some newspaper published in Baldwin County, Alabama, and on any such sale being made the Grantor is hereby authorized and empowered to make proper conveyances or conveyances to the purchaser or purchasers, and apply the proceeds of said sale; first, to the payment of the cost and expense of sale, including a reasonable attorney's fee; second to the payment of any amount that may be due the grantor by virtue of the special liens herein declared or retained; third, to the payment of the amount of said principal note evidencing the indebtedness secured hereby with interest thereon to the date of sale whether the same be due or not; and, fourth, the balance, if any, shall be paid to the grantee. If on the date of sale as fixed in the advertisement hereinabove provided for the holder of the vendor's lien herein preserved and retained should for any reason deem it necessary or expedient to postpone said sale, then the grantee hereby authorizes the holder of said lien or the auctioneer making the sale to verbally announce the postponement of said sale until some later date and no further publication or notice of the time and terms of sale shall be necessary. Any sale made in pursuance of such postponement shall be as valid and binding as if it had been made on the date fixed by the advertisement. At any sale made under the powers herein contained, the grantor may bid for and purchase said property as though a stranger to this instrument, and in the event of a purchase by the grantor the auctioneer conducting the sale shall have and is hereby given full power and authority to execute the proper deed to the purchaser.

All rights, powers and privileges herein reserved by, given or secured to the grantor and grantee, respectively, shall inure to the benefit and be held by their respective heirs, executors, administrators and assigns.

This is a correction deed given for a nominal consideration to perfect the title by correcting the error in that certain deed with vendor's lien between the same parties, dated December 3rd, 1940, and recorded in Deed Book 75, pages 575-56 in which the land was erroneously described.

IN WITNESS WHEREOF; The parties hereunto set their hands and seals this 11th day of October, 1941.

Bertha M. Morris (SEAL)  
Herlon B. Parker (SEAL)

STATE OF ALABAMA  
BALDWIN COUNTY.

I, Lloyd A. Magney, a Notary Public, in and for said County, in said State,

herby certify that Bertha M. Morris, a widow, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she executed the same voluntarily on the day the same bears date.

IN WITNESS WHEREOF, I have hereunder set my hand and official seal this 11th day of October, 1941.

LLOYD A. MAGNEY  
Notary Public.

STATE OF ALABAMA  
BALDWIN COUNTY.

I, Lloyd A. Magney, a Notary Public in and for said county, in said State, hereby certify that Herlon B. Parker, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

IN WITNESS WHEREOF; I have hereunto set my hand and official seal this 11th day of October, 1941

LLOYD A. MAGNEY  
Notary Public.



EXHIBIT "B".

FORECLOSURE NOTICE.

THAT WHEREAS Bertha M. Morris did by deed dated December 3, 1940, convey the property hereinafter described to Herlon B. Parker, which deed is recorded in Deed Book 75 NS at pages 120-122, Baldwin County, Alabama, Records, in which a vendor's lien was reserved to secure payment of the sum of \$118.75 and interest due on or before December 3, 1943, and the further sum of \$118.75 and interest due on or before December 3, 1944; and

WHEREAS, default has been made by the said vendee in the payment of the said note which was due on or before December 3, 1943, which default has continued for more than thirty days;

WHEREUPON the said vendor has, under the terms and provisions of the said Vendor's lien, declared the entire amount secured thereby to be immediately due and payable, which said indebtedness has not been paid and is now in default;

NOW, THEREFORE, notice is hereby given that Bertha M. Morris, the said vendor, will sell to the highest bidder for cash at twelve o'clock Noon on July 10, 1944, at the front door of the Court House of Bay Minette, in Baldwin County, Alabama, the following described property situated in Baldwin County, Alabama, to-wit:

Southeast Quarter of the Southwest Quarter of Section Thirty Two (32) Township Sevem (7) South Range Four (4) East, containing forty (40) acres, more or less.

The said sale will be made under and by virtue of the power of sale contained in the said vendor's lien and is for the purpose of paying the indebtedness secured thereby. The proceeds of the said sale will be applied as provided in and by the said vendor's lien.

BERTHA M. MORRIS  
Vendor.

J. B. BLACKBURN  
Attorney for Vendor.

HERLON B. PARKER,  
Complainant,

VS.

