

NOV 5 - 1953

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1953-54

1 Div. 530

Walter M. Lindsey et al.,

v.

Claude M. Rogers,

Appeal from Baldwin Circuit Court,  
In Equity.

STAKELY, JUSTICE.

The original bill was filed by Claude M. Rogers (appellee) against Walter M. Lindsey (appellant) and W. R. Thompson to enforce a materialman's lien. The original bill was amended a number of times so that when the case was tried, it sought to establish a statutory lien for an amount alleged by the complainant Rogers to be due for materials furnished by Rogers to Lindsey under

2.

a contract with and on the credit of Lindsey and used in the construction of a house on a lot of land owned by Lindsey in Baldwin County, Alabama. There was a decree in favor of Rogers for the amount of the materials supplied by him, secured by a lien on the property of Lindsey. The appeal here is from the foregoing decree.

Assignment I. Demurrers were filed separately by Thompson and Lindsey. The demurrer of Thompson was sustained by the court and the cause dismissed as to him. Thereafter the bill was only against Lindsey. It is insisted that Thompson, as the contractor for the construction of the house, was a necessary party and that this ruling constitutes prejudicial error to the appellant, the owner of the land. Sections 56-57, Title 33, Code of 1940, are cited in support of this position. The contention is not correct. These statutes relate to situations where money due the contractor on the contract has been withheld or where the contractor is required to reimburse the owner when the owner has settled with the contractor.—

Sanitary Plumbing Co. v. Simpson, 200 Ala. 590, 76 So. 848;

Wood Lumber Co. v. Greathouse, 226 Ala. 644, 148 So. 125;

Emanuel v. Underwood Coal & Supply Co., 244 Ala. 436, 14 So. 2d 151.

If the suit concerns money in which the contractor is interested, the contractor obviously is a necessary party. In the case at bar, however, there is no effort to collect out of any funds owing to the contractor on the contract or which have been paid the contractor. The suit is a claim against the owner on the basis that the materials were furnished the owner solely on the credit of the owner and the prayer is for a lien on the land to the full extent of the claim. Since the statutes do not apply and the liability, if any, is several, Lindsey cannot complain of the dismissal as to Thompson. —  
City of Birmingham v. Corr, 229 Ala. 321, 157 So. 56.

3.

Assignment II. This assignment of error goes to the action of the court in overruling the appellant's motion to strike the amended bill of complaint. The demurrer of the respondent Lindsey to the bill of complaint was sustained by the court on July 25, 1951. In the decree the court allowed twenty days within which the bill might be amended. The bill was amended on August 16, 1951. The basis of the motion is that the bill was not amended within twenty days from July 25, 1951. There is no merit in this insistence. Ordinarily the matter of a dismissal rests in the court's discretion. —Brown v. Hawkins, 239 Ala. 291, 194 So. 885; 30 C. J. S. p. 960. We certainly are not willing to say that the court abused its discretion in failing to dismiss on the ground on which the motion is based. The case of Underwood v. Underwood, 162 Ala. 553, 50 So. 305, cited by the appellant, is not in point. In that case the complainant stood by and declined to amend his bill. Here the bill was amended.

Assignment III. The demurrer of the appellant, among other things, takes the position that the lien claims attached to and made a part of the bill of complaint do not show to whom the materials referred to were furnished. It is argued that a person claiming a lien should be required to state in the form filed by him under the provisions of § 41, Title 33, Code of 1940, to whom the materials were furnished. It may be noted in this connection that the bill specifically alleges that the complainant furnished the goods to Walter M. Lindsey at the request of Walter M. Lindsey. The affidavit in connection with the account states in part,

4.

"The attached account is an itemized statement of lumber, building materials, custom cabinet work, sold and delivered by the said Claude M. Rogers to Walter M. Lindsey at his building site, Lot One, Block 18, Hand Land Company Addition to the Town of Bay Minette, and that the said Claude M. Rogers has knowledge of the sale and deliver of the items listed in the attached itemized statement. . ."

However the matter under consideration is governed by § 41, Title 33, Code of 1940, which provides that the lien shall contain (1) the amount of the demand, (2) a description of the property and (3) the name of the owner or proprietor. The lien claim in the case at bar states the amount of the demand is \$3769.03 with interest from the 10th day of December, "for material furnished." It gives a legal description of the property. It names Walter M. Lindsey as the owner of the property. The lien claim as filed meets all the requirements of the foregoing statute. There was accordingly no error in this ruling of the court.

Assignment IV. The court rendered a final decree to the effect that Lindsey is indebted to Rogers in the sum of \$3,079.77 and further provided that Rogers has a lien on the land of Lindsey to secure payment of this amount. This brings us to the real question before the court on this appeal and that is whether the materials for which this suit is brought were sold directly by Rogers to Lindsey, so that Lindsey became personally responsible therefor. It must be kept in mind that a materialman's lien is a statutory creation and is not "allowable in equity independently of statute." —Emanuel et al. v. Underwood Coal & Supply Co., supra. In other words the lien must be perfected by compliance with statutory requirements and it is an essential statutory requirement that there be a valid contract of purchase

5.

between the materialman and the owner of the property. This may arise either by virtue of a positive agreement between the materialman and the owner of the property or where the statutory notice has been given by the materialman to the owner prior to the furnishing of the materials that the materialman will look to the owner for payment for the materials. —Buettner Bros. v. Good Hope Missionary Baptist Church, 245 Ala. 553, 18 So. 2d 76.

It is undisputed that originally Thompson and Lindsey entered into a written contract whereby Thompson was to build a residence for Lindsey for \$20,050.00, labor and materials to be furnished by Thompson. It became increasingly apparent that Thompson's financial condition was bad. He became delinquent with his account with Rogers and Rogers refused to continue to supply materials. Lindsey was anxious for Rogers to supply materials. As a result on September 26, 1950, he called Thompson and Rogers to his office and gave a check for \$3,000.00 to Thompson which was payable to Thompson. Thompson endorsed the check and handed it to Rogers. This left a balance of four hundred twenty-eight dollars and some cents. At that time Lindsey wrote and delivered a letter to Rogers as follows:

"Bay Minette, Alabama  
Sept. 26, 1950.

"Mr. Claude Rogers  
Rogers Building and Supply Company  
Bay Minette, Alabama

Dear Mr. Rogers:

"Confirming our conversation of this date I am forwarding a check for \$3,000.00 to Mr. W. R. Thompson as an advance payment on my contract, and to enable him to pay your past due account for materials you have furnished him for use in my home.

"It is my understanding that you are to furnish Mr. Thompson other materials to enable him to finish my home, but as regards these other materials I am responsible for the costs only to the extent of any unpaid balance due Mr. Thompson under the contract.

Yours very truly,  
Walter M. Lindsey".

WML:bb

6.

It will be noted from the foregoing letter that Lindsey restricted liability to Rogers to the extent of the unpaid balance due Thompson under the contract. However, Rogers testified and his testimony was corroborated by Thompson that subsequently it was orally agreed between Rogers and Lindsey that materials furnished from that time on the job by Rogers would be charged directly to Lindsey and that Lindsey would be responsible for the same. Such an agreement is denied by Lindsey and the young woman who typed the letter to which we have referred, testified that Rogers was present when the foregoing letter was dictated to her. It, therefore, appears that decision in this case turns on the question as to whether or not Lindsey, the owner, agreed with Rogers, the materialman, to be responsible for materials furnished after September 26, 1950, and used in the construction of the house on his property.

We are mindful of the presumption that attends findings of fact by the trial court when the case is heard orally before the court. In this case the court held that despite the letter of September 26, 1950, on or about October 13, 1950, there was an agreement made between Rogers and Lindsey whereby Lindsey would be directly responsible for materials supplied by Rogers on the job.

But apart from the oral testimony of the witnesses to which we have referred, there is written evidence which does not appear to sustain the finding of the court. We summarize this evidence as follows.

7.

(1). The invoice or charge ticket dated December 9, 1950, covering what is known as the McPhillips order, shows that the entire item was charged to the contractor Thompson and received by him. This is the principal item of materials furnished by Rogers. Rogers testified that he delivered the original copies of the invoice or charge ticket to Thompson because he had sold and charged the merchandize to Thompson.

(2). A number of checks dated respectively from September 29, 1950 to December 9, 1950, drawn on the Baldwin County Bank and signed by Walter M. Lindsey, were introduced in evidence. All of these checks which had notations thereon showing that they were for materials or labor used on the Lindsey job, were payable to W. R. Thompson.

(3). So far as we can ascertain from the record, there is no written entry made by Rogers showing a charge made by Rogers to Lindsey.

(4). On November 17, 1950, Rogers made a note for \$1,000.00 payable to the Baldwin County Bank. This note was endorsed by Lindsey. Subsequently the note was not paid by Rogers and Lindsey, by reason of his endorsement, was forced to pay the note. The note was then transferred by the bank to Lindsey. The proceeds of the note were credited to the contractor Thompson according to Rogers. According to Lindsey when Rogers asked if he would advance further moneys to Thompson to apply on his account, he refused. Rogers explained to Lindsey the dire circumstances in

8.

which Rogers was with his creditors and as a favor to Rogers, Lindsey went to the bank and endorsed the note to allow Rogers to get One Thousand Dollars. It is not reasonable to think that if Lindsey had purchased or agreed to pay for all items delivered after September 26, 1950, he would have endorsed a note for Rogers on November 17, 1950, and permitted the proceeds of the note to be credited to the account of the contractor Thompson.

In view of the foregoing written evidence we do not think that it can be reasonably said that Lindsey agreed to pay Rogers for materials delivered on the job after September 26, 1950. We believe that the ruling of the court in holding Lindsey responsible for these items is palpably wrong.

It results that the judgment of the lower court is reversed and the cause is remanded.

Reversed and remanded.

Livingston, C. J., Lawson and Merrill, JJ., concur.



THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 530

Walter M. Lindsey et al.

, Appellant,s

vs.

Claude M. Rogers

, Appellee,

From Baldwin  
in Equity

Circuit Court.

