

ELVIN G. LOW,
Complainant,
VS.
ELIZABETH LOW,
Respondent.

1520
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 2360.

TESTIMONY TAKEN IN OPEN COURT ON
JANUARY 24, 1950

APPEARED: For Complainant

Messrs. Hybart, Chason & Stone

For Respondent

Hon. V. R. Jansen

Mr. Elvin G. Low, having been first duly
and legally sworn, testified as follows:

ON DIRECT EXAMINATION

By Mr. Chason

Q. Is this Mr. Elvin G. Low?

A. Yes sir.

Q. Where do you live, Mr. Low?

A. Captiva, Florida.

Q. Do you know Elizabeth Low?

A. Yes sir.

Q. Who is that?

A. She is my wife.

Q. Where does she live?

A. Captiva, Florida.

Q. Are you and Elizabeth Low both over the age of twenty-one years?

A. We are.

Q. Mr. Low, are you the owner and in possession of the land described
in paragraph two of the original Bill of Complaint?

MR. JANSEN: We object to the question. It calls for a conclusion
of the witness, a determination by the witness of the very
issue which the court has to decide, the question of ownership.

THE COURT: Overrule the objection and let him answer.

MR. JANSEN: We except.

MR. CHASON: Are you the owner and in possession of this land described in paragraph two of the original Bill of Complaint?

A. I am.

Q. Do you claim to own it in fee simple?

A. I do.

Q. Is there any other suit, other than this one, pending to test your title to, interest in or right to possession of said property?

A. None.

Q. Mr. Low, on October 11, 1943, did you execute a deed to Elizabeth Low, your wife, describing the property described in paragraph two of the original Bill of Complaint?

A. I did.

Q. Are you sometimes also known as E. G. Low?

A. That's the way I sign my name as a rule.

Q. For the purpose of identifying the land we are talking about, is this land described in paragraph two of the Bill of Complaint known as the Bear Point property?

A. That's right.

Q. Is it the only property you had full ownership of at Bear Point?

A. That's right.

Q. You had some undivided interest in something else but this is the only Bear Point property to which you had full ownership?

A. In my own right.

Q. Now, Mr. Low, on the day you executed the deed or on any subsequent date did you deliver that deed you executed to your wife, Elizabeth Low?

A. I did not.

Q. Did you have any intention of delivering the deed to her at that time or any agreement to deliver it at any future date?

MR. JANSEN: We object. It calls for a mental operation of the witness in his mind. Should be determined from circumstances and not from a statement of the witness.

MR. CHASON: It is in our Bill of Complaint. We want to prove our Bill of Complaint.

THE COURT: Overrule the objection.

MR. JANSEN: We except. WE want to renew our objection.

THE COURT: Overrule the objection.

MR. JANSEN: We except.

A. I did not deliver the deed.

Q. Mr. Low, that was a double-barrel question. Did you have any intention of delivering it at that time or any agreement to deliver it at any future date?

A. No sir.

MR. JANSEN: We move to exclude his answer on the same ground as stated in the objection.

THE COURT: Deny the motion.

MR. JANSEN: We except.

Q. Did this deed recite a consideration of one dollar and other good and valuable consideration?

A. It did.

Q. Was any consideration actually paid by Elizabeth Low to you?

A. None whatever.

Q. Now, at the time you executed this deed, did you retain custody and control of that deed?

A. I did.

Q. What did you do with it when you carried it away with you?

A. I put it in an inner compartment of my safe.

Q. Where was that safe kept after you moved out of the Robertsdale property?

A. In the camp cabin at Bear Point property.

Q. On this property?

A. Right.

Q. How long did you keep that deed in the safe?

A. Until I sold the safe to Nick Sawyer.

Q. About when was that?

A. August, 1945.

Q. When you sold the safe here what did you do with the deed?

A. Nick come down for the safe and other office equipment and I hurriedly took out everything and pushed it in boxes except the current stuff I wanted to keep I put in my brief case and I had the rest in first one box and then another.

Q. What kind of box did you put this in?

A. Put it in a carton, in a carbon paper box the original box.

Q. Now, immediately after this deed was placed in this box of carbon paper, did you go anywhere from Baldwin County, move anywhere?

A. In a few days we moved to Captiva, Florida.

Q. And you have been in Captiva, Florida since that time? Your home in Captiva, Florida?

A. It was our post office.

Q. I believe you testified in the beginning you were a non-resident of Alabama, you and your wife both and that you reside at Captiva, Florida?