BERTHA M. MORRIS, ET ALS,  
Respondents.

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

DISCLAIMER.

Now comes the Respondent, Bertha M. Morris, by her Solicitor, and disclaims all right, title and interest in and to the property involved in this proceeding.

*J. B. Blasburn*

Solicitor for Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

RECORDED  
INDEXED

CONFIDENTIAL

RECORDED  
INDEXED

CONFIDENTIAL

DISCLAIMER

HERLON B. PARKER,

Complainant,

VS.

BERTHA W. MORRIS, ET ALS,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY.

*Filed 5-30-48  
Bertha W. Morris  
Court*

HERLON B. PARKER,  
Complainant,  
VS.  
BERTHA MORRIS AND J. B.  
BLACKBURN,  
Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY. NUMBER 1148.

DECREE ON DEMURRER

This cause coming on to be heard on this date is submitted by consent of the parties on the Respondents' Demurrer to the Bill of Complaint, upon consideration of which it is therefore ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That the Demurrer to the Bill of Complaint be and it is hereby overruled.
2. The Respondents are allowed twenty days in which to file their Answer.

ORDERED, ADJUDGED AND DECREED this 10th day of January, 1945.

*J. W. Lane*

Judge.

FILED IN BALDWIN COUNTY ALABAMA  
JAN 11 1945  
CLERK OF COURT

HERLON B. PARKER,

Complainant,

VS.

BERTHA MORRIS AND J. B.  
BLACKBURN,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 1148.

DEMURRER

Now come the Respondents, each separately and severally, and demur to the Bill of Complaint in this cause and as grounds of demurrer set down and assign separately and severally the following:

1. There is no equity in the bill.
2. The said bill is exhibited against the two said defendants for distinct matters and causes in several whereof the defendant, J. B. Blackburn, is not in any manner concerned and that the bill is altogether multifarious.
3. There is a misjoinder of parties defendant.
4. The fraud alleged in the Bill of Complaint is but the conclusion of the pleader.
5. No facts are alleged to show the fraud alleged in the Bill of Complaint by way of conclusion.
6. The fraud alleged in the Bill of Complaint is not shown to be material or made wilfully to deceive.
7. The fraud alleged, if true, does not show that the Complainant relied on such fraudulent representations to his hurt or injury.
8. It affirmatively appears that the Complainant's suit is an effort to vary the terms of a written instrument by parol testimony.
9. No facts are alleged to entitle the Complainant to the relief prayed for.
10. The Complainant has a full, complete and adequate remedy at law.

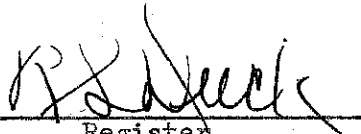
HERLON B. PARKER,  
COMPLAINANT,  
VS.  
BERTHA M. MORRIS, et al,  
RESPONDENTS.

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

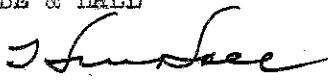
NOTE OF TESTIMONY:

This cause is submitted for final decree on behalf of the  
Complainant upon the following:

1. Original summons and complaint.
2. Decree of the Court overruling demurrers of the Respondent.
3. Stipulation as to the taking of testimony of witnesses on  
behalf of the Complainant.
4. Testimony of Herlon B. Parker, Lydia Parker, and J. P.  
Waltman.

  
Register

BEEBE & HALL

By:   
Solicitors for the Complainant.

HERLON B. PARKER,  
Complainant,  
VS.  
BERTHA M. MORRIS AND  
J. B. BLACKBURN,  
Respondents.

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

NOTE OF TESTIMONY

This cause is submitted for Final Decree on behalf of  
the Respondent, Bertha M. Morris, upon the following:

1. Answer.
2. Stipulation of parties relative to taking of testimony.
3. Oral deposition of Myrtle M. Barchard.
4. Oral deposition of Harvey L. Windbigler.

This cause is submitted for Final Decree on behalf of the  
Respondent, J. B. Blackburn, upon the following:

1. Answer.

Dated this 19th day of September, 1945.



Register.



Solicitor for Respondent, Bertha M.  
Morris.



Respondent.

HERLON B. PARKER,

Complainant,

VS.