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

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

Witness, J. Render Thomas, Clerk of the Supreme  
Court of Alabama, this the 5th day of

November, 19 53

*J. Render Thomas*  
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 19 53-54

1st Div, No. 530

Walter M. Lindsey et al.,  
Appellant, s

vs.

Claude M. Rogers  
Appellee.

From Baldwin Circuit Court  
in Equity

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1951

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 53-54

To the Register of the Circuit Court of \_\_\_\_\_  
Baldwin County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court In Equity  
of said county, in a certain cause lately pending in said Court between  
Walter M. Lindsey et al., Appellant S,  
and  
Claude M. Rogers, Appellee,  
wherein by said Court it was considered adversely to said appellantS, were brought before our  
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant S:

Now, it is hereby certified, That it was thereupon considered, ordered, adjudged, and decreed by  
our Supreme Court on the 5th day of November, 1953, that said Decree  
of said Circuit Court be reversed and annulled, and the cause remanded to said court  
for further proceedings therein; and that it was further considered, ordered, adjudged, and decreed  
that the appellee - ~~xxx~~ Claude M. Rogers, pay - - - - -

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution  
issue. \_\_\_\_\_

Witness, J. Render Thomas, Clerk of the Supreme  
Court of Alabama, at the Judicial Department  
Building, this the 5th day of  
November, 1953  
J. Render Thomas  
Clerk of the Supreme Court of Alabama.

No. 2583

THE SUPREME COURT OF ALABAMA

October Term, 1953-54

1st Div., No. 530

Walter M. Lindsey et al.

Appellant, s

vs.

Claude M. Rogers

Appellee.

From Baldwin Circuit Court,  
in Equity

CERTIFICATE OF  
REVERSAL

The State of Alabama,

Baldwin County, } Filed

this 9th day of May 1953

Charles F. Jones  
Register

CLAUDE M. ROGERS,	)	
Complainant and	)	
Cross Respondent,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
WALTER M. LINDSEY,	)	IN EQUITY NO. 2583
Respondent and	)	
Cross Complainant.	)	

DECREE GRANTING MOTION TO STRIKE

This cause coming on to be heard on this date is submitted on the respondent and cross complainant's motion to strike the complainant and cross respondent's Bill of Complaint as last amended, which matter has been taken under consideration and has been considered by the Court, after which the Court is of the opinion that the complainant and cross respondent's Bill of Complaint as last amended constitutes a departure from the Bill of Complaint previously filed by him in this cause, upon consideration of all of which it is, therefore, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. The respondent and cross complainant's motion to strike the complainant and cross respondent's Bill of Complaint as last amended shall be and the same is hereby granted and the said amended Bill of Complaint is hereby stricken.

2. The complainant and cross respondent is allowed twenty (20) days from the date of this decree to file further pleadings in this cause, if he shall elect so to do.

ORDERED, ADJUDGED AND DECREED on this the 29th day of May, 1956.

Hubert M. Hall  
Judge

FILED

MAY 30 1956

ALICE L. BARK, Register

2583  
DECREE GRANTING MOTION TO  
STRIKE.

CLAUDE M. ROGERS,

Complainant and Cross  
Respondent,

VS.

WALTER M. LINDSEY,

Respondent and Cross  
Complainant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY NO. 2583

FILED

MAY 1956

ALICE A. DYCK, Registrar

*Respondent's Exhibit "1"*

*Ora B. McLean, Court Reporter*

*April 22-1952*

CLAUDE M. ROGERS,	)	
doing business as Rogers	)	
Builders Supply Company,	)	IN THE CIRCUIT COURT OF
	)	
Complainant,	)	BALDWIN COUNTY, ALABAMA
VS.	)	
	)	IN EQUITY
WALTER M. LINDSEY,	)	
	)	
Respondent.	)	

NOTICE TO PRODUCE WRITTEN INSTRUMENT

TO CLAUDE M. ROGERS, COMPLAINANT, AND TO C. LENOIR THOMPSON, AS HIS SOLICITOR:

Notice is hereby given to you to produce on the trial of this cause on April 21, 1952, or on any date to which the said cause may be continued, the original letter from Walter M. Lindsey to Mr. Claude Rogers, Rogers Builders Supply Company, Bay Minette, Alabama, dated September 26, 1950.

Upon your failure to produce the said original letter, secondary evidence of the said letter will be offered by the respondent.

Dated this 11th day of April, 1952.

*J. B. Blackburn*  
Solicitor for Respondent.

STATE OF ALABAMA )  
                          \*  
BALDWIN COUNTY    )

I hereby certify that I delivered a copy of the foregoing notice to C. LeNoir Thompson, Esquire, Solicitor for the complainant, on this the 11<sup>th</sup> day of April, 1952.

*J. B. Blackburn*  
Solicitor for Respondent.

(19)  
NOTICE TO PRODUCE WRITTEN INSTRUMENT.

CLAUDE M. ROGERS, doing business  
as Rogers Builders Supply Company,

VS. Complainant,

WALTER M. LINDSEY,

Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY

*Filed 4-11-52*  
*Alvin J. Rector*  
*Registrar*



C. LENOIR THOMPSON

Attorney-At-Law

BAY MINETTE, ALABAMA

PHONES : 5941  
7487

October 12, 1956

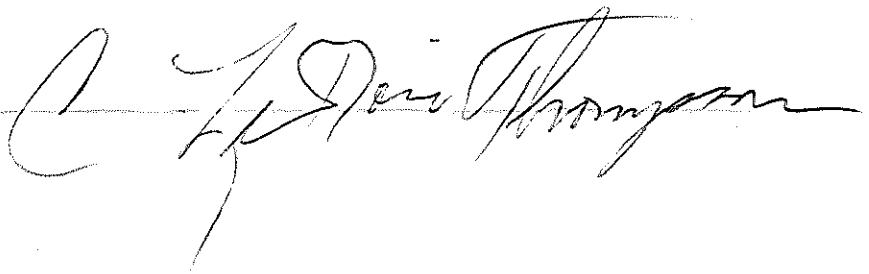
Mrs. Alice J. Duck  
Clerk of the Circuit Court  
Bay Minette, Alabama

Dear Mrs. Duck:

On September 4th or prior thereto I withdrew as attorney for Mr. Claude Rogers in the Rogers VS Lindsey matter making my withdrawal statement to Judge Hubert M. Hall in the presence of Mr. J. B. Blackburn and stated then and there my grounds for withdrawing.

I am returning to you a card concerning Rogers and Lindsey received from your office this morning.

Sincerely,

A handwritten signature in cursive script, reading "C. Lenoir Thompson". The signature is written in dark ink and is positioned below the "Sincerely," text.

CLT/LW

CLAUDE M. ROGERS,

Complainant and  
Cross Respondent,

VS.

WALTER M. LINDSEY,

Respondent and  
Cross Complainant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 2583

### MOTION TO STRIKE

Now comes the respondent and cross complainant, by his Solicitor, and moves to strike the amended Bill of Complaint filed in this cause by the complainant and cross respondent on, to-wit, June 28, 1954, and as grounds of said motion assigns, separately and severally, the following:

1. It is prolix.
2. It is irrelevant.
3. It is frivolous.
4. It is unnecessarily repeated.
5. It constitutes a departure.

6. It constitutes a departure from the amended Bill of Complaint that was filed in this cause by the complainant and cross respondent on which a decree was heretofore rendered in his favor, in that in the amended Bill of Complaint which was filed by the complainant and cross respondent and on which a decree was rendered in his favor the complainant and cross respondent alleged and attempted to prove that the building materials which are described therein were sold to the respondent and cross complainant, and after this cause was reversed by the Supreme Court of Alabama the complainant and cross respondent then filed in this cause an amended Bill of Complaint on June 28, 1954, in which he has alleged that the said building materials were sold to W. R. Thompson, who was the respondent and cross complainant's contractor, and that the respondent and cross complainant has failed to pay the complainant and cross respondent for the said materials sold to the said contractor from the balance due by the respondent and cross complainant to the said contractor, W. R. Thompson.

*J. B. Blackburn*  
Solicitor for respondent and cross  
complainant.



9. For further answer to the said amended Bill of Complaint, respondent alleges that on, to-wit, the 1st day of April, 1950, he entered into a written contract with W. R. Thompson, which contract is dated the 1st day of April, 1950, in which and by which the said contractor, W. R. Thompson, agreed to construct a residence on Lot 1 in Block 18 in the Hand Land Company's Addition to the Town of Bay Minette, and to furnish all labor and materials used in the construction of the said residence. After the execution of the said contract, the said W. R. Thompson commenced work on the residence described in the said contract. Respondent further alleges that the materials for which this suit is brought, if furnished, were furnished by the complainant to the said W. R. Thompson, who was also named as one of the respondents in this suit at the time it was filed. This respondent did not at any time enter into any contract with the said complainant as alleged in the said Bill of Complaint and this respondent did not at any time order from the said complainant any of the materials for which this suit is brought, nor did he agree with the complainant that he would pay for any of the said materials.

10. Respondent alleges that he had a conversation with the complainant, Claude M. Rogers, who is the same person as Claude Rogers, on, to-wit, September 26, 1950, in which the said respondent notified the said complainant that he would not be liable for any materials furnished by the said complainant to the said W. R. Thompson, except to the extent of any unpaid balance due by the respondent to W. R. Thompson under the said contract described above. The same information was given by the respondent to the complainant in a letter from the respondent to the complainant, dated September 26, 1950.

The said complainant, by a letter to the respondent dated September 26, 1950, agreed to supply the said W. R. Thompson additional materials to enable him to complete the respondent's said home and in the said letter the complainant distinctly agreed that his liability for payment of additional materials to be furnished to W. R. Thompson was limited to any balance due by the respondent

to Thompson under the said contract. The said letter reads as follows:

"Bay Minette, Alabama  
September 26, 1950

Mr. Walter M. Lindsey  
Bay Minette, Alabama

Dear Mr. Lindsey,

Confirming our conversation this date and in consideration of your advance this date to Mr. W. R. Thompson to enable him to pay up his past due account with me (said past due account consisting of monies due for materials furnished to him for use in your home such as windows, roofing and lumber, etc) I agree to supply Mr. Thompson with any other materials necessary in order to insure completion of your home including trim & mill-work doors, and cabinets, etc. It is agreed that your liability for payment for any of these other materials furnished Mr. Thompson is limited to any balance due Mr. Thompson under the contract.

Yours very truly,

(S) CLAUDE ROGERS  
Rogers Building Supply Co."

11. The complainant, Claude M. Rogers, who is the same person as Claude Rogers and C. M. Rogers, did not at any time comply with the provisions of Title 33, Section 37 of the 1940 Code of Alabama and furnish to this respondent the notice required by the said section and advise the respondent that the said complainant was furnishing materials to the said W. R. Thompson, for which he expected this respondent to pay.

A few days prior to November 17, 1950 the complainant notified the respondent that his creditors were pressing him, that he could make no collections from W. R. Thompson for materials furnished by the complainant to Thompson, and requested that the respondent make additional advances to the said W. R. Thompson under the said contract. Respondent notified the complainant at that time that he could not make further advances to the said contractor, W. R. Thompson, but agreed that he would assist the complainant in obtaining credit by endorsing a note for the complainant at the

Baldwin County Bank, Bay Minette, Alabama, in the amount of One Thousand Dollars (\$1,000.00). A note for \$1,000.00 from the complainant to the Baldwin County Bank was prepared on, to-wit, November 17, 1950, which note was dated November 17, 1950, due February 15, 1951, bearing interest from date at six percent (6%). The said note was signed by the complainant and endorsed by the respondent and delivered to the Baldwin County Bank as security for a loan made by the Baldwin County Bank to the said complainant. The complainant paid the interest due on the said note to April 15, 1951 and then declined to make further payments thereon. The said note was then endorsed by the Baldwin County Bank to the respondent and is now his property. The respondent claims of the complainant the sum of One Thousand Dollars (\$1,000.00) due on the said note and interest thereon from April 15, 1951. The said note contained a provision whereby the complainant waived his personal property exemptions and agreed to pay a reasonable attorney's fee for collecting or securing the said note. The respondent alleges that the sum of Two Hundred Dollars (\$200.00) is a reasonable fee for the collection of the said note, which he herewith claims in addition to the said sum of \$1,000.00 and interest, as provided above.

The first notice which this respondent had from the complainant that the complainant considered him liable for the amounts for which this suit was brought was when the said complainant filed his original claim of lien in the Probate Court of Baldwin County, Alabama. At the time the said original claim was filed the said contractor, W. R. Thompson, <sup>who</sup> was also made a party to this suit, had not completed his contract and the respondent was then indebted to the said W. R. Thompson in the sum of, to-wit, Seven Hundred Forty-two and 84/100 Dollars (\$742.84). On December 12, 1950 respondent notified the said W. R. Thompson that he could not make additional payments to him under the said contract because the claim of lien had then been filed and that it would be necessary that all future payments be made to the complainant and to the said W. R. Thompson. The said W. R. Thompson then refused to do further

work under the contract, defaulted on it and the said respondent was required to complete the contract as provided therein, and in completing the said contract this respondent expended the sum of Six Hundred Nineteen and 57/100 Dollars (\$619.57) over and above the said balance of \$742.84 which was due at the time the claim of lien was filed.


#### PRAYER FOR PROCESS

Respondent prays that this answer be taken and treated in all respects as a cross bill and that the usual notice thereof in the form and manner prescribed by law be given to the complainant, requiring him to appear and plead, answer or demur to this cross bill within the time required by law.

#### PRAYER FOR RELIEF

Respondent and Cross Complainant prays for the following separate and several relief:

1. That it be adjudged and decreed that he is not indebted to the complainant in any amount and that the complainant be required to cancel and satisfy the two claims of lien described in complainant's amended Bill of Complaint in this cause.
2. That the Court will make and enter a proper order or decree adjudging that the complainant is indebted to the respondent on the above described promissory note for the sum of \$1,000.00, interest and attorney's fee.
3. Respondent and Cross Complainant further prays that such other orders be made and decrees rendered as may be requisite and proper in the premises.

  
Solicitor for Respondent.

CLAUDE M. ROGERS,  
doing business as Rogers  
Builders Supply,

Complainant.

VS

WALTER M. LINDSEY,

Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

IN EQUITY

Comes the complainant and cross-respondent in said cause, and for  
answer to counts nine through eleven, says:

1.

As to count nine he denies the allegation thereof.

2.

As to count ten he says that he admits the receipt of said letter,  
but did not read it at the time of receipt, nor did he read the letter  
which was typed by the respondent and cross-complainant for his signa-  
ture, but desiring to obtain the unpaid balance of Thirty Four Hundred  
Twenty Eight and 03/100 (\$3428.03) dollars your complainant signed what  
was handed him, and on being informed later of the numerous variances  
from the written contract by the respondent and his contractor, your  
complainant refused to furnish ~~me~~ further material although the respondent  
had advised him on September 26, there was more than Eight Thousand (\$8000.00)  
Dollars available to pay for material, and during such conversation your  
complainant informed the respondent again of the McPhillip's contract, and  
verbally instructed the respondent to withhold approximately Three Thousand  
(\$3000.00) Dollars for said contract. However, because of the variance  
mentioned your complainant believed that no contract existed, and that he  
would not make further delivery, and so informed the respondent prior to  
October 13th.

And that complainant then entered into an agreement with respondent to  
make delivery of such items as had been arranged for or might be needed for  
use of the house, subject of this action, and the respondent verbally agreed  
to be liable, and to pay for all such material, where upon delivery were  
begun and were made regularly and frequently to the site of construction  
in accordance with verbal agreement wherein stated.

As to count eleven he denies the allegation thereof.  
Attorney for Complainant and  
Cross-Respondent.



(15)

Rogers

✓

Sunday

Answer to Cross-  
Bill.

Filed: April 22, 1952.

Walter J. Madbury, Jr.  
Judge

TO WALTER M. LINDSEY:

You will take notice that the undersigned, Claude M. Rogers, claims a lien upon the following described land, the buildings, and the improvements located thereon, viz., Lot one Block 18 Hand Land Company addition to the town of Bay Minette together with all improvements appurtenances thereunto belonging of which you are the owner or proprietor. The amount sought to be secured by said lien is Three Thousand Six Hundred Fifty-Nine Dollars and 67/100 (\$3659.67) and is due and owing for material furnished on said buildings or improvements and is due and owing to the undersigned from W. R. Thompson, the original contractor.

Witness my hand this the 11th day of December, 1950.

Claude M. Rogers.

CLAUDE M. ROGERS,  
doing business as Rogers  
Builders Supply Company,

Complainant,

VS.

WALTER M. LINDSEY,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

AFFIDAVIT DENYING CORRECTNESS OF SWORN  
STATEMENT.

Now comes the respondent, Walter M. Lindsey, and denies  
on information and belief the correctness of the sworn account  
attached to and made a part of the amended Bill of Complaint in this  
cause.

Affiant further deposes and says that he denies liabil-  
ity on the said account and that he disputes the whole of the said  
account.

Walter M. Lindsey

Respondent.

Sworn to and subscribed before me on  
this the 11th day of April, 1952.

Mary Lou Blackburn  
Notary Public, Baldwin County, Alabama.

20  
AFFIDAVIT DENYING CORRECTNESS  
OF SWORN STATEMENT.

CLAUDE M. ROGERS, doing business  
as Rogers Builders Supply,

VS. Complainant,

WALTER M. LINDSEY,  
Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY

*Filed: April 22, 1952.*

*J. Fair J. Mableberry Jr.  
Judge.*

*W. Lindsey*

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY. NO. 2583

DEMURRER.

Now comes Walter M. Lindsey, one of the Respondents named in this suit and amends his demurrer, heretofore filed in this suit and for amended demurrer to the amended Bill of Complaint filed in this cause, says:

1. There is no equity in the bill.
2. It is multifarious.
3. There is a misjoinder of parties respondent.
4. The allegations of the Bill of Complaint are vague, indefinite and uncertain.
5. No facts are alleged to show that the Complainant is entitled to a lien on the property of this Respondent.
6. The Bill of Complaint does not allege to whom the Complainant furnished materials.
7. The Bill of Complaint does not allege with whom the Complainant contracted to furnish the materials referred to in the Bill of Complaint.
8. It is not alleged that the materials for which this suit is brought were furnished to the Respondent, Walter M. Lindsey.
9. It is not alleged, except by way of conclusion, that the materials for which this suit is brought were furnished to the Respondent, Walter M. Lindsey.
10. The "Exhibit A" referred to in the amended Bill of Complaint is not attached thereto and it is, therefore, incomplete.
11. It does not appear that notice of alleged lien was given to Respondent, Walter M. Lindsey.

12. The Bill of Complaint does not allege what materials were furnished to the Respondents.

13. No contract between Complainant and Respondent, Walter M. Lindsey, is alleged.

14. It is not alleged with whom Respondent, Walter F. Lindsey, contracted to procure building materials.

15. It is not alleged when said contract was made.

16. It is not alleged when the materials were furnished.

17. The use of the word "and/or" in the Bill of Complaint renders the averments of the bill prolix, equivocal and uncertain.

Now comes Walter M. Lindsey, one of the Respondents named in this suit, and demurs to Paragraph Number One of the amended Bill of Complaint filed in this cause and as grounds for demurrer to the said paragraph, sets down and assigns, separately and severally, grounds numbered one (1) through seventeen (17), both inclusive, as shown above in the same manner as though the said grounds of demurrer were rewritten here.

Now comes Walter M. Lindsey, one of the Respondents named in this suit, and demurs to Paragraph Number Two of the amended Bill of Complaint filed in this cause and as grounds for demurrer to the said paragraph, sets down and assigns, separately and severally, grounds numbered one (1) through seventeen (17), both inclusive, as shown above in the same manner as though the said grounds of demurrer were rewritten here.

J. B. Blackburn

Solicitor for Respondent, Walter M. Lindsey.

CLAUDE M. ROGERS, d/b/a  
ROGERS BUILDERS SUPPLY  
COMPANY,

COMPLAINANT,

VS.

WALTER M. LINDSEY and  
W. R. THOMPSON,  
RESPONDENTS.

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

NO. 2583

DEMURRER

Now comes W. R. Thompson, one of the  
Respondents named in this suit, and for demurrer to the  
amended Bill of Complaint filed in this cause, says:

1. There is no equity in the bill.
2. It is multifarious
3. There is a misjoinder of parties  
respondent.

4. The allegations of the Bill of  
Complaint are vague, indefinite and uncertain.

HORNE & BRANTLEY

BY: Albert M Brantley  
Solicitors for Respondent,  
W. R. Thompson.

Thompson  
L. C. Brown

(6)

FILED  
MAY 12 1951  
ALICE L. DUCK, Register



CLAUDE M. ROGERS,  
d/b/a/ Rogers Builders  
Supply Company,  
Complainant,  
VS  
WALTER M. LINDSEY and  
W. R. THOMPSON,  
Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY. NO. 2583

DEMURRER.


Now comes Walter M. Lindsey, one of the Respondents named in this suit, and for demurrer to the amended Bill of Complaint filed in this cause, says:

1. There is no equity in the bill.
2. It is multifarious.
3. There is a misjoinder of parties respondent.
4. The allegations of the Bill of Complaint are vague, indefinite and uncertain.
5. No facts are alleged to show that the Complainant is entitled to a lien on the property of this Respondent.
6. The Bill of Complaint does not allege to whom the Complainant furnished materials.
7. The Bill of Complaint does not allege with whom the Complainant contracted to furnish the materials referred to in the Bill of Complaint.
8. It is not alleged that the materials for which this suit is brought were furnished to the Respondent, Walter M. Lindsey.
9. It is not alleged, except by way of conclusion, that the materials for which this suit is brought were furnished to the Respondent, Walter M. Lindsey.
10. The "Exhibit A" referred to in the amended Bill of Complaint is not attached thereto and it is, therefore, incomplete.

Now comes Walter M. Lindsey, one of the Respondents named in this suit, and demurs to Paragraph Number One of the

amended Bill of Complaint filed in this cause and as grounds for demurrer to the said paragraph, sets down and assigns, separately and severally, grounds numbered one (1) through ten (10), both inclusive, as shown above in the same manner as though the said grounds of demurrer were rewritten here.

Now comes Walter M. Lindsey, one of the Respondents named in this suit, and demurs to Paragraph Number Two of the amended Bill of Complaint filed in this cause and as grounds for demurrer to the said paragraph, sets down and assigns, separately and severally, grounds numbered one (1) through ten (10), both inclusive, as shown above in the same manner as though the said grounds of demurrer were rewritten here.

  
Solicitor for Respondent, Walter M. Lindsey.

CLAUDE M. ROGERS,  
d/b/a/ Rogers Builders  
Supply Company,

Complainant,

VS.

WALTER M. LINDSEY and  
W. R. THOMPSON,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY. NO. 2583

#### DEMURRER

Now comes Walter M. Lindsey, one of the Respondents named in this suit, and for demurrer to the Bill of Complaint filed in this cause, says:

1. There is no equity in the bill.
2. It is multifarious.
3. There is a misjoinder of parties respondent.
4. The allegations of the Bill of Complaint are vague, indefinite and uncertain.
5. No facts are alleged to show that the Complainant is entitled to a lien on the property of this Respondent.
6. The Bill of Complaint does not allege to whom the Complainant furnished materials.
7. The Bill of Complaint does not allege with whom the Complainant contracted to furnish the materials referred to in the Bill of Complaint.

Now comes Walter M. Lindsey, one of the Respondents named in this suit, and demurs to the second paragraph of the Bill of Complaint filed in this cause and as grounds for demurrer to the said paragraph, sets down and assigns, separately and severally, grounds numbered one (1) through seven (7), both inclusive, as shown above in the same manner as though the said grounds of demurrer were rewritten here.

Now comes Walter M. Lindsey, one of the Respondents named in this suit, and demurs to the third paragraph of the Bill of Complaint filed in this cause and as grounds for demurrer to the said paragraph, sets down and assigns, separately and severally,

grounds numbered one (1) through seven (7), both inclusive, as shown above in the same manner as though the said grounds of demurrer were rewritten here.

J. B. Blackburn.  
Solicitor for Respondent, Walter M.  
Lindsey.

STATE OF ALABAMA

BALDWIN COUNTY

Before me ~~C. L. BENOIR~~ THOMPSON, a Notary Public personally appeared  
CLAUDE M. ROGERS who being duly sworn deposes and says: That the  
attached account is an itemized statement of lumber, building materials,  
custom cabinet work sold and delivered by the said CLAUDE M. ROGERS to  
WALTER M. LINDSEY at his building site, Lot one Block eighteen Hand Land  
Company addition to the town of Bay Minette and that the said CLAUDE M.  
ROGERS has knowledge of the sale and deliver of the items listed in the  
attached itemized statement and that said account so stated is due  
and unpaid to the CLAUDE M. ROGERS d/b/a ROGERS BUILDERS SUPPLY.

Claude M. Rogers

Sworn to and subscribed before me on this the 16 day of December,  
1950.

C. L. B. Thompson  
Notary Public, Baldwin County, Alabama.

SOLD TO WALTER M. LINDSEY, IN CARE OF BILL THOMPSON:

September 26, 1950	Balance due after receiving \$3,000 chk.	\$ 428.03
November 10, 1950	180 ft. shoerold @ 2.00	3.60
	8 bd. ft. 1 x 4 @ 160.00	1.28
		<u>\$ 4.88</u>
	Tax	.09
		<u>\$ 4.97</u>
November 14, 1950	Cabinet Hinges	\$ 5.90
	Tax	.11
		<u>\$ 6.01</u>
November 15, 1950	46 bd. ft. 1 x 12 #1 @ 140.00	\$ 6.44
	26 bd. ft. 1 x 6 #2 @ 100.00	2.60
	7 ft. Ast.	.70
		<u>\$ 9.74</u>
	Tax	.19
		<u>\$ 9.93</u>
November 20, 1950	Hardware	\$ 13.43
November 21, 1950	3 gallons C.W. paint @ 4.50	\$ 13.50
	Tax	.27
		<u>\$ 13.77</u>
November 16, 1950	26 bd. ft. 1 x 12 #2 @ 125.00	\$ 3.25
	15 bd. ft. 5/4 x 12 #1 @ 150.00	2.25
		<u>\$ 5.50</u>
	Tax	.11
		<u>\$ 5.61</u>
December 4, 1950	2 Pr. E 1618 Cabinet Hinges	
	1 E 9485 Ditto Catch	
	1 E 485 Ditto Pull	
	1 E 01622 Elbow Catch	\$ 2.50
	Tax	.05
		<u>\$ 2.55</u>
December 9, 1950	Millwork on contract	\$2,792.00
	Tax	55.81
		<u>\$2,847.81</u>
December 9, 1950	1 gallon 5900	\$ 4.50
	1 gallon C.W. white	4.85
	2 astragle	2.00
		<u>\$ 11.35</u>
	Tax	.23
		<u>\$ 11.58</u>
November 9, 1950	1 mantal board	\$ 18.50
	Tax	.37
		<u>\$ 18.87</u>
September 6, 1950	128 bd. ft. Rock Lath @ 60.00	\$ 7.68
	Tax	.15
		<u>\$ 7.83</u>
September 6, 1950	6 sks. Keene Cement @ 2.75	\$ 16.50
	Tax	.33
		<u>\$ 16.83</u>
	133 bd. ft. 2 x 4 @ 90.00	\$ 11.97
	Tax	.24
		<u>\$ 12.21</u>

September 8, 1950	Angle still for wds. Tax	\$ 104.00 2.08 <u>\$ 106.08</u>
September 5, 1950	Still lintels Fire place material 18 argus block @ 80¢ Tax	\$ 7.50 85.00 14.40 \$ 106.90 2.14 <u>\$ 109.04</u>
September 22, 1950	5 gallons Newvitic acid @ 2.50 Tax	\$ 12.50 .24 <u>\$ 12.74</u>
September 21, 1950	4 Sks. finish lime @ 1.25 Tax	\$ 5.00 .10 <u>\$ 5.10</u>
September 21, 1950	10 bags M.H.M. @ 95¢ deadend felt Tax	\$ 9.50 3.00 \$ 12.50 .26 <u>\$ 12.76</u>
September 22, 1950	4 Sks. Cement @ 2.50 Tax	\$ 10.00 .20 <u>\$ 10.20</u>
September 20, 1950	106 Len ft. 3" Brown @ 5.00 160 Len ft. scremole @ 2.00 48 bd. ft. 1 x 4 SWS # 1 @ 130.00 Tax	\$ 5.30 3.20 6.24 \$ 14.74 .30 <u>\$ 15.04</u>
September 20, 1950	10 bags F.H.M. @ 95¢ Tax	\$ 9.50 .18 <u>\$ 9.68</u>
September 20, 1950	280 Len ft. scremole @ 2.50 Tax	\$ 7.00 .14 <u>\$ 7.14</u>
September 14, 1950	100 bd. ft. 1 x 4 @ 95.00 200 ft. 3" crown mold @ 5.00 16 bd. ft. 1 x 6 @ 95.00 Tax	\$ 9.50 10.00 1.52 \$ 21.02 .42 <u>\$ 21.44</u>
September 12, 1950	1 keg #8 casin 2 pas metallath Tax	\$ 12.00 2.43 \$ 14.43 .28 <u>\$ 14.71</u>
September 12, 1950	34 bd. ft. 1 x 5 #2 @ 95.00 64 bd. ft. 1 x 12 # 1 @ 125.00 160 ft 3" crown mold @ 5.00 3 sheets metal lath @ 45.00 Tax	\$ 3.23 8.00 8.00 3.65 \$ 22.88 .46 <u>\$ 23.34</u>
October 13, 1950	20 bd.ft. 1 x 6 @ 100.00 Tax	\$ 2.00 .04 <u>\$ 2.04</u>
October 17, 1950	76 bd. ft. 1 x 6 (CM) @ 110.00 Tax	\$ 8.36 .17 <u>\$ 8.53</u>
October 20, 1950	72 sq. ft. alumin screen @ 15¢ Tax	\$ 10.80 .21 <u>\$ 11.01</u>

October 25, 1950	2 bags M.M.H. @ 95¢	\$ 1.90
	Tax	.03
		<u>\$ 1.93</u>
October 26, 1950	1 gallon shalok @ 5.50	\$ 5.50
	2 gallons 5900 @ 4.50	9.00
	1 ironing board @ 15.75	15.75
		<u>\$ 30.25</u>
	Tax	.61
		<u>\$ 30.86</u>
October 26, 1950	160 len ft. 3" crown @ 4.50	\$ 7.20
	Tax	.15
		<u>\$ 7.35</u>
October 19, 1950	1 set windows 28 x 28 @ 5.50	\$ 5.50
	Tax	.11
		<u>\$ 5.61</u>
October 30, 1950	1 telephone cabinet	\$ 12.50
	Tax	.25
		<u>\$ 12.75</u>
November 1, 1950	2 gallons 5900	\$ 9.00
	Tax	.18
		<u>\$ 9.18</u>
November 1, 1950	2 gallons flat wall white paint	\$ 7.00
	Tax	.14
		<u>\$ 7.14</u>
November 4, 1950	2 gallons 5900 @ 4.50	\$ 9.00
	Tax	.18
		<u>\$ 9.18</u>
November 6, 1950	3 sheets 1/4 x 1 x 8 @ 4.50	\$ 13.50
	1 sheet 3/4 x 1 x 8 @ 10.85	10.85
	10 bd. ft. 5/4 x 12 (I) @ 125.00	1.25
		<u>\$ 25.60</u>
	Tax	.51
		<u>\$ 26.11</u>
November 7, 1950	1 gallon of 5900 @ 4.50	\$ 4.50
	1 gallon of white paint @ 3.50	3.50
		<u>\$ 8.00</u>
	Tax	.16
		<u>\$ 8.16</u>
November 7, 1950	5# nails @ 15	\$ .75
	1 sack M.M.H. @ 95¢	.95
		<u>\$ 1.70</u>
	Tax	.04
		<u>\$ 1.74</u>
November 7, 1950	hardware	\$ 30.06
	Tax	.60
		<u>\$ 30.66</u>

TOTAL DUE AND UNPAID

**\$3,769.03**



2583

2.

Claude M. Rogers d/b/a  
Rogers Builders Supply  
Complainant

V5

Walter M. Lindsey and  
W. R. Thompson,  
Respondents

FILED

DEC 16 1950

ALICE J. DUCK, Register

CLAUDE M. ROGERS,  
doing business as Rogers  
Builders Supply Company,

Complainant,

VS

WALTER M. LINDSEY,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

NOTICE TO PRODUCE WRITTEN INSTRUMENT

TO WALTER M. LINDSEY, RESPONDENT, AND TO J. B. BLACKBURN, AS HIS SOLICITOR:

Notice is hereby given to you to produce on the trial of this cause  
on April 22, 1952, or on any date to which the said cause may be continued,  
the cancelled check in payment for the items listed on your letter of Dec-  
ember 9th as follows:

Aug. 15, 1950	---	\$300.00	(on electrical work)
Sept. 23, 1950	---	12.50	(on labor)
Sept. 27, 1950	---	524.77	(on plaster-hardware- labor)
Oct. 4, 1950	---	21.91	(on paint)
Oct. 7, 1950	---	24.50	(on labor)
Oct. 7, 1950	---	43.78	(On Stone)
Oct. 13, 1950	---	112.16	(cement & paint)
Oct. 13, 1950	---	224.46	(Alexander on Sink)
Oct. 17, 1950	---	19.86	(Alexander on plb. supplies )
Oct. 21, 1950	---	280.25	(on labor)
Oct. 11, 1950	---	221.25	( on labor)
Oct. 21, 1950	---	503.04	( on Iron work)
July 22, 1950	---	503.76	(Rogers - flooring)
Aug. 5, 1950	---	500.00	(on tile)
Sept. 11, 1950	---	197.67	(on hardware)
Oct. 28, 1950	---	291.00	(on lbr. & plumber 47.00)
Nov. 4, 1950	---	195.50	(on lbr & supplies)
Sept. 26, 1950	---	3000.00	(on Rogers)
Nov. 4, 1950	---	3525.00	(on elect. & plumber)
Nov. 10, 1950	---	112.50	( on labor)
Nov. 17, 1950	---	112.50	( on labor)
Nov. 20, 1950	---	500.00	(on tile)
Nov. 25, 1950	---	112.50	( on labor)
Nov. 30, 1950	---	60.00	(on plumbing)
Dec. 2, 1950	---	25.20	(on plumber)
Dec. 9, 1950	---	67.05	(for plumber)
Dec. 9, 1950	---	126.00	(on labor)

Dated this 21st day of April, 1952.

*C. B. Blackburn*  
Solicitor for Complainant

STATE OF ALABAMA

BALDWIN

I hereby certify that I delivered a copy of the foregoing notice to  
J. B. Blackburn, Esquire, Solicitor for the respondent, on this the  
21 day of April, 1952.

*C. B. Blackburn*  
Solicitor for Complainant

#2583

Comp's notice to (15)  
Rec'd to produce  
written const.

FILED

APR 21 1952

ALICE J. DUCK, Register

VS. Complainant,  
WALTER M. LINDSEY,  
Respondent.

IN EQUITY

## DEMURRER

Now comes the respondent and for demurrer to the Bill of Complaint as last amended, says:

1. There is no equity in the said amended Bill of Complaint.
2. It affirmatively appears that the complainant has an adequate remedy at law.
3. There is a variance in the allegations of the said Bill of Complaint in that the allegations in the body thereof the complainant alleges that he furnished materials to the respondent and in the two claims of lien attached to the Bill of Complaint as exhibits, it is not alleged to whom the materials were furnished.
4. No facts are alleged in the claims of lien attached to and made a part of the said Bill of Complaint and identified as Exhibits A and B to show that the materials referred to therein were furnished to the respondent or to anyone authorized to bind him for the payment thereof, or that they were used on the property described therein.
5. For aught that appears from the claims of lien which are attached to the said Bill of Complaint and identified as Exhibits A and B, the materials for which this suit is brought were furnished to W. R. Thompson and not to the respondent.
6. It affirmatively appears from the allegations of the said Bill of Complaint that the complainant does not have a lien on the property of the respondent, which is referred to in the said Bill of Complaint.
7. The facts alleged in the said Bill of Complaint, if true, are not sufficient to show that the complainant has a lien on the property of the respondent.

8. The allegations of the Bill of Complaint, as last amended, are vague, indefinite and uncertain.

9. The allegation "Complainant further shows that under and by virtue of the laws of the State of Alabama, he has a lien on the aforesaid building and the said lot on which the same is situated as security for the said materials furnished by the complainant to the respondent at his request as aforesaid" is a conclusion of the pleader and is not supported by any facts to show that the complainant has a lien on the respondent's said property.

10. No valid lien has been filed against the property described in the Bill of Complaint, as provided by the relevant statutes of the State of Alabama.

11. Complainant alleges in paragraph numbered 6 (a) of the said Bill of Complaint that the agreed prices for such materials and for each and every part thereof is as set out in Exhibit C attached to the said Bill of Complaint, but the said Bill of Complaint does not allege what parties agreed on the prices for the said materials.

12. It affirmatively appears from the said Bill of Complaint that the respondent, Walter M. Lindsey, did not agree to the prices of the said materials set out and described in Exhibit C, which is attached to the said Bill of Complaint.

13. No facts are alleged to show that the complainant complied with the provisions of Title 33, Section 37 of the 1940 Code of Alabama.

14. No facts are alleged to show that the complainant gave the respondent the notice required in and by Title 33, Section 37 of the 1940 Code of Alabama.

15. It affirmatively appears that the complainant has not complied with the provisions of Title 33, Section 37 of the 1940 Code of Alabama.

The respondent demurs to the allegations of paragraph numbered 2 of the Bill of Complaint and assigns therefor each of the grounds of demurrer, supra, from 1 to 15, separately and severally, just as if each of the said grounds of demurrer were specifically rewritten here.

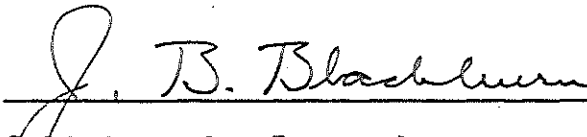
The respondent demurs to the allegations of paragraph numbered 3 of the Bill of Complaint and assigns therefor each of the grounds of demurrer, supra, from 1 to 15, separately and severally, just as if each of the said grounds of demurrer were specifically rewritten here.

The respondent demurs to the allegations of paragraph numbered 4 of the Bill of Complaint and assigns therefor each of the grounds of demurrer, supra, from 1 to 15, separately and severally, just as if each of the said grounds of demurrer were specifically rewritten here.

The respondent demurs to the allegations of paragraph numbered 5 of the Bill of Complaint and assigns therefor each of the grounds of demurrer, supra, from 1 to 15, separately and severally, just as if each of the said grounds of demurrer were specifically rewritten here.

The respondent demurs to the allegations of paragraph numbered 6 of the Bill of Complaint and assigns therefor each of the grounds of demurrer, supra, from 1 to 15, separately and severally, just as if each of the said grounds of demurrer were specifically rewritten here.

The respondent demurs to the allegations of paragraph numbered 7 of the Bill of Complaint and assigns therefor each of the grounds of demurrer, supra, from 1 to 15, separately and severally, just as if each of the said grounds of demurrer were specifically rewritten here.

  
Solicitor for Respondent.

AMENDED COMPLAINT

STATE OF ALABAMA  
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon WALTER M. LINDSEY to appear and plead, answer or demur within thirty days from the service hereof, to the bill of complaint filed in the Circuit Court of Baldwin County, Alabama, in Equity, by CLAUDE M. ROGERS d/b/a Rogers Builders Supply as Complainant and against WALTER M. LINDSEY as Respondent.

WITNESS my hand this the 28<sup>th</sup> day of January, 1952.

*Cecil L. Hunter*  
Register.

\*\*\*\*\*  
Ex "a":  
CLAUDE M. ROGERS d/b/a Rogers  
Builders Supply

Complainant

vs

WALTER M. LINDSEY

Respondent

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

TO THE HONORABLE TELFAIR J. MASHBURN JR., JUDGE OF THE 28th  
JUDICIAL CIRCUIT, BALDWIN COUNTY, ALABAMA:

Comes now your Complainant, Claude M. Rogers d/b/a Rogers Builders Supply, and amends his complaint as last filed, and complains of Respondent Walter M. Lindsey, and respectfully shows unto your Honor and your Honorable Court as follows:

1.

That your Complainant and the Respondent are each over the age of twenty-one years and are residents of Baldwin County, Alabama.

2.

The Complainant claims of the Respondent Three Thousand Seven Hundred Sixty-Nine and  $\frac{03}{100}$  (\$3769.03) Dollars, due from him by account on to-wit; the first day of December, 1950, for merchandise, goods and chattels sold by the Complainant to the Respondent on to-wit: the first day of December, 1950; which sum of money with the interest thereon, is still unpaid.

3.

The Complainant claims of the Respondent, the further sum of Two Thousand Eight Hundred Forty-Seven and  $\frac{84}{100}$  (\$2847.84) Dollars, due from him by account on to-wit: the first day of December, 1950, for merchandise, goods and chattels sold by the Complainant to the Respondent on to-wit; the first day of December, 1950; which sum of money with interest

thereon, is still unpaid.

4.

The Complainant claims of the Respondent, the further sum of Nine Hundred Twenty-one and .19/100 (\$921.19) Dollars, due from him by account on to-wit; the first day of December, 1950, for merchandise, goods and chattels sold by the Complainant to the Respondent on to-wit; the first day of December, 1950; which sum of money with interest thereon, is still unpaid.

5.

Complainant claims of the Respondent the sum of Three Thousand Seven Hundred Sixty-Nine and .03/100 (\$3769.03) Dollars for material furnished by the Complainant to the Respondent, Walter M. Lindsey, at the request of Respondent, Walter M. Lindsey, on a building or improvement on the following described property, viz., Lot One Block eighteen Hand Land Company addition to the town of Bay Minette, which said indebtedness accrued on, to-wit, the first day of December, 1950, and is now due and unpaid.

Complainant alleges that the above described property is the property of the Respondent, Walter M. Lindsey; that said materials were furnished for use in the construction of said buildings and improvements on said land, under any by virtue of a contract with the said Walter M. Lindsey, the owner or proprietor thereof, that within thirty days, after the said indebtedness had matured, on, to-wit, the tenth day of December, 1950, Complainant did file in the office of the Judge of Probate of the County wherein said land is situated, a verified statement as required by law, and on December 16, 1950, your Complainant did file in the office of the Probate Court of Baldwin County, Alabama, an amended verified statement, copies of both of which are attached to the original bill of complaint in this cause and made a part hereof, and marked Exhibit "A" and "B".

6.

That between October 1, 1950 and December 1, 1950 your Complainant, at the request of the Respondent, furnished materials for the construction of a residence that was in process of being constructed by said Respondent on Lot 1 Block 18 of the Hand Land Company addition to the town of Bay Minette, the property of said Respondent, that such materials consisted of the items of materials and were furnished the Respondent at his request for use in the construction of said building on dates and were used by him in such consideration as is set out in Exhibit "C" and attached hereto and made a part of this complaint, to-wit: \$3769.03.



(a) Complainant further shows that the agreed prices for such material and for each item thereof were the amounts set opposite each of the said articles as set out in Exhibit "C" attached hereto.

(b) Complainant further shows that under and by virtue of the laws of the State of Alabama he has a lien on the aforesaid building and the said lot on which same is situated as security for the said materials furnished by the Complainant to the Respondent at his request as aforesaid.

(c) Complainant further shows that of those items listed in Exhibit "C" attached viz:

We will furnish the following list of millwork delivered to Bay Minette, Ala., by McPhillips' truck for the lump sum of \$ 2,792.00

- 3 O. S. DR FRS 3-0 x 6-8 x 1-3/4 SET UP TO DET B.V.YP
- 1 O.S. DR FR 6-0 x 6-8 x 1-3/4 DO
- 1 DR 3-0 x 6-8 x 1-3/4 FLUSH V JOINT 2 LTS SS OAK
- 1 DR 3-0 x 6-8 x 1-3/4 1 PAN, 3 HOR LTS SS WPP
- 1 T ASTRAGAL 1-3/4 x 7-0 WPP
- 5 SCREEN DRS 3-0 x 6-8 x 1-1/8 # 105 ALUM YP
- 3 SIDES TRIM 3-0 x 6-8 TC DET YP
- 1 DO 5-0 x 6-8 DO
- 3 DRS 3-0 x 6-8 x 1-3/4 4 HOR LTS SS 1 PAN WPP METAL THRESHOLDS NOT INCLUDED
- 3 SIDES BAY WINDOW TRIM TO DET YP
- 1 SIDE TRIPLE COMBINATION TRIM TO DET YP
- 1 SIDE QUAD WD TRIM 3-0 x 5-2 TC DET YP
- 4 SIDES TWIN CORNER WD TRIM 3-0 x 5-2 YP
- 1 SIDE TWIN TRIM 3-0 x 5-2 to DETAIL YP
- 5 SIDES TRIM 3-0 x 5-2 TO DET YP
- 1 SIDE TWIN WD TRIM 3-0 x 4-6 TC DET YP
- 3 SIDES TRIM TO DET YP
- (E) WINDOW NOT INCLUDED
- 11 1.S. DR FRS 2-8 x 6-8 x 1-3/8 3/4 x 5-1/2 - 1/2 x 1-3/8 K.D.YP
- 2 1.S. DR FRS 2-4 x 6-8 x 1-3/8 DO
- 2 1.S. DR FRS 2-0 x 6-8 x 1-3/8 DO
- 1 1.S. DR FR 1-8 x 6-8 x 1-3/8 DO
- 1 1.S. DR FR 4-0 x 6-8 x 1-3/8 DO
- 11 DRS 2-8 x 6-8 x 1-3/8 FLUSH, UNSEL GUM
- 2 DRS 2-4 x 6-8 x 1-3/8 DO
- 3 DRS 2-0 x 6-8 x 1-3/8 DO
- 1 DR 1-8 x 6-8 x 1-3/8 DO
- ABOVE DRS "HASKO ARCH KOR" OR EQUAL
- 1 DR 2-0 x 6-8 x 3/4 FIR PLYWOOD - DUTCH
- 22 SIDES TRIM 2-8 x 6-8 TO DET YP
- 4 DO 2-4 x 6-8 DC
- 4 SIDES TRIM 2-0 x 6-8 TO DET YP
- 2 DO 1-8 x 6-8 DO
- 2 DO 4-0 x 6-8 DC
- 1 BOTTOM SECT KITCHEN CAB. 11-0 x 3-0 x 2-0 FIR & YP
- 1 DO 8-0 x 3-0 x 2-0 DO
- 1 DO 6-0 x 3-0 x 2-0 DO
- 1 TOP SECT KITCHEN CAB. 9-0 x 4-0 x 1-0 DO
- 1 DO 8-0 x 4-0 x 1-0 DO
- FORMICA TOP, METAL MOULD, HDWE NOT INCLUDED
- 1 BENCH 1-10 x 3-6 x 5-0 FIR PLYWOOD & YP SET-UP
- 1 WALL CABINET 1-6 x 3-6 x 1-0 DO
- WITH 3 ADJ. SHELVES, COMPLETE WITH METAL SHELF STANDARDS & BRACKETS - NO DOORS.
- 1 TABLE CABINET 2-8 x 6-6 x 6" WITH 5 ADJ SHELVES AND HINGED TOP - HINGES NOT INCLUDED
- IRONING BOARD - BUILT-WELL, #3642 NOT INCLUDED
- 1 WARDROBE #2 10-0 x 8-0 x 1-6 SEMI K.D. FIR & YP
- 1 DO #3 10-0 x 8-0 x 2-6 DO

1 WARDROBE #1 9-0 x 8-0 x 2-6 SEMI K.D. FIR & YP  
 1 DO #4 12-0 x 8-0 x 2-6 DO  
 ADJ. SHELF ONLY ON HDWE. INCLUDED  
 1 CABINET IN BATH #2 2-0 x 6-0 x 1-0 WITH 4 ADJ.  
 SHELVES - SET-UP FIR PLYWOOD & YP  
 CLOSET SHELVING, CLEATS & ROD NOT INCLUDED.  
 1 MANTEL IN LIVING ROOM TO DET WPP  
 1 DO GAME DO  
 410 LIN FT 3/4 x 2-3/4 BASE YP TO DET  
 410 LIN FT 3/4 x 7/8 BASE CAP YP TO DET  
 410 LIN FT 1/2 x 3/4 SHOE OAK TO DET  
 550 LIN FT 3/4 x 2-1/4 CEILING MOULD TO DET YP  
 WE DO NOT INCLUDE CEILING MATERIAL, PANELING IN GAME  
 ROOM, OR T & G AND V-JOINT MATERIAL ANY KIND.  
 16 LIN FT 1-1/8 x 1-3/4 DENTIL STRIP AT BAY YP  
 16 LIN FT 3/4 x 5-1/2 FACIA AT BAY YP  
 16 LIN FT 3/4 x 1-1/4 SOFFIT AT BAY YP  
 16 LIN FT 3/4 x 2-3/4 FACIA AT BAY YP  
 16 LIN FT 3/4 x 1-3/4 BED MOULD AT BAY YP  
 16 LIN FT 1-1/8 x 4 FACIA AT BAY YP

COUNTER TOPS WHERE FORMICA OCCURS NOT INCLUDED.

TOTAL CONTRACT PRICE AS SHOWN	\$ 2,792.00
PLUS TAX \$ 55.84	55.84
were specially constructed, designed and milled to the specifications	<u>\$ 2,847.84</u>

and requirements of the Respondent at his request and under his direction  
 and order and the Respondent agreed to pay the Complainant therefore the  
 prices enumerated above on the completion of the building and that such  
 building was completed on or about December, 1950.

7.

Complainant further shows that within thirty days after the said  
 indebtedness had matured, on, to-wit, the 10th day of December, 1950,  
 Complainant did file in the office of the Judge of Probate of Baldwin  
 County, Alabama, the County wherein said land is situated, a verified  
 statement of the said material furnished by Complainant to the Respondent  
 as required by law, and on December 16, 1950, your Complainant did file  
 in the office of the Probate Court of Baldwin County, Alabama, an amended  
 verified statement of the materials furnished, aforesaid copies of both  
 of which statements are attached to this amended bill of complaint and  
 marked Exhibit "A" and "B" and made a part thereof.

AND the Complainant under the laws of the State of Alabama has and  
 claims a lien on said Lot 1, Block 18 of the Hand Land Company addition  
 to the town of Bay Minette and on the building thereon as security for  
 payment of the agreed purchase price of such materials.

#### PRAYER FOR PROCESS

WHEREFORE the premises considered the Complainant prays that your  
 Honor will by proper process make the said Walter A. Lindsey a party  
 Respondent to this cause of action requiring him to plead, answer or  
 demur to this amended complaint within the time and under the penalties  
 prescribed by law and the practice of this Honorable Court.

PRAYER FOR RELIEF

AND your Complainant further prays that upon the hearing of the cause made by this bill of complaint, this Honorable Court will make and enter a decree, determining, establishing, and fixing a lien on Lot 1 Block 18 of the Hand Land Company addition to the town of Bay Minette and the dwelling situate thereon, and adjudging and decreeing that the Respondent, Walter M. Lindsey, is indebted to your Complainant in the amount of Three Thousand Seven Hundred Sixty-Nine and .03/100 (\$3769.03) Dollars for materials furnished by the Complainant to the said Respondent at his request. That the Respondent be ordered and required to pay the said indebtedness so determined as owing your Complainant, within such time as this Honorable Court shall deem proper and upon the Respondent failing and refusing to pay the same that this Honorable Court will make and enter such orders and decrees as may be necessary and proper to cause the aforesaid lot and building thereon to be sold at such time and place and in such manner as this Honorable Court shall order for the payments of such sums as the court shall have found and determined to be owing the Respondent and your Complainant prays for such other, further, or different relief as in equity and good conscience he shall be entitled to receive, and in the premises, places himself within the jurisdiction of this Honorable Court and offers to do and perform whatever this Honorable Court shall in equity and good conscience require of him in this cause.

  
Attorney for Complainant

CLAUDE M. ROGERS d/b/a Rogers  
Builders Supply

Complainant

vs

WALTER M. LINDSEY

Respondent

AMENDED COMPLAINT

From the Law offices of  
C. LeNoir Thompson  
Bay Minette, Alabama

AMENDMENT TO COMPLAINT AS LAST AMENDED

CLAUDE M. ROGERS, d/b/a  
ROGERS BUILDERS SUPPLY,

COMPLAINANT,

VS

WALTER M. LINDSEY,

RESPONDENT.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE 28TH JUDICIAL CIRCUIT, BALDWIN COUNTY, ALABAMA:

Comes the Complainant in the above styled cause and amends his complaint as last amended in said cause to add to said complaint the following counts:

8.

That on, to-wit, April 1, 1950, the Respondent herein and one W. R. Thompson entered into a contract whereby the said W. R. Thompson was to erect for the said Walter M. Lindsey a residence for the aggregate sum of Twenty Thousand Fifty (\$20,050.00) Dollars, said contract being payable to the said W. R. Thompson in accordance with Article Six of said contract as hereinafter set forth:

ARTICLE 6. PAYMENTS TO CONTRACTOR - The above amount shall be paid by the Owner to the Contractor, according to the schedule, and upon completion of the several phases of construction as set out below:

- (a) Two Thousand Dollars (\$2000.00) upon completion of the Foundations, Installation of the first floor joists and subflooring.
- (b) Two Thousand Three Hundred Dollars (\$2300.00) upon completion of the Exterior and Interior stud walls, Roof, Rafters, and exterior Wall Sheathing.
- (c) Two Thousand Dollars (\$2000.00) upon completion of the roughing in of plumbing and Electrical Wiring, Installation of Windows and Roof Sheathing, Shingles and Metal Flashings.
- (d) Two Thousand Three Hundred Dollars (\$2300.00) upon completion of applying felt to Exterior Sheathing, Brick Veneering and Miscellaneous Brick Work, Gutters and Down Spouts.
- (e) Two Thousand One Hundred and Fifty (\$2150.00) upon completion of Rock Lath and Plastering, and Installation of Heating Equipment.
- (f) Two Thousand One Hundred and Fifty Dollars (\$2150.00) upon completion of the Installation of Kitchen and Bath Room Plumbing Fixtures and all Cabinets.
- (g) Two Thousand One Hundred and Fifty Dollars (\$2150.00) upon completion of all Trim Work, Installation of all Floors and Ceramic Tile Wainscots.
- (h) Two Thousand One Hundred and Fifty Dollars (\$2150.00) upon completion of Painting (both Exterior and Interior) and sanding, filling and finishing of wood floors.
- (i) Two Thousand Eight Hundred and Fifty Dollars (\$2850.00) upon final inspection by the Owner and Architect and their acceptance of the work.

(Initialed) W R T  
W L.

(2)

All material and work covered by the partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility from the care and protection of materials and work upon which payments have been made or restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the contract including use of all equipment and materials delivered on the site.

The Contractor shall pay (1) for all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered, (2) for all materials, tools, and other expendable equipment to the extent of ninety (90%) percent of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the Project, and the balance of the cost thereof not later than the 30th day following the completion of that part of the work in or on which such materials, tools and equipment are incorporated or used, and (3) to each of his subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his subcontractors, to the extent of each such subcontractor's interest therein.

9.

That in the course of construction of said residence the said W. R. Thompson obtained from your Petitioner certain materials and supplies used in the construction of said residence of the Respondent, Walter M. Lindsey, and in the course of said construction on, to-wit, September 26, 1950, the said W. R. Thompson having become in arrears with his account owed your Petitioner in the sum of Three Thousand Four Hundred Thirty Eight (\$3438.00) Dollars your Petitioner stopped his deliveries to the Lindsey Project aforesaid.

10.

That the said Walter M. Lindsey paid over to W. R. Thompson for delivery to your Petitioner the sum of Three Thousand (\$3,000.00) Dollars by a check which check was received by your Petitioner and credited to the account of the said W. R. Thompson.

11.

That on, to-wit, September 26, 1950, the said Walter M. Lindsey entered into an agreement in writing with your Petitioner to pay for all materials furnished by your Petitioner to the said W. R. Thompson not to exceed the amount remaining in said contract on said date, which the said Walter M. Lindsey alleged to your Petitioner to be approximately Nine Thousand Three Hundred Dollars (\$9,300.00), which agreement in words and figures are as follows:

"Bay Minette, Alabama  
Sept. 26, 1950.

"Mr. Claude Rogers  
Rogers Building and Supply Company  
Bay Minette, Alabama

"Dear Mr. Rogers:

"Confirming our conversation of this date I am forwarding a check for \$3,000.00 to Mr. W. R. Thompson as an advance payment on my contract, and to enable him to pay your past due account for materials you have furnished him for use in my home.

"It is my understanding that you are to furnish Mr. Thompson other materials to enable him to finish my home, but as regards these other materials I am responsible for the costs only to the extent of any unpaid balance due Mr. Thompson under the contract.

"Yours very truly,  
Walter M. Lindsey".

"WML;bb

12.

Your Petitioner did on that date execute an acceptance of said agreement with the said Walter M. Lindsey, which acceptance was prepared by said Walter M. Lindsey and executed by your Petitioner and which in words and figures is as follows:

"Bay Minette, Alabama  
September 26, 1950.

Mr. Walter M. Lindsey  
Bay Minette, Alabama

Dear Mr. Lindsey:

Confirming our conversation this date and in consideration of your advance this date to Mr. W. R. Thompson to enable him to pay up his past due account with me (said past due account consisting of monies due for materials furnished to him for use in your home such as windows, roofing and lumber, etc) I agree to supply Mr. Thompson with any other materials necessary in order to insure completion of your home including trim & mill-work doors, and cabinets, etc. It is agreed that your liability for payment for any of these other materials furnished Mr. Thompson is limited to any balance due Mr. Thompson under the contract.

Yours very truly

/s/ C. M. Rogers  
Claude Rogers  
Rogers Building Supply Co."

13.

That subsequent to the agreement, as set out in and by the exchange of letters set forth herein, your Petitioner delivered to W. R. Thompson as contractor for Walter M. Lindsey, Respondent in said cause, certain items of building material aggregating the sum of Three Thousand Seven Hundred Sixty-Nine and .03/100 (\$3769.03) Dollars, and as set forth in detail in Exhibit "C" heretofore filed in said cause of which items a certain bill of mill work delivered by McPhillips Manufacturing Company's truck, being cabinet work and other items detailed as set forth in Exhibit "D" as attached hereto, and made a part hereof, which said items were known to have been ordered for, delivered to and used by W. R. Thompson in the constructions of said residence of said Walter M. Lindsey at the

time of the delivery of the same and before he had paid out the monies he had contracted and agreed with this Complainant to hold for the payment of such materials.

14.

That the said Walter M. Lindsey breached the agreement entered into with your Petitioner on September 26, 1950, as set forth in this petition in that, in violation of his said agreement to hold the balance on the said contract to W. R. Thompson for the payment of monies due for delivery of materials to W. R. Thompson for use in the Lindsey residence, and with full knowledge of the fact that such materials and supplies had been furnished to W. R. Thompson on the project and not paid for, in that, the said Walter M. Lindsey had paid out to various and sundry persons sums aggregating Nine Thousand Three Hundred Dollars (\$9300.00) alleged to have been that portion of said contract unpaid on September 26, 1950, the date said agreements were made wherein the said Walter M. Lindsey agreed to be responsible to your Petitioner to the extent of the unpaid monies under the contract.

15.

Complainant alleges that by virtue of the failure of the Respondent to keep and perform the agreement set forth in that certain letter from the Respondent to the Complainant dated September 26, 1950, as shown herein, that the said Respondent is indebted to your Petitioner for the materials delivered by your Petitioner to W. R. Thompson for use in the said Walter M. Lindsey residence, aforesaid which sum of money is due and unpaid being uncollected from the said W. R. Thompson, wherefore the said Respondent is indebted to your Petitioner in said sum, to-wit: Three Thousand Seven Hundred Sixty-Nine and .03/100 (\$3769.03) Dollars.

PRAYER FOR PROCESS

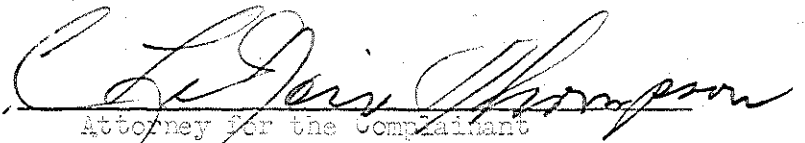
WHEREFORE the premises considered the Complainant prays that your Honor will by proper process make the said Walter M. Lindsey a party Respondent to this cause of action requiring him to plead, answer or demur to this complaint, as last amended, within the time and under the penalties prescribed by law and the practice of this Honorable Court.

PRAYER FOR RELIEF


AND your Complainant further prays that upon the hearing of the cause made by this bill of complaint as last amended this Honorable Court will make and enter a decree, decreeing an accounting of the said funds then unpaid in said contract between Walter M. Lindsey and W. R. Thompson



expended by the Respondent, Walter M. Lindsey, subsequent to September 26, 1950, and upon said accounting having been made this Honorable Court will then make and enter a decree determining and adjudicating that the said Respondent, Walter M. Lindsey, is indebted to the said Claude M. Rogers d/b/a Rogers Builders Supply in the amount of Three Thousand Seven Hundred Sixty-Nine and .03/100 (\$3769.03) Dollars for materials furnished by the Complainant to W. R. Thompson, contractor of Walter M. Lindsey, which materials were furnished by the Complainant in accordance with the written agreement entered into on the 26th day of September, 1950, for delivery of building materials for use in the dwelling then being erected on Lot 1, Block 18, Sand Land Company addition to the Town of Bay Minette. AND that so much of said monies as the accounting shall show to have been expended by the Respondent, Walter M. Lindsey, subsequent to September 26, 1950, shall equal to the amount of said indebtedness being applied to said indebtedness. That the Respondent be ordered and required to pay the said indebtedness so determined as owing your Complainant within the time and according to the rules of this Honorable Court and the laws of the State of Alabama in such matters and that this Honorable Court will make and enter such orders and decrees that may be necessary and proper in the judgment of this Honorable Court for the payment of such sums that the Court may have found and determined to be owing to your Complainant by said Respondent, and your Complainant prays for such other, further, or different relief as in equity and good conscience he shall be entitled to receive, and in the premises, places himself within the jurisdiction of this Honorable Court and offers to do and perform whatever this Honorable Court shall in equity and good conscience require of him in this cause.

  
Attorney for the Complainant

I hereby certify that I delivered a copy of the foregoing amended complaint to J. B. Blackburn, Esquire, Solicitor for Respondent and Cross-Complainant, on this the 28th day of June, 1954.

  
Attorney for the Complainant

2583  
IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

IN EQUITY

CLAUDE M. ROGERS, d/b/a  
ROGERS BUILDERS SUPPLY,

COMPLAINANT,

VS

WALTER M. LINDSEY,

RESPONDENT.

Amendments to Complaint as last amended.

FILED  
JUN 28 1954  
ALICE J. DUCK, Register

C. LeNoir Thompson  
Attorney At Law  
Bay Minette, Alabama

CLAUDE M. ROGERS d/b/a Rogers  
Builders Supply

COMPLAINANT

VS

WALTER M. LINDSEY and W. R.  
THOMPSON

RESPONDENTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.

TO THE HONORABLE TELFAIR J. MASHBURN JR., JUDGE OF THE 28th  
JUDICIAL CIRCUIT, BALDWIN COUNTY, ALABAMA.

Comes now your Complainant, Claude M. Rogers d/b/a Rogers Builders Supply and complains of Respondents Walter M. Lindsey and W. R. Thompson, and respectfully shows unto your Honor and your Honorable Court as follows:

1.

That your Complainant and the Respondents are each over the age of twenty-one years and are residents of Baldwin County, Alabama.

2.

That on to-wit, the 1st day of May, 1950, your Complainant and Respondent W. R. Thompson entered into an agreement that your Complainant would furnish to Respondent W. R. Thompson certain building materials to be used in the construction of a house for Respondent Walter M. Lindsey. Said house being erected on Lot 1 Block 18 Hand Land Company addition to the town of Bay Minette, Alabama and that your Petitioner would furnish said materials as ordered by Respondent, W. R. Thompson, delivering said materials to the sight of the construction above described in Bay Minette, Alabama.

3.

That your Petitioner was not paid for said materials promptly and each month as is customary and proper and that on to-wit, the 5th day of September, 1950, Respondents Walter M. Lindsey and W. R. Thompson came to the business sight of Rogers Builders Supply on the edge of Bay Minette, Alabama and the said Walter M. Lindsey paid to your Complainant by personal check of the said Walter M. Lindsey the sum of Three Thousand (\$3,000.00) Dollars which sum was to be credited on the unpaid account

which had heretofore been charged to W. R. Thompson, aforesaid, for materials delivered to the building sight of the house being constructed for Walter M. Lindsey, Respondent.

4.

That the said Walter M. Lindsey inquired as to further delivery of materials to be used in the construction of his house which was being erected on Lot 1 Block 18 Hand Land Company addition to the town of Bay Minette and was informed by your Complainant that no further deliveries would be charged to W. R. Thompson or would be made to the sight of said house because of the difficulty in collecting the Three Thousand (\$3,000.00) Dollars just then paid by Walter M. Lindsey to Claude M. Rogers for the delinquent account of W. R. Thompson.

5.

Respondent Walter M. Lindsey, then and there requested your Complainant to furnish such materials for the completion of the said dwelling then being erected for Respondent Walter M. Lindsey on Lot 1 Block 18 Hand Land Company addition to the town of Bay Minette, by Respondent W. R. Thompson, as your Complainant could customary furnish in the course of his normal business AND FURTHER, Respondent Walter M. Lindsey informed your Petitioner that Respondent W. R. Thompson would continue the construction of said building and would order the materials and supplies as made in such construction but that Respondent Walter M. Lindsey would pay for all of such materials or supplies delivered. Your Complainant thereupon and by virtue of said agreement would furnish materials and or supplies both of general construction nature and by special custom built order all of which materials were delivered to the building sight aforesaid at the request of Respondent Walter M. Lindsey or of said Respondent's agent or contractor, and an itemized statement of such deliveries is hereto attached as Exhibit "C".

6.

Complainant claims of the Respondent the sum of Three Thousand Seven Hundred Sixty-Nine Dollars and .03/100 (\$3769.03) for material furnished by the Complainant at the request of Respondent or Respondent's agent or contractor, on a building or improvement on the following described property, viz., Lot 1 Block 18 Hand Land Company addition

to the town of Bay Minette, which said indebtedness accrued on, to-wit, the 1st day of December, 1950, and is now due and unpaid.

Complainant alleges that the above described property is the property of the Respondent, Walter M. Lindsey; that said materials were furnished for use in the construction of said buildings or improvements on said land, under and by virtue of a contract with the said Walter M. Lindsey, the owner or proprietor thereof, or W. R. Thompson, his agent or contractor, that within thirty days, after the said indebtedness had matured, on, to-wit, the 10th day of December, 1950, Complainant did file in the office of the Judge of Probate of the county wherein said land is situated, a verified statement as required by law, and on December 16, 1950, your Complainant did file in the office of the Probate Court of Baldwin County, Alabama, an amended verified statement, copies of both of which are attached hereto, made a part hereof, and marked Exhibit "A", and "B"; wherefore Complainant claims a lien for said amount upon said land and buildings and improvements situated thereon.

7.

Complainant claims of the Respondents the sum of Three Thousand Seven Hundred Sixty-Nine Dollars and .03/100 (\$3769.03) for material furnished by the Complainant to the Respondent, Walter M. Lindsey, at the request of Respondent, Walter M. Lindsey, on a building or improvement on the following described property, viz., Lot one Block eighteen Hand Land Company addition to the town of Bay Minette, which said indebtedness accrued on, to-wit, the 1st day of December, 1950, and is now due and unpaid.

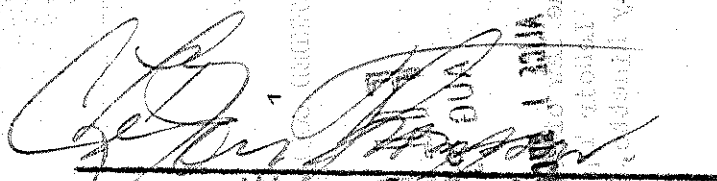
Complainant alleges that the above described property is the property of the Respondent, Walter M. Lindsey; that said materials were furnished for use in the construction of said buildings and improvements on said land, under and by virtue of a contract with the said Walter M. Lindsey, the owner or proprietor thereof, that within thirty days, after the said indebtedness had matured, on, to-wit, the 10th day of December, 1950, Complainant did file in the office of the Judge of Probate of the County wherein said land is situated, a verified statement as required by law, and on December 16, 1950, your Complainant did file in the office of the Probate Court of Baldwin County, Alabama, an amended verified statement, copies of both of which are attached to the original bill of complaint in this cause and made a part hereof, and marked Exhibit "A" and "B".

PRAYER

WHEREFORE Complainant claims a lien for said amount upon said land and

buildings and improvements situated thereon, AND Complainant prays that said lien may be established and that said real estate be condemned for the satisfaction of said indebtedness and that same be ordered sold to satisfy said indebtedness.

Your Complainant further prays for such other, further, different or general relief as he maybe entitled to receive, and your Complainant ever prays, etc.

  
Attorney for Complainant.

FILED  
JUN 10 1921  
Clerk of Court

RECORDED  
JUN 10 1921  
Clerk of Court

INDEXED