A. That's right. Our post office is Captiva, Florida.

Q. Did your wife, Elizabeth Low, return to Baldwin County on or about February 18, 1946?

A. Yes sir.

Q. The last time you saw that deed you had executed prior to February 18, 1946, where did you say it was then?

A. I put it in a box of carbon paper. In August of 1945.

Q. Did you see that deed at any time between August, 1945 and February, 1946, or deliver it to anybody?

A. No.

Q. When did you first know the deed was no longer in that box of carbon paper?

A. In the latter part of July, 1947.

Q. 1947?

A. 1946.

Q. The latter part of July, 1946?

A. That's right.

Q. What was the occasion at that time of your learning that the deed was no longer in the box of carbon paper?

A. I had put signs up on the place for sale and had had a tentative deal for selling and I spoke to my wife about signing the papers and she said she wouldn't sign a paper, that it was in her name, she got the deed and recorded it.

Q. Up to that time had you ever delivered this deed to her or agreed to deliver it?

A. No sir.

Q. Had you ever told her where the deed was being kept?

A. No sir.

Q. Did you consent to her taking that deed out of the box of carbon paper and having it recorded?

A. No sir.

Q. Did you have any knowledge that she had taken it out of the box of carbon paper and had it recorded?

A. No sir.

Q. Now, is the deed which is attached a copy of the deed, the deed attached to your Bill of Complaint, is that a true and correct copy of the deed you executed?

A. It is.

Q. Now, did you continue to assess and pay taxes in your name on this property after the deed was drawn up and signed to your wife?

A. Yes sir.

Q. This deed, I believe, was drawn on February 11, 1943, October 11, 1943, did you soon thereafter assess and pay taxes on this property in your name?

A. I did.

Now, I would like to state to the Court that we can show by the original assessments - if he admits it it wont be necessary to bring the books, otherwise, we would like to have permission to bring the books to show that on October 13, 1943, two days after the date of this deed the property was assessed to E. G. Low, Beat 9, assessment number 955, for the year 1944 assessment,

and that on December 18, 1944 the assessment for 1945 was made by E. G. Low, Beat 9, being assessment number 987, for 1946 the assessment was made December 7, 1945 in the name of E. G. Low, Beat 13, being assessment number 386; that the 1947 assessment was copied assessment by the assessor made February 1, 1947 and assessed E. G. Low, Beat 13, being assessment number 408, that on February 10, 1948 there was a copied assessment by the assessor in the name of E. G. Low, Beat 13 being assessment number 431, that the 1949 assessment was made November 16, 1948 by Elizabeth Low in Beat 13, being assessment Number 435. Mr. Jansen, do you admit that it correct or would you like for us to introduce the original record.

MR. JANSEN: I have the assessments themselves I would like to offer, original assessments for 1946, 47 and 48.

MR. CHASON: These are for 1946, 49 and 50.

MR. CHASON: Dictates into the record:

IT IS AGREED that the assessments were made as just stated by the attorney for the Complainant in the name of E. G. Low from 1944 through 1948 inclusive.

MR. JANSEN: No.

MR. CHASON: Dictates into the record:

IT IS ADMITTED between the parties that the property involved in this suit was assessed by E. G. Low for the years 1944 through 1948 inclusive and that the tax receipts show that the taxes were paid in those years in the name of E. G. Low. It is further admitted that the property was assessed in the name of Elizabeth Low for the tax year 1949 and the taxes were paid in her name for 1949.

MR. CHASON: Resuming examination of witness:

Q. Now, Mr. Low, did you know that there was any change being made in this assessment from your name to that of Elizabeth Low?

A. No sir.

Q. Did you request the tax assessor to make that change?

A. No sir.

Q. When did you first know that it has been assessed to her?

A. When I came to the tax books and found it that way.

Q. Now Mr. Low, did you and your wife have a joint checking account in Captiva, Florida after you moved down there?

A. Yes sir, on the Fort Meyers bank.

Q. Do you remember about when that account was set up?

A. Shortly after we moved there in the fall of 1945.

Q. Were the taxes for 1946 and 7 - I will ask you, do you know which taxes were paid out of the joint account?

A. 1947 and 1948.

X Q. Do you know where she got the money - I will withdraw that, Do you know where the money came from to pay the 1949 taxes?