BERTHA M. MORRIS, AND J. B.  
BLACKBURN,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.


IN EQUITY. NUMBER 1148.

ANSWER OF J. B. BLACKBURN

Now comes J. B. Blackburn, one of the Respondents named in this cause and for answer to the Bill of Complaint says:

1. That he was employed by the Respondent, Bertha M. Morris, to foreclose the vendor's lien that was reserved in the deed from Bertha M. Morris to Herlon B. Parker dated December 3, 1940 and recorded in Deed Book 75 N. S. at pages 120-22, Baldwin County Records; that after this suit was filed and on July 10, 1944 he completed the foreclosure proceedings by holding a foreclosure sale, at which the Respondent, Bertha M. Morris, became the purchaser of the said property at and for the sum of Three Hundred Thirteen and 67/100 Dollars (\$313.67).

2. This Respondent has no knowledge of the agreement or understanding between the Complainant and the Respondent and therefore denies each and all of the other allegations of the Bill of Complaint and demands strict proof of same.

  
Respondent.



HERLON B. PARKER,  
Complainant,

VS.

BERTHA M. MORRIS AND J. B.  
BLACKBURN,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY. NUMBER 1148.

ANSWER OF BERTHA M. MORRIS

Now comes the Respondent, Bertha M. Morris, and for answer to the Bill of Complaint and to each and every count thereof says:

1. She admits the allegations of paragraph numbered One of the Bill of Complaint.
2. She admits the allegations of paragraph numbered Two of the Bill of Complaint.
3. This Respondent denies that there was an agreement between her and the Complainant whereby she would furnish a full and complete abstract of title showing a merchantable fee simple title vested in her but admits that she has failed to furnish such abstract to the Complainant. For further answer to the Bill of Complaint this Respondent alleges that at the time she agreed to sell the said property to the Complainant they were advised that a complete abstract of title to the property would cost Fifty Dollars (\$50.00) and that after receiving this information she and the Complainant agreed that they would each pay Twenty-five Dollars (\$25.00) on the cost of this abstract and the Complainant paid his Twenty-five Dollars (\$25.00) to her. There was no agreement between the parties that the abstract would show a merchantable fee simple title vested in this Respondent and the Complainant was expressly advised that Respondent only owned a tax title to the property and was further advised that her price was lower because of this condition of her title than it would have been if there had been no question about her title to the property.
4. Respondent admits that she made conveyance to the

Complainant by Warranty Deed and that this instrument warranted that she was lawfully seized of an indefeasible estate in and to the said property and that it was free of all liens and encumbrances and further admits that it was expressly understood by the Complainant and the Respondent that she had and held only a tax title to the said lands but she expressly denies that she agreed to institute proceedings in the Chancery Court of Baldwin County, Alabama to quiet title to the property but she admits that she has failed to take any action to perfect title to the property because there was no agreement or obligation on her part to quiet title to it. This Respondent further alleges that at the time this suit was filed the Complainant and this Respondent under whom he claims title to the property, have been in the actual, open, notorious, hostile, exclusive, continuous and peaceable possession of the said property for more than three years by virtue of the tax deed which Complainant received to it.

5. This Respondent denies that the Complainant agreed to pay or would pay Twenty-five Dollars (\$25.00) toward the expense of quieting title to the said lands and alleges that he made no payment whatever to her for this purpose. She admits, however, that he did pay to her Twenty-five Dollars (\$25.00) to cover one-half of the cost of an abstract to the property as hereinabove described.

6. This Respondent admits that the Complainant paid the note due October 11, 1942 but denies each and all of the other allegations of paragraph Numbered 6. For further answer to paragraph numbered Six of the Bill of Complaint, Respondent alleges that the Complainant said nothing about the transaction after the said note of October 11, 1942 was paid until the note due on December 3, 1943 became due and that he failed and refused to pay this note claiming that this Respondent had agreed to furnish an abstract and quiet title to the property.

7. Respondent denies each and all of the allegations of

Paragraph Numbered 7 of the Bill of Complaint and expressly denies that any fraud was practiced upon him. Respondent further alleges that the entire contract between the parties consisted of the written Vendor's Lien Deed from her to the Complainant dated October 11, 1941 and recorded in Deed Book Number 76 N. S. at pages 120-21, Baldwin County Records, and the notes secured thereby, and the verbal agreement about the abstract which is set out in this answer. Respondent further alleges that the Complainant is now endeavoring to vary the terms of this written contract by parole testimony.

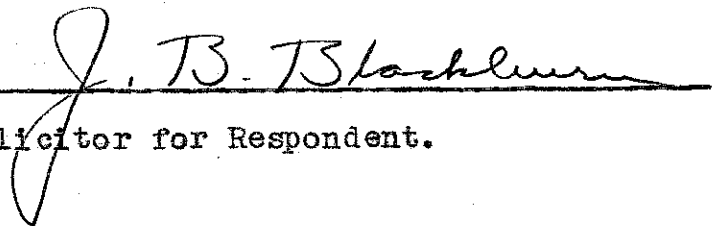
8. Respondent admits that she, through her attorney, gave notice of the foreclosure of the lien reserved in the above described deed and alleges that the foreclosure sale was held on to-wit, July 10, 1944, at which she became the purchaser of the said property at and for the sum of Three Hundred Thirteen and 67/100 Dollars (\$313.67) as will fully appear from the Foreclosure Deed, a copy of which is hereto attached, marked Exhibit "A" and by reference made a part hereof as though fully incorporated herein.

9. Respondent denies that she has no property out of which Complainant could collect damages or enforce his rights under the warranty contained in the deed from this Respondent to him and alleges that she is solvent and able to pay and satisfy any judgment which may be rendered against her for breach of the warranty contained in the said deed. For further answer to the Bill of Complaint Respondent admits that the Complainant has a right to redeem the property from the said foreclosure sale and in the event the said right of redemption is exercised by him, she agrees that she will account to him for the Twenty-five Dollars (\$25.00) which he paid to her to apply on the cost of an abstract and further agrees that she will pay the Twenty-five Dollars (\$25.00) toward the cost of this abstract or make this payment to the Complainant.

Complainant has an adequate remedy at law.

10. Respondent denies each and all of the other allegations of the Bill of Complaint which have not been specifically answered herein and demands strict proof of same.

Having fully answered the said Bill of Complaint Respondent prays that she be discharged with her reasonable costs in this behalf expended.

  
Solicitor for Respondent.

W. C. BEEBE  
H. M. HALL

BEEBE & HALL  
LAWYERS  
BAY MINETTE, ALABAMA

December 27, 1945

Judge F. W. Hare,  
Monroeville, Ala.

In Re: Parker vs. Morris

Dear Judge:

The above cause was mailed to you sometime ago by Mr. Duck.

The matter, from a legal stand point, is very simple. It is the contention of Mr. Parker that he bought the property with the express understanding that title would be perfected by proper Chancery Court proceeding. Following out, and supporting this contention, is the fact that Mr. Parker agreed to pay \$25.00 toward the cost, which amount was included and made a part of the purchase price. It will be noted that Mrs. Morris conveyed the property to Mr. Parker by deed containing full warranty. There is some question as to why the \$25.00 was actually paid, however, we take it that the evidence is sufficient to support our contention that the money was actually paid and accepted, with the understanding that title would be perfected. This has never been done.

Mr. Parker paid a part of the purchase price, but when it came to the last payment he insisted that the agreement be complied with and that title to the property be perfected.

The Respondent refused this and proceeded to and did foreclose on her lien.

The original pleading set up the fact that the Complainant had complied in every sense of the word with his part of the agreement, except the last payment, which he was ready, willing and able to make, upon the performance by the Respondent. The bill prayed that he be given the right to redeem, and that the court ascertain the respective rights of the parties.

It is unnecessary for us to discuss the testimony in detail, since it is brief, and you will probably wish to read and study it any way.

It is our contention that the Respondent be required to comply with the contract and perfect title to the property, or, that the expenses of such proceeding be determined, and he be given credit as against the last payment on the property.

There is, it is true, no testimony in the record as to the cost of this proceeding, or the cost of the abstract referred to by the Respondent, however, the court in it's decree can ascertain and determine the respective rights of the parties and then order a reference to determine

the other questions, if any are found.

We are mailing a copy of this letter to Mr. Blackburn,  
Solicitor for the Respondent.

Yours very truly,

BEEBE & HALL

By: *J. H. Lee*

HMH/lp

HERLON B. PARKER,  
Complainant,  
VS.

BERTHA M. MORRIS AND  
J. B. BLACKBURN,  
Respondents.

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

It appears that the Complainant purchased from the Respondent, Bertha M. Morris, a tract of land at and for the sum of \$500.00. Of this sum he paid in cash the sum of \$50.00, leaving a balance of \$450.00 which was to be paid in four annual installments. The deed expresses the consideration at \$50.00 cash paid and \$475.00/~~due~~<sup>secured</sup> by vendor's lien, in which \$475.00 is included the sum of \$25.00 which the Court holds was to be one half payment by Complainant of an abstract of said property. The Complainant has paid two notes of \$118.75 each, or a total of \$237.50, which is to be applied as a credit on the balance due as of the date of the deed. In these two payments is included the sum of \$12.50 as partial payment for abstract fee, which should be returned to the complainant, leaving a balance due as of the date of the last payment, the sum of \$213.50, plus 6% interest from the date of the deed, making the total balance due as of this date \$279.15.

I am not convinced from the evidence that the parties mutually agreed that the Respondent was to file a bill in the Chancery Court to perfect the title as was the apparent understanding of the complainant, and as contended in this suit, and the Court holds that the complainant is due the respondent, Bertha M. Morris the sum of \$279.15, as of this date, this amount being the two last notes with interest, less the sum of \$12.50 included therein as part payment on abstract.

And it appearing from the pleading that pending this suit the Respondent, Bertha M. Morris, instituted proceedings

to foreclose the vendor's lien contained in the warranty deed, these proceedings between the parties are void and of no force and effect, especially since warranty in the deed was breached at the time of its execution. This foreclosure proceeding should be held invalid and of no effect, and the deed executed thereunder to the respondent, Bertha M. Morris, should be declared null and void.

The Register will enroll the following decree:

D E C R E E:

This cause coming on to be heard is submitted upon the pleading and proof as noted by the Register. And upon a consideration thereof, it is ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. It is ordered, adjudged and decreed that the Complainant is not entitled to have the respondent, Bertha M. Morris, perfect the title to said lands by proceedings in the Chancery Court.
2. It is further ordered, adjudged and decreed that the complainant is due the Respondent as the balance of the purchase price on the property involved in this suit the sum of \$279.15; said sum to be paid into the Registry of this Court within sixty days from this date. If said sum is not paid into the Registry of this Court within sixty days, the Register is directed to proceed to foreclose the vendor's lien contained in the deed from Bertha M. Morris to Complainant, and to execute a deed to the purchaser conveying the property involved, and to report his actions in the premises.
3. It is further ordered, adjudged and decreed that the foreclosure proceeding held pendente lite on to-wit: 10th day of July, 1944, is null and void and that the deed executed under said proceeding to respondent, Bertha M. Morris, is null and void, and the register is directed to ascertain if said foreclosure deed is of record in the Probate Office of Baldwin County, Alabama,



and if so to enter upon the margin of the record where the same is recorded that said deed has been declared null and void by order of this Court, referring to this decree as his authority for so doing.

The cost of this suit is taxed against the Complainant for which let execution issue.

This 18th day of January, 1946.

*F. M. Hare*

Judge

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HERLON B. PARKER,  
 Complainant,

VS.

BERTHA M. MORRIS AND J. B. BLACKBURN,  
 Respondents.

IN THE CIRCUIT COURT OF  
 BALDWIN COUNTY, ALABAMA.  
 IN EQUITY. NUMBER 1148.

STIPULATION

IT IS AGREED by and between H. M. Hall, Solicitor for the Complainant, and J. B. Blackburn, Solicitor for the Respondent, Bertha M. Morris, and J. B. Blackburn, as follows:

1. That Ora S. Nelson shall act as Commissioner in taking the testimony of the Complainant, Herlon B. Parker, and Lydia Parker and J. P. Waltman, witnesses for the Complainant, and the testimony of Myrtle Barchard and Harvey L. Windbigler, witnesses for the Respondent ; that a formal commission to her is waived, that she is to take the testimony of the said witnesses in shorthand, transcribe the same and furnish a copy thereof to the solicitors for the respective parties to this suit.
2. The signing of the testimony by the witnesses is waived.
3. The court shall consider only legal and competent testimony. Objections to questions and motions to exclude shall not be necessary.

Dated this 25th day of April, 1945.

Bertha M. Morris  
 Solicitor for Complainant.

J. B. Blackburn  
 Solicitor for Respondent, Bertha Morris.

J. B. Blackburn  
 Respondent.

HERLON B. PARKER,

Complainant,

VS.

BERTHA M. MORRIS AND  
J. B. BLACKBURN,

Respondents.

200 50  
IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY.

TESTIMONY

DIRECT EXAMINATION OF HERLON B. PARKER, by H. M. Hall, Solicitor  
for Complainant:

Q. This is Mr. Herlon B. Parker?

A. Yes.

Q. Mr. Parker, sometime ago you entered into an agree-  
ment with Mrs. Bertha M. Morris for the purchase of some land near  
Foley?

A. I did.

Q. At the time you entered into that agreement with Mrs.  
Morris, where were you? Tell us about that.

A. I came to Mrs. Barchard's house and seen her first  
about - asked her about the land - she told me her mother had it for  
sale. I went down and looked it over, came back and asked about  
buying it. She told me what she wanted for it - wanted \$500.00 cash  
for it. Well, I told her I would see about that and asked her  
about terms. She said she would make it on terms and I asked what  
could she figure on terms and she told me to suit myself but she  
would love to have \$50.00 down. I agreed to buy the place paying  
\$50.00 down with the balance in four payments and she was to give me  
a tax deed or Quit Claim Deed, same as she had. The day was set  
when we were going to make the deeds.

Q. Did she at that time say anything about her daughters?

A. She said she wouldn't make no deal without their  
knowledge. She told me first to see Mr. Barchard and he went off  
to the army then Mrs. Barchard wanted to ger her sister and they  
came down to settle the deal and they came down, we set the day,  
the third day of December, to meet me and make the deed and Mrs.

500  
10/10/10

Barchard, Mrs. Windbigler and Mr. Windbigler all went down - they met me right there between the Foley Bakery and the Hardware and my wife and I were there. They told me they didn't want to sell it that way as Mrs. Morris wanted all her money and wanted to bring it up where she could cash her notes and I asked them how much difference they wanted me to pay half the expense to clear it up to where the bank would accept the notes. I asked how much expense. Mr. Harvey said something like twenty-five, thirty or maybe thirty-five dollars and asked if I would be willing to pay half and I told them I would pay twenty-five dollars if they would put it on four payments and let it come due when each payment was due and he turned and asked Mrs. Barchard and Mrs. Windbigler if it was agreeable - if it was more they paid it and if that covered it I paid it all and they said it was. They had the deed made and I went over to Mr. Magney's office after they had been there and asked them what type of deed it was and he said a Warranty Deed - he said they were making a warranty deed as the bank wouldn't accept anything else the bank told them that they would accept the notes and he said the bank wouldn't accept anything except a warranty deed and I told them whatever the bank would accept I would be willing to accept.

Q. At the time you talked with Mrs. Morris did she mention the fact that Mrs. Barchard and Mrs. Windbigler represented her.

A. She said she wouldn't deal and would have to have their say-so.

Q. At anytime did you with Mrs. Morris or Mrs. Barchard or Mrs. Windbigler or all of them enter into an agreement whereby they would furnish an abstract.

A. The agreement was that they would bring me up a clear title.

Q. In other words, to bring the title up it would have to be cleared to get an abstract and they were to present a correct abstract?

A. In my name.

Q. They ever furnish you with an abstract?

A. I haven't got one yet. I made the two first payments. I went over on the other and asked for it and they didn't ever bring it and then they brought up this suit of collecting them and I come and paid that last July.

Q. When this first payment came due, you make this payment?

A. Yes.

Q. The second?

A. I did.

Q. Where did you come to make the payments?

A. At the bank.

Q. When this third payment came due did you go to see Mrs. Barchard or any other parties?

A. I went to them.

Q. Where was she?

A. At her office.

Q. Onlooker office? Discuss with her about this land?

A. I had asked her several times - they were to bring the papers up, you know, as soon as we could. She hadn't done it. Told me - I went to see her about the 20th of November and asked if she had them ready and she said she had turned it in to her attorney.

Q. Did she mention the name of the attorney?

A. I don't know where she did or not.

Q. Sometime later you went back to see them?

A. Yes sir.

Q. What did you tell them.

A. I told them that the payment was most due. I went over and made two payments and the agreement to bring the payments. Since the first of the place she said I had several days, it would be about the tenth and I told her "no" it was the third and she said she understood it was the tenth to wait by then I dropped back and she didn't have them and about the second or third of the month and told her to bring both up and when they got

the papers ready I would pay her or leave them at the bank and I would pay the bank and I haven't got no papers yet.

Q. Did you tell Mrs. Barchard you were ready and able to pay the money?

A. I did. The money in the bank waiting.

Q. And that you would see that was to be done immediately they complied with their part of the agreement?

A. Yes.

Q. At the time you purchased this property was there any discussion as to the kind of title Mrs. Morris had?

A. Yes, sir, she had a State Deed, Tax Deed and they was the deed that I was to get at the first but they said the bank would not accept that and they had to bring up the papers on the place at that time.

Q. At that time, during these proceedings, was there an agreement between you and Mrs. Morris, Mrs. Barchard or Mrs. Windbigler that there would be some proceeding instituted to quiet title or perfect the title? Was there such an understanding?

A. Yes sir. I told them they wanted to know if I was going to improve it and I asked them to bring the title up and they said they would.

Q. You asked them to perfect title?

A. Yes.

Q. And they agreed to that?

A. Yes.

Q. You say twenty-five dollars was agreed on the purchase price?

A. Yes.

Q. You have paid that part up until its time?

A. Yes.

Q. After that then, relying upon this deed which you had and the agreement and the promises of Mrs. Morris, acting through her two daughters, you signed the notes?

A. Yes.

Q. And the Vendor's Lien Deed accompanied that?

A. Yes.

Q. You paid the first two notes?

A. Yes.

Q. And you say you went to Mrs. Barchard and offered to pay the balance due, the other two notes due, immediately they would comply with their agreement?

A. Yes.

Q. And perfect title and furnish an abstract?

A. I told them that by the time it was due.

Q. At that time, you tell them where you had the money, where it was?

A. I told them that the money was in the bank ready for them.

Q. At the time you went to her you were ready, able and willing to pay the amount due immediately they brought you the abstract?

A. Yes.

Q. You told her that?

A. Yes.

Q. Have they complied with those conditions?

A. No sir.

Q. Have they instituted any suit or court proceedings that you know of?

A. They advertised the place.

Q. I mean to correct the title?

A. No.

Q. At the time you got the deed you went into possession of this property didn't you?

A. Yes.

Q. You made improvements on it?

A. Yes.

Q. That is your permanent home?

A. Yes.

Q. At the time you went upon this property and made these improvements and prepared to make it your permanent home, you were relying on their promise that they would furnish you with a good title and abstract?

A. Yes.

Q. You didn't go on the property until those promises were made you that they would correct title?

A. No sir. I went to building immediately afterwards.

Q. Have you at any time discussed with Mrs. Morris as to what other property she had?

A. No.

Q. She tell you whether she had additional property or not?

A. Only thing, when we first bought the place, when we were on the deal, Mrs. Barchard said she would like for her mother to sell the place and not have any other worries, that's all I know.

Q. Before this suit was brought you had been to Mrs. Barchard as her daughter and offered to pay all amount due?

A. I did.

Q. On condition that the comply with their part of the agreement?

A. Yes.

Q. You are, and have been ready, able and willing to perform your contract immediately they do?

A. Any day. There has not been a day I couldn't give a check to them.

Q. You have communicated that to Mrs. Barchard?

A. Mrs. Barchard asked me not to say anything to her mother about it.

CROSS EXAMINATION of Herlon B. Parker, by J. B. Blackburn, Attorney for the Respondent:

Q. Mr. Parker, with whom did you make your trade to buy this property?



A. Mrs. Morris at first.

Q. At first?

A. Yes.

Q. Was that by - in other words - was the contract made between you and Mrs. Morris?

A. Yes.

Q. And the original contract between you and Mrs. Morris wasn't changed in any way, was it?

A. No way except what I just told you of the change of the correcting of the title.

Q. Now then, in the beginning you were advised that Mrs. Morris only owned a tax title to this property?

A. Yes, sir.

Q. Did you ever make any trade with Mrs. Morris or have any discussion with Mrs. Morris, or with either Mrs. Barchard or Mrs. Windbigler except at Foley?

A. No, when we made the trade Mrs. Barchard was at her home.

Q. In all your conversations you had with Mrs. Morris, Mrs. Barchard or Mrs. Windbigler was there anything said about her owning anything but a tax title?

A. Only one time I ran - when the first day I went to see her Mrs. Barchard wasn't there and I just asked about the sale and she told me she didn't own anything but a tax deed and that was all brought up. Then I come to Bay Minette here and checked the record but when I went back and made the trade Mrs. Barchard was there.

Q. How far is this piece of property from the Town of Foley?

A. About two miles.

Q. Just state in your own words what your agreement was about buying that property and what Mrs. Morris' agreement was about selling it?

A. She told me she didn't need the property and wanted to sell me the whole eighty acres and I told her I didn't need the whole eighty, that I was not able to buy it, that I wouldn't mind having it but I wasn't able to buy it. I picked the back forty as it being ~~x~~ lots cheaper I asked what she wanted for the front and she told me \$15.00 and would take \$5.00 for the back and that when I came up to Bay Minette and checked over it and I went back and made a trade.

Q. When you came to Bay Minette you found she had a tax title and you made a trade for the back forty?

A. Yes.

Q. What was that trade? Tell me in your own words.

A. I went back and told her I would buy the piece of land paying \$50.00 and the balance in four payments one year apart and they set a day, the third day of December, to make the deed and when I come out to make the deed she said she didn't deal without Mrs. Barchard or one of them, you know, and so Mrs. Barchard, her sister and Mr. Windbigler met me down there to make the deed and they wouldn't trade under that without bringing her, Mrs. Morris could get all her money and I accepted their proposition.

Q. What was that?

A. That they brought the title up where the bank would accept it and they had went to the bank and Mr. Sanders said he would cash the notes but he wouldn't take it on a tax deed and I told them they asked me to pay - made the agreement on how much it would be and wanted me to pay one-half, I asked how much it would cost and he said about twenty-five or thirty dollars.

Q. To whom were you talking?

A. To Mr. Windbigler, Mrs. Barchard and Mrs. Windbigler.

Q. What was that twenty-five or thirty dollars to cover?

A. Correcting of the deeds so the bank would accept them.

Q. Just explain in your own words what you mean by correcting the deeds?

A. Well, a tax deed they told me/was no good more than, Mr. Magney told me, you know, that you had tax title and could get your money out of it but the bank wouldn't accept it as collateral.

Q. You referred a few moments ago about a conversation with Mr. Magney. Was Mrs. Morris, Mrs. Barchard or Mr. or Mrs. Windbigler present at the time you had that conversation?

A. No sir.

Q. Mr. Magney did tell you to make a Warranty Deed that that's what the bank wanted and what the bank would accept? Did Mrs. Barchard, Mrs. Morris or Mr. or Mrs. Windbigler tell you at the time Mrs. Morris agreed to sell you the property and you agreed to buy it that they would file a suit to quiet title, to perfect title?

A. To correct the title and bring the abstract in my name.

Q. You wouldn't tell her that they agreed to commence court proceedings?

A. I understood that would be -

Q. I asked you what they said?

A. They said they would correct the title.

Q. Mr. Parker, wasn't your entire discussion about the costs of an abstract?

A. No sir.

Q. Isn't it a fact that Mr. Magney/<sup>who</sup>drew the deed told you and these other people that an abstract of title to the property would cost fifty dollars?

A. No sir, he didn't.

Q. After that, didn't you as purchaser, and these people as seller, agree to divide the costs of an abstract, after that?

A. Yes.

Q. Didn't you agree to pay twenty-five dollars toward the cost of an abstract and didn't Mrs. Morris and her people offer to pay the other twenty-five dollars?