

170 12

John Berglin

vs

Harry L. Misamore

Original Bill

Filed Mar 28, 1917

D. W. Richardson  
Register

F. R.

ERVIN & McALEER

ATTORNEYS

1001 1/2 First Street

No. 12 - Equity.  
Circuit Court, Baldwin Co., Ala.

John Berglin,

vs.

Harry L. Misamore et al.

ANSWER OF JOHN BERGLIN  
TO CROSS-BILL OF CHAS. J. WATERALL.

*Filed Dec 14<sup>th</sup> 1918  
D. W. Richardson  
Register*

ERVIN & McALEER  
ATTORNEYS

John Berglin

vs.

Harry L. Misamore et al.

THE STATE OF ALABAMA,

BALDWIN COUNTY

IN EQUITY,

CIRCUIT COURT OF BALDWIN COUNTY.

This cause is submitted in behalf of Complainant upon the original Bill of Complaint, ~~agreement to submit~~  
cause on depositions of witnesses, agreed statement of facts between the Solicit  
ors, of record in this cause,

and in behalf of Defendant upon deposition of witnesses,

*T. W. Beaman*

Register

13th

No. ....

THE STATE OF ALABAMA,  
BALDWIN COUNTY

IN EQUITY,  
CIRCUIT COURT OF BALDWIN COUNTY.

*James Bergin*

vs.

*Harry L. Williams  
et al*

NOTE OF TESTIMONY.

Filed in Open Court this *28th*

day of *June* 191*7*

*W. H. ...*

Register

John Berglin, )  
vs. ) Circuit Court, Baldwin Co., Ala.  
Harry L. Misamore et al. ) No. In Equity  
State of Alabama, )  
County of Mobile. )

Before me, Stella Black a, Notary Public in and for said State and County, personally appeared Joseph N. McAleer, known to me, who, having been first duly sworn, deposes and says, that he is one of the solicitors for complainant in the above entitled cause, and is his authorized agent to conduct the inquiry hereinafter mentioned and to make this affidavit; that Jessie Roach is over the age of 21 years, is a non-resident of the State of Alabama, residing in Hancock County, Ohio, but that he has been unable to ascertain her *specific* place of residence and post-office address, although he has made diligent inquiry to this end; that Charles John Waterall is over the age of 21 years, is a non-resident of the State of Alabama, and resides at Westleyville, Erie, Pennsylvania.

Subscribed and sworn to before me this the 23rd. day of March, 1918,

Stella Black  
Notary Public, Mobile Co.,  
Alabama.

Joseph N. McAleer

700  
No. 12, in Equity,  
Circuit Court, Baldwin County,  
Alabama.

John Berglin,

vs.

Harry L. Misamore et al.

-----  
AFFIDAVIT OF NON-RESIDENCE  
-----

Filed April 11<sup>th</sup>, 1918,

*T. McIlwain*

Register

John Berglin,  
vs.  
Harry L. Misamore et al.)

Circuit Court, Baldwin Co., Ala.  
No. \_\_\_\_\_, Equity.

This cause comes on to be heard on the complainant's motion for a decree pro confesso, and it appearing to the Court that the defendants Harry L. Misamore and Axil Johnson have been personally and regularly served with process of subpoena for more than thirty days, and that the H. M. Price Hardware Company has been regularly served with process of subpoena (by personal service of a proper officer of said corporation), for more than thirty days; and that all of said defendants have failed to appear, and plead, answer or demur to the allegations of the bill of complaint on file, it is ordered, adjudged and decreed that the same be taken as confessed against them.

Made this the 12<sup>th</sup> day of April 1918, at Grenada Alabama.

*W. E. Gausey*  
Judge.

67u

No. 12, Equity,

John Berglin,

vs.

Harry L. Misamore et al.

DECREE PRO CONFESSO.  
ON PERSONAL SERVICE.

April 11<sup>th</sup>, 1918

T. W. Richmond  
Registrar



John Berglin, )  
vs. ) Equity,  
Harry L. Misamore et al. ) Circuit Court, Baldwin County, Ala.

Complainant, by his solicitor, moves the Court for leave to amend the bill of complaint in the above entitled cause, in accordance with the proposed amendment herewith filed, and to prescribe the notice to be given defendants in default.

Joseph N. McAllister,  
Solicitor for Complainant.

No 12, Equity,

Circuit Court, Baldwin County,  
Alabama.

John Berglin,

vs.

Harry L. Misamore et al.

---

MOTION TO AMEND BILL.

---

Filed April 11<sup>th</sup> 1918,

*D. W. Williams* Register

*Record on Final Record,*

come down and live on the land and cultivate the same, and that he was to work up North until such time as I had things in shape where the land would support us both, when it was our plan that he should come down and join me. I do not know Jessie Roach, and never saw her. I know nothing about her except that her name appears in the chain of title to this land. I never made any inquiries of the said Jessie Roach.

15. Answering the 15th interrogatory, defendant says:-

I do not know and never saw and never made any inquiries of Karl Hosafros.

Charles J. Waterall jr.

STATE OF ALABAMA )  
MOBILE COUNTY. )

Personally appeared before me, Charles L. Rehm, a Notary Public in and for said County in said State, Charles J. Waterall, Jr., who, being first duly sworn, deposes and says that the foregoing answers to the interrogatories propounded by the complainant are true and correct.

Charles J. Waterall jr.

Subscribed and sworn to before me this 28<sup>th</sup> day of January, 1918.

Orville E. Swinson  
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA.

Hydrogalymer

Filed 24-1919,  
D. W. Williams  
Project

John Berglin, )  
vs. ) Circuit Court, Baldwin Co., Ala.  
John L. Misamore et al. ) No. 12, Equity.

In this cause it appearing, from an affidavit on file, that ~~Jessie Roach and Charles John Waterall~~, defendants to the amended bill of complaint, are over the age of twenty-one years, and are non-residents of the State of Alabama, said Jessie Roach residing in Hancock County, Ohio, and said Charles John Waterall residing in Westleyville, Erie, Pennsylvania:

It is ordered that they plead, answer or demur to the allegations of the amended bill of complaint filed against them in this cause, before the 15th day of May 1918, or, upon the expiration of thirty days from said date, the same will be taken as confessed against them.

It is further ordered that notice of this order be published, once a week for four consecutive weeks, in

The Baldwin Times, a newspaper published at Bay Minette, in the County of Baldwin, State of Alabama.

Made this 18 day of April 1918, at Bay Minette Alabama.

*T. W. Krumm*  
Register  
Judge

*Joe N. McAllen*  
*and James H. Kentpatrick*  
Attys for Complainant

*SM*

No. 12, in Equity.

Circuit Court, Baldwin Co.,  
Alabama.

John Berglin,

vs.

Harry L. Misamore et al.

ORDER OF PUBLICATION  
ON AMENDED BILL.

*April 18<sup>th</sup>*, 1918

*D. W. Williams*  
*Register*

John Berglin,  
vs.  
Harry L. Misamore  
et al.

Circuit Court, Baldwin County,  
In Equity.

Complainant, by his solicitor, moves the Court for a decree pro confesso against the defendants Harry L. Misamore, Axil Johnson, the H. M. Price Hardware Company, a corporation, they having been regularly served with process of subpoena for more than thirty days, and having failed to appear and plead, answer or demur to the allegations of the bill of complaint on file.

March 22nd., 1918.

Joseph N. Miller,  
Solicitor for the Complainant.

5-10-18  
No. 12, Equity

Circuit Court, Baldwin County,  
Alabama.

John Berglin,

vs.

Harry L. Misamore et al.

-----  
MOTION FOR DECREE PRO CONFESSO  
ON PERSONAL SERVICE.  
-----

Filed April 11, 1918,

*D. W. Kilburn*

Register



THE STATE OF ALABAMA,  
Baldwin County.

CIRCUIT COURT OF  
Baldwin COUNTY,  
IN EQUITY.

To any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon Harry L Misamore, Mrs. Mamie E Oswalt,  
H.M. Price Hardware Company, a Corporation, Axil Johnson, and Jessie Be  
Roach.

of Baldwin County, to be and appear before the Judge of the Circuit Court  
of Baldwin County, exercising Chancery jurisdiction, within thirty days after  
the service of Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited  
by ~~John Berglin~~

John Berglin,

against said  
Harry L Misamore, Mrs. Mamie E Oswalt, H.M. Price Hardware Company,  
a Corporation. Axil Johnson, and Jessie Roach.

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defend-  
ant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your  
endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T.W. Richerson, Register of said Circuit Court, this  
28th, day of March 1917.

*T.W. Richerson*  
Register.

*copying ML*

*at*

Serve on.....

CIRCUIT COURT OF

Baldwin COUNTY,

IN EQUITY.

No. 12

SUMMONS.

John Berglin,

vs.

Harry B. Misamore,

Mrs. Mamie E. Oswalt, H.M. Price Hardware Co, a Corporation.

Axl Johnson, and Jessie Roach.

Solicitor for Complainant.

Recorded in Vol. .... Page .....

THE STATE OF ALABAMA,

Baldwin County.

Received in office this.....

day of..... 19.....

Sheriff.

Executed this..... day of

19.....

by leaving a copy of the within Summons with.....

Defendant.....

Sheriff.

By..... Deputy Sheriff.

*Le Barrow Daly, Solicitor*

THE STATE OF ALABAMA,  
Baldwin County.

CIRCUIT COURT OF  
Baldwin COUNTY,  
IN EQUITY.

To any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon Harry L Misamore, Mrs. Mamie E Oswalt,  
H.M.Price Hardware Company, a Corporation, Axil Johnson, and Jessie Re  
Roach.

of Baldwin County, to be and appear before the Judge of the Circuit Court  
of Baldwin County, exercising Chancery jurisdiction, within thirty days after  
the service of Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited  
by ~~Harry L Misamore~~

John Berglin,

against said  
Harry L Misamore, Mrs. Mamie E Oswalt, H.M.Price Hardware Company,  
a Corporation. Axil Johnson, and Jessie Roach.

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defend-  
ant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your  
endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T.W. Richerson, Register of said Circuit Court, this  
28th, day of March, 1917.

*T.W. Richerson*  
Register.

*Vol Original*

*174* H.M. Price Hardware Co.  
Serve on... and Jessie Roach.

CIRCUIT COURT OF  
Baldwin COUNTY,  
IN EQUITY.

No. 12

SUMMONS.

John Berglin,

vs.

Harry L Misamore,

Mrs. Mamie E Oswalt, H.M. Price Hardware Co., a  
Corporation.

Axil Johnson, and Jessie  
Roach.

*Joseph H. K...  
Solicitor for Complainant.*

THE STATE OF ALABAMA,

Baldwin County.

Received in office this  
day of \_\_\_\_\_ 19\_\_\_\_

Sheriff.

Executed this *30* day of  
*March* 19*17*

by leaving a copy of the within Summons  
with *LeBarnd Daly Secretary*  
*Treasurer H.M. Price Hardware Co*  
Defendant.

*W.H. L...  
Sheriff.*

By *M. B. Edg...  
Deputy Sheriff.*

THE STATE OF ALABAMA,  
Baldwin County.

CIRCUIT COURT OF  
Baldwin, COUNTY,  
IN EQUITY.

To any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon Harry L Misamore, Mrs. Mamie E Oswalt,  
H.M.Price Hardware Company, a Corporation, Axil Johnson, and Jessie Roach

of Baldwin County, to be and appear before the Judge of the Circuit Court  
of Baldwin County, exercising Chancery jurisdiction, within thirty days after  
the service of Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited  
by John Berglin

against said  
Harry L Misamore, Mrs. Mamie Oswalt, H.M.Price Hardware Company, a Corpora-  
-tion, Axil Johnson, and Jessie Roach.

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defend-  
ant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your  
endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T.W.Richerson, Register of said Circuit Court, this  
28th. day of March 19 17.

*T.W. Richerson*  
Register.

*Bald Original*

Harry L Misamore, Mrs. Mamie E Oswalt,

Serve on Axil Johnson.

CIRCUIT COURT OF  
Baldwin COUNTY,  
IN EQUITY.

No. 12

SUMMONS.

John Berglin,

vs.

Harry L Misamore,  
Mrs Mamie E Oswalt,  
H.M. Price Hardware Co.,  
Axil Johnson and Jessie  
Roach.

*Joseph H McLean*  
*and James H Kilpatrick,*  
Solicitor for Complainant.

Recorded in Vol. \_\_\_\_\_ Page \_\_\_\_\_

THE STATE OF ALABAMA,

Baldwin, County.

Received in office this 28th

day of March 1917.

*C. E. Eubanks*  
Sheriff.

Executed this 29 day of

Mar 1917

by leaving a copy of the within Summons

with *Harry L Misamore*  
*Mamie E Oswalt Axil Johnson*  
Defendant

*C. E. Eubanks*  
Sheriff.

By \_\_\_\_\_  
Deputy Sheriff.

*Jessie Roach del Comp*  
*Ohio*

John Berglin, )  
 ) Equity.  
 vs. )  
 ) Circuit Court, Baldwin County, Ala.  
 Harry L. Misamore et al. )

Complainant, by his solicitor, -leave of the Court having been first had and obtained- amends his bill of complaint in the above entitled cause by adding as a party defendant, in the paragraph preceding paragraph "1st.", after the name of "Jessie Roach", the name of Charles John Waterall as a party defendant; by adding, in paragraph 1st., after the words "Baldwin County, Alabama", and before the words "That the H. M. Price Hardware Company", etc., the following: "except the said Jessie Roach, who is a non-resident of the State of Alabama, but after diligent inquiry complainant is informed that she is a resident of Hancock County, in the State of Ohio, but that he has been unable to obtain the more specific address of said Jessie Roach; that the said Charles John Waterall is over the age of 21 years, is a non-resident of the State of Alabama, and resides in Westleyville, Erie, State of Pennsylvania.

*Joseph N. Miller*  
Solicitor for Complainant.

Foot-Note.

The defendants, and each of them, are required to answer all of the allegations of the foregoing bill of complaint as amended, from Paragraph 1st. to Paragraph 4th., both inclusive, but not under oath, oath to such answer being hereby expressly waived.

*Joseph N. Miller*  
Solicitor for Complainant.

No. \_\_\_\_\_, Equity,

Circuit Court, Baldwin Co., Ala.

John Berglin,

vs.

Harry L. Misamore et al.

-----  
AMENDMENT TO BILL.  
-----

Filed *April 11*, 1918,

*T. W. Wilcox*

Register.



John Berglin, )  
vs. ) No. \_\_\_\_\_ in Equity,  
Harry L. Misamore et al. ) Circuit Court, Baldwin Co., Ala.

I hereby accept service of a copy of the foregoing amendment, and waive notice of the filing of same, and consent to its allowance, waiving notice of said allowance.

*J. G. Mitchell*

Solicitor for Respondent  
Mrs. Mamie E. Oswalt.

No. ~~12~~ 12 Equity,

Circuit Court, Baldwin Co.,  
Alabama.

John Borglin,

vs.

Harry L. Misamore et al.

PROPOSED AMENDMENT TO BILL  
AND WAIVER OF NOTICE, ETC.,  
BY APPEARING DEFENDANT.

Filed April 11<sup>th</sup>, 1918.

*T. W. Williamson*  
Register.

*Recorded on Final Record*

*W. R.*

John Berglin, )  
vs. ) Circuit Court, Baldwin Co., Ala.  
Harry L. Misamore et al. ) No. \_\_\_\_\_, Equity.

This cause comes on further to be heard on the complainant's motion to amend his bill in accordance with the proposed amendment filed herein on March \_\_\_\_\_, 1918, and it appearing to the Court that the appearing defendant has waived notice of said motion, it is ordered that the motion be granted, and that complainant be, and hereby is, allowed to amend his bill of complaint in accordance with said proposed amendment, which is hereby allowed, and is re-filed, as an amendment to the bill.

The Register will give one day's notice of this amendment, to defendants in default, by entry on the Order Book in his office.

Made this the 12<sup>th</sup> day of March, 1918, at Trouville,  
Alabama.

*W. B. Gandy*  
Judge.

No. 72 Equity.

Circuit Court, Baldwin County,  
Alabama.

John Berglin,

vs.

Harry L. Missmore et al.

ORDER ALLOWING AMENDMENT TO BILL.

April 10<sup>th</sup>, 1918

T. Williamson  
Registrar

Recorded  
minutes.

Abstract of Title

TO

---

FOR

*Harry L. Micamore*  
*Fairhope,*  
*Ala.*

---

**J. A. Ertzinger & Son**

**Abstracters**

Bay Minette, Alabama

WARRANTY DEED

State of Alabama )  
Mobile County )

Know All Men by These Presents, That for and in consideration of the sum  
of One dollar and other valuable considerations Dollars  
to me in hand paid by Chas. John Waterall  
the receipt whereof is hereby acknowledged.

I, do grant, bargain, sell and convey unto the said  
Chas. John Waterall

the following described lands situated in Baldwin County, Alabama, to-wit:  
conveying a two thirds undivided interest in the following de-  
scribed property, all of the north half of section four, township seven,  
south of range two east of St. Stephens Meridian, except the north-  
west quarter of the northwest quarter of the northwest quarter, and the  
northwest quarter of the southwest quarter of the northwest quarter  
and the north half of the southwest quarter of the southwest quarter  
of the northwest quarter;

TO HAVE AND TO HOLD to the said Chas. John Waterall  
his heirs and assigns forever.

And I do covenant with the said Chas. John Waterall  
that I am seized in fee of the above  
described premises; that I have the right to sell and convey the same, that the said premises are  
free from all encumbrances; and that I will and my heirs, executors and administrators  
shall forever WARRANT AND DEFEND the same to the said Chas. John Waterall, his  
heirs and assigns, against the lawful claims of all persons whomsoever.

WITNESS my hand and seal this 31st day of August 1917

WITNESSES:

[Signature] Karl Hosafros and Imo G. Hosafros, L. S.  
his wife  
by Harry L. Misamore L. S.  
Power of Attorney L. S.

Exhibit "W"

State of Alabama

Mobile County

I, Josie P. Savage

Notary Public

in and for said State and County, do hereby certify that Harry L. Misamore, who has Power of Attorney to sign for Karl Hosafros and Imo G. Hosafros, his wife whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day that being informed of the contents of the said conveyance he executed the same voluntarily on the day the same bears date.

Given under my hand this 31st day of August 1917

[Signature of Josie P. Savage]
Notary Public Mobile Ala.

State of Alabama

County

I,

in and for said State and County, do hereby certify that on the day of 191, came before me the within named, known to me to be the wife of the within named, who being examined separate and apart from her husband in reference to 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, this day of 191

THE STATE OF ALABAMA, Office of the Judge of the Probate Court.

I, JAMES H. WATZ, Judge of said Court in and for Mobile County, do hereby certify that the within instrument was recorded in my office for record on the day of September 17, 1917, at o'clock P.M., and I further certify that the same is duly recorded in Record Book No. 2674 Page 216 and duly indexed.

Witness my hand and seal of this day of September 1917

By [Signature] Probate Clerk

Charles Waterwall

974 Dauphin St, Mobile Ala

9/17-8 am 7524

*Filed 6/11/1914*  
*Publication*  
*Required*

HARRY T. SMITH & CAFFEY  
ATTORNEYS AT LAW  
715-722 NATIONAL CITY BANK BUILDING  
MOBILE, ALA.



No. ———  
Circuit Court  
of  
Baldwin County

---

John Berglin  
v.

H. J. Misamore  
Chas. J. Waterall, et al.

---

Answer & Cross-  
Bill of Charles J.  
Waterall,

---

Filed Oct 21, 1918,  
J. W. Misamore  
Register

STEVENS, McCORVEY & McLEOD  
ATTORNEYS AT LAW  
505-7 CITY BANK BUILDING  
MOBILE, ALA.

(COPY)

May 13, 1916.

Rickarby & Austill, Lawyers,  
909 Van Antwerp Building,  
Mobile, Alabama.

Gentlemen:-

Your letter of May 6th, inclosing Warranty Deed to John F. Berglin of this city was handed to us for reply.

As we understand the facts Mr. Harry L. Misamore was an agent of Mr. Berglin to dispose of his land at \$25.00 per acre; that he betrayed his trust as such agent and tried to get the title himself and that the suit pending between Mr. Berglin and Mr. Misamore has not been disposed of, but is still pending. Under the circumstances, we thought it inadvisable for Mr. Berglin to give a Warranty Deed. Should it develop that Mr. Misamore has title, the chances are another suit would be brought against Berglin for breach of warranty. In view of the fact that the contract was made by Misamore with Anna May Oswalt and on account of the peculiar circumstances of this case, it would be unsafe for him to sign a warranty deed at this time.

We have given the question as to Mr. Berglin's liability on the option some thought and we doubt whether he would be liable thereunder because of the betrayal of trust and confidence on the part of the person who acted for him in giving it.

Yours truly,

DILLETT & WINTER

PJW/VF

Exhibit "C"

J. E. Murphy  
Sol.

Filed Apr 27th 1917  
D. W. Pickerson  
Register

Answer & Cross Petition  
of  
Mamie E. Oswald

vs  
Harry L. Wisamore  
et als

John Burghin

4th No  
Circuit Court -  
In Equity

FILED, BY 1917

(17500)

RECORDED  
INDEXED

APPROVED AND FORWARDED

NOTARIAL PUBLIC

NOTARY PUBLIC

1917

PROPERTY OF  
**THE FEDERAL LAND BANK OF NEW ORLEANS**  
**TRANSFERS OF TITLE**

Karl Hosafros and Imo G.  
Hosafros, his wife

---

TO GRANTOR

Harry L. Misamore

---

GRANTEE

KIND OF CONVEYANCE Power of attorney  
 ANY RESERVATIONS TO GRANTOR see recitals  
 DATE OF CONVEYANCE August 1, 1917  
 DATE OF ACKNOWLEDGMENT same day  
 BEFORE WHOM N D Stein, NP., Hancock Co, Ohio  
 GRANTOR MARRIED OR SINGLE? married  
 SEPARATE ACKNOWLEDGMENT OF WIFE no  
 BEFORE WHOM ---  
 DATE OF FILING FOR RECORD Aug 27, 1917  
 RECORDED IN Vol 1 BOOK No. 3 PAGE 377  
 IS IT PROPERLY INDEXED yes  
 DOWER OR HOMESTEAD CONVEYED PROPERLY? ---  
 ARE NAMES OF ALL SIGNERS IN BODY OF CONVEYANCE yes  
 CONSIDERATION, \$ --- IS IT PAID? ---  
 WITNESS: { N D Stein  
               Ida M Stein.

**DESCRIPTION OF PROPERTY CONVEYED**

(GIVE DESCRIPTION AS IN DEED AND ALSO SHOW ANY AND ALL KINDS OF RESERVATIONS)

Know all men by these presents: that Karl Hosafros & Imo G Hosafros his wife of Arlington, Ohio., have made, constituted and appointed and by these presents do make, constitute and appoint Harry L. Misamore of Fairhope, Alabama a true and lawful attorney for them and in their name, place and stead to sell or otherwise dispose of their two thirds (2/3) interest in a certain tract of land in Baldwin County, Alabama described as follows: the north half of section four, in township seven south of range two east of St. Stephens Meridian, except the northwest quarter of the north west quarter and the northwest quarter of the southwest quarter of the said northwest quarter and the north half of the southwest quarter of the said southwest quarter of the northwest quarter of said section 1 N $\frac{1}{2}$  Sec 4, except NW $\frac{1}{4}$  NW $\frac{1}{4}$  & NW $\frac{1}{4}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$  & N $\frac{1}{2}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec 4 T 7 S R 2 E) giving and granting their said attorney full power and authority in the premises to do, execute, perform, fulfill and conclude for them and in their name and stead, all and singular, acts, matters and things whatsoever which shall be expedient and necessary concerning the premises in as ample a manner as they might do of personally present. Hereby ratifying and confirming all that their said attorney shall lawfully do by virtue hereof in the premises.

In ~~xxx~~ testimony whereof we have hereunto set out hands and seal this first day of August, 1917.

PROPERTY OF  
THE FEDERAL LAND BANK OF NEW ORLEANS  
TRANSFERS OF TITLE

Mrs Jessie Roach,

\_\_\_\_\_

GRANTOR

TO

Karl Hosafros

GRANTEE

KIND OF CONVEYANCE Warranty Deed

ANY RESERVATIONS TO GRANTOR ---

DATE OF CONVEYANCE May 28th, 1917

DATE OF ACKNOWLEDGMENT same day

BEFORE WHOM R A Koether, NP, Hancock Co., Ohio

GRANTOR MARRIED OR SINGLE? don't say

SEPARATE ACKNOWLEDGMENT OF WIFE none

BEFORE WHOM ---

DATE OF FILING FOR RECORD July 23, 1917

RECORDED IN Deed BOOK No. 26 NS PAGE 251

IS IT PROPERLY INDEXED yes

DOWER OR HOMESTEAD CONVEYED PROPERLY? not if  
married

ARE NAMES OF ALL SIGNERS IN BODY OF CONVEYANCE yes

CONSIDERATION, \$ 1.00 and other IT PAID? yes

WITNESS: { J C Bright  
R A Roether.

DESCRIPTION OF PROPERTY CONVEYED  
(GIVE DESCRIPTION AS IN DEED AND ALSO SHOW ANY AND ALL KINDS OF RESERVATIONS)

in Baldwin County, Alabama, conveying a two thirds undivided interest in the following described property, all of the north half of section four, township seven south of range two east of St. Stephens Meridian, except the northwest quarter of the northwest quarter of the northwest quarter and the northwest quarter of the southwest quarter of the northwest quarter and the north half of the southwest quarter of the southwest quarter of the northwest quarter.



map of the north half of sec 4.  
 Township seven South of range  
 2 East. Showing a 40a. a 15a. and  
 a 5a. being sold.

John Berglin,

vs.

Harry L. Misamore et al.

INTERROGATORIES  
PROPOUNDED TO CHARLES J. WATERALL,  
RESPONDENT AND CROSS-COMPLAINANT,  
UNDER SECTION 4049, CODE OF 1907.

Filed Dec 14 1918  
D. W. Williams  
Register

Give Copy on  
Steven McCoway &  
McLeod.

ERVIN & McALEEB  
ATTORNEYS

*col handed 18 1919, and handed 19 1919 & served a copy of writ in S. & W. King  
firm of Stevens McCoway, McLeod  
By McLeod & H. Shart  
Per H. Shart*

*Filed 6/11/1919  
T W Rivington  
Register*

HARRY T. SMITH & CAFFEY  
ATTORNEYS AT LAW  
716 - 722 NATIONAL CITY BANK BUILDING  
MOBILE, ALA.



7. Agreed statement of facts in this cause entered into between the solicitors of record for the complainant and the respondent Charles J. Waterall under date of May 30th, 1919.

8. Deposition of Dr. V. McR. Schowalter.

9. Deposition of Will Lowell.

10. Deposition of A. O. Berglin.

11. Separately and severally all objections made by the complainant, and all motions made by the complainant and noted in each of the following depositions: Dr. V. McR. Schowalter, Will Lowell, A. O. Berglin, Charles J. Waterall, Jr., and Charles J. Waterall, Sr.

FOR THE RESPONDENT

CHARLES J. WATERALL

1. Answer and cross bill of Charles J. Waterall

1-a. Agreed statement of facts dated May 30th, 1919.

2. Deposition of Chas. J. Waterall.

3. Deposition of Chas. J. Waterall, Sr.

4. Separately and severally all objections made by the respondent Charles J. Waterall, and all motions made by the respondent Charles J. Waterall and noted in each of the following depositions: Dr. V. McR. Schowalter, Will Lowell, A. O. Berglin, Charles J. Waterall, Jr., and Charles J. Waterall, Sr.

5. Receipt from Harry L. Misamore to Charles J. Waterall dated August 31st, 1917, attached as an exhibit to agreed statement of facts.

6. Abstract of title attached as "Exhibit X" to agreed statement of facts.

7. Original deed from Karl Hosafres and wife to Chas. John Waterall, dated August 31st, 1917, and attached to agreed statement of facts as "Exhibit W".

And it is further agreed by and between the solicitors of record for the above named parties that the Clerk may publish

JOHN BERGLIN,  
Complainant.

-vs-

HARRY L. MISAMORE, CHARLES  
J. WATERALL, ET AIS.,  
Respondents.

IN THE CIRCUIT COURT OF BALDWIN  
COUNTY.

IN EQUITY.

It is hereby agreed by and between Joseph N. McAleer and Harry T. Smith and Caffey, solicitors for the complainant, and Stevens, McCorvey and McLeod, solicitors for the respondent Charles J. Waterall, that the above and foregoing cause may be forthwith submitted for final decree in vacation on the following evidence to be noted by the Clerk for the respective parties:

FOR THE COMPLAINANT.

1. Original bill of complaint.
2. Answer of complainant to cross-bill of Charles J. Waterall.
3. Bill of complaint in the case of John Berglin vs. Harry L. Misamore filed in the Chancery court for the Southwestern Chancery Division of Alabama, attached as "Exhibit A" to complainant's answer to cross bill.
4. Final decree of Chancery court in said last named cause attached as "Exhibit B" to complainant's answer to cross-bill.
5. Answer and cross bill of Harry L. Misamore in said last named suit attached as "Exhibit A" to agreement of solicitors of record dated May 30th, 1919.
6. Answer of John Berglin to cross bill in said cause attached as "Exhibit B" to said agreement of May 30th, 1919.

all of the testimony taken and filed in the cause and may forward the court file, together with all of the evidence noted, to the Judge for final decree.

Dated at Mobile, Alabama, this 7<sup>th</sup> day of June, 1919.

Joseph N. McCall

Harry S. Smith Coffey  
Solicitors for Complainant.

Stewart McCann, McLea

Solicitors for Respondent  
Charles J. Waterall.

JOHN BERGLIN,  
Complainant.

-vs-

HARRY L. MISAMORE AND  
CHARLES J. WATERALL, ET ALIS.,  
Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY.  
IN EQUITY.

It is hereby agreed by and between Joseph N. McAleer, and Harry T. Smith and Caffey, as solicitors for the complainant in the above entitled cause, and Stevens, McCorvey and McLeod, as solicitors for the respondent, Charles J. Waterall, that the allegations of the first, the second, and the fourth paragraphs of the original bill of complaint as amended are true; that the United States Government patented the land described in the bill of complaint, namely, North 1/2 of Section 4, in Township 7 South, Range 2 East of St. Stephens Meridian, Baldwin County, Alabama, to Noah Harrington, Jr., Jan. 5, 1841, which said patent was recorded in Deed Book "F" of the Baldwin County Records, at p. 258, May 20, 1852; and that the title of Noah Harrington, Jr. passed by mesne conveyances to Emanuel Schowalter, the said conveyances being a deed from said Noah Harrington, Jr. and wife to Stephen Foote, dated May 20, 1851, recorded in Deed Book "F", Baldwin County Records at pp. 259-60, May 20th, 1852; deed from Stephen Foote and wife to Andrew H. Johnson, dated Oct. 23, 1854, recorded in Deed Book "M", Baldwin County Records at pp. 132-3, July 1, 1881; deed from Andrew H. Johnson to Emanuel R. Schowalter dated Dec. 12, 1878, recorded Deed Book "K", Baldwin County Records at pp. 765-6, Dec. 25, 1878, and that the said Emanuel R. Schowalter died intestate about the year 1889; that at the time of his death he owned the said North half of Section 4, Township 7 South, Range 2 East, Baldwin County, Alabama, in fee simple; that the sole heirs at law of the said Emanuel Schowalter were V. McR. Schowalter, Blanche S. Broadwood, and Percy R. Schowalter; that on, to-

To the Honorable A. E. Gamble, Judge of the Circuit Court of Baldwin County, Alabama, sitting in Equity:

Your Orator, John Berglin, brings this his Bill of Complaint against Harry L. Misamore, Mrs. Mamie E. Oswalt, H. M. Price Hardware Company, a corporation, Axil Johnson and Jessie Roach, and respectfully represents and shows unto Your Honor as follows:

1st. That your Orator is over the age of twenty-one years, and is a resident of Baldwin County, Alabama. That the Respondents, Harry L. Misamore, Mrs. Mamie E. Oswalt, Axil Johnson and Jessie Roach are all over the age of twenty-one years, and are residents of Baldwin County, Alabama. That the H. M. Price Hardware Company is a corporation organized and existing under the laws of the State of Alabama, and has its principal place of business in Mobile, Mobile County, Alabama.

2nd. That your Orator is in the peaceable possession of the following lands in Baldwin County, Alabama, claiming to own the same in his own right:-

North Half of Section Four in Township Seven South, Range Two East of St. Stephens Meridian.

3rd. That the Respondents, and each of them, claims, or is reputed to claim, some right, title or interest in, or encumbrance upon, said lands. That your Orator now calls upon the said Respondents, and each of them, to set forth and specify their said right, title or interest or claim in, or encumbrance upon, said land, and how and by what instrument the same is derived or created.

4th. That no suit is pending to enforce or test the validity of the said claim, right, title or encumbrance of the said respondents in and to said land.

The premises considered, your Orator prays that the said Harry L. Misamore, Mrs. Mamie E. Oswalt, the H. M. Price Hardware Company, a corporation, Axil Johnson, and Jessie Roach may each of them be made a party Respondent to this Bill of Complaint, and that due process issue to them as such, according to law and the practices of this Honorable Court.

And your Orator further prays that upon a final hearing of this cause, it will please Your Honor to order and decree that said Respondents have no right, title or interest in, or encumbrance upon, the said lands, and that said Respondents, and each of them, be forever enjoined from asserting any claim, right, title or interest in, or encumbrance upon, the same. And your Orator prays for such other, further and different relief as, in equity, under the premises, he may be entitled to. And your Orator will forever pray.

*Joseph N. McAlee*  
*James H. Kirkpatrick*

Solicitors for Complainant.

Foot-Note.

The Respondents, and each of them, are required to answer all the allegations of the foregoing Bill of Complaint, from paragraphs 1st. to 4th., <sup>both</sup> inclusive, but not under oath, oath as to such answers being hereby expressly waived.

*Joseph N. McAlee*  
*James H. Kirkpatrick*  
Solicitors for Complainant.

John Berglin, Complainant, )  
vs. )  
Harry L. Misamore et al., )  
Respondents. )

Circuit Court of Baldwin County,  
In Equity No. 12.

ANSWER OF THE COMPLAINANT, JOHN BERGLIN, TO THE CROSS-BILL  
OF CHARLES J. WATERALL.

Now comes the complainant and cross-respondent, John Berglin, and answering the cross-bill of Charles J. Waterall, says:

First.

Answering the second paragraph of said cross-bill, said John Berglin says:

That it is not true that the defendant owns an undivided two-thirds interest in the land described in said second paragraph, nor is it true that he owns any right, title or interest of any kind or character in said land.

Second.

The complainant and cross-respondent further answering said cross-bill, says:

That he is the owner of land described in the original bill of complaint, and that he acquired his title to said lands through the chain of conveyances and proceedings set out in this and subsequent paragraphs:

Patent from United States of America to Noah Harrington, Jr., for the North Half of Section 4, Township 7, South Range 2 East, dated January 5th., 1841, and recorded in Deed Book F of the Records of the Probate Court of Baldwin County, at page 258; deed from Noah Harrington, Jr. and wife to Steven Foote, dated May 20th., 1851, recorded in Deed Book F, pages 259-60, of the Records of Baldwin County; deed from Steven Foote and wife to Andrew H. Johnson, dated October 23rd., 1854, and recorded in Deed Book M., pages 132-3; deed from Andrew H. Johnson to Emanuel R. Schowalter, dated December 12th., 1878, and recorded Deed Book K, pages 765-6, Records of Baldwin County.

the day, I did not learn of this suit until some time in February, 1918, when the said attorneys told me about the same.

12. Answering the 12th interrogatory, defendant says:-

My father acted for me and paid to Misamore \$705.00 on the 31st day of August, 1917, or, at least, so he informed me. I hold a receipt for the money which corroborates the statement made to me by my father. This money was paid in cash.

13. Answering the 13th interrogatory, defendant says:-

I object to the 13th interrogatory as calling for incompetent, irrelevant and immaterial testimony. Without waiving this objection, I make the following statement: I have never directly, or indirectly, employed Mr. Beebe, of Bay Minette, Alabama, for any purposes, and never saw him, so far as I know. My attorneys tell me that in July, 1918, they had some correspondence with Mr. Beebe, but so far as they recall, they never made any inquiry of him as to whether or not the present suit had been dismissed. Mr. Beebe, so far as I know, did not examine the records of the courts of Baldwin County, nor make any report whatever to me or my representative, relative to any suit regarding this land. I did not employ anyone to examine the titles of this property until I was told in February, 1918, that Berglin was laying claim to the same, whereupon I employed Stevens, McCorvey and McLeod as stated above. No written opinion was given me relative to this title, but I had a number of conversations with a member of this firm, who explained verbally to me the status of the matter.

14. Answering the 14th interrogatory, defendant says:-

I furnished \$400.00 of the money paid to Misamore, as attorney in fact for Hosafros, for the deed to the property. My father furnished the balance, with the understanding that the title to the land was to be taken in my name, that I was to



8. Answering the 8th interrogatory, defendant says:-

I never examined the records of the Chancery Court for the Southwestern Division of Alabama, at Mobile, prior to the execution of the deed from Hosafros, and so far as I know, no agent or attorney of mine have ever made any such investigation until after this deed was executed, and I had come down to Alabama to take possession of the land and found that the complainant was claiming the same.

9. Answering the 9th interrogatory, defendant says:-

This interrogatory was fully answered by the allegations of my answer and cross-bill, relative to the deeds inquired about, which allegations are hereby referred to and adopted as my answer.

10. Answering the 10th interrogatory, defendant says:-

I do not know who, if anyone, was in possession of the property at the time negotiations for the purchase thereof were begun by my father. My father informed me that he went over the land and that no one was living on the land. From the description of it, I judged that no one was in actual possession of the land, or ever had been. I did not make any inquiry as to who was in possession of the property, as I understood that no one was.

11. Answering the 11th interrogatory, defendant says:-

I made no such examination as that inquired about in this interrogatory, prior to the time the deed was executed and delivered to me. My first information as to the chancery suit mentioned in the complainant's answer to my cross-bill, was given me by the law firm of Stevens, McCorvey and McLeod, whom I asked to look into the matter after I had come to Baldwin County to take possession of the land, had gone over it with the county surveyor, and had been told by him that he heard that Berglin was claiming the land. As nearly as I can fix

3. Answering the 3rd interrogatory, defendant says:-

I do not personally know Harry L. Misamore, nor Karl Hosafros, and have never seen either one of them.

4. Answering the 4th interrogatory, defendant says:-

I was represented in all negotiations referred to by my father, Charles J. Waterall, Sr., who handled the matter entirely for me.

5. Answering the 5th interrogatory, defendant says:-

My father wrote me that he had gone over the land, prior to the closing of the deal with Misamore, and that the land looked all right, and had considerable timber on it. He did not mention any improvements on the land, and if there were any, he did not know it at the time the deal was closed.

6. Answering the 6th interrogatory, defendant says:-

I did not personally see the abstract until after the trade was closed, but my father wrote me that he had an abstract of title, and it looked all right. This abstract was made by J. A. Gutierrez, Sr., and certified to on the 27<sup>th</sup> day of 1917, and I still have it in my possession. I did not <sup>personally</sup> obtain any opinion on the title to this property prior to the deed of August 31st, 1917.

7. Answering the 7th interrogatory, defendant says:-

I object to the 7th interrogatory, as calling for incompetent, irrelevant and immaterial testimony. Without waiving the said objection, I make the following statement: My father told me that this abstract was furnished by Misamore. I have only the original of the abstract, and as it is quite bulky I decline to go to the expense of having a copy thereof made, unless required to do so by the court. I am perfectly willing, however, to exhibit this abstract to the court, or to the complainant, or to his attorneys.

JOHN BERGLIN,  
Complainant,

-vs-

HARRY L. MISAMORE,  
et als,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY,  
ALABAMA.

IN EQUITY.

Answers of the defendant and cross-complainant, Charles J. Waterall, to the interrogatories propounded to him by the complainant.

1. Answering the 1st interrogatory, defendant says:-

My name is Charles J. Waterall, Jr., age thirty-one years, and present residence, 316 North Conception Street, Mobile, Alabama. On August 31st, 1917, I resided at Mount Kisco, New York. I was residing at said place when my father first began negotiations with Misamore for the land referred to in said interrogatory. I had resided there several months.

2. Answering the 2nd interrogatory, defendant says:-

I cannot answer this question of my own personal knowledge, as all of the negotiations for the purchase of the land were conducted by my father, Charles J. Waterall, Sr. My only knowledge as to what took place between him and Misamore, who had a power of attorney from Hosafros, was derived from letters from, and conversations with my father. My father told me that he saw an advertisement in a paper, offering this land for sale, and got in touch with Misamore, who showed him over the land, assured him that the title was all right, furnished him with an abstract which seemed to bear out Misamore's assertion as to the title, and when the deal was closed collected from my father something over \$700.00, and furnished him with a deed.

## Third.

This complainant and cross-respondent alleges that the said Emanuel R. Schowalter, to whom the property described in the original bill of complaint passed by the conveyances above set out, died intestate in the year 1889, leaving surviving three children as his only heirs at law, viz: V. McR. Schowalter, Blanche S. Broadwood, wife of Louis J. Broadwood, and Percy R. Schowalter; that said Emanuel R. Schowalter also left an estate of considerable value, consisting largely of lands other than the lands described in the original bill of complaint; that about the 30th. day of June, 1894, the lands belonging to the estate of the said Emanuel R. Schowalter were divided among the said heirs of said Emanuel R. Schowalter, namely: V. McR. Schowalter, Blanche S. Broadwood, and Percy R. Schowalter, the said parties being then of the full age of twenty-one years; that in pursuance of said division and of the intention of the parties, deeds were exchanged among said parties, and the deed executed and delivered to said Percy R. Schowalter, conveying to him the interest of said V. McR. Schowalter and Blanche S. Broadwood in the North Half of Section 4, Township 7, South of Range 2 East, described in the original bill of complaint, but that said deed was lost or mislaid and was never recorded in the office of the Judge of Probate of Baldwin County, Alabama, and that the said Percy R. Schowalter has since died without issue.

## Fourth.

This complainant and cross-respondent further answering said cross-bill says:

That he acquired the title of the said Percy R. Schowalter by deed of mortgage from Percy R. Schowalter to Aaron Moog, dated August 20th., 1896, and recorded in Book 1 of Mortgages, pages 500-1, Records of Baldwin County, Alabama; by deed of foreclosure of said mortgage from Aaron Moog, Mortgagee, to Silas Matson, recorded in Deed Book W., pages

the conveyance previously made by them to the said Percy R. Schowalter, and in order to validate and clear the title derived from the said Percy R. Schowalter by this complainant, and cross-respondent, by and through the mesne conveyances above referred to; that there was no consideration for the execution of said deeds other than the consideration that the grantors had already obtained from said Percy R. Schowalter in a partition of the lands of the estate of said Emanuel R. Schowalter, and the desire to ratify their previous deed of partition which had, as before stated, been lost or mislaid, and this complainant alleges that said deeds were obtained for his benefit and to clear his title.

Sixth.

This complainant and cross-respondent further answering said cross-bill, says:

That after obtaining the said deeds from the said V. McR. Schowalter and Blanche S. Broadwood, the said Misamore caused the same to be recorded in the office of the Probate Judge of Baldwin County, Alabama, and proceeded to assert title to an undivided two-thirds interest in said land, adverse to the title of this complainant and cross-respondent, and did attempt to sell portions of said land and to encumber the same by mortgage and otherwise; that thereupon this complainant and cross-respondent filed a bill of complaint in the Chancery Court for the Southwestern Chancery Division of Alabama, at Mobile, Alabama, a copy of which said bill of complaint is hereto attached, marked Exhibit "A", and made a part hereof; that after a full hearing on said bill of complaint and the answer which was thereto filed by the said Harry L. Misamore, the said Chancery Court rendered a decree against the respondent, Harry L. Misamore, by which it held and decreed that any right, title or interest acquired by the said Harry L. Misamore under the deeds which he obtained from V. McR. Schowalter and Blanche S. Broadwood and husband, was held in trust by him for the complainant, and the said Harry L. Misamore, and all claiming under him were enjoined and restrained by said decree from

asserting any title to the land described in the bill of complaint in opposition to the complainant, John Berglin, a copy of which decree is hereto attached, marked Exhibit "B" and made a part hereof, and those claiming under him; that this decree was rendered on December 15th., 1915, and was affirmed by the Supreme Court of Alabama, on appeal, on the 8th. day of June, 1916. And this complainant and cross-respondent avers that if he be mistaken in alleging that a partition was had between the heirs of Emanuel R. Schowalter, as above alleged, by which Percy R. Schowalter acquired all of the right, title and interest of said Emanuel R. Schowalter in the land described in the original bill of complaint, nevertheless any right, title or interest conveyed to said Harry L. Misamore by the said deeds from V. McR. Schowalter and the said Blanche S. Broadwood was held by said Harry L. Misamore for the use and benefit of this complainant and cross-respondent, and that said Harry L. Misamore and all claiming under him are estopped by the said decree from claiming any right, title or interest under said deeds.

Seventh.

This complainant and cross-respondent further answering said cross-bill, says:

That he is informed and believes, and on such information and belief he states, that after said decree was rendered in the Chancery Court for the Southwestern Division of Alabama, and on to-wit, the 15th. of February, 1917, the said Harry L. Misamore and his wife, in violation of the injunction contained in said decree and in an effort to defraud this complainant and cross-respondent of the fruits of said decree, undertook to convey said land to Jessie A. Roach, but that said conveyance was collusive, was without consideration, and was made for the purpose aforesaid; that the said Jessei Roach, with the further intent of aiding and abetting the said Harry L. Misamore in his effort to defeat the effect of said decree, thereupon, on to-wit, the 28th. day of May, 1917, made a quit-claim deed to said property to one Karl Hosafros, which was also a collusive deed, and

that the said Karl Hosafros, purporting to act through said Harry L. Misamore, on to-wit, the 31st. day of August, 1917, and after the filing of the bill of complaint in this cause in this Honorable Court, executed a deed to the cross-complainant, Charles John Waterall, and this complainant and cross-respondent avers that this deed was also a part of the scheme to defraud this complainant of the benefit of said decree, and that the said Charles John Waterall was a party to said fraud.

This complainant and cross-respondent avers that if he is mistaken in alleging that said Charles John Waterall was a party to said fraud, then he avers that the said Charles John Waterall nevertheless had knowledge of the defect in the title of the said Karl Hosafros, and if he is mistaken in averring that said Charles John Waterall had actual knowledge of said defect, then this complainant avers that he had knowledge of facts which were sufficient to put him on notice of the defect in the title of said Karl Hosafros, or if he be mistaken in this, that he was nevertheless charged with notice thereof by the said proceedings in the Chancery Court for the Southwestern Division of Alabama, at Mobile, affecting this land, and that the said Charles John Waterall acquired no right, title or interest in or to said land, under the conveyance from Karl Hosafros to him, and is estopped to set up title under such conveyance.

Now having fully answered the cross-bill in this behalf, this complainant and cross-respondent prays that he be discharged therefrom with his reasonable costs in this behalf incurred.

*Harry J. Smith & Coffey*  
*Joseph H. McAlee*  
 Solicitors for Complainant and Cross-Respondent.

EXHIBIT "A"

Original Bill

TO THE HONORABLE THOMAS H. SMITH,

CHANCELLOR FOR THE SOUTHWESTERN CHANCERY DIVISION  
OF ALABAMA:

Your orator, John Berglin, brings this his bill of complaint against Harry L. Misamore and humbly complaining showeth unto your Honor as follows:

FIRST.

That your orator is over the age of twenty-one years and resides at Shawno, in the State of Wisconsin; that the defendant Harry L. Misamore is over the age of twenty-one years and resides at Fairhope, Baldwin County, Alabama.

SECOND.

That your orator is the owner of the following described real estate in Baldwin County, Alabama, to-wit: The North half of Section Four (4) in Township seven (7) South of Range two (2) East, containing three hundred and twenty & 42/100 acres; that orator has owned the same for many years.

THIRD.

That the said land was formerly owned by one, E. R. Schowalter, who died in the year 1889, leaving him surviving three children as his only heirs at law, to-wit: V. McR. Schowalter, Blanche S. Broadwood, now the wife of Luis J. Broadwood, and Percy R. Schowalter; said E. R. Schowalter also left an estate of considerable value consisting largely of lands other than the lands described in this bill of complaint; that about the 30th. day of June, 1894, the lands belonging to the estate of the said E. R. Schowalter were divided among the said heirs of said E. R. Schowalter, to-wit: V. McR. Schowalter, Blanche S. Broadwood and Percy R. Schowalter, -the said parties being of the full age of twenty-one years; that in pursuance of the said division and of the intention of the parties deeds were exchanged among said parties and a deed was executed and delivered to said Percy R. Schowalter conveying to him the interest of said V. McR. Schowalter and Blanche S. Broadwood in the North half of Section four, Township seven South of Range two East hereinbefore described, but that said deed was lost or mislaid and was never recorded in the

Exhibit "A"



office of the Judge of Probate of Baldwin County, Alabama. Said Percy R. Schowalter has since died without issue.

FOURTH.

That your orator acquired title to the said land as follows: 1. By deed of mortgage from Percy R. Schowalter to Aaron Moog dated August 20, 1896, and recorded in Book 1 of mortgages, pages 500-501, records of Baldwin County, Alabama.

2. Deed of foreclosure from Aaron Moog, mortgagee, to Silas Matson recorded in Book W., Pages 464-6 of Baldwin County, Alabama, records, and by mesne conveyances from said Matson to orator.

FIFTH.

That during the month of May, 1914 the said Harry L. Misamore entered into negotiations with your orator for the purchase from orator of the said North half of Section 4, in Township 7 South of Range 2 East, and obtained from your orator an option to purchase said land and with the consent of your orator entered into possession thereof.

SIXTH.

That about the 8th. day of March, 1915, while the said Harry L. Misamore was in possession of said land he, the said Misamore, discovered that there was a defect in the record title of your orator, in this, that there was no conveyance or conveyances of record conveying the interests of the said V. McR. Schowalter and Blanche S. Broadwood, and thereupon the said Harry L. Misamore prepared or caused to be prepared deeds to be executed by said V. McR. Schowalter and Blanche S. Broadwood and husband to said Misamore conveying to him all of their right, title and interest in said land, which interest according to the condition of the record would amount to an undivided two-thirds interest; that in order to induce the said V. McR. Schowalter and said Blanche S. Broadwood to execute said deeds, said Misamore represented to them that he desired to obtain same to ratify and confirm the conveyance or mortgage heretofore made by said Percy R. Schowalter and to remove any question or doubt as to the validity of the title which had by mesne conveyances vested in your orator in pursuance of

the mortgage by said Percy R. Schowalter to Aaron Moog; that the said V. McR. Schowalter and Blanche S. Broadwood being desirous of ratifying their previous deed of conveyance did execute the said deeds as presented to them by said Misamore; that there was no consideration for the execution of said deeds other than the consideration that the grantors had already obtained from said Percy R. Schowalter in the partition of the lands of the estate of said E. R. Schowalter, and their desire to ratify their previous deed of partition which had as before stated been lost or mislaid. Your orator attaches to this bill a certified copy of the deed from V. McR. Schowalter and wife to said Harry L. Misamore, marked "Exhibit B", and a certified copy of the deed from Blanche S. Broadwood and husband to said Misamore and marked "Exhibit C". Orator prays that exhibits A and B may be considered and treated as a part of this bill of complaint.

Seventh.

That after obtaining said deeds from said V. McR. Schowalter and Blanche S. Broadwood, the said Misamore caused the same to be recorded in the office of the Probate Judge of Baldwin County, Alabama, and proceeded to assert and now asserts title to an undivided two-thirds interest in said land adverse to the title of your orator; that said Misamore is attempting to sell portions of said land and to incumber the same by mortgage and otherwise.

Your orator cannot protect his title as against bona fide purchasers or creditors of said Harry L. Misamore, without the aid of this court of equity.

PRAYER FOR PROCESS.

To the end, therefore, that equity may be done in the premises, your orator prays that a writ of subpoena in the usual form may be issued at once directed to the said Harry L. Misamore making him a party defendant to this bill of complaint and commanding him to plead, answer or demur to the allegations of this bill of complaint under the usual penalties and within the time prescribed by law.

PRAYER FOR RELIEF.

May it please your Honor upon the final hearing of this

cause to decree as follows;

1. That the said defendant, Harry L. Misamore, holds whatever title he may have acquired under the deeds attached as Exhibits A and B as trustee for your orator and not in his own right;

2. That the legal title to the lands described in the second paragraph of this bill of complaint was in Percy R. Schowalter at the date of the execution of the mortgage by him to Aeron Moog on August 20, 1896;

3. That the defendant, Harry L. Misamore and all persons claiming by, through or under him be enjoined and restrained from asserting any title to said lands described in paragraph two of this bill by virtue of the deeds from V. McR. Schowalter and Blanche S. Broadwood attached to this bill as "Exhibits B and C";

4. To grant to your orator such other, further or different relief as the premises considered he may be entitled to receive and as in justice may seem meet.

Leslie Hall,  
Solicitor for Complainant.

FOOT NOTE:-

The defendant, Harry L. Misamore, is hereby required to answer each and every allegation of the foregoing bill of complaint from paragraphs first to seventh, inclusive, but answer under oath is hereby expressly waived.

Leslie Hall,  
Solicitor for Complainant.

Exhibit B.

Know all men by these presents, That V McR Schowalter, and Charlotte G Schowalter, his wife, for and in consideration of the sum of one dollar, and other valuable consideration, to them in hand paid by H. L. Misamore, the receipt whereof is hereby acknowledged, do hereby remise, release, quit-claim and convey unto the said H. L. Misamore all of their right, title, interest and claim

in and to the following described real estate, situate in the County of Baldwin, State of Alabama.

The North Half of Section Four, in Township Seven South, of Range Two East, of St. Stephens Meridian, in Baldwin County, Alabama.

To have and to hold the same unto the said H. L. Misamore and his heirs and assigns, forever.

In witness whereof, the said grantors have hereunto set their hands and seals, this the 8th day of March, 1915.

V. McR. Schowalter (seal)

Charlotts G. Schowalter (seal)

State of Alabama, )  
Baldwin County. )

I, A. duMont a Notary Public in and for said State and County, hereby certify that V McR. Schowalter, and Charlotte G. Schowalter, 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 executed the same voluntarily, on the day the same bears date.

Given under my hand and seal, this the 8th day of March, 1915.

(Seal)

A duMont Notary Public,  
Baldwin County, Alabama.

Filed March 11th., 1915.

Recorded March 13th., 1915.

J. H. H. Smith, Judge of Probate.

The State of Alabama, )  
Baldwin County. )

I, J H H Smith, Judge of Probate in and for said State and County, hereby certify that the above and foregoing is a true, correct and complete copy of an instrument of writing as the same appears of record in Deed Book 22 N.S., at page 681, now on file in the office of the Judge of Probate of Baldwin County, Alabama.

Witness my hand and the seal of the Probate Court of Baldwin County, Alabama, this 12th. day of July, A.D. 1915.

J H H Smith Judge of Probate Court,  
Baldwin County, Alabama  
(Seal-Probate Court Baldwin county)

Exhibit C.

Know all men by these presents, That Louie J. Broadwood, and Blanche S. Broadwood, his wife, for and in consideration of the sum of One Dollar, and other valuable consideration to them in hand paid by H. L. Misamore, the receipt whereof is hereby acknowledged, do hereby remise, release, quit-claims and convey, unto the said H L Misamore all of their right, title, interest and claim in and to the following described real estate, situate in the County of Baldwin, State of Alabama:

The North half of Section Four, in Township Seven South, of Range Two East, of the St. Stephens Meridian, in Baldwin County, Alabama.

To have and to hold the same unto the said H L Misamore, and his heirs and assigns, forever.

In witness whereof, the said grantors have hereunto set their hands and seals, this 9th day of March, 1915.

Louis J. Broadwood (seal)

Blanche S. Broadwood (seal)

State of Alabama, )  
Mobile County. )

I, Lelia C. Harris, a notary public in and for said State and County, hereby certify that Blanche S. Broadwood, 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, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal, this the 9th. day of March, 1915.

(seal)

Lelia C Harris, Notary Public,  
Mobile County, Ala.

American Consulate, )  
Southampton, England ) ss.

I, Albert W Swalm, Consul for the United States of America and for said Port of Southampton, hereby certify that Louie J Broadwood, whosensms is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that, being in-

formed of the contents of the conveyance, he executed the same voluntarily, on the day the same bears date.

Given under my hand and seal, this the 8th. day of March, 1915.

(Seal of American Consulate) Albert W. Swalm, American Consul,  
Southampton, England.

(American Consular Service  
\$2.00, Fee Stamp)  
(American Consulate, Cancelled  
Southampton)

Filed for record April 23rd, 1915

Recorded April 26th., 1915,

J. H. H. Smith, Judge of Probate. (L)

The State of Alabama, )  
Baldwin County. )

I, J H H Smith, Judge of Probate in and for said State and County, hereby certify that the above and foregoing is a true, correct and complete copy of an instrument of writing as the same appears of record in Deed Book 23 N. S., at page 163, now on file in the office of the Judge of Probate of Baldwin County, Alabama.

Witness my hand and the seal of the Probate Court of Baldwin County, Alabama, this 12th. day of July, A.D. 1915.

J H H Smith,

Judge of the Probate Court,  
Baldwin County, Alabama.

(Seal-Probate Court Baldwin County)

-----  
Filed August 14th., 1915.

Carl Holzborn, Register.

EXHIBIT "B"

DECREE DECLARING DEFENDANT A TRUSTEE FOR DEFENDANT, AND DISMISSING  
CROSS-BILL.

State of Alabama ..... District, Southwestern Chancery Division

John Berglin, Complainant, )  
No. 11 410 vs. ) In Chancery at Mobile,  
Harry L. Misamore, Defendant. ) Alabama.

This cause coming on to be heard was submitted on pleadings and proof as noted.

Upon consideration it is ordered, adjudged and decreed by the Court, that the defendant obtained the deeds from Schowalter and Broadwood while in possession of the lands as tenant of complainant under an option to purchase them and can not set up any rights acquired thereunder against, but is a trustee for him, and he, and all claiming under him, are enjoined and restrained from asserting any title to the lands described in such deed and in the Bill of Complaint in opposition to the Complainant; and those claiming under him;

- Kent vs. Dean, 30 Southern 545;
- Insurance Company vs. Daugaix 103 Ala 388;
- Walker vs. Jones, 107 Ala. 331.

The loss of deed to complainant from Percy Schowalter and its contents are not proven, Shorter vs. Sheppard, 33 Ala., 648, nor is he made a party to the cause, therefore, it can not be established in these proceedings nor the relief asked in 2nd. paragraph of the Bill of Complaint granted; that the Cross-Bill be and hereby is dismissed; that defendant pay the costs of this cause for which execution may issue against him.

Thos. H. Smith,  
Chancellor.

Fall Term, 1915  
December 15, 1915.  
Ent. Min. "H-H", P. 842.

Exhibit "B"

464-6 of Baldwin County, Alabama, Records; and by the following mesne conveyances, viz: deed from said Silas Matson to Mary Althea Matson and Jerome Orville Matson, dated January 12th., 1901, and recorded in Deed Book 3 N. S., pages 350-1, Baldwin County Records; deed from Jerome Orville Matson and Mary Althea Matson to Charles Henry Matson, recorded in Deed Book 4 N.S., pages 659-60, Baldwin County Records; deed from Charles Henry Matson and wife to John Berglin, recorded Deed Book 17 N.S., page 268, Baldwin County Records; deed from Jerome Orville Matson and Mary Althea Matson to John Berglin, dated April 11th., 1904, and recorded Deed Book 7 N.S., page 267, Baldwin County Records.

Fifth.

This complainant and cross-respondent further answering said cross-bill, says:

That during the month of May, 1914, the respondent, Harry L. Misamore, under whom the cross-complainant claims, entered into negotiations with this complainant and cross-respondent for the purchase from him of the said North Half of Section 4, in Township 7 South of Range 2 East and obtained from him an option to purchase said lands, and with the consent of this complainant and cross-respondent entered into possession thereof under said option to purchase; that after the 8th. day of March, 1915, while the said Harry L. Misamore was in possession of said land, the said Misamore discovered that there was a defect in the record title of this complainant and cross-respondent, in that there was no conveyance or conveyances of record conveying the interests of the said V. McR. Schowalter and Blanche S. Broadwood, and that thereupon the said H. L. Misamore prepared deeds to be executed by said V. McR. Schowalter and Blanche S. Broadwood and her husband, to said Misamore, conveying to him all their right, title and interest in said land; that in order to induce the said V. McR. Schowalter and said Blanche S. Broadwood to execute said deeds, said Misamore represented to them that he desired to obtain the same in order to ratify and confirm



EXHIBIT "A"

Original Bill

TO THE HONORABLE THOMAS H. SMITH,

CHANCELLOR FOR THE SOUTHWESTERN CHANCERY DIVISION  
OF ALABAMA;

Your orator, John Berglin, brings this his bill of complaint against Harry L. Misamore and humbly complaining showeth unto your Honor as follows:

FIRST.

That your orator is over the age of twenty-one years and resides at Shawno, in the State of Wisconsin; that the defendant Harry L. Misamore is over the age of twenty-one years and resides at Fairhope, Baldwin County, Alabama.

SECOND.

That your orator is the owner of the following described real estate in Baldwin County, Alabama, to-wit: The North half of Section Four (4) in Township seven (7) South of Range two (2) East, containing three hundred and twenty & 42/100 acres; that orator has owned the same for many years.

THIRD.

That the said land was formerly owned by one, E. R. Schowalter, who died in the year 1889, leaving him surviving three children as his only heirs at law, to-wit: V. McR. Schowalter, Blanche S. Broadwood, now the wife of Luis J. Broadwood, and Percy R. Schowalter; said E. R. Schowalter also left an estate of considerable value consisting largely of lands other than the lands described in this bill of complaint; that about the 30th. day of June, 1894, the lands belonging to the estate of the said E. R. Schowalter were divided among the said heirs of said E. R. Schowalter, to-wit: V. McR. Schowalter, Blanche S. Broadwood and Percy R. Schowalter, the said parties being of the full age of twenty-one years; that in pursuance of the said division and of the intention of the parties deeds were exchanged among said parties and a deed was executed and delivered to said Percy R. Schowalter conveying to him the interest of said V. McR. Schowalter and Blanche S. Broadwood in the North half of Section four, Township seven South of Range two East hereinbefore described, but that said deed was lost or mislaid and was never recorded in the

Exhibit "A"

EXHIBIT "B"

DECREE DECLARING DEFENDANT A TRUSTEE FOR DEFENDANT, AND DISMISSING  
CROSS-BILL.

State of Alabama ..... District, ..... western Chancery Division

John Berglin, Complainant, }  
No. 11 410 vs. } In Chancery at Mobile,  
Harry L. Misamora, Defendant. } Alabama.

This cause coming on to be heard was submitted on pleadings and proof as noted.

Upon consideration it is ordered, adjudged and decreed by the court, that the defendant obtained the deeds from Schowalter and Broadwood while in possession of the lands as tenant of complainant under an option to purchase them and can not set up any rights acquired thereunder against, but is a trustee for, him, and he, and all claiming under him, are enjoined and restrained from asserting any title to the lands described in such deed and in the Bill of Complaint in opposition to the Complainant; and those claiming under him;

Kent vs. Dean, 30 Southern 545;

Insurance Company vs. Daugair 103 Ala 388;

Walker vs. Jones, 107 Ala. 331.

The loss of deed to complainant from Percy Schowalter and its contents are not proven, Shorter vs. Sheppard, 33 Ala., 648, nor is he made a party to the cause, therefore, it can not be established in these proceedings nor the relief asked in 2nd. paragraph of the Bill of Complaint granted; that the Cross-Bill be and hereby is dismissed; that defendant pay the costs of this cause for which execution may issue against him.

Thos. H. Smith,

Chancellor.

Fall Term, 1915

December 15, 1915,

Ent. Min. "H-R", P. 842.

Exhibit "B"

formed of the contents of the conveyance, he executed the same voluntarily, on the day the same bears date.

Given under my hand and seal, this the 8th. day of March, 1915.

(Seal of American Consulate) Albert W. Swalm, American Consul,  
Southampton, England.

(American Consular Service  
\$2.00, Fee Stamp)  
(American Consulate, Cancelled  
Southampton)

Filed for record April 23rd, 1915

Recorded April 26th., 1915.

J. H. H. Smith, Judge of Probate. (L)

The State of Alabama, )  
Baldwin County, )

I, J H H Smith, Judge of Probate in and for said State and County, hereby certify that the above and foregoing is a true, correct and complete copy of an instrument of writing as the same appears of record in Deed Book 23 N. S., at page 163, now on file in the office of the Judge of Probate of Baldwin County, Alabama.

Witness my hand and the seal of the Probate Court of Baldwin County, Alabama, this 12th. day of July, A.D. 1915.

J H H Smith,

Judge of the Probate Court,  
Baldwin County, Alabama.

(Seal-Probate Court Baldwin County)

Filed August 14th., 1915.

Carl Holzhorn, Register.

Exhibit C.

Know all men by these presents, That Louis J. Broadwood, and Blanche S. Broadwood, his wife, for and in consideration of the sum of One Dollar, and other valuable consideration to them in hand paid by H. L. Misamore, the receipt whereof is hereby acknowledged, do hereby remise, release, quit-claim and convey, unto the said H L Misamore all of their right, title, interest and claim in and to the following described real estate, situate in the County of Baldwin, State of Alabama;

The North half of Section Four, in Township Seven South, of Range Two East, of the St. Stephens Meridian, in Baldwin County, Alabama.

To have and to hold the same unto the said H L Misamore, and his heirs and assigns, forever.

In witness whereof, the said grantors have hereunto set their hands and seals, this 9th day of March, 1915.

Louis J. Broadwood (seal)

Blanche S. Broadwood (seal)

State of Alabama, )  
 )  
Mobile County. )

I, Lelia C. Harris, a notary public in and for said State and County, hereby certify that Blanche S. Broadwood, 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, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal, this the 9th. day of March, 1915.

(seal)

Lelia C Harris, Notary Public,  
Mobile County, Ala.

American Consulate, )  
 ) ss.  
Southampton, England )

I, Albert W Swalm, Consul for the United States of America and for said Port of Southampton, hereby certify that Louis J Broadwood, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that, being in-

in and to the following described real estate, situate in the County of Baldwin, State of Alabama.

The North Half of Section Four, in Township Seven South, of Range Two East, of St. Stephens Meridian, in Baldwin County, Alabama.

To have and to hold the same unto the said H. I. Missmore and his heirs and assigns, forever.

In witness whereof, the said grantors have hereunto set their hands and seals, this the 8th day of March, 1915.

V. McR. Schowalter (seal)  
Charlotte G. Schowalter (seal)

State of Alabama, }  
Baldwin County, }

I, A. d'Amont a Notary Public in and for said State and County, hereby certify that V McR. Schowalter, and Charlotte G. Schowalter, 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 executed the same voluntarily, on the day the same bears date.

Given under my hand and seal, this the 8th day of March, 1915.

(Seal) A. d'Amont Notary Public,  
Baldwin County, Alabama.

Filed March 11th., 1915.

Recorded March 13th., 1915.

J. H. E. Smith, Judge of Probate.

The State of Alabama, }  
Baldwin County, }

I, J H E Smith, Judge of Probate in and for said State and County, hereby certify that the above and foregoing is a true, correct and complete copy of an instrument of writing as the same appears of record in Deed Book 22 N.S., at page 681, now on file in the office of the Judge of Probate of Baldwin County, Alabama.

Witness my hand and the seal of the Probate Court of Baldwin County, Alabama, this 12th. day of July, A.D. 1915.

J H E Smith Judge of Probate Court,  
Baldwin County, Alabama  
(Seal-Probate Court Baldwin County)

cause to decree as follows:

1. That the said defendant, Harry L. Misamore, holds whatever title he may have acquired under the deeds attached as Exhibits A and B as trustee for your orator and not in his own right;

2. That the legal title to the lands described in the second paragraph of this bill of complaint was in Percy R. Schowalter at the date of the execution of the mortgage by him to Aaron Hoog on August 20, 1896;

3. That the defendant, Harry L. Misamore and all persons claiming by, through or under him be enjoined and restrained from asserting any title to said lands described in paragraph two of this bill by virtue of the deeds from V. McR. Schowalter and Blanche S. Broadwood attached to this bill as "Exhibits B and C";

4. To grant to your orator such other, further or different relief as the premises considered he may be entitled to receive and as in justice may seem meet.

Leslie Hall,

Solicitor for Complainant.

FOOT NOTE:-

The defendant, Harry L. Misamore, is hereby required to answer each and every allegation of the foregoing bill of complaint from paragraphs first to seventh, inclusive, but answer under oath is hereby expressly waived.

Leslie Hall,

Solicitor for Complainant.

Exhibit B.

Know all men by these presents, That V McR Schowalter, and Charlotte G Schowalter, his wife, for and in consideration of the sum of one dollar, and other valuable consideration, to them in hand paid by H. L. Misamore, the receipt whereof is hereby acknowledged, do hereby remise, release, quit-claim and convey unto the said H. L. Misamore all of their right, title, interest and claim

the mortgage by said Percy R. Schowalter to Aaron Hoog; that the said V. McR. Schowalter and Blanche S. Broadwood being desirous of ratifying their previous deed of conveyance did execute the said deeds as presented to them by said Misamore; that there was no consideration for the execution of said deeds other than the consideration that the grantors had already obtained from said Percy R. Schowalter in the partition of the lands of the estate of said E. R. Schowalter, and their desire to ratify their previous deed of partition which had as before stated been lost or mislaid. Your orator attaches to this bill a certified copy of the deed from V. McR. Schowalter and wife to said Harry L. Misamore, marked "Exhibit B", and a certified copy of the deed from Blanche S. Broadwood and husband to said Misamore and marked "Exhibit C". Orator prays that exhibits A and B may be considered and treated as a part of this bill of complaint.

Seventh.

That after obtaining said deeds from said V. McR. Schowalter and Blanche S. Broadwood, the said Misamore caused the same to be recorded in the office of the Probate Judge of Baldwin County, Alabama, and proceeded to assert and now asserts title to an undivided two-thirds interest in said land adverse to the title of your orator; that said Misamore is attempting to sell portions of said land and to incumber the same by mortgage and otherwise.

Your orator cannot protect his title as against bona fide purchasers or creditors of said Harry L. Misamore, without the aid of this court of equity.

PRAYER FOR PROCESS.

To the end, therefore, that equity may be done in the premises, your orator prays that a writ of subpoena in the usual form may be issued at once directed to the said Harry L. Misamore making him a party defendant to this bill of complaint and commanding him to plead, answer or demur to the allegations of this bill of complaint under the usual penalties and within the time prescribed by law.

PRAYER FOR RELIEF.

May it please your Honor upon the final hearing of this

office of the Judge of Probate of Baldwin County, Alabama. Said Percy R. Schowalter has since died without issue.

FOURTH.

That your orator acquired title to the said land as follows: 1. By deed of mortgage from Percy R. Schowalter to Aaron Moog dated August 20, 1896, and recorded in Book 1 of mortgages, pages 500-501, records of Baldwin County, Alabama.

2. Deed of foreclosure from Aaron Moog, mortgages, to Silas Matson recorded in Book W., Pages 464-6 of Baldwin County, Alabama, records, and by means conveyances from said Matson to orator.

FIFTH.

That during the month of May, 1914 the said Harry L. Misamore entered into negotiations with your orator for the purchase from orator of the said North half of Section 4, in Township 7 South of Range 2 East, and obtained from your orator an option to purchase said land and with the consent of your orator entered into possession thereof.

SIXTH.

That about the 8th. day of March, 1915, while the said Harry L. Misamore was in possession of said land he, the said Misamore, discovered that there was a defect in the record title of your orator, in this, that there was no conveyance or conveyances of record conveying the interests of the said V. McR. Schowalter and Blanche S. Broadwood, and thereupon the said Harry L. Misamore prepared or caused to be prepared deeds to be executed by said V. McR. Schowalter and Blanche S. Broadwood and husband to said Misamore conveying to him all of their right, title and interest in said land, which interest according to the condition of the record would amount to an undivided two-thirds interest; that in order to induce the said V. McR. Schowalter and said Blanche S. Broadwood to execute said deeds, said Misamore represented to them that he desired to obtain same to ratify and confirm the conveyance or mortgage heretofore made by said Percy R. Schowalter and to remove any question or doubt as to the validity of the title which had by means conveyances vested in your orator in pursuance of



that the said Karl Hoesafros, purporting to set through said Harry L. Hissamore, on to-wit, the 31st. day of August, 1917, and after the filing of the bill of complaint in this cause in this Honorable Court, executed a deed to the cross-complainant, Charles John Waterall, and this complainant and cross-respondent avers that this deed was also a part of the scheme to defraud this complainant of the benefit of said decrees, and that the said Charles John Waterall was a party to said fraud.

This complainant and cross-respondent avers that if he is mistaken in alleging that said Charles John Waterall was a party to said fraud, then he avers that the said Charles John Waterall nevertheless had knowledge of the defect in the title of the said Karl Hoesafros, and if he is mistaken in averring that said Charles John Waterall had actual knowledge of said defect, then this complainant avers that he had knowledge of facts which were sufficient to put him on notice of the defect in the title of said Karl Hoesafros, or if he be mistaken in this, that he was nevertheless charged with notice thereof by the said proceedings in the Chancery Court for the Southwestern Division of Alabama, at Mobile, effecting this land, and that the said Charles John Waterall acquired no right, title or interest in or to said land, under the conveyance from Karl Hoesafros to him, and is estopped to set up title under such conveyance.

Now having fully answered the cross-bill in this behalf, this complainant and cross-respondent prays that he be discharged therefrom with his reasonable costs in this behalf incurred.

*Harry Smith & Coffey*  
*Joseph L. McAfee*  
 Solicitors for Complainant and Cross-Respondent.

the conveyance previously made by them to the said Percy R. Schowalter, and in order to validate and clear the title derived from the said Percy R. Schowalter by this complainant, and cross-respondent, by and through the means conveyances above referred to; that there was no consideration for the execution of said deeds other than the consideration that the grantors had already obtained from said Percy R. Schowalter in a partition of the lands of the estate of said Emanuel R. Schowalter, and the desire to ratify their previous deed of partition which had, as before stated, been lost or mislaid, and this complainant alleges that said deeds were obtained for his benefit and to clear his title.

Sixth.

This complainant and cross-respondent further answering said cross-bill, says:

That after obtaining the said deeds from the said V. McK. Schowalter and Blanche S. Broadwood, the said Misamore caused the same to be recorded in the office of the Probate Judge of Baldwin County, Alabama, and proceeded to assert title to an undivided two-thirds interest in said land, adverse to the title of this complainant and cross-respondent, and did attempt to sell portions of said land and to encumber the same by mortgage and otherwise; that thereupon this complainant and cross-respondent filed a bill of complaint in the Chancery Court for the Southwestern Chancery Division of Alabama, at Mobile, Alabama, a copy of which said bill of complaint is hereto attached, marked Exhibit "A", and made a part hereof; that after a full hearing on said bill of complaint and the answer which was thereto filed by the said Harry L. Misamore, the said Chancery Court rendered a decree against the respondent, Harry L. Misamore, by which it held and decreed that any right, title or interest acquired by the said Harry L. Misamore under the deeds which he obtained from V. McK. Schowalter and Blanche S. Broadwood and husband, was held in trust by him for the complainant, and the said Harry L. Misamore, and all claiming under him were enjoined and restrained by said decree from

464-6 of Baldwin County, Alabama, Records; and by the following mesne conveyances, viz; deed from said Silas Watson to Mary Althea Watson and Jerome Orville Watson, dated January 12th., 1901, and recorded in Deed Book 3 N. S., pages 550-1, Baldwin County Records; deed from Jerome Orville Watson and Mary Althea Watson to Charles Henry Watson, recorded in Deed Book 4 N.S., pages 659-60, Baldwin County Records; deed from Charles Henry Watson and wife to John Berglin, recorded Deed Book 17 N.S., page 268, Baldwin County Records; deed from Jerome Orville Watson and Mary Althea Watson to John Berglin, dated April 11th., 1904, and recorded Deed Book 7 N.S., page 267, Baldwin County Records.

Fifth.

This complainant and cross-respondent further answering said cross-bill, says:

That during the month of May, 1914, the respondent, Harry L. Misamore, under whom the cross-complainant claims, entered into negotiations with this complainant and cross-respondent for the purchase from him of the said North Half of Section 4, in Township 7 South of Range 2 East and obtained from him an option to purchase said lands, and with the consent of this complainant and cross-respondent entered into possession thereof under said option to purchase; that after the 8th. day of March, 1915, while the said Harry L. Misamore was in possession of said land, the said Misamore discovered that there was a defect in the record title of this complainant and cross-respondent, in that there was no conveyance or conveyances of record conveying the interests of the said V. McR. Schowalter and Blanche S. Broadwood, and that thereupon the said H. L. Misamore prepared deeds to be executed by said V. McR. Schowalter and Blanche S. Broadwood and her husband, to said Misamore, conveying to him all their right, title and interest in said land, that in order to induce the said V. McR. Schowalter and said Blanche S. Broadwood to execute said deeds, said Misamore represented to them that he desired to obtain the same in order to ratify and confirm

## Third.

This complainant and cross-respondent alleges that the said Emanuel R. Schowalter, to whom the property described in the original bill of complaint passed by the conveyances above set out, died intestate in the year 1889, leaving surviving three children as his only heirs at law, viz: V. McR. Schowalter, Blanche S. Broadwood, wife of Louis J. Broadwood, and Percy R. Schowalter; that said Emanuel R. Schowalter also left an estate of considerable value, consisting largely of lands other than the lands described in the original bill of complaint; that about the 30th. day of June, 1894, the lands belonging to the estate of the said Emanuel R. Schowalter were divided among the said heirs of said Emanuel R. Schowalter, namely: V. McR. Schowalter, Blanche S. Broadwood, and Percy R. Schowalter, the said parties being then of the full age of twenty-one years; that in pursuance of said division and of the intention of the parties, deeds were exchanged among said parties, and the deed executed and delivered to said Percy R. Schowalter, conveying to him the interest of said V. McR. Schowalter and Blanche S. Broadwood in the North Half of Section 4, Township 7, South of Range 2 East, described in the original bill of complaint, but that said deed was lost or mislaid and was never recorded in the office of the Judge of Probate of Baldwin County, Alabama, and that the said Percy R. Schowalter has since died without issue.

## Fourth.

This complainant and cross-respondent further answering said cross-bill says:

That he acquired the title of the said Percy R. Schowalter by deed of mortgage from Percy R. Schowalter to Aaron Moog, dated August 20th., 1896, and recorded in Book 1 of Mortgages, pages 500-1, Records of Baldwin County, Alabama; by deed of foreclosure of said mortgage from Aaron Moog, Mortgages, to Silas Matson, recorded in Deed Book W., pages

John Berglin, Complainant, )  
vs. )  
Harry L. Misamore et al., )  
Respondents. )

Circuit Court of Baldwin County,  
In Equity No. 12.

ANSWER OF THE COMPLAINANT, JOHN BERGLIN, TO THE CROSS-BILL  
OF CHARLES J. WATERALL.

Now comes the complainant and cross-respondent, John Berglin, and answering the cross-bill of Charles J. Waterall, says:

First.

Answering the second paragraph of said cross-bill, said John Berglin says:

That it is not true that the defendant owns an undivided two-thirds interest in the land described in said second paragraph, nor is it true that he owns any right, title or interest of any kind or character in said land.

Second.

The complainant and cross-respondent further answering said cross-bill, says:

That he is the owner of land described in the original bill of complaint, and that he acquired his title to said lands through the chain of conveyances and proceedings set out in this and subsequent paragraphs:

Patent from United States of America to Noah Harrington, Jr., for the North Half of Section 4, Township 7, South Range 2 East, dated January 5th., 1941, and recorded in Deed Book F of the Records of the Probate Court of Baldwin County, at page 258; deed from Noah Harrington, Jr. and wife to Steven Foote, dated May 20th., 1951, recorded in Deed Book F, pages 259-60, of the Records of Baldwin County; deed from Steven Foote and wife to Andrew H. Johnson, dated October 23rd., 1954, and recorded in Deed Book M., pages 132-3; deed from Andrew H. Johnson to Emanuel R. Schowalter, dated December 12th., 1978, and recorded Deed Book X, pages 765-6, Records of Baldwin County.

Copy

J. Waterall, Sr., took any part whatsoever in said negotiations, and if so, what part he took?

5. Is it not a fact that your father, as your representative, went upon the land prior to the closing of the deal for the purpose of seeing the character of the land and the improvements thereon with a view of ascertaining the value of said land? Please state whether or not your father communicated to you what he saw on said land, and if so, what did he say to you on the subject?

6. Please state whether or not you had any abstract of title made prior to the execution of the deed of August 31st., 1917, to you, and if so, by whom was said abstract of title made and when? Please state whether or not you ever obtained any opinion on the title to this property prior to the deed of August 31st., 1917, and if so, state by whom it was given, and state whether said opinion was verbal or in writing, and if in writing, please attach the original to your answers, and if you will not do so, then please attach a true copy thereof; or, if you decline to attach a copy of this opinion, then state fully and in detail what that opinion was.

7. Please state whether or not you were furnished with an abstract of title by Karl Hosafros or Harry L. Misamore, or whether you had such abstract made. If you had an abstract of title furnished you or made for you, then please attach the original of said abstract of title to your answers, or a true copy thereof, and if you will do neither, then please state fully and in detail what was shown by said abstract of title.

8. Please state whether you, or your agent or attorney, ever examined, prior to the execution of said deed, the records of the Chancery Court for the Southwestern Division of Alabama, at Mobile in order to ascertain whether or not there was then pending, or whether there had been previously filed and final decree rendered therein, any suit involving or affecting the title to this property.

9. Did you or not claim to have acquired a two-thirds undivided interest in the property described in the second paragraph of your cross-bill through deeds from V. McR.

John Berglin, Complainant, )

vs. )

Harry L. Misamore et al., )

Defendants. )

Circuit Court of Baldwin County,

In Equity No. 12.

Now comes the complainant and cross-respondent in the above entitled cause and propounds to the respondent and cross-complainant, Charles J. Waterall, the following interrogatories under Section 4049 of the Code of Alabama of 1907:

1. Please state your name, age and place of residence, also your place of residence on August 31st., 1917, and also at the time you first began negotiations with Karl Hosafros or Harry L. Misamore for the land which you claim was conveyed to you by deed dated August 31st., 1917, and how long you had resided at said place.

2. Please state when and where such negotiations began and with what person. Please state how the negotiations began and just what was said between you, or your representative, and Karl Hosafros, or his representative, giving such conversation fully and in detail; also give fully and in detail all subsequent conversations between you, or your representative, or representatives, in the matter of acquiring the deed referred to, and Karl Hosafros, or his representative or representatives, specifying in each instance between whom the conversation was had, and fully and in detail what was said in each such conversation by every party engaged therein.

3. Please state whether you knew Harry L. Misamore prior to the beginning of the negotiations above referred to and for how long a period of time you had known him; also please state whether you knew Carl Hosafros at said time, and how long you had known him, and whether you had known either of these parties immediately prior to this time, and for how long a period you had known either of them intimately.

4. Did you conduct all of the negotiations above referred to personally, or were you represented therein by any other person or persons? Please state whether or not your father, Charles

complainant, John Berglin, and that the complainant and cross-defendant, John Berglin, be required to plead, answer or demur to this cross-bill; and further that the said John Berglin be required to set forth and specify his right, title or claim to, or interest in, or encumbrance upon, the said land, and when and by what instruments the same is derived or created, and at the hearing of this cause your Honor will adjudge and decree that the said Berglin has no right, title or interest in, or encumbrance upon, the undivided two-thirds interest in the said land above stated to be owned by this defendant, but that the title of this defendant in and to the said undivided two-thirds interest is absolute and in fee simple, and free from all right, title, or interest, or encumbrance in, to or upon, said land, which the said Berglin may have or claim, and this defendant and cross-complainant prays for such other and further relief as to this Honorable Court may seem meet and right.

PRAYER FOR PROCESS.

The said John Berglin is hereby made a party defendant to this cross-bill, and this defendant respectfully prays that the usual process of this Honorable Court do forthwith issue to the said John Berglin.

And this cross-complainant will ever pray, etc.

Sten M. C. M. L.  
Solicitors for Cross-Complainant.

FOOT NOTE: The cross-defendant, John Berglin, is required to answer all of the allegations of the foregoing cross-bill numbered from one to three, inclusive, but not under oath, the benefit whereof is hereby expressly waived.

Sten M. C. M. L.  
Solicitors for Cross-Complainant.



Stephen Foote by deed dated May 20th, 1851, and recorded in Book "F", at page 259.

The said Stephen Foote and his wife conveyed the said land to Andrew H. Johnson by deed dated October 23rd, 1854, and recorded in Book "M", at page 132.

The said Andrew H. Johnson conveyed the said land to Emanuel R. Schowalter by deed dated December 12th, 1878, and recorded in Book "K", at page 765.

The said Emanuel R. Schowalter died intestate sometime before the year 1915, leaving as his sole heirs at law V. McR. Schowalter, Percy R. Schowalter and Blanche S. Broadwood, who were the children of the said Emanuel R. Schowalter, and each of whom inherited upon the death of their father an undivided one-third interest in the above described land.

The said V. McR. Schowalter and his wife conveyed their interest in the said land to H. L. Misamore by deed dated March 8th, 1915, and recorded in Book 22 N. S., at page 681.

The said Blanche S. Broadwood and her husband conveyed her interest in the said land to the said H. L. Misamore by deed dated March 9th, 1915, and recorded in Book 23 N. S., at page 163.

The undivided two-thirds interest in all <sup>that part</sup> of the North half of said Section 4, Township 7 South, of Range 2 West, in Baldwin County, Alabama, which is now owned by this defendant, was conveyed by the said H. L. Misamore and his wife to Jessie Roach by deed dated February 15th, 1917, and recorded in Book 26 N. S., at page 119; by the said Jessie Roach to Karl Hosafros by deed dated May 28th, 1917, and recorded in Book 26 N. S., at page 251; and by the said Karl Hosafros and his wife to this defendant, who is described as Charles John Waterall, by deed dated August 31st, 1917, and recorded in Book No. 26 N. S., at page 316. The last mentioned deed was executed by Harry L. Misamore, as attorney in fact for the said Karl Hosafros and his wife, the power of attorney being dated August 1st, 1917, and recorded in Misc. Book No. 2, at page 277.

Wherefore, this defendant prays that this, his answer, be taken, treated and considered as also his cross-bill against the original

-----  
John Berglin,  
Complainant,  
  
-vs-  
  
Harry L. Misamore, Charles  
J. Waterall, et al.,  
Defendants.  
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IN THE CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA.  
IN EQUITY.

ANSWER AND CROSS-BILL OF CHARLES J. WATERALL.

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

Comes Charles J. Waterall, one of the defendants named in the bill of complaint of John Berglin, as amended, and for answer to said amended bill of complaint, says:-

1. For answer separately to the first, the second and the fourth paragraphs of said amended bill of complaint, this defendant says that he is not informed as to whether or not the allegations thereof are true, but demands strict proof of same.

2. For answer to the third paragraph of said amended bill of complaint, this defendant admits that he claims to own, and does own, an undivided two-thirds interest in all of the North half of Section Four, Township Seven South, of Range Two East, of St. Stephens in Baldwin County, Alabama, Meridian, except that 25 acres in said Section described as the northwest quarter of the northwest quarter of the northwest quarter and the northwest quarter of the southwest quarter of the northwest quarter, and the north half of the southwest quarter of the southwest quarter of the northwest quarter of said Section, as to which 25 acres this defendant disclaims any right, title or claim.

3. For further answer to said bill of complaint, as amended, this defendant says that he acquired his undivided two-thirds interest in the lands described in the preceding paragraph through the chain of conveyances set out below, the Books mentioned being Record Books in the office of the Probate Judge of Baldwin County, Alabama:

The United States issued a patent to Noah Harrington, Jr., for the said North half of Section 4, Township 7 South, Range 2 East, which patent is dated January 5th, 1841, and recorded in Book "F", at page 258.

The said Noah Harrington, Jr., conveyed the said land to

(COPY)

May 6th, 1916.

Mr. John F. Berglin,  
Shawano, Wis.

Dear Sir:-

You will find enclosed a warranty deed conveying to Annie Mae Oswalt the Northwest Quarter of the Northwest Quarter of the Northwest Quarter of Section 4, Township 7 South, Range 2 East, St. Stephens Meridian, Baldwin County, Alabama. This is part of the North Half of said Section 4 which you gave Mr. Harry L. Misamore an option to sell for you, or any part thereof, at the price of \$25.00 per acre at any time before June 1st, 1916, your option having been executed October 17th, 1914.

You are obligated to deliver an abstract of title to this purchaser, but, if this can not be secured before June 1st, you can arrange to deliver this later. When your deed is properly executed, return it to the First National Bank of Mobile, Alabama, with draft attached in your favor against Annie Mae Oswalt, who is ready, able and willing to buy the land and has secured the money for this purpose.

The suit instituted by you against Mr. Misamore has gone to the Supreme Court but no decision has been rendered therein, and this purchase is made now in order to come clearly within the terms of your option and agreement to sell, above referred to.

Please be kind enough to let us know when you are returning the deed to the Bank. We hold the option contract in our office.

Yours very truly,

Rickarby & Austill.

2841.

A-V

Exhibit "B"

the first part shall not be required to pay or account to the said second party for any commissions, but the said Harry L. Misamore shall have, hold and receive for his services whatever he may be able to realize over and above the price herein stipulated.

Should the said party of the second part not be able to handle said property within the time mentioned and do not purchase the same, he shall not in any way be liable to the said first party, but this contract shall be at an end.

IN WITNESS WHEREOF, we have hereunto subscribed our names this 17th day of October, 1914.

(Signed) John Berglin (L. S.)

Signed in the presence of

Mrs. Otto Berglin

Exhibit "A"

(COPY)

THIS CONTRACT

Made and entered into between J. F. Berglin, of Shawano, Wis., party of the first part, and Harry L. Misamore, of Fairhope, Alabama, party of the second part, witnesseth:

That the said party of the first part hereby agrees to and with the said party of the second part, that he will sell and convey by Warranty Deed free from any and all liens of every kind and description, together with an abstract of title, unto the said Harry L. Misamore, or to any other person under and by request of said party of the second part, for and in consideration of the sum of \$25.00 per acre upon the terms and conditions hereinafter set forth, the following described real estate situated in Baldwin County, State of Alabama, to-wit:

The N. 1/2 of Sec. 4, Township seven south, Range 2 East, St. Stephen's Meridian.

The party of the second part shall have the right to go in occupation of said property at once, and to put on such improvements as he sees proper at his own expense; and should said property not be sold under terms of this option at the conclusion thereof such improvements are to belong to first party. It is further agreed that the party of the second part may sell any number of acres at price mentioned in option.

Now, the object and intention of the said party of the first part, is to give unto the said party of the second part the right and option to purchase or procure a buyer for the above described property at the price above stipulated for a period of twelve (12) months from the first day of June, A. D. 1915, so that the said party of the first part shall not dispose of said property by himself or by any other person or agency for him without the consent of the party of the second part.

In consideration of the option, privileges and rights delegated to the said party of the second part for the time above mentioned, the said Harry L. Misamore agree to use his reasonable efforts to dispose of said property at the price herein affixed by the party of the first part, and for further consideration that if the said party of the second part shall dispose of the said property at the price mentioned or take the same himself, the said party of

Exhibit "a"

as to the N. W. 1/4 of the N. W. 1/4 of the N. W. 1/4 of said section, township and range, upon the execution by the said Berglin of the deed hereinabove referred to.

Wherefore, the premises considered, this defendant prays that this answer be taken as a cross-bill, and that the said John Berglin be required to demur, plead to or answer same within the time required by law, and in accordance with the practice of this Honorable Court.

PRAYER FOR RELIEF

Cross complainant further prays that upon the hearing hereof, your Honor will enter a decree requiring cross-respondent, the said John Berglin, upon the deposit of the sum of \$250.00 into the registry of this court by cross-complainant, to execute a warranty deed to cross-complainant, or to the said Annie Mae Oswalt, as to your Honor may seem proper, within such time as may be fixed by your Honor, and in default of the execution of such deed, that said deed be executed on behalf of the said John Berglin by the Register of this Court.

Cross-complainant ~~further~~ prays for such further or other or different relief to which she may be entitled in equity and good conscience.

  
Solicitor for Mamie E. Oswalt

The said John Berglin is required full, true and sufficient answers to make to each paragraph of this bill of complaint, from second to sixth inclusive, but answer under oath is waived.

  
Solicitor for Cross-Complainant

had secured the money for said purpose.

3rd. That on, to-wit, the 13th day of May, 1916, complainant, through his attorneys, Dillet & Winter, wrote and forwarded a letter to Rickarby & Austill, a copy of which letter is hereto attached, marked Exhibit "C" and made a part hereof, in which letter complainant, though his said attorneys, declined to execute such deed.

4th. That respondent, Mamie E. Oswalt, had prior to the 6th day of May, 1916, offered to purchase said ten acre tract from complainant, through the said Harry L. Misamore, and had authorized the said Misamore to purchase said ten acres for her, and to take the deed thereto in the name of Annie Mae Oswalt, the said Annie Mae Oswalt being a mere agent or trustee of said defendant, and who was at the time acting for this defendant, but who does not claim any interest in said land.

5th. That at the time of the acceptance by the said Misamore on, to-wit, May 6th, 1916, of complainant's offer to sell said tract of land described in the bill of complaint, or any portion thereof, at and for the sum of \$25.00 per acre, this respondent was ready, willing and able to pay the same, upon the execution by complainant of a warranty deed therefor to the said Annie Mae Oswalt, in accordance with said contract of purchase, and has<sup>been</sup>/at all times since said date, and now is, ready, willing and able to pay the agreed purchase price to the complainant, upon the execution by the complainant of such warranty deed therefor.

6th. That this respondent also has an interest in the N. 1/2 of the N. W. 1/4 of the N. W. 1/4 of the land described in the bill of complaint under and by virtue of a certain mortgage made to this respondent by the said Harry L. Misamore on the 5th day of November, 1914, and an interest in the N. W. 1/4 of the N. W. 1/4 of the land described in the bill of complaint under and by virtue of a certain mortgage made to respondent by the said Harry L. Misamore on the 30th day of November, 1914, each of said mortgages having been given to secure the payment of \$200.00 loaned by this respondent to the said Misamore, all of the entire \$400.00 being still due and unpaid, but respondent offers to release all claim to that portion of the property covered by said mortgages, except

John Berglin : In the Circuit Court of Baldwin  
vs : County, Alabama,  
Harry L. Misamore, et als : In Equity

Now comes Mamie E. Oswalt, and for answer to the bill of complaint exhibited against her in this cause, says:

1st. That she disclaims all right, title and interest in or to the lands described in the bill of complaint, except as hereinafter stated.

2nd. That on, to-wit, the 17th day of October, 1914, the complainant entered into a written agreement with Harry L. Misamore, a copy of said agreement being attached hereto and marked Exhibit "A", and made a part hereof, under which agreement the complainant agreed with the said Misamore that complainant would sell and convey by warranty deed unto the said Harry L. Misamore, or to any other person under and by request of said Misamore, in consideration of \$25.00 per acre, that certain real estate described in the bill of complaint in this cause, and that the said Misamore might sell any number of acres of said land at the aforesaid price, the object and intention of the complainant, as stated in said contract, or offer of sale, being to give to the said Misamore the right and option to purchase or procure a buyer for said property at the price above stipulated for a period of twelve months from the first day of June, 1915; that on, to-wit, the 6th day of May, 1916, the said Harry L. Misamore, by his attorneys, Rickarby & Austill, accepted complainant's offer, insofar as the N. W. 1/4 of the N. W. 1/4 of the N. W. 1/4 of Sec. 4, T. 7 S., R. 2 E. was concerned, by a letter to complainant, a copy of which, marked Exhibit "B", is hereto annexed and made a part hereof, in which letter was enclosed a warranty deed conveying to Annie Mae Oswalt the ten acres above described, and requesting that complainant properly execute said deed, and return same to the First National Bank, of Mobile, Alabama, with draft attached in complainant's favor against the said Annie Mae Oswalt, said letter stating that the said Annie Mae Oswalt was then ready, able and willing to buy the land, and



CERTIFICATE.

I, Mary Lou Pugh, the Commissioner agreed upon between the parties to the above styled cause, as per agreement above set out, to take the deposition of Charles J. Waterall and of Charles J. Waterall, Sr., as witnesses for the defendant and cross-complainant, Charles J. Waterall, in the above entitled cause, do hereby certify that in accordance with the provisions of the said agreement, I caused the said witnesses to come before me at my Office at Room 505 City Bank Building, in the City of Mobile, State of Alabama, on the 28th day of May, 1919; that the said witnesses are known to me, and before testifying as above set out were duly sworn by me to speak the truth, the whole truth and nothing but the truth; that the testimony of the said witnesses was reduced to writing, as above set out, though the testimony was not signed by the said witnesses, as the signature of the said witnesses was expressly waived by the agreement above referred to; that I am not of kin nor of counsel to any of the parties to the said cause and that I am not in any manner interested in the result thereof; that at the taking of said deposition Mr. William G. Caffey appeared as Solicitor for the Complainant, and Mr. William McLeod, of the firm of Stevens, McCorvey & McLeod, appeared as Solicitor for the Defendant and Cross-Complainant, Charles J. Waterall.

Witness my hand and seal this 28th day of May, 1919.

Mary Lou Pugh (SEAL)  
COMMISSIONER.

Commissioner's fee  
of Mary Lou Pugh - \$7.50.

I first learned that Berglin claimed the land when going over the land with Parker. He advised me to see the law firm of Stevens, McCorvey & McLeod. That was in February, 1919. That was several months after the deed had been delivered to my father for me.

Complainant moves to exclude the testimony of this witness as to going over the land with Mr. Parker and Mr. Parker's pointing out the land described in the deed, also the testimony that he saw no signs on the land with the name of Berglin on them, that he saw no houses on the land, that he saw no signs of cultivation and no signs of possession, on the ground that it now appears that the witness did not go on the land until several months after the deed under which he claims was executed and because this testimony is irrelevant, incompetent and immaterial.

I do not know, and have never had any communication or dealings directly or indirectly with Karl Hosafros or Mrs. Jessie Roach. I never had any dealings personally with Misamore until I came to Alabama. I had not on August 31, 1917, ever heard of any claim that John Berglin made to the two-thirds interest in the land that I purchased. I had not then heard of any suit filed by John Berglin affecting this land. I did not then know of the present suit being filed. I gained my first knowledge of the suit of Berglin against Misamore through Stevens, McCorvey & McLeod in the early part of 1918. Up to that time no one had ever told me of any misconduct or fraud on the part of Misamore. I had never, up to the time that Mr. Parker told me, heard any word spoken or seen any word written that indicated that Berglin claimed the interest in this land described in my deed.

#### CROSS EXAMINATION.

I was in New York at the time my father was negotiating for the purchase of this land. He handled the negotiations for me. It was several months before I came to Alabama. The first I knew about the abstract was when my father sent it to me. I meant when I spoke of the "Northwest corner" the northwest corner of this half section. I didn't know anything about what land my father bought until he reported to me that he had bought it.

DEPOSITION OF CHARLES JOHN WATERALL.

The defendant and cross-complainant Charles John Waterall, being called as a witness in his own behalf, and being first duly sworn, testified as follows:

I live at 316 N. Conception Street, Mobile, Alabama. I think it was the first of February, 1918, when I first came to Alabama. About a day or two after arriving here I asked Harry Parker, County Surveyor of Baldwin County, to show me the land described in my deed and he undertook to do so. He showed me the North half of Section Four in Township 7 South, Range 2 East, but told me he couldn't point out my part as it was an undivided interest. We were walking about on the land for two hours. I saw no signs with Berglin's name on the land, in fact no signs at all. I saw no houses on the land but did see some nearby. One was on the corner of the main road in the extreme Northwest corner. I don't remember who lived there but Mr. Parker said that a man named Rosencrans lived further down. I don't really remember if there were enclosures around the houses.

Q. Did you understand that these houses were on the land which you had bought or on different land?

Complainant objects on the ground that the question calls for a mere conclusion or opinion of the witness and also because it calls for irrelevant, incompetent and immaterial testimony.

A. I understood that they were not on the land that we bought.

Q. In pointing out the land described in the deed to you, did Parker include the parts of the land in which the houses were?

Complainant objects on the ground that the question calls for irrelevant, incompetent and immaterial testimony.

At that time I did not personally know Harry L. Misamore and had never seen him. My father handled the purchase of the land for me. I put up \$400.00 of the purchase price. At the time I went over the land, I saw no sign of cultivation.

Q. Did you see any signs of possession of the part of any person?

Complainant objects to the question on the ground that in the first place it calls for a mere conclusion or opinion of the witness and also because it calls for irrelevant, incompetent and immaterial testimony.

A. No.

Fairhope and they told me it was good.

RE-CROSS EXAMINATION.

As well as I can estimate now, the nearest line of the place that Misamore showed me was about a mile from Rosencrans' house.

JOHN BERGLIN,

-vs-

CHARLES J. WATERALL, Et Al.

No. 12

IN THE CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA.

*In Equity*

It is agreed by and between Harry T. Smith & Caffey, as Solicitors for Complainant and Stevens, McCorvey & McLeod as Solicitors for the Defendant and Cross-Complainant Charles J. Waterall, that the issuance of a Commission to take the testimony of the said Charles J. Waterall who is also known as Charles J. Waterall, Jr., and of Charles J. Waterall, Sr., witnesses for the said defendant and cross-complainant, is waived and that the testimony of the said Charles J. Waterall and Charles J. Waterall, Sr., be taken down by Mary Lou Pugh and when transcribed shall be admissible in evidence in all respects as if taken under a properly issued commission, subject to such objections as are noted therein. It is further agreed that the signature of the said witnesses to their respective depositions as transcribed is waived.

*Joseph M. Cales*  
*Harry J. Smith Caffey*  
Solicitors for Complainant.

*Stevens, McCorvey & McLeod*  
Solicitors for Defendant and Cross-Complainant, Charles J. Waterall.

DEPOSITION OF CHARLES JOHN WATERALL, SR.

CHARLES JOHN WATERALL, SR., BEING CALLED AS A WITNESS FOR THE DEFENDANT AND CROSS-COMPLAINANT, AND BEING FIRST DULY SWORN TESTIFIED AS FOLLOWS:-

I live in Mobile at present with my son. I represented him in purchasing the land involved in this suit. I began to negotiate with Misamore in August, 1917. August 31st, 1917, the date of the deed is the date it was delivered to me by Misamore. I paid him \$705.00 for the deed and had paid him \$5.00 previously for the abstract. I got the deed the day it is dated and the abstract probably six weeks before. It was brought down to date and delivered to me three or four days before I got the deed. I got a man named Stevens, a fertilizer dealer, who said he had had quite some business in real estate transactions to look over the abstract. He told me to get it drawn down to date. I showed it to him and he said he could see nothing wrong with it. I then decided to buy the land. I paid the Money to Misamore in the Peoples Bank. I went over this land twice - once with Misamore and the second time with Parker. Misamore told me he was showing me the land afterwards included in the deed. We spent probably an hour and half going over the land. This was maybe a month or six weeks before I got the deed. At that time I saw no signs forbidding trespassing on the lands, no signs with Berglin's name on them and, in fact, no signs at all. The land was not cultivated and there were no signs that anyone was using it in any way. When this deed was delivered to me I had never heard that Berglin was claiming the two-thirds interest in the land which we purchased. I did not know Karl Hosafros or Mrs. Jessie Roach and never had any correspondence or dealings with either of them. I went over this land with Harry Parker, the County Surveyor, after I got my deed.

Q. Did you ask him to show you the land covered by the abstract?

Complainant objects to the question on the ground that it calls for irrelevant, incompetent, and immaterial testimony.

A. Yes, sir.

Q. Did he state to you that the land he was showing you was the land covered by the abstract?

Complainant objects to the question on the ground that it calls for irrelevant, incompetent and immaterial testimony and also because it calls for hearsay testimony.

A. He told me that he knew the land that Misamore professed to possess and he took me over the identical ground that Misamore had shown me.

Parker showed me all the four corners that Misamore had. I wanted Parker to survey the land so I could put some land marks on it. I went back North soon after. I did not know anything about Berglin's claim being hostile to ours until my son wrote me in March or April, 1918. I never heard until lately about the suit that Berglin filed against Misamore. At the time I accepted the deed I knew nothing about it or I would not have dabbled with it. I did not at that time know anything about the present suit being filed nor about any other suit affecting this land. I knew nothing about the land except what the abstract showed and Misamore told me. Berglin's name was never mentioned to me until my son wrote me several months after I got the deed. I did not see any houses on this land or nearby. I saw one or two in the distance. When I left here, it was agreed that I should go back North and work and make some money while my son took possession of the land and opened it up. Not until he wrote me did I know anything was wrong with the title.

CROSS EXAMINATION.

When I first went on the land I didn't have the abstract. I was just looking at the land to see if it was worth the money. I don't know what land it was that Misamore told me he wanted to sell and was showing me, but I know its location. Later Mr. Parker showed me the four corners of what he said Misamore claimed to possess. I do not know if the northwest corner was where two roads crossed. I only saw one road. On the other side of the road Misamore had a sign up. He had that for sale. This was across the road from the land I was looking at. I looked over the abstract when I got it. I got Mr. Stevens, a fertilizer man to look over it. He was not a lawyer, but he told me he had had some business in land deals. I am not a lawyer. It's been sometime now and what was in the abstract has gone out of my memory. I did not make any inquiries about the land before I bought it. The abstract was the only thing I knew about.

RE-DIRECT EXAMINATION.

I saw some houses about a mile from the land I was looking at. Misamore told me a man named Rosencrans lived in one. I made inquiry about Misamore's character the first day I went to

by the original bill of complaint in this cause, had not been dismissed. Please state when this occurred. Whom did you employ to examine the title to the property in question, and if a written opinion was given you, please attach same, or a copy thereof, to your answers.

14. Please state who furnished the money which was paid to Harry L. Misamore or Karl Hosafros for the deed of August 31st., 1917. Was this money furnished by you, or was it furnished by your father? If it was furnished by your father, then please state under what arrangement between you and him it was furnished. Please state whether or not you knew Jessie Roach at the time you began negotiations for the land described in the deed of August 31st., 1917, and if so, how long you had known said Jessie Roach, and whether you knew that she claimed this land under deed from Harry L. Misamore to her. Please state whether or not you ever made any inquiries of the said Jessie Roach as to how she acquired this land, or as to whether or not she paid any consideration therefor.

15. Did you ever make any inquiry of Karl Hosafros as to how he acquired this land, or whether he ever paid any consideration therefor?

*Harry Smith Coffey*

*Joseph N. McAlister*

*Solicitors for Complainant and Cross Respondent*

STATE OF ALABAMA, )  
COUNTY OF MOBILE. )

Personally appeared before me, *Stella Black*, Notary Public in and for said State and County, Joseph N. McAlister, who, upon oath, deposes and says that he is one of the attorneys for the complainant and cross-respondent, John Berglin, in the above entitled cause, and that the answers of the said respondent to the above and foregoing interrogatories, if well and truthfully made, will be material evidence for the complainant and cross-respondent in said cause.

*Joseph N. McAlister*

Subscribed and sworn to before me this 12 day of December, 1918.

*Stella Black*  
Notary Public, Mobile County, Alabama.



Schowalter and wife to Harry L. Misamore, and from Luis J. Broadwood and Blanche S. Broadwood to Harry L. Misamore?

10. Please state who was in possession of the property at the time you began your negotiations for the purchase thereof and at the time you got the deed in question. Did you or anyone representing you go upon the land which you claim to have acquired in the deed of August 31st., 1917, for the purpose of finding out who was in possession of said property, or did you make any inquiry whatever as to who was then in possession of said property? If you say you did either, give the details fully.

11. Did you or anyone representing you examine the records of the courts of Baldwin County to see whether any suit was pending there involving the title to this property prior to the time that you acquired the deed of August 31st., 1917? If so, state what records were examined and who made the examination. When did you first know such suit was pending, giving the date as nearly as you can?

12. Please state what portion of the purchase price you have paid to Harry L. Misamore or Karl Hofstros for the land described in the deed of August 31st., 1917, to whom you paid the same and the date and manner in which the same was paid, that is, whether it was paid by check or in cash. If by check, then please state on what bank the check was drawn and attach to your answers the original thereof or a true copy thereof.

13. Please state whether or not you, either directly or indirectly, employed Mr. Beebe of Bay Minette, Alabama, to examine the records of the courts of Baldwin County, for the purpose of ascertaining whether the bill of complaint in this case had been dismissed. If you say that you did employ Mr. Beebe, either directly or indirectly, for this purpose, then please state through whom you employed him and when he was so employed. Please state whether or not he did examine the records of the courts of Baldwin County, and whether or not he did report to you, or to your representatives, that the suit of John Berglin vs. Harry L. Misamore et al., which was instituted

This Abstract Purports only to Show Title to August 27, 1917.

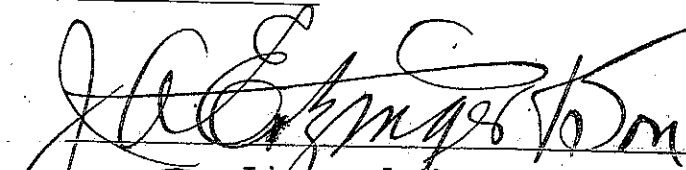
## CERTIFICATE.

We, J. A. Ertzinger & Son, licensed abstracters of Baldwin County Lands, hereby certify that we have carefully examined the title to the within described tract or parcel of land and that the foregoing pages compose a full, correct and complete abstract of such conveyances as are now on record in the office of the Judge of Probate of Baldwin County, Alabama, which affect the title to the lands described., since April 5th 1917

We further certify that there are no mortgages, judgments, liens or suits against the land within described which are recorded in Baldwin County, Alabama, which affect the title, except as may be hereinbefore set out, since April 5th, 1917

We further certify that there are no taxes, due and unpaid against said lands described in the caption hereof, except as noted, since April 5th, 1917.

Dated at Bay Minette, Baldwin County, Alabama,  
this 27th day of August, 1917.

  
Licensed Abstracters.

THIS ABSTRACT PURPORTS ONLY TO SHOW TITLE TO \_\_\_\_\_

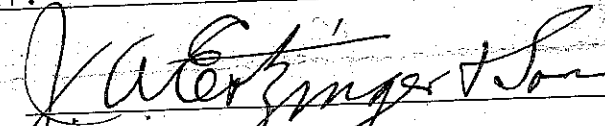
## CERTIFICATE.

We, J. A. Ertzinger & Son, licensed abstractors of Baldwin County Lands, hereby certify that we have carefully examined the title to the within described tract or parcel of land and that the foregoing pages compose a full, correct and complete abstract of such conveyances as are now on record in the office of the Judge of Probate of Baldwin County, Alabama, which affect the title to the lands described, since April 30th, 1915

We further certify that there are no mortgages, judgments, liens or suits against the land within described which are recorded or pending in Baldwin County, Alabama, which affect the title, except as may be hereinbefore set out, since Apr 30, 1915.

We further certify that there are no taxes, due and unpaid against said lands described in the caption hereof, which are unpaid, that there are no unredeemed tax sales of said land, except as hereinbefore noted, since April 30, 1915.

Dated at Bay Minette, Baldwin County, Alabama,  
this 5th day of April, 1917.

  
Licensed Abstractors.

CONTINUATION  
ABSTRACT OF TITLE

to  
N $\frac{1}{2}$  of Section 4, Tp 7 South, Range 2 East, in  
Baldwin County, Alabama

\*\*\*\*\*

Item 1.

Harry L. Misamore and  
Leona Misamore, his wife

to

Jessie Roach.

Book 36 NS, page 119

Consideration \$1.00 and other  
Quit Claim Deed

Dated February 15th, 1917

Acknowledged Feb 15 and 20, 1917.

Filed Feb 26th, 1917.

Conveys "an undivided interest of two thirds of the following described real estate to-wit: the north half of Section four in township seven south of range two east ( N $\frac{1}{2}$  Sec 4, T 7 S, r 2 E) of St Stephens Meridian in Baldwin County, Alabama, except the Northwest quarter of the northwest quarter, and northwest quarter of the southwest quarter of the northwest quarter and the north half of the southwest quarter of the southwest quarter of the northwest quarter of said section four (except NW $\frac{1}{4}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$  & N $\frac{1}{2}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$ , Sec 4) containing 265 acres more or less."

\*\*\*\*\*

C E R T I F I C A T E .

State of Alabama,  
Baldwin County.

We, the Baldwin Title & Abstract Company, licensed abstracters of Baldwin County Lands, hereby certify that the foregoing items numbering from one to three, inclusive, compose a true, correct and complete continuation of an abstract of title to the lands described in the caption hereof, according to the records now on file in the Court House, in the aforesaid County, in said State.

We further certify that there are no mortgages, judgments, liens or other instruments of record in the office of the Judge of Probate of Baldwin County, Alabama, in said Court House, effecting the title to the lands described in the caption hereof, except as herein recited and that all the taxes have been paid that are due and payable.

Dated at Bay Minette, the county seat of Baldwin County, Alabama, this 30th day of April, A.D., 1915.

Baldwin Title & Abstract Company,  
By Theren J. Weaver,  
General Manager.

\*\*\*\*\*

\*\*\*\*\*

Item 1.

V. Mc. R. Schowalter and  
Charlotte G. Showalter, his wife,  
  
to  
  
H. L. Misamore.

Book "22" NS, page 681.  
Quit-claim Deed, dated  
March 8th, 1915.  
Consideration \$1.00.  
Acknowledged same date before  
Adu Mont, N.P. Baldwin Co., Ala.  
Filed for record March 13th, 1915.

Conveys the land described in the caption hereof.

\*\*\*\*\*

Item 2

Louie J. Broadwood and  
Blanche S. Broadwood, his wife,  
  
to  
  
H. L. Misamore.

Book "23" NS, page 163.  
Quit-claim Deed, dated  
March 9th, 1915.  
Consideration \$1.00.  
Acknowledged same date before  
Lelia C. Harris N.P. Mobile Co., Ala.,  
and on Mar. 8th, 1915 before Albert  
W. Swalm, American Consul, Southamp-  
ton, England.  
Filed for record Apr. 23, 1915.

Conveys the land described in the caption hereof,

\*\*\*\*\*

Item 3.

Harry L. Misamore and  
Maud S. Misamore, his wife,  
  
to  
  
Everett S. Rosencrans and  
Florence Rosencrans, his wife,

Book "22" NS, page 506.  
Warranty Deed, dated  
December 26th, 1914.  
Consideration \$1.00.  
Acknowledged same date before  
Elliott G. Ricarby, N.P. Mobile  
County, Ala.  
Filed for record Jan. 1st, 1915.

Conveys the South half of the Northwest quarter of the  
Southwest quarter of the Northwest quarter and the North half of the  
Southwest quarter of the Southwest quarter of the Northwest quarter of  
Section 4, Township 7 South of Range 2 East, Baldwin County, Alabama.

\*\*\*\*\*

10  
am

\*\*\*\*\*

Continuation of an Abstract of

Title to

The North half of Section Four, Township  
Seven South of Range Two East, in Baldwin  
County, Alabama, except 10 acres described  
in Item #3 of the continuation.

\*\*\*\*\*

June 30

Exhibit "X"

"Exhibit B"

JOHN BERGLIN

-vs-

HARRY L. MISAMORE

No. 11410.

IN CHANCERY AT MOBILE.

Comes the complainant and for answer to the defendants cross-bill, says:

1st: For answer to all of the allegations of the said cross bill complainant reiterates the allegations contained in the original bill and for further answer to the allegations that defendants own an undivided 2/3 interest in the land described in the bill, this defendant specifically denies the same.

Leslie Hall,

Solr. for Complt. and Cross-Defendant.



"EXHIBIT A"

JOHN BERGLIN, )  
Complainant, )

-vs-

HARRY L. MISAMORE, )  
Defendant. )

No. 11,410.

IN CHANCERY AT MOBILE.

Comes the respondent, Harry L. Misamore, by his solicitors, and by leave of the Court first had and obtained, files the following amendment to his answer heretofore filed in this cause:

1st. Defendant admits the allegations contained in the first paragraph of the bill.

2nd. Defendant specifically denies that complainant is the owner of the north half of Section 4 in Township 7 South, Range 2 east, in Baldwin County, Alabama, and, on the contrary, alleges that he, defendant, owns an undivided two-thirds interest therein.

3rd. Defendant admits that this land was once owned by E. R. Schowalter, who died, leaving as his sole heirs V. McR. Schowalter, Percy R. Schowalter, and Blanch S. Schowalter, now Blanch S. Broadwood. Defendant denies that the estate of said E. R. Schowalter was ever legally divided between the joint owners thereof, as above named, or that valid deeds were executed and delivered divesting the title of V. McR. Schowalter and Blanch S. Broadwood in and to the land described in the bill, making Percy R. Schowalter the sole owner thereof.

4th. Defendant says the complainant has acquired an undivided one-third interest, and no more, in this land, in the manner alleged in the bill.

5th. Defendant says that he did secure an option to buy this land from the complainant at about the time alleged in the bill, believing him to be the owner thereof, and went into possession of said lands at his own expense and peril, not having in any way contracted to buy the same from complainant, and, after taking

possession, he discovered by his own efforts that complainant did not have title to but a one-third undivided interest in the land, though, under the terms of the option, complainant agreed to sell the whole title.

6th. Defendant admits that he secured valid deed from V. McR. Schowalter and Blanch S. Broadwood, conveying to defendant all title that the grantors had to said land, but without any knowledge that his grantors had, if ever, formerly conveyed away their title, and without any agreement or understanding with complainant that the title so secured should inure to complainant's benefit. Defendant denies that said deeds were secured upon the false and fraudulent representations charged in the bill, and says that before said deeds were executed, he clearly informed his grantors of the defects he had discovered in the title and asked them if they would quit-claim their title to him, and they did. Further, that defendant agreed with Blanch S. Broadwood, as the consideration for the execution of her deed, to perform valuable services for her, at her request, as agent for the sale of her lands.

7th. Defendant says that, as soon as said deeds, shown as Exhibits "A" and "B", were executed, he placed them of record and since that time has asserted title to and now claims to own an undivided two-thirds interest in said lands.

WHEREFORE, defendant prays that upon consideration of the premises, your Honor will find and decree that complainant and defendant are tenants in common to said lands, and further decree that said lands be divided if equitable, or sale for distribution.

Rickarby and Austill,

Solicitors for Defendant.

cause of John Berglin against Harry L. Misamore are recorded in the Chancery Court at Mobile, and have been recorded from the time of the rendering of the decree in said cause to the present time; and that said cause and the proceedings thereunder are shown by the indices to the records of said court.

It is further agreed that neither at the time of filing said suit, nor during the progress thereof, nor at any subsequent time, did the said John Berglin, or any other person, file with the Judge of Probate of Baldwin County a notice containing the names of all the parties to the said suit, a description of the real estate and a statement of the suit sought to be enforced, nor did the said Berglin, or any other person, file any notice such as is provided for by the Act found at Pages 122 and 123 of the Alabama Acts of 1915, prior to the execution, delivery and recording of the deed from Karl Hosafros and wife to Charles John Waterall attached hereto as Exhibit "W". *Either of the said Deed or of the present suit*

A copy of the answer of said Harry L. Misamore as last amended, and a copy of the answer to cross bill, are hereto attached marked Exhibit "A" and Exhibit "B", respectively, and it is agreed that the same may be offered and used in evidence as if they were the originals or duly certified copies of the record thereof.

It is further agreed that each of the deeds above referred to as being recorded is sufficient in form to convey title to real estate provided the grantor or grantors therein had title, the object of this portion of the agreement being to eliminate any question of the sufficiency of any of these deeds insofar as form only is concerned.

Dated this the 30 day of May, 1919.

Joseph N. McCalister

Harry J. Smith & Cassie  
Solicitors for Complainant.

Stevens, McCune & McLea

Solicitors for Respondent,  
Charles J. Waterall.

attorney for them, and in their name, to sell or otherwise dispose of their two-thirds interest in the tract of land described as in the deed from the said Misamore to Jessie Roach. This power of attorney was filed for record on August 22nd, 1917, and recorded in Misc. Book 2, page 277, Baldwin County Records; that thereafter Karl Hosafros and wife, acting by, and through the said Harry L. Misamore, as their attorney in fact, executed a warranty deed to the respondent Charles J. Waterall, dated August 31st, 1917, and recorded in Deed Book No. 26, N. S., page 216, purporting to convey land described as in the deed from Harry L. Misamore to Jessie Roach for the recited consideration of \$1.00 and other valuable considerations, the true consideration being \$705.00 in cash, which was paid by the said Waterall to the said attorney in fact as evidenced by the receipt hereto attached and made a part hereof.

It is further agreed that Charles J. Waterall, Sr. acted as the agent of the respondent Charles J. Waterall in procuring said deed from said Misamore; that he went upon and over the land described in said deed before undertaking to purchase the land described therein, and that before taking said deed he was furnished an abstract of title showing an abstract of all the conveyances above stated to be recorded in the Probate Court of Baldwin County, Alabama, which abstract is hereto attached marked Exhibit "X" and made a part hereof.

It is further agreed between the solicitors of record that in the suit of John Berglin against Harry L. Misamore, filed in the Chancery Court of the Southwestern Chancery Division of Alabama, on the 14th day of August, 1915, the said Harry L. Misamore appeared and filed an answer to the bill of complaint, that both parties in the cause took testimony, and that the Chancery Court, on, to-wit, the 15th day of December, 1915, rendered a decree in favor of the complainant, a copy of which is attached to the original bill of complaint in this cause, marked Exhibit "B"; that thereafter said cause was appealed to the Supreme Court of the State of Alabama, and the decree of the Chancery Court was by that court affirmed; and that the decree and all of the proceedings in said

filed for record in the Probate Court in Baldwin County, on March 13, 1915, and recorded in Deed Book 22 N. S. page 681; that the said deed from Blanche S. Broadwood and husband, to Harry L. Misamore, referred to in said fifth paragraph of said answer, is a quit-claim deed, dated March 9, 1915, for the recited consideration of One Dollar (\$1.00) that it was filed for record in Baldwin County on April 23, 1915, and recorded in Deed Book 23 N. S. Page 163, that on, to-wit, the 26th day of December 1914, Harry L. Misamore and wife, executed a warranty deed purporting to convey to Everett S. Rosencrans and Florence Rosencrans the South half of the Northwest quarter of the Southwest quarter of the Northwest quarter and the North half of the Southwest quarter of the Southwest quarter of the Northwest quarter of Section 4, Township 7 South, Range 2 East, Baldwin County, Alabama; that this deed was filed for record on January 1st, 1915, and recorded in Deed Book 22 N. S. page 506; that on, to-wit, the 15th day of February, 1917, Harry L. Misamore and wife, executed a quit-claim deed for the recited consideration of One Dollar (\$1.00), and other valuable considerations, to Jessie Roach, purporting to convey an undivided interest of two-thirds of the following described real estate, namely: the North half of Section 4, in Township 7 South, Range 2 East, Baldwin County, Alabama, <sup>the NW quarter of the NW quarter of the NW quarter and</sup> except the ten acres described in the deed from Misamore and wife to Rosencrans and wife above referred to; that this deed was filed for record in Baldwin County on February 26th, 1917, and recorded in Deed Book 26 N. S. page 119; that thereafter on, to-wit, the 28th day of May, 1917, Mrs. Jessie Roach executed a warranty deed for the recited consideration of One Dollar (\$1.00), and other valuable considerations, to Karl Hosafros, purporting to convey the same lands described in the deed from Misamore to Jessie Roach, that said deed was filed for record on July 23rd, 1917, and recorded in Deed Book 25 N. S. at page 251. that on, to-wit, the 1st day of August, 1917, Karl Hosafros and wife, executed a power of attorney to Harry L. Misamore, constituting and appointing him their true and lawful

a warranty deed purporting to convey a fee simple title in and to the entire northeast quarter of said Section 4, to John Berglin, said deed being filed for record in Baldwin County, on May 19, 1904, and recorded in Deed Book "7", N. S., at page 267; that on, to-wit, the 16th day of April, 1904, Charles Henry Matson and his wife, Telve Matson, executed to John Berglin, the complainant, a warranty deed purporting to convey to him a fee simple title in and to the entire northwest quarter of said Section 4, for the consideration of Four Hundred and Eighty Dollars (\$480.00), which said deed was filed for record May 19th, 1904, and recorded in Deed Book "7", N. S., at page 268.

It is further agreed that the allegations of the third paragraph of the answer of John Berglin to the cross-bill are true, except as to the existence of a deed to Percy R. Schowalter and except the allegation that a deed was executed to Percy R. Schowalter conveying to him the interest of V. McR. Schowalter and Blanche S. Broadwood in the North half of Section 4, Township 7, South of Range 2 East, described in the original bill of complaint, but that said deed was lost or mislaid, the complainant affirming the truth of these allegations and the respondent Chas. J. Waterall denying such allegations and that the pleadings, proof and decree in the suit of John Berglin against Harry L. Misamore hereinafter referred to as filed in the Chancery Court for the Southwestern Chancery Division at Mobile, sustain the allegations of the fifth paragraph of the complainant's answer to the respondent Waterall's cross-bill, *Except the allegations as to the existence of a deed to Percy R. Schowalter.* Solicitors for the respective parties further agree that the allegations of the sixth paragraph of the answer of John Berlin to the cross-bill (except those contained in the last sentence thereof) are true, that Exhibit "A" to said answer to said cross-bill is a true copy of the bill of complaint filed in the Chancery Court in Mobile, and that the same may be treated and used in evidence as if it were the original or a duly certified copy of the record thereof; that the proceedings in said cause are in all respects regular and resulted in the decree, copy of which is attached to said answer as Exhibit "B", that said Exhibit "B" is a true copy of the decree rendered in said cause, and that the same may be taken and used in evidence as if it were the original or a duly certified copy of the record of said decree.

It is further agreed that the said deed from V. McR. Schowalter and wife to Harry L. Misamore, referred to in the fifth paragraph of said answer, is a quit-claim deed, dated March 8, 1915, for the recited consideration of one Dollar (\$1.00)

wit, the 20th day of August, 1896, said Percy R. Schowalter executed a mortgage purporting to mortgage the entire fee simple title in said land to Aaron Moog, to secure payment of a note for Seventy Five Dollars (\$75.00), due six months after date, with power to sell in case of default, and containing covenants of warranty, that said mortgage was recorded in mortgage Book 1, pages 500-501, of the Baldwin County Records, the same having been filed for record on September, 12, 1896; that the said Percy R. Schowalter defaulted in the payment of said note, and the said Aaron Moog duly and legally foreclosed said mortgage under the power of sale therein contained, and one Silas Matson became the purchaser of said land for the consideration of Ninety Dollars (\$90.00) and said Aaron Moog executed to him a deed dated April 24, 1897, with covenants of warranty purporting to convey a fee simple title in said north half of Section 4, which said deed was filed for Record in Baldwin County on May 4, 1897, and recorded in Deed Book "W", at pages 464-466; that thereafter Silas Matson in consideration of One Dollar (\$1.00.) and other valuable considerations executed a warranty deed purporting to convey a fee simple title in the entire North half of Section 4, Township 7 South, Range 2 East, in Baldwin County, Alabama, with other land to Mary Althea Matson and Jerome Orville Matson, which said deed was dated January, 12, 1901, and was filed for Record January, 14, 1901, and recorded in Deed Book 2, new series at pages 350-351, Baldwin County Records; that Jerome Orville Matson and Mary Althea Matson, on, to wit, the 10th day of January 1902, executed a warranty deed purporting to convey a fee simple title in and to the northwest quarter of said Section 4, to Charles Henry Matson for the consideration of One Dollar, (\$1.00) and other valuable considerations, which was filed for record on January 15, 1902, and recorded in Deed Book 4, new series, at pages 659-60, that on, to wit, the 11th day of April, 1904, Jerome Orville Matson and Mary Althea Matson executed for the consideration of Four Hundred and Eighty Dollars (\$480.00)

Each and every endorser of this note hereby waives all right of exemption of property from levy and sale under execution, or other process for the collection of debts, as provided for in the Constitution and Laws of the State of Alabama, or any other State in the United States of America and it is hereby agreed by each endorser hereof that he shall pay all costs of collecting this note, after failure to pay when same becomes due under the terms hereof, including a reasonable Attorney's fee for all services rendered in any way, in any suit, against any endorser, or in collecting or attempting to collect, or in securing or attempting to secure this debt. Each and every endorser of this note hereby waives demand, protest and notice of protest, and all requirements necessary to hold them as endorsers.

Recd of Chas J. Waters ack. 8/31/17  
Seven hundred and fifty  
dollars. Being full amount  
for land bought which has  
been conveyed by warrant  
Dtd on same date

H. Mearns



Abstract of Title

To

The North Half of Section Four, Township Seven South, of Range Two East,  
in Baldwin County, Alabama.

- 1.-----  
United States Entry (Tract Book #1., pp 207  
To )Entry dated March 6th., 1837;  
Noah Harrington, Jr. (Certificate or Warrant #8523.  
Description:  
The N $\frac{1}{2}$  of Sec. 4., Tp. 7.S., R. 2. East of St. Stephens Meridian in Alabama,  
containing 320.42 acres.
- 2.-----  
Rufus Green, by Simon Mussina, (Book "D", pp 135-136;  
his attorney in fact, )Consideration: \$10,271.22;  
To )Warranty Deed, dated 22d., 1837;  
Noah Harrington, Jr. )Acknowledged April 22d., 1837, before  
(W. T. Lewis, N.P., New Orleans, La. ;  
)Filing for record not stated.  
Description:  
The N $\frac{1}{2}$  of Sec. 4., Tp. 7.S., R. 2. E., Baldwin Co., Ala., & other land.  
No record of power of attorney from Rufus Green or any claim of Rufus Green  
to said land, in Baldwin County, Ala.
- 3.-----  
United States, (Book "F", pp 258;  
by Martin Van Buren, Pres't., )Patent, dated Jany. 5th., 1841;  
To )On certificate #8523;  
Noah Harrington, Jr. )Filed for record May 20th., 1852.  
Description:  
The N $\frac{1}{2}$  of Sec. 4., Tp. 7.S., R. 2. E., in the District of Land Subject to sale  
at St. Stephens, Alabama, containing 320.42 acres.
- 4.-----  
Noah Harrington, Jr., & (Book "F", pp 259-260;  
S. A. Harrington, his wife, )Consideration: \$800.00;  
(Warranty Deed, dated May 20th., 1851;  
To )Acknowledged May 20th., 1851, before  
(Wm. Brooks, J. Peace, Mobile Co., Ala. ;  
)Wit: Wm. Brooks;  
Stephen Foote. (Filed May 20th., 1852.  
Description:  
The N $\frac{1}{2}$  of Sec. 4., Tp. 7.S., R. 2. E., Baldwin Co., Ala., & other land.
- 5.-----  
Stephen Foote. (Book "F", pp 153-154;  
)Consideration: \$800.00;  
To )Mortgage, dated May 20th., 1851;  
Noah Harrington, Jr. )Acknowledged May 23d., 1851, before  
(Wm. Brooks, J. Peace, Mobile Co., Ala. ;  
)Filed May 23d., 1851.  
Description:  
The N $\frac{1}{2}$  of Sec. 4., Tp. 7.S., R. 2. E., Baldwin Co., Ala., & other land.  
To secure two notes, \$400. each due Jany. 1st. & April 1st., 1852, respectively.
- 6.-----  
Stephen Foote & (Book #5., New Series, pp 327, Mobile Co., Ala.  
Julia Foote, his wife, )Consideration: \$650.00;  
To )Warranty Deed, dated Feby. 21st., 1853;  
Sarah Barnes. )Acknowledged Feby. 22d., 1853, before  
(Wm. Brooks, J. Peace, Mobile Co., Ala. ;  
)Filed Feby. 22d., 1853.  
Description:  
The N $\frac{1}{2}$  of Sec. 4., Tp. 7.S., R. 2. E., Baldwin County, Ala., & other land.

7.

Sarah B. Barnes

(Book "F", pp. 479-480;  
)Consideration: \$650.00;  
(Warranty Deed, dated Oct. 6th., 1853;  
)Acknowledged April 5th., 1854, before  
(Jno. E. Fisher, J. Peace, Mobile Co., Ala.;  
)Wit: Benj. R. White; Benj. Smoot;  
(Filed Jan'y. 27th., 1855.

To

Stephen Foot.

Description:

The ~~N<sup>1</sup>/<sub>2</sub>~~ N<sup>1</sup>/<sub>2</sub> of Sec. 4., Tp. 7.S., R. 2.E., Baldwin Co., Ala., & other land.

8.

Stephen Foot &  
Julia Foot, his wife,

(Book "M", pp 132-133;  
)Consideration: \$400.00;  
(Warranty Deed, dated Oct. 23d., 1854;  
)Acknowledged Oct. 23d., 1854, before  
(Wm. Brooks, J. Peace, Mobile Co., Ala.;  
)Filed July 1st., 1881.

To

Andrew H. Johnson.

Description:

The N<sup>1</sup>/<sub>2</sub> of Sec. 4., Tp. 7.S., R. 2.E., Baldwin Co., Ala., containing 320. acres.

9.

Andrew H. Johnson

(Book "K", pp 765-766;  
)Consideration: \$416.06;  
(Warranty Deed, dated Dec. 12th., 1878;  
)Acknowledged Dec. 12th., 1878, before  
(Jerry M. Beam, J. Peace, Baldwin Co., Ala.;  
)Filed Dec. 25th., 1878.

To

Emanuel R. Schowalter.

Description:

The N<sup>1</sup>/<sub>2</sub> of Sec. 4., Tp. 7.S., R. 2.E., Baldwin Co., Ala., & other land.

10.

As to heirs at law of

(Book #9. New Series, pp 381.

Emanuel R. Schowalter, deceased.) Filed Oct. 4th., 1905.

Copy.

The State of Alabama)

Baldwin County ) Before me, George H. Hoyle, a Notary Public in and for  
said county, in said State, personally appeared V. McR. Schowalter, who is known  
to me, and who on being sworn deposes and says that he, the affiant, Percy R.  
Schowalter and Blanche S. Broadwood are the sole heirs at law of Emanuel R.  
Schowalter, deceased, and that there were no debts of the estate of said  
Emanuel R. Schowalter, deceased, left unpaid; that on June 30th., 1894, all  
said heirs at law were of age." (Signed) V. McR. Schowalter.  
Subscribed and sworn to before me, this 21st. day of June, 1905.

George H. Hoyle,

Notary Public, Baldwin County, Alabama.

11.

Percy R. Schowalter

(Mortgage Book #1., pp 500-501;  
)Consideration: \$75.00;  
(Mortgage, dated Aug. 20th., 1896;  
)Acknowledged Aug. 20th., 1896, before  
( A. duMont, N.P., Baldwin Co., Ala.;  
)Filed Sept. 12th., 1896.

To

Aaron Moog.

Description:

The N<sup>1</sup>/<sub>2</sub> of Sec. 4., Tp. 7.S., R. 2.E., Baldwin Co., Ala., containing 320 acres.  
To secure payment of note for \$75.00 due six months after date hereof.  
Gives grantee power of sale in case of default.

12.

Percy R. Schowalter,  
by Aaron Moog, mortgagee,

(Book "W", pp 464-465-466;  
)Consideration: \$90.00;  
(Mortgagee's Deed, dated April 24th., 1897;  
)Acknowledged April 29th., 1897, before  
(A. duMont, N.P., Baldwin Co., Ala.  
)Filed May 4th., 1897.

To

Silas Matson.

Description:

The N<sup>1</sup>/<sub>2</sub> of Sec. 4., Tp. 7.S., R. 2.E., Baldwin Co., Ala., containing 320 acres.  
Sold under powers of mortgage from Percy R. Schowalter to Aaron Moog,  
recorded in Book #1. of Mortgages, pages 500-501.

John Berglin, )  
vs. ) In the Circuit Court of Baldwin County, Ala.  
Harry L. Misamore, et. als. ) In Equity.

This cause is submitted for final decree on the pleadings and the proof as noted by the Register, and on consideration the Court is of the opinion that Complainant is entitled to the relief prayed for in his Bill as amended;

It is therefore Ordered, Adjudged and decreed that the Respondents, Harry L. Misamore, Mrs: Mamie E. Oswalt, The H. M. Price Hardware Company, a Corporation, Axil Johnson, Jesse Roach, and Charles John Waterall have no right, title or interest in, or encumbrance upon the lands described in the Original Bill of Complaint, to-wit:- North Half of Section Four in Township Seven South, Range Two East of St. Stephens Meridian.

It is further ordered, adjudged and decreed that the said Respondents and each of them, be and they are each, forever enjoined from asserting any claim, right, title or interest in, or encumbrance upon the said above described and mentioned lands.

It is further ordered, adjudged and decreed that the Cross Bill of the said Respondent Charles John Waterall is hereby dismissed.

It is further ordered, adjudged and decreed that the said Respondant, Charles John Waterall pay the costs of this proceeding except that created by any of the other Respondents which shall be paid by Complainant, for all of which execution may issue.

Done this July 24th 1919.

  
Judge.

JOHN BERGLIN,  
Complainant.

-vs-

HARRY L. MISAMORE, CHARLES  
J. WATERALL, ET AL.,  
Defendants.

CIRCUIT COURT OF BALDWIN COUNTY.

IN EQUITY.

I, Lillie A. Booth, do hereby certify that under and pursuant to the agreement between the solicitors of record in the above entitled cause, which is hereto attached, I did swear Dr. V. McR. Schewalter, Mr. Will Lowell, and Mr. A. O. Berglin to speak the truth, the whole truth, and nothing but the truth in answer to such interrogatories as might be propounded to them by the solicitors representing the complainant and the defendants respectively, and the witnesses testified as set out in the foregoing answers.

I further certify that the answers of the witnesses to the said several interrogatories were reduced to writing by me as near as might be in the language of the witnesses; that I am not of counsel or of kin to any of the parties to the cause, nor am I in any manner interested in the result thereof.

Dated this 16th day of May, 1919.

Lillie A. Booth  
Commissioner.

JOHN BERGLIN,  
Complainant.

-vs-

HARRY L. MISAMORE, CHARLES  
J. WATERALL, ET AL.,  
Defendants.

CIRCUIT COURT OF BALDWIN COUNTY.  
IN EQUITY.

It is hereby agreed by and between the solicitors for the complainant and the defendant Charles J. Waterall, in the above entitled cause, that the depositions of Dr. V. McR. Schowalter, Will Lowell, and A. O. Berglin, may be taken on behalf of the complainant before Lillie A. Booth without the necessity of any commission issuing to her, and shall be treated in all respects as if said depositions had been taken under a regular commission issued out of the court to the said Lillie A. Booth. It is further agreed that the said depositions may be returned to the court without being signed by said witnesses.

Made this the 16th day of May, 1919.

*Joseph W. McAleer*  
*Harry J. Smith & Coffey*  
Solicitors for Complainant.

*Stewart M. Connor & M. L. Lusk*  
Solicitors for Defendant  
Charles J. Waterall.

JOHN BERGLIN,  
Complainant.

-vs-

HARRY L. MISAMORE, CHARLES  
J. WATERALL, ET AL.,  
Defendants.

CIRCUIT COURT OF BALDWIN COUNTY.

IN EQUITY.

On the 16th day of May, 1919, came before me, at the office of Harry T. Smith and Caffey, Dr. V. McR. Schowalter, Will Lowell and A. O. Berglin, who, being by me duly sworn to speak the truth, the whole truth and nothing but the truth in answer to the interrogatories that might be propounded to them in the above entitled cause of John Berglin vs. Harry L. Misamore, Charles J. Waterall, et al., the said witnesses were examined before me by Wm. G. Caffey on behalf of the complainant, John Berglin, and were cross examined by William McLeod on behalf of the defendant Charles J. Waterall, and who testified as follows:

DEPOSITION OF DR. V. McR. SCHOWALTER.

Direct examination by Wm. G. Caffey:-

- Q. You are Dr. V. McR. Schowalter?      Ans. Yes sir.
- Q. What was your father's name?
- A. Emanuel R. Schowalter.
- Q. Is he living or dead?
- A. Dead.
- Q. When did he die?
- A. November 10th, 1899.
- Q. Did he leave a will, or die intestate?
- A. Died intestate.
- Q. Who were his heirs at law, Doctor?
- A. Myself, my sister, Mrs. L. J. Broadwood, and my brother, Percy R. Schowalter.
- Q. You were the children of Emanuel R. Schowalter?

- A. Yes sir.
- Q. Did he leave any other children surviving him?
- A. No.
- Q. Did he leave any real estate in Baldwin County at the time of his death?
- A. Yes sir.
- Q. Subsequent to his death, I wish you would state whether or not there was ever any partition of the real estate left by your father, among his heirs?
- A. There was.
- Q. About how long after his death was that?
- A. I can't be positive, Mr. Caffey, but it might be --- the deed I received --- I was looking over my papers the other night, and my deed was filed for record June 25th, 1894.
- Q. Do you recall whether or not it was filed for record soon after you got it?
- A. No, I do not.
- Q. I wish you would explain, doctor, just what was done between the three heirs of Emanuel R. Schowalter in reference to the partition of this land?
- A. After the estate was wound up in law in the chancery court, I had to file suit in the chancery court to keep the administrator from stealing all we had, and the final administration which took place was transferred from Baldwin County to the chancery court at Mobile, and each of the heirs appointed an arbitrator to divide. We realized that this property was over 5,000 acres and could not be sold or forced on the market without great loss, so we had these three arbitrators appointed and they divided the lands in as nearly balanced portions as they could and we issued to each other quit claim deeds in accordance with the findings of this court of arbitrators, disinterested parties, --- Jos. M. Railey, since dead, Edward Brodbeck, of Point Clear, and John DeSilva, late of Point Clear, but now of Biloxi, Miss.

OBJECTION: Cross respondent Charles J. Waterall moves to exclude from the answer of the witness the statement that quit-claim deeds were issued in accordance with the findings of arbitrators, on the ground that this portion of the answer is not responsive to the question, and on the further grounds that the statement made is not the best evidence of the issuing of those deeds.

- Q. As I understand it, doctor, you appointed these three men to divide the real estate among the three heirs?
- A. Yes, and agreed to abide by their decision.
- Q. Did they make a division?
- A. They did.
- Q. After that division was made, I wish you would state whether or not you three heirs executed quit claim deeds to each other of the portions that were set apart to each heir.

OBJECTION: Cross respondent Charles J. Waterall objects to the

question on the ground that the deeds themselves would be the best evidence.

A. We did.

OBJECTION: Cross-respondent Charles J. Waterall moves to exclude the above answer on the same ground assigned as grounds of objection to the question.

Q. Do you recall whether or not you and your sister, Mrs. Broadwood executed such a quit-claim deed to your brother Percy Schowalter?

OBJECTION: Cross-respondent Charles J. Waterall objects to the question on the ground that the deed itself would be the best evidence.

A. We did.

OBJECTION: Cross-respondent Charles J. Waterall moves to exclude the above answer on the same ground assigned as grounds of objection to the question.

Q. Do you recall whether or not that deed included the North 1/2 of Section 4, Township 7 South, Range 2 East?

OBJECTION: Cross-respondent Charles J. Waterall objects to the question as calling for incompetent, immaterial and irrelevant testimony, and on the further ground that the deed itself would be the best evidence of its contents.

A. That was part of the land.

Q. I wish you would state, doctor, whether or not these three quit claim deeds that you refer to were executed on the same day.

A. They were.

Q. Was your deed put on record?

A. Yes sir.

Q. After the execution of these deeds, I wish you would state whether or not the respective heirs went into possession of the property that had been allowed to them in this partition.

A. We did.

Q. Is Percy Schowalter living or dead?

A. Dead.

Q. I wish you would state, doctor, whether or not these quit claim deeds were identical in terms with the exception of the description of lands in them, ~~xxxxxxxxxxxx~~

OBJECTION: Cross respondent Charles J. Waterall objects to the question on the ground that the deeds themselves would be the best evidence.



A. To the best of my knowledge they were.

OBJECTION: Cross-respondent Charles J. Waterall moves to exclude the above answer on the same ground assigned as grounds of objection to the question.

CROSS-EXAMINATION BY MR. WILLIAM McLEOD:

Q. Doctor, did you execute a quit claim deed for the North 1/2 of Section 4, Township 7 South, Range 2 East, to one Harry L. Misamore?

A. I did on the representation that I would facilitate matters between he and Mr. Berglin. I believe it was obtained under false pretenses.

OBJECTION: Cross-respondent Charles J. Waterall moves to exclude that portion of the answer that the deed was obtained under false pretenses, on the ground that it is not responsive to the question.

Q. Doctor, do you remember about when that deed was executed?

A. I do not, but it may have been as far back as 1915, but it does not seem so to me.

Q. Doctor, did you say a deed from your sister, Mrs. Broadwood, to Misamore was executed possibly at the same time?

A. It was the same deed, a joint deed to the best of my recollection.

Q. You recollect you joined in one deed?

A. That is my recollection. Her husband was in England at the time.

Q. Did you and Misamore ever have any agreement as to sharing the profit on the deal involved in this land?

A. Did he say so?

Q. You did not answer my question,-- now, will you answer my question?

A. When you answer mine.

Q. I will answer when you get through testifying. Now, did Misamore ever tell you that if you would get an option for him from Mr. John Berglin for the purchase of this land, that you and he would share equally in the profits on the deal?

A. No sir. Now--- I recall, He asked me --- I presume I saw Berglin first about this land, and at Misamore's request, and he told me that if I would secure the option, that he would sell the land and divide the proceeds. Pending any further effort on my part, Mr. Misamore saw the Berglins, saw them first, and obtained the option in his own name. I do recall that now, but no such agreement was ever put into effect because he found out that the title to this land was vested in John Berglin, and he got into communication with the brother of Adolph O. Berglin and got the option.

Q. Was it before or after that proposition came up that Misamore came to you and asked for a deed to this land to him?

- A. Before this proposition that I was to get this option?
- Q. Yes.
- A. It was a long time afterwards.
- Q. Did Misamore offer you anything for that deed to him?
- A. Not a cent. The deed was executed, as we supposed, to facilitate or make this deal possible or legal between he and Berglin.
- Q. Did he state to you that that was the case?
- A. He did and he further stated when he made this request, after I had stated to him that I had previously executed a deed to this same property and had no right, title or interest in it, and if he knew just what the trouble was, he did not tell me at the time, but said it was necessary to clear the deed between he and Berglin.
- Q. Did he have more than one conversation with you about it?
- A. It seems that he did mention it once or twice, and stated he would come down to see me about the deed, but he came in one morning just as I was about to start out on my professional rounds, and I requested that he leave the deed so I could look it over, and if I found it all right, I would execute it, but he was in an awful hurry that morning and nothing would do but that we would go execute it that morning, and we did.
- Q. So you did execute it?
- A. Yes.
- Q. Is your statement that the deed was obtained on the misrepresentation of facts based on what he actually said at the time, or on the opinion that you have formed from subsequent events?
- A. From what he said at the time. As he expressed it to me, I can either buy this land outright myself under my contract, or I can sell it to anyone else, and I can't do it unless you all straighten it out. Those are the representations under which he gained that title.
- Q. Did he state to you that he had had an abstract made which disclosed this defect in the title which necessitated the deed?
- A. He stated that there was some irregularity, some cloud on the Berglin title that this deed would clear up.
- Q. Was anything said between you about the deed being made to Berglin instead of Misamore?
- A. No. That's the way he got it through - the rush. I was going to inquire and look into it and see whether it was the proper procedure.
- Q. Doctor, do you know where the deed is that was executed by you and Mrs. Broadwood to your brother, Percy Showalter?
- A. No, I do not. None of us know what disposition he made of his papers before he left home. I thought it might be at my sister's and asked her about it, but she said she had no knowledge of it.
- Q. Did you ever have any conversation about this land with Mr. Waterall?
- A. No sir.

- Q. Either one of these gentlemen sitting here (referring to Mr. Charles J. Waterall and his son)?
- A. No. I saw them the first time today.

RE-DIRECT EXAMINATION BY WM. G. CAFFEY:

- Q. You and your sister never executed but the one deed to Misamore to this North 1/2 of Section 4, Township 7 South, Range 2 East?
- A. That was all. I tried to stop it after I found out what was going on.
- Q. Subsequent to that time, you testified in the suit of John Berglin vs. Misamore in the chancery court at Mobile, did you not?
- A. Yes, by commissioner on the other side of Mobile Bay.
- Q. The deed involved in that suit was the same deed you have referred to in this testimony?
- A. Yes.
- Q. As I understand your testimony on cross examination, that deed was given to remedy an alleged cloud on Berglin's title?
- A. Exactly.
- Q. As I understand it, you testified that there was no agreement to pay anything for that deed?
- A. No, no agreement.
- Q. Was anything in fact paid?

OBJECTION: Cross respondent Charles J. Waterall objects to the question on the ground that it calls for incompetent, irrelevant and immaterial testimony, and that the deed itself would be the best evidence.

- A. Not a cent. He paid for the acknowledgment, that's all.
- - - - -

DEPOSITION OF WILL LOWELL

DIRECT EXAMINATION BY WILLIAM G. CAFFEY:

- Q. You are Mr. Will Lowell?
- A. Yes.
- Q. Mr. Lowell along in February, 1917, I wish you would state whether or not you were living on any part of the North 1/2 of Section 4, Township 7 South, Range 2 East, over in Baldwin County?
- A. Yes sir. I do not know exactly what day I was there, but I moved out there in February and stayed there until January, 1918.
- Q. You were living on that land in August, 1917?
- A. Yes.
- Q. What part of the North 1/2 of that Section were you living on?
- A. The northwest corner.
- Q. Was there a house on that land?
- A. Yes.
- Q. Any clearing there?
- A. Yes sir.
- Q. Did you cultivate any land during that time?
- A. Yes sir.
- Q. How much?
- A. About ten acres.
- Q. Was that in cultivation in August, 1917?
- A. Yes sir.
- Q. Have you any family, Mr. Lowell?
- A. Yes sir.
- Q. Was your family living there on the land with you?
- A. Yes sir.
- Q. Was anybody else living on any part of the North 1/2 of that section?
- A. Yes. Mr. Resencrans.
- Q. What part was he living on?
- A. I don't know exactly, about the southwest part of it; down below me.
- Q. Did he have any house on it?
- A. Yes.

Q. Was he cultivating any of the land at the time?

A. Yes.

Q. Under what authority were you living on this land, Mr. Lowell, what arrangement?

A. Mr. A. O. Berglin spoke to me about taking the place.

Q. Did he or not put you on that land to look out for the entire North 1/2 of the land?

OBJECTION: Cross-respondent Charles J. Waterall objects to the question as leading and as calling for incompetent, irrelevant and immaterial testimony.

A. Yes sir.

OBJECTION: Cross-respondent Charles J. Waterall moves to exclude the above answer on the same grounds assigned as grounds of objection to the question to which it is an answer.

Q. During the time that you were on there, were you in charge of and looking out for this North 1/2 of Section 4 for Mr. Berglin?

A. Yes sir.

Q. Do you know whether or not any "no trespass" signs were put up on that land during the time you were on there?

A. Yes.

Q. Who put those up?

A. Mr. Berglin.

Q. Was his name on that sign?

A. Yes. "A. O. Berglin, Agent".

Q. Were those signs on there in August, 1917?

A. Yes sir.

Q. Are they on there still?

A. I am satisfied some of them are on there still.

Q. As I understand it, you were living on a portion of this North 1/2 under authority from Mr. Berglin with the understanding that you would look out for the entire North 1/2 as agent for him?

A. Yes sir.

CROSS EXAMINATION BY MR. WILLIAM McLEOD:

Q. Mr. Lowell, do you know the lines of this Section?

A. No sir, I do not exactly. I know about where it and the next neighbor's land joins, but not exactly.

Q. Do you know where any particular corner of the section is?

- Q. Are you certain now, this long after, that it was before August, 1918?
- A. Yes sir.
- Q. How many signs did he put up?
- A. He put one right inside of the gate where I was living on a sapling, right next to the northwest corner; then he put one-- he must have put up a half dozen; he put up as many as 4, 5 or 6 signs.
- Q. Was this sign that was near your gate on the northwest quarter of the northwest quarter of the northwest quarter, that is, the ten acres in the northwest corner of the section so far as you know the section?
- A. Yes. The house sets probably 75 or 100 feet --- 40 or 50 feet back from this road, running north and south, and 50 or 75 feet from east and west, - probably 100 feet from the corner.
- Q. Where was the next nearest sign?
- A. On the next ten acres south of the ten I was living on.
- Q. Were these wooden signs?
- A. Yes, painted on wooden boards.
- Q. What was painted on them?
- A. "No trespassing, A. O. Berglin, Agent".
- Q. Did you ever see any signs except those three?
- A. There was more signs on it; there was one south. Two I know of to the corner on the north side.
- Q. Do you mean that all these signs were up before August, 1917?
- A. Yes.
- Q. Were they there before that time?
- A. Yes, they were put there shortly after I moved there.
- Q. Did you ever see Mr. Waterall, the gentleman sitting here, before?
- A. No sir.
- Q. Did you ever see him on that land with Mr. Misamore?
- A. No sir.
- Q. Did you ever see Misamore showing any prospective purchasers over this land?
- A. No sir, I lived about three or four miles from Misamore. Then I went out there to live and after that it was only a time or two he came out.
- Q. Where did Mr. Resencrans live?
- A. He lives just below where I was living - about ten or twenty acres between us.
- Q. As nearly as you know the section lines, could you say that he lived in the Northwest quarter of the Southwest quarter of the Northwest quarter?

there and sell it, they get a whole lot more than it is worth.

Q. Would you say the house and ten acres was worth \$650.00?

A. Yes, I suppose, with fence and clearing, it was.

Q. Your understanding is that Berglin sold Oswalt a \$650.00 house and land for \$250.00?

A. Yes, the way I understood they did this is, that Oswalt had a mortgage on the place and the mortgage was made through Misamore. Then Oswalt put in for the place and Berglin agreed to let him have the place for the amount put on the place by Misamore, and after that Oswalt was claiming it under the mortgage.

Q. Mr. Lowell, you say that it was the understanding that you were to look after the North 1/2 - what looking after did it need?

A. I don't know --- Just see who was around and about, such as that.

Q. Mr. Lowell, are you absolutely positive that Mr. Berglin said anything to you about looking after the North 1/2 of this section before August 1917?

A. Yes, sir, Mr. Berglin came to me a few weeks before I moved out there and asked me to move out there and look after the place.

Q. As a matter of fact, you did nothing on the land except the ten-acre tract where you lived? Is that correct?

A. Yes.

Q. You could not say whether or not Misamore had any signs up on that land in his name?

A. I can't say positively whether he did or not.

RE-DIRECT EXAMINATION BY WM. G. CAFFEY:

Q. As I understand you, Mr. Lowell, this land that you were living on was known as Section 4 around that community?

A. Yes.

Q. It was also known as Berglins land?

A. Yes.

Q. Do you know whether you were on a part of what is known as Berglins land?

A. Yes.

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- Q. Was or not that land in cultivation in August, 1917?
- A. Yes sir, had a crop on there.
- Q. I wish you would state whether or not shortly after Mr. Lowell was put on this land, you went over there and put up any signs on the land?
- A. Yes sir; I put up signs to the extent of about a dozen.
- Q. What was on those signs?
- A. No trespassing, A. O. Berglin, Agent.
- Q. Will you tell us as near as you can where those signs were erected?
- A. I had one on the northwest corner of Section 4; one right at the front of the house; one in front of Mr. Rosencrans, that is, the part he was on; then I put one on the extreme southwest corner of the North 1/2 of Section 4; then a number along the east line along the road to the end of the section at different points, and one right on top of a hill and it's up there now.
- Q. Do you know whether any of the others are still there?
- A. I have seen several there. The one in front of the house is still there.
- Q. You spoke of Mr. Rosencrans place, was he or not in August, 1917, living on any part of this land?
- A. He was living on the southwest quarter of the North 1/2 of Section 4.
- Q. Do you remember Mr. Misamore obtaining an option to buy any of this land - did you negotiate that transaction, handle it?
- A. Yes.
- Q. Do you know how Mr. Rosencrans came to be on that land.
- A. Mr. Misamore sold Rosencrans the land, in fact, I think right out. I don't think that he took into consideration anything of the option. While he had that option he sold Rosencrans a portion of the land.
- Q. Do you know whether or not Rosencrans has ever paid for that land?
- A. No sir, he has paid nothing on it.
- Q. After this suit in chancery between your brother, John Berglin, and Harry L. Misamore was decided, I wish you would state whether or not you had any agreement or arrangement with Mr. Rosencrans in reference to this land.

OBJECTION: Cross-respondent Charles J. Waterall objects to the question as calling for incompetent, irrelevant and immaterial testimony.

A. Why it was this. I went out immediately after the decision of the Supreme Court and I informed him of the fact that I would now have to collect for the option price, or otherwise I would have to dispossess him, as I was then contemplating a suit for having this quit-claim set aside. He said you need not involve me in that, for as soon as you clear the title, I am willing to pay you the option price on this land.



A. Yes, I have the receipts.

CROSS EXAMINATION BY MR. WILLIAM MCLEOD:

Q. Where does John Berglin live?

A. He lives now in Chicago, but formerly lived in Wisconsin.

Q. Has he ever lived in Baldwin County?

A. No sir.

Q. You have always represented him?

A. Yes.

Q. All the dealings that Misamore had relative to this land were had with you?

A. Why, practically everything yes. He has generally wrote to my brother, but he has never made any deals through him. He got an option extended at one time, but that's all.

Q. He did have <sup>some</sup> correspondence with your brother?

A. Yes, but it was all referred to me.

Q. How do you know that John Berglin did not give a deed to Mr. Misamore for this land?

A. Because it would have come to my attention.

Q. Mr. Berglin, Mr. Lowell lived on a place consisting of ten acres under fence?

A. Yes.

Q. Was that the ten acres Oswalt had a mortgage on?

A. Yes, an option on it; he had a mortgage on forty acres.

Q. You said that Oswalt did not purchase the land from John Berglin, and never said he did purchase it, which is correct?

A. He purchased it from John Berglin through me.

Q. How much did he pay?

A. \$250.00.

Q. Was that the full value of the place?

A. That was the terms I agreed to sell to Mr. Oswalt after the filing of suit.

Q. And was that the full value of the place?

A. We considered it was.

Q. Was that place worth \$650.00?

A. It might be to some.

Q. Did you give Oswalt credit for \$400.00 that he let Misamore have on the land?

A. No.

Q. Did you reduce the price to him on account of that mortgage?

A. No sir.

Q. In other words, \$250.00 was the full value of that house and

- A. There is one between Rosencrans and Lowell's, and one on the Lowell place. And one on the east side of the hill, about half of the section.
- Q. When did you see that last?
- A. A couple of weeks ago I went through there.
- Q. Was that one of the same signs you put up in 1917?
- A. Yes.
- Q. Misamore overlooked that one.
- A. Probably did.
- Q. Did not tear them down?
- A. No. It was probably too high; I nailed them up about ten feet.
- Q. Did Misamore have any signs on this land with his name as agent on them?
- A. No sir.
- Q. Did he have any signs on it?
- A. No.
- Q. He had a sign right across the road from this land, didn't he?
- A. I don't know whether he did or not. On the north side of the road he did have some signs.
- Q. This land was all lying out except the little place that Lowell lived on, and the little place that Rosencrans lived?
- A. Yes sir.
- Q. Is Rosencrans still living on the part that he had fenced up?
- A. Yes.
- Q. Has he ever bought it from you or your brother?
- A. No.
- Q. He is claiming it adversely to you, is he not?
- A. No.
- Q. Does he rent it from you?
- A. He is living there under conditions I spoke of a while ago.
- Q. About when did you make this arrangement with Mr. Rosencrans that you will fix up this title later?
- A. Before the filing of this suit.
- Q. About when?
- A. I think it was in June or July, 1916 or 1917.
- Q. Mr. Berglin, did Misamore after he got these deeds from the Schowalter family notify you or your brother that he claimed the land as his own?
- A. Yes.

- Q. Was or not that land in cultivation in August, 1917?
- A. Yes sir, had a crop on there.
- Q. I wish you would state whether or not shortly after Mr. Lowell was put on this land, you went over there and put up any signs on the land?
- A. Yes sir; I put up signs to the extent of about a dozen.
- Q. What was on those signs?
- A. No trespassing, A. O. Berglin, Agent.
- Q. Will you tell us as near as you can where those signs were erected?
- A. I had one on the northwest corner of Section 4; one right at the front of the house; one in front of Mr. Rosencrans, that is, the part he was on; then I put one on the extreme southwest corner of the North 1/2 of Section 4; then a number along the east line along the road to the end of the section at different points, and one right on top of a hill and it's up there now.
- Q. Do you know whether any of the others are still there?
- A. I have seen several there. The one in front of the house is still there.
- Q. You spoke of Mr. Rosencrans place, was he or not in August, 1917, living on any part of this land?
- A. He was living on the southwest quarter of the North 1/2 of Section 4.
- Q. Do you remember Mr. Misamore obtaining an option to buy any of this land - did you negotiate that transaction, handle it?
- A. Yes.
- Q. Do you know how Mr. Rosencrans came to be on that land.
- A. Mr. Misamore sold Rosencrans the land, in fact, I think right out. I don't think that he took into consideration anything of the option. While he had that option he sold Rosencrans a portion of the land.
- Q. Do you know whether or not Rosencrans has ever paid for that land?
- A. No sir, he has paid nothing on it.
- Q. After this suit in chancery between your brother, John Berglin, and Harry L. Misamore was decided, I wish you would state whether or not you had any agreement or arrangement with Mr. Rosencrans in reference to this land.

OBJECTION: Cross-respondent Charles J. Waterall objects to the question as calling for incompetent, irrelevant and immaterial testimony.

A. Why it was this. I went out immediately after the decision of the Supreme Court and I informed him of the fact that I would now have to collect for the option price, or otherwise I would have to dispossess him, as I was then contemplating a suit for having this quit-claim set aside. He said you need not involve me in that, for as soon as you clear the title, I am willing to pay you the option price on this land.

OBJECTION: Cross-respondent, Charles J. Waterall moves to exclude the answer on the ground that it is not responsive to the question.

Q. This arrangement you are speaking of, I wish you would state whether or not that occurred before or after the filing of the suit of John Berglin vs. Harry L. Misamore and others in Baldwin County, - the suit now pending?

A. It occurred before.

Q. Was there or not any agreement or arrangement between you, as agent of your brother, and Mr. Rosencrans as to how the land should be held pending that suit?

A. Yes.

Q. What was that arrangement?

A. The arrangement was that he would live there as holding possession for Berglin until this decision from the court.

Q. You are referring to the present suit?

A. Yes.

Q. Then what was to be done?

A. Then he was to pay \$25.00 per acre, the old option price.

Q. Was not your brother to give him a deed?

A. Yes.

Q. Do you know whether or not in August, 1917, Mr. Rosencrans was living on any portion of the North 1/2 of this Section 4, and whether or not he was cultivating it?

A. Yes sir he was.

Q. Did he or not have his family on that land?

A. Yes.

Q. Was any portion of the land he was living on under fence, and if so, what portion?

A. I presume there was possibly twenty acres under fence. I am not certain as to acres. He contemplated buying twenty acres and I think there is that much under fence.

Q. Under the same fence as now?

A. Yes.

Q. Has he lived on there since that time?

A. Yes, for about three years.

Q. How long did Mr. Lowell live in the northwest corner under the arrangement to which you have testified.

A. Somewhere around a year.

Q. Mr. Berglin, do you know anything about a mortgage on that ten acres in the northwest corner of this North 1/2 of Section 4, to the Oswalts?

A. Yes.

Q. Was that or not made during the time that Misamore had this option?

- A. Yes, it was during the first year of this option.
- Q. Do you know whether or not any arrangement or agreement had been made in reference to the sale of this land to Oswalt by your brother, John Berglin?
- A. No sir, there had been no agreement made whatever. At the time of the option or the suit in litigation in the Supreme Court, the Oswalts or Misamore sent up a deed requesting the sale of this ten acres, but without any remittance.
- Q. Sent it to whom?
- A. To my brother, and he referred the matter to me, and I consulted an attorney and he advised me not to accept it, because the deed had not been accompanied by a legal tender.
- Q. What I am trying to get at, is that subsequent to that time, did your brother make any arrangement about selling the Oswalts that land?
- A. No sir.
- Q. Did he make a deed in 1918?
- A. Yes, I think he did in the latter part of 1918.
- Q. He did ultimately sell them the land?
- A. Yes.
- Q. That was after this present suit was brought against Oswalt?
- A. Yes.
- Q. Mr. Berglin, this option you have been testifying about, did Misamore ever comply with the terms of that option?
- A. No sir, he did not comply with them at all.
- Q. I wish you would state whether or not that option was subsequently cancelled.
- A. It expired.
- Q. Was that before or after the suit down here in the chancery court at Mobile?
- A. It expired during the suit.
- Q. It expired without his having complied with the terms of the option.
- A. Yes.
- Q. Mr. Berglin, I wish you would state, if you know <sup>in</sup> whose name this property - the North 1/2 of Section 4, Township 7 South, Range 2 East - was assessed for taxation in 1917?

OBJECTION: Cross-respondent Charles J. Waterall objects to the question on the ground that it calls for incompetent, irrelevant and immaterial testimony, and on the further ground that the record is the best evidence.

- A. The property has always been assessed to John Berglin by A. O. Berglin, Agent, since 1904 up to the present date.
- Q. Do you know whether or not John Berglin, or you, as agent of John Berglin, have paid the taxes on that property?

A. Yes, I have the receipts.

CROSS EXAMINATION BY MR. WILLIAM MCLEOD:

Q. Where does John Berglin live?

A. He lives now in Chicago, but formerly lived in Wisconsin.

Q. Has he ever lived in Baldwin County?

A. No sir.

Q. You have always represented him?

A. Yes.

Q. All the dealings that Misamore had relative to this land were had with you?

A. Why, practically everything yes. He has generally wrote to my brother, but he has never made any deals through him. He got an option extended at one time,,but that's all.

Q. He did have <sup>some</sup> correspondence with your brother?

A. Yes, but it was all referred to me.

Q. How do you know that John Berglin did not give a deed to Mr. Misamore for this land?

A. Because it would have come to my attention.

Q. Mr. Berglin, Mr. Lowell lived on a place consisting of ten acres under fence?

A. Yes.

Q. Was that the ten acres Oswalt had a mortgage on?

A. Yes, an option on it; he had a mortgage on forty acres.

Q. You said that Oswalt did not purchase the land from John Berglin, and never said he did purchase it, which is correct?

A. He purchased it from John Berglin through me.

Q. How much did he pay?

A. \$250.00.

Q. Was that the full value of the place?

A. That was the terms I agreed to sell to Mr. Oswalt after the filing of suit.

Q. And was that the full value of the place?

A. We considered it was.

Q. Was that place worth \$650.00?

A. It might be to some.

Q. Did you give Oswalt credit for \$400.00 that he let Misamore have on the land?

A. No.

Q. Did you reduce the price to him on account of that mortgage?

A. No sir.

Q. In other words, \$250.00 was the full value of that house and

ten acres?

- A. Yes, we considered it was.
- Q. Is it or not?
- A. It is the real value; not a fictitious value.
- Q. What kind of a house is it?
- A. A two room house.
- Q. What would it cost to built it?
- A. Not exceeding \$150.00.
- Q. If the house is worth \$150.00, then you sold it to him for \$10.00 an acre?
- A. Yes.
- Q. Is that, in your judgment, the value of the land in this section?
- A. That is more than I would pay for it if I had to buy it.
- Q. Is that all it is worth in your judgment?
- A. Yes, it is.
- Q. Mr. Berglin, the cultivation that you spoke of, on direct examination, was only on the ten acres under fence and occupied by Mr. Lowell?
- A. Yes.
- Q. Did Rosencrans have any under cultivation?
- A. Yes.
- Q. There were only two pieces of the section under cultivation?
- A. Yes.
- Q. All that had ever been cultivated?
- A. Yes, for a long time. There might have been years ago.
- Q. In what month did you put up these twelve signs you spoke of?
- A. I think it was just right after Mr. Lowell moved out there--- in March or February, 1917.
- Q. How did you put them up?
- A. Nailed them on trees.
- Q. How many did you put up?
- A. About a dozen.
- Q. One on Lowell's place and one on Rosencrans place?
- A. Yes.
- Q. Do you know if anybody tore any of those signs down?
- A. I was told Misamore tore some of them down. No, I don't know. Some of them are still there.
- Q. The only one you know is there is the one on Lowell's place?

- A. There is one between Rosencrans and Lowell's, and one on the Lowell place. And one on the east side of the hill, about half of the section.
- Q. When did you see that last?
- A. A couple of weeks ago I went through there.
- Q. Was that one of the same signs you put up in 1917?
- A. Yes.
- Q. Misamore overlooked that one.
- A. Probably did.
- Q. Did not tear them down?
- A. No. It was probably too high; I nailed them up about ten feet.
- Q. Did Misamore have any signs on this land with his name as agent on them?
- A. No sir.
- Q. Did he have any signs on it?
- A. No.
- Q. He had a sign right across the road from this land, didn't he?
- A. I don't know whether he did or not. On the north side of the road he did have some signs.
- Q. This land was all lying out except the little place that Lowell lived on, and the little place that Rosencrans lived?
- A. Yes sir.
- Q. Is Rosencrans still living on the part that he had fenced up?
- A. Yes.
- Q. Has he ever bought it from you or your brother?
- A. No.
- Q. He is claiming it adversely to you, is he not?
- A. No.
- Q. Does he rent it from you?
- A. He is living there under conditions I spoke of a while ago.
- Q. About when did you make this arrangement with Mr. Rosencrans that you will fix up this title later?
- A. Before the filing of this suit.
- Q. About when?
- A. I think it was in June or July, 1916 or 1917.
- Q. Mr. Berglin, did Misamore after he got these deeds from the Schowalter family notify you or your brother that he claimed the land as his own?
- A. Yes.



- Q. Then followed this suit that you filed?
- A. Yes, we immediately filed suit on this matter.
- Q. Did you ever see before today Mr. Waterall or his son, young Mr. Waterall?
- A. No sir.
- Q. Did you know that Misamore was showing this land to Mr. Waterall, or other prospective purchasers in the summer of 1917?
- A. No.
- Q. Do you know how long that option ran for?
- A. One year, then they renewed for another year.
- Q. This place that Mr. Lowell lived on was improved by Misamore, himself, was it not?
- A. Yes.
- Q. Do you know what your brother paid for this land?
- A. He paid \$975.00 or something like that; \$3.00 an acre. I negotiated the deal; about \$960.00.
- Q. How frequently have you gone over this land in the last three years?
- A. Possibly once a month; something like that. Sometimes not that often, but usually about that much.
- Q. Was anything on this North 1/2 except the two places where houses were built, except for the signs that you mentioned, to indicate any actual possession of it so far as you know?
- A. No excepting ~~xxxx~~ there was a public road on both sides of it. No.
- Q. Who had those roads cut?
- A. Misamore.

REDIRECT EXAMINATION BY WM. G. CAFFEY:

- Q. How about the rights of way being cut through there?
- A. There were a number of rights of way cut through.
- Q. Those rights of <sup>are</sup> way/clearly defined so anybody going on the land could see them?
- A. Yes.