A. No sir.

Q. Did she have full authority to draw on that account and did you have full authority to draw on that joint account?

A. Yes sir.

Q. You say the taxes for 1947 and 1948 were paid out of that joint account?

A. Yes, paid it that way.

Q. Now, Mr. Low, do you know of any property owned by your wife out of which you could have recovered damages if your wife had conveyed this land to an innocent purchaser while this suit was pending or before the suit was pending?

A. No sir.

Q. This property is located in Baldwin County, Alabama, is it not, Mr. Low?

A. Yes sir.

Q. When you carried the deed away from Bay Minette did you tell your wife where you were going to put it?

A. No.

Q. Did you tell her you had placed it in the box of carbon paper when you went to Captiva, Florida?

A. No sir.

I believe that is all at this time.

ON CROSS EXAMINATION

By Mr. Jansen

Q. Mr. Low, in October, 1943 were you in business in Robertsdale, in this county?

A. No sir.

Q. When did you sell your business in Robertsdale?

A. In the fall of 1941.

Q. Did you own a home in Robertsdale?

A. I did.

Q. Were you living in that home from 1941 to 1943, October, 1943?

A. I was.

Q. Was that property in your name, Mr. Low?

A. It was.

Q. Now you and your wife had lived in the dwelling as a home for sometime had you not?

A. At Robertsdale, yes.

Q. During the period of your occupancy you had improved the place?

A. No sir.

Q. Planted shrubs, worked on the lawn?

A. The shrubs were planted before she came there and there was none planted after.

Q. When you got an offer to sell the place in Robertsdale you discussed with her the signing of the deed?

A. I ask her if she would sign it, yes sir.

Q. What did she tell you?

A. She was agreeable.

Q. Was there any discussion about her having something else, other interest?

A. No sir.

Q. Any discussion about the property at Bear Point?

A. No sir.

Q. Did you not at that time promise her that if she would sign the deed to the Robertsdale property conveying it to another man, allowing you to collect the entire consideration you would convey to her the property at Bear Point?

A. No sir.

Q. Mr. Low, when you sold the Robertsdale property you came up to Mr. Chason's office, you and Mrs. Low, and signed the deed, did you not? To the place at Robertsdale?

A. Yes sir.

Q. That was the same day you signed the deed to her for the Bear Point property?

A. Right.

Q. Both deeds acknowledged and executed in Mr. Chason's office the same day?

A. Right.

Q. And you left and went back to Robertsdale and continued to occupy the place until the first of November?

A. No sir.

Q. How long did you stay in the dwelling at Robertsdale after you delivered the deed?

A. Possibly to the twenty-seventh of October.

Q. About sixteen days after the deed was delivered to the purchaser?

A. From the eleventh, yes sir.

Q. During that time you undertook to move to your sister's cottage down at Bear Point?

A. Yes sir.

Q. Moved all your household effects down there?

A. That that we didn't sell, yes sir.

Q. That was next door or adjoining the property described in the deed to her?

A. Right.

Q. And on that property was a one room shack at that time?

A. Right.

Q. There was a good deal of property, furniture and so forth moved into this little one room shack?

A. No sir.

Q. Isn't it a fact that the family safe was moved in the cottage on your property and her property, the property in dispute?

A. It was not a family safe.

Q. Not a family safe. Is it a business safe?

A. Yes.

Q. Put in the one room cottage?

A. That's right.

Q. No one lived in that cottage for awhile did they?

A. No sir.

Q. Now, Mr. Low, at that time where was the deed that we are talking about here now?

A. The deed was in that safe.

Q. Back inside a brown envelope with a string sort of tied up?

A. Might possibly have been in that inside in the case.

Q. In the same envelope, - I will ask you if there were not three or four, - several insurance policies on the life of Elizabeth Low in there?

A. No sir.

Q. What else was in the envelope with that deed?

A. Nothing whatever. I don't think it was in an envelope.

Q. During that time where were your old deeds, assessments and surveys?

A. In a cardboard box.

Q. In a cardboard box?

A. That's right.

Q. Now, you had at the time of the conveyance to Mrs. Low, a quantity of old deeds and surveys, correspondence, concerning this property did you not?

A. Here in Bay Minette when the deed was made?

Q. No sir. At the time the deed was made you had a great quantity of papers?

A. That's right.

Q. They were not kept with the deed that was made to Mrs. Low?

A. No sir.

Q. When was the last time you saw these papers concerning the early history of that title?

A.

- A. When they were put in that box when I cleaned out the safe.
- Q. These (indicating) all in the safe?
- A. Yes sir.
- Q. When you cleaned out the safe and delivered it to the man almost two years after you made this deed, is that right?
- A. Yes, a year and about nine months I would say.
- Q. What did Mrs. Low have in that safe?
- A. Nothing whatever.
- Q. No papers of any kind?
- A. No sir.
- Q. Where did she keep her insurance policies?
- A. Had a deposit box in Mobile.
- Q. Did she have one at that time?
- A. I don't know.
- Q. You don't know if she had one in 1943?
- A. No sir.
- Q. Now, when you unloaded the safe and put these things in the box, did you have this in the same box you had the deed in?
- A. No sir.
- Q. In a different box?
- A. Absolutely.
- Q. Did you have any bonds in that box?
- A. No sir.
- Q. When they were carried down to Captiva they were all, all these papers were put in the closet were they not?
- A. Those old papers, yes sir.
- Q. Wasn't the deed put in the closet?
- A. No sir.
- Q. Weren't the bonds put in the same closet?
- A. No sir.
- Q. I will ask you, as a matter of fact, didn't you and Mrs. Low have twenty-seven thousand dollars in bonds made to you jointly that you kept right along with these other papers?
- A. No sir.
- Q. I would like to ask you to look at this telegram (handing witness telegram), dated the thirteenth of March, 1947, copy

of which I hand you.

MR. CHASON: We object to that. The original is the, would be the best evidence.

MR. JANSEN: Tell me if you sent a telegram dated March seventeenth or whatever date is in 1947, to Mr. V. R. Pritchard, in Mobile, of which is this a copy?

MR. CHASON: We would like for the Court to say. We object to it. It has no bearing on this case. It is a copy. The original would be the best evidence.

MR. JANSEN: On cross examination a statement was made against her interest. I expect to connect it up.

THE COURT: For what reason? This gentleman has testified that up until 1949 he knew nothing about the claim of Mrs. Low.

MR. CHASON: No. he first told July, 1946.

MR. JANSEN: I expect to show by the instrument that she paid taxes. Mr. Low directed the accountant preparing the income tax return to charge against her income the taxes she paid on this particular piece of land which is a statement by him that the taxes are a proper charge against her income.

THE COURT: Sustain the objection.

MR. CHASON: We except.

MR. JANSEN: We would like the telegram to be identified as Respondent's Exhibit "1".

Q. Mr. Low, you testified she paid taxes out of the joint account on this property?

A. She did.

Q. This cancelled check, is that in payment of that? (Handing witness cancelled check). Is that one of the cancelled checks drawn on the joint account in payment of taxes on this land?

A. That's right.

Q. In the amount of seven dollars and fourteen cents?

A. That's correct.

MR. JANSEN: We offer this in evidence as Respondent's Exhibit "2".

Q. Mr. Low, in June, 1949 did you see an advertisement in the Foley Onlooker, a newspaper published in Baldwin County, signed by your wife?

A. I did.

Q. In connection with this land?

A. I did.

Q. Is this one of the advertisements you saw? (Handing witness paper).

A. Yes sir.

Q. How many of those did you see, Mr. Low?

A. Only saw one.

Q. You don't remember the date of that publication?

A. Not the exact date. Latter part of June.

THE COURT: What's the pertinency of that, Mr. Jansen?

MR. JANSEN: To show that at the time they filed suit she was advertising and in adverse possession.

THE COURT: I don't see where that would have anything to do with it.

MR. JANSEN: Possession would have a good deal to do with it. She was in possession and advertising that possession.

THE COURT: I doesn't say she had proper proof of possession.

Q. Mr. Low, did you write this memorandum and put it on the door of that cottage down there? (Handing witness small piece of paper).

A. I did.

Q. Was that after you saw the advertisement in the newspaper?

A. No sir.

Q. Do you remember when it was?

A. Possibly six weeks before.

Q. Prior to the advertisement in the paper?

A. That's right.

MR. JANSEN: I would like to offer this in evidence and ask that it be identified as Respondent's Exhibit "3".

Q. Mr. Low, in February, 1947, did you order an abstract to this property from Mr. Ertzinger?

A. Not personally, no sir.

Q. Did you receive the abstract or a copy of the abstract on the Bear Point property?

A. It was handed to me, yes sir.

Q. Do you remember when that was?

A. No sir.

Q. That shows the recorded deed to your wife, does it not? That abstract?

A. I don't recollect.

Q. Mr. Low, just prior to the time the abstract was ordered, did you have a conversation with your wife in which the sale to a cousin or some relative in Ohio was mentioned, of the property or part of the property down there?

A. Yes sir.

Q. Did you tell her to write this cousin or relative about it?

A. Not that I remember.

Q. Did you ask her if she would sign the deed?

A. Yes sir.

Q. Did you later have a deed prepared?

A. I did.

Q. Did she sign it?

A. She did.

Q. Conveying her dower interest in the property in which you held an undivided interest?

A. That's right.

Q. Do you remember when that deed was made?

A. No sir.

Q. It was after this deed was recorded was it not?

A. I don't recall.

Q. It has been within the last twelve months or twenty-four months?

A. No sir. I can't remember the date on that.

Q. In addition to that you made a conveyance to your son of some property?

A. I did.

Q. Did you talk to your wife about signing that?

A. I did.

Q. She joined in the execution of that deed?

A. She did.

Q. Conveyed her dower interest?

A. Yes.

Q. That was a ~~my~~ gift to your son?

A. No sir.

Q. Did he pay for the property?

A. Yes sir.

Q. Was any of that consideration paid to her?

A. No sir.

Q. On the sale to your cousin in Ohio where she joined in the deed, any of that consideration paid to her?

A. That deed was never delivered.

Q. That sale still pending on a mix-up about the title, or lines or something?

A. No sir.

Q. It is not?

A. No sir.

Q. Have they abandoned the idea of buying that property?

A. Yes sir.

Q. There was a deed prepared and executed by both of you, you and your wife, to sell that property?

A. Yes sir.

Q. That was after this deed had been recorded and after you knew it had been recorded?

A. I still say I don't recollect.

Q. When did you first know about this deed being recorded, Mr. Low?

A. In the latter part of July, 1946.

Q. In 1946? Did you make any complaint to anybody for the next three years about the deed being in her name?

A. No sir.

Q. Did you ever demand from her a re-conveyance to you?

A. Yes sir.

Q. When?

A. Right then, when I found -

Q. In July, 1946?

A. Yes sir, that's right.

Q. What did she say?

A. Said she was going to hold it for her boys.

Q. She always maintained that up to the time you brought suit?

A. Right.

Q. Did you ever make another demand on her for the deed after July, 1946? In that conversation?

A. No sir.

Q. Now you went to Captiva and bought down there a piece of property on an island which is in your joint names is it not?

A. Yes sir.

Q. She has an undivided half interest on that island to that property which you bought, is that right?

A. I don't know exactly how to interpret that clause.

Q. Is the deed made to you jointly?

A. Right.

Q. Have any provision in the deed that on the death of one it goes to the other?

A. Yes sir.

Q. It's a joint deed with survivorship clause. Is that correct?

A. Yes sir.

Q. Is she should die you get her half and if you should die she gets your half?

A. Right.

Q. How much is that property worth, Mr. Low?

A. I paid fifteen thousand dollars for it.

Q. Any improvements made to it since you bought it?

A. Some.

Q. Has the land in that area gone up since that time?

A. I doubt it.

Q. When you testified she had no property out of which you could collect, that was an error was it not?

A. I didn't consider she owned it.

Q. Don't consider she owns it?

A. As long as I was alive.

Q. She is living on the property?

A. Yes sir.

Q. You say you live there, Mr. Low?

A. When I am there, yes sir.

Q. How long since you have been there?

A. I left the tenth of September, last fall.

Q. In 1949?

A. Right.

Q. You haven't been back since?

A. Yes sir.

Q. During the ten years of your marriage have you given her any other land?

A. No sir.

Q. During that time you have owned the property at Robertsdale, an undivided interest in the family property at Bear Point, this individual piece which was in your name and the property down in Florida?

A. No sir.

Q. You haven't owned all that?

A. Not at one time.

Q. During the ten years, this is the only piece of property you have ever made a deed to her for?

A. Yes sir.

Q. These sales you have made, has she ever gotten any of the proceeds from the purchase price paid to her?

A. It was entered in a joint account.

Q. When you sold the Robertsdale dwelling house was that put in a joint account?

A. Put in bonds.

MR. CHASON: May it please the Court, we don't see what this has to do with the delivery of this deed. Extending the trial. If the Court thinks it has any bearing -

THE COURT: I was wondering about that. Let him answer.

Q. It was put in a joint account?

A. Yes sir.

Q. I will ask you if the proceeds from the sale of the Robertsdale dwelling house was placed in a joint account?

A. No sir, joint bonds.

Q. Made payable to both of you?

A. That's right.

Q. Have you still got those bonds?

A. No sir.

Q. Where were they kept in 1943, 1944 and 1945?

A. In that safe.

Q. After the safe was sold where were they kept?

A. In a file of my own.

Q. In a box, a paper file?

A. My valuable papers in a folder given to me by the Commonwealth Life Insurance Company.

Q. When you went to Captiva they were still kept in that folder?

A. What were left.

Q. How many were left when you went to Captiva?

A. That, I can't say.

Q. Were they kept in the same room, the same closet, same part of the house as these papers (pointing to stack of papers)?

A. No sir.

Q. What part of the house was the bonds kept in?

A. In the bank at Fort Meyers.

Q. Did Mrs. Low have access to them?

A. No sir.

Q. Did she ever, at any time, have access to that file kept in the same house where you were living?

A. No sir.

Q. She never took any of those bonds did she Mr. Low?

A. No sir.

Q. She never got any of those bonds?

A. No sir.

Q. So far as you know she never cashed one?

A. No sir.

Q. Had them made out jointly to you both?

A. Yes sir.

Q. When you left Mr. Chason's office in October, 1943, did you go home together, you and Mr. Low?

A. Yes sir.

Q. Went back to your home in Robertsdale?

A. Yes sir.

Q. Did you have any conversation going back about the property?

A. You mean this piece on Bear Point? No sir.

Q. Mr. Low, were you in Mr. Chason's office in company with Mrs. Low when you made the deed up?

A. Yes sir.

Q. Were you?

A. Yes sir.

Q. Did you give any explanation as to why you wanted to sign such a deed?

A. No sir.

Q. She seated there the whole time?

A. Yes sir.

Q. Did you ask him to make up a deed to your wife to the property at Bear Point at that time, the time you signed it?

A. I did.

Q. And when you and your wife left there you had the deed in your possession?

A. I did.

Q. When you got to Robertsdale you put it in the safe?

A. I did.

Q. Is it your contention that she had nothing in that safe?

A. Yes sir.

Q. Is it your contention she had no access to that safe?

A. Yes sir.

Q. Do you know how she got these papers (indicating) Mr. Low?

A. No sir.

Q. Did you give them to her?

A. No sir.

Q. Do you remember having a conversation with her that if you ever got into any lawsuits about this property she would find these papers very helpful?

A. No sir.

Q. Isn't it true Mr. Low that you had some difficulties and you are now separated and you want to get back what you gave her during your marriage, is that not true?

A. No sir.

Q. This the only thing you ever gave her?

A. Yes sir.

Q. And now you want hat back, is that right?

A. Yes sir.

That's all

ON RE DIRECT EXAMINATION

By Mr. Chason

Q. Mr. Low, he asked you about her helping you develop the yard before you sold the place in Robertsdale, in 1943, when did you and this lady marry?

A. In the fall of 1939.

Q. She spoke of wanting to keep this property for her boys.

Are these boys by a former marriage, does she have boys by a former marriage?

A. She does.

Q. Do you have some by a former marriage?

A. I don't.

Q. The boy that was spoken of, deeding the property to, is that a boy by a former marriage of yours and not hers?

A. Right.

Q. He asked what happened to the money from that transaction, what was done with the money from that transaction?

A. I owed the boy the money, I handled it-

Q. How had it come in, had he actually paid you?

A. He had joined the Navy and when he went in I told him to send his money back to me and I would put it in bonds for him, carried those bonds and kept them for him all the time he was in the Navy and when he come out he was undecided what he wanted to do and he decided he wanted this piece of property and I took the money that was his and paid off my brother and sister and gave him my third.

Q. That property your son bought you owned an undivided one-third interest and his money bought the other two-thirds and you gave him your one-third?

A. That's right.

Q. He asked about the deed to the Florida property, when was that bought?

A. Bought in February, 1945.

Q. I show you here the original deed, is that the deed where you bought the Florida property and put it in the name of you and your wife jointly?

A. It is.

Q. He asked you amoment ago if you have given her any other than this piece of property, this title still remains in your joint names?

A. Right.

Q. You say this property down in Florida is your home?

A. Right.

Q. And it's worth about fifteen thousand dollars?

A. Yes sir.

MR. CHASON: We offer in evidence deed and ask that it be incorporated in the record and identified as Complainant's Exhibit "A", with leave of Complainant to withdraw the original when so incorporated.

(The following is a copy of the deed above introduced)

Oras S. Nelson
Reporter

"105373

THIS INDENTURE, Made this 26th day of February, A. D. 1945, between NORRIS B. HENLEY and EDITH M. HENLEY, husband and wife, of the County of Lee and State of Florida, parties of the first part, and E. G. LOW and FRANCES ELIZABETH LOW, husband and wife, of the County of Lee and State of Florida, parties of the second part:

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of Ten (\$10.00) Dollars, and other valuable considerations, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold to the said parties of or the survivor of them, as tenants by the entireties, the second part, / their heirs and assigns forever, the following described land, situate, lying and being in Lee County, Florida, to-wit:

Lots numbered Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), and Fifteen (15), in Block "B", of Unit 1, DEL SEGA SUBDIVISION, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 8, at page 21, together with all the household goods, furniture and personal property now located on said premises;

And the said parties of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said parties of the first part hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered
in presence of:

/s/ Cyrus S. Stewart

/s/ Norris B. Henley (SEAL)

/s/ Mildred W. Austin

/s/ Edith M. Henley (SEAL)

STATE OF FLORIDA)
COUNTY OF LEE)

Before me, the undersigned authority, this day personally came NORRIS B. HENLEY and EDITH M. HENLEY, husband and wife, to me well known to be the persons described in and who executed the foregoing instrument, and they acknowledged the execution thereof to be their free act and deed for the uses and purposes therein expressed.

WITNESS my hand and official seal this 26th day of February, A. D. 1945.

/s/ Cyrus S. Stewart
Notary Public

Notary seal affixed

My Commission expires Nov. 19, 1947.

Federal Documentary Stamps hereto affixed

Seal of the Circuit
Court hereto affixed

STATE OF FLORIDA, COUNTY OF LEE Filed for Record
This 12th day of March 1945, Record in Deed
Book 158 Page 186 and Record Verified.
D.T. FARABEE By Lois Farabee
Clerk Circuit Court Deputy Clerk
INDEXED

Q. After this deed had been signed up in my office did you continue to build on this property at Bear Point?

A. No sir.

Q. Put a shed or anything on that property?

A. After a period of time, yes.

Q. About when did you put the shed on that place?

A. In the summer of 1944.

Q. Before you knew she had possession of this deed?

A. Yes.

Q. While the deed was in the safe?

A. Yes sir.

Q. Now he showed you a check that the introduced in evidence.

When you opened the joint account each of you sign an authorization with the bank, a signature card?

A. Yes sir.

Q. In that joint account was it necessary for both of your names to be on the check to draw money out?

A. No sir.

Q. Could either one draw out money by signing his own individual name?

A. Yes sir.

Q. He asked about a deed that she joined in with you several years ago in a sale of ^{Low} estate property. Do you have the deed with you this morning?

A. I have it in that brief case.

Q. (Witness takes deed from brief case and hands it to Mr. Chason) This deed (indicating) from you and your wife, Elizabeth Law and some other parties to T. Watt Jones and Lucille Jones dated April 22, 1947, is that your wife's signature on that deed?

A. It is.

Q. Has it ever been delivered to anyone?

A. No sir.

Q. Have you all ever sold this property to the persons named as grantees in that deed?

A. No sir.

Q. Give it to them?

A. No sir.

Q. Mr. Jansen asked you in conclusion of his cross examination if this is the only property you have ever given your wife and now you are wanting it back, I will ask you, did you ever give this property to your wife?

A. No sir.

Q. Have you ever validly parted with your title to this property?

A. No sir.

That's all.

MR. JANSEN: I would like to renew my offer to introduce the telegram by which Mr. Low told the tax expert making the tax returns for Mrs. Low, wherein he directed the tax expert to charge against her income state and county taxes in the amount of seven dollars and fourteen cents as a proper charge to her.

MR. CHASON: I object to the statement by the counsel. The instrument offered by him does not state the matters just alleged by him as I read it. We ask that his statement be stricken from the record.

MR. JANSEN: I don't know where it could be a mis-statement, if the Court please. It's exactly what it says. Directing Mr. Pritchard in connection with her income tax return.

MR. CHASON: This does not say anything about her return.

MR. JANSEN to witness: Was Mr. Pritchard preparing her income tax return at that time, in March 13, 1947?

A. She had left me and I don't know.

Q. Did you get a telegram from Mr. Pritchard?

A. I don't recall.

MR. JANSEN: I still renew my offer.

MR. CHASON: We object.

THE COURT: Sustain the objection.

MR. JANSEN: We except.

MR. CHASON: That is Complainant's case.

Mrs. Elizabeth Low having been first duly
and legally sworn, testified as follows:

ON DIRECT EXAMINATION

By Mr. Jansen

Q. Are you Mrs. Elizabeth Low?

A. I am.

Q. Mrs. Low, where do you live?

A. Captiva, Florida.

Q. What business are you engaged in there?

A. Rent tourist cottages.

Q. Rent tourist cottages?

A. Yes sir.

Q. How many accommodations do you have for tourists?

A. Have two cottages and a garage apartment.

Q. Are those apartments located on the land that is referred to in this deed which Mr. Low discussed as being the property of both of you jointly?

A. They are.

Q. How long have you been there?

A. Since 1945.

Q. In addition to renting cottages what else do you do?

A. Pick up shells on the beach.

Q. There is a sale for shells to tourists?

A. Sell them wholesale-

MR. CHASON: We object. That has no bearing on the delivery of a deed in Alabama, what she does in Florida.

MR. JANSEN: One of the allegations is that she has no property out of which damages can be recovered.

THE COURT: Sustain the objection.

MR. JANSEN: We except.

Q. Mrs. Low, you say how long you have been there?

A. Since 1945, during the winter.

Q. Have you ever lived on the property described in this suit.

A. Yes sir.

Q. How long a period of time?

A. From about May to around the last of August or first of September.

Q. Of what year?

A. 1945, 1946.

Q. What improvements on this property involved in this case?

A. Well we had a bedroom added on, it was just one big room, had

windows put in, a bathroom and a kitchen.

Q. When did you first live on this property, what date did you move in?

A. In 1945 after we give up my sister-in-law's cottage and bought the land in Florida.

Q. Prior to that time what use did you make of the improvements on the property?

A. Hadn't made any.

Q. Was any property kept there, any household effects?

A. Certainly. All the furniture we saved, didn't sell, was in there.

Q. When was the furniture put in that one room?

A. When we gave up my sister-in-law's house.

Q. Do you remember when you lived in Robertsdale, in Baldwin County?

A. Yes sir.

Q. Where was that property located?

A. Just back across the railroad tract, back of our business.

Q. How large a house was it?

A. We considered it eight rooms.

Q. Do you remember what it sold for in 1943?

A. Twelve thousand dollars.

Q. Mrs. Low, when your husband found a buyer for that property and began to discuss a sale did you have any conversation about signing the deed?

A. He asked me would I sign the deed and I told him yes but if we ever have another home I would like to have it be mine so I could do as I pleased and always have a home to live in and in the discussion - how about giving you the seven and a half acres at Orange Beach and I said yes, some place where I would always have a home and he said I will have Mr. Chason make that up.

Q. When the Robertsdale property was sold did you come to Bay Minette to close the trade?

A. Yes sir.

- Q. Where was it closed?
- A. In Mr. Chason's office.
- Q. What deed did you sign that day?
- A. The deed to our home in Robertsdale.
- Q. Any other papers executed at that time?
- A. This deed giving me the seven and a half acres at Bear Point.
- Q. Had the deed been drawn before you got there?
- A. No sir.
- Q. What was the conversation with Mr. Low and Mr. Chason in your presence about that time?
- A. He told Mr. Chason he was going to give his wife the seven and a half acres at Bear Point, he had children and he wanted me to be protected so I would know I had a home.
- Q. Do you remember who furnished Mr. Chason the description?
- A. Mr. Low did.
- Q. Did he have it with him?
- A. Yes sir.
- Q. Do you remember whether he had the old deed?
- A. Had his original deed.
- Q. After the deed was signed were you two together?
- A. Certainly. We went home together.
- Q. How?
- A. In the car.
- Q. Anybody else in the car?
- A. This Mr. _____, the man who bought our place.
- Q. In the car going home was there any conversation about the deed?
- A. No, but he give me the deed.
- Q. When you got to Robertsdale what did you do with it?
- A. Put it in this paper envelope and put it in the safe. I had access to it.
- Q. The envelope here a regular file?
- A. It's one I always kept my insurance papers and personal papers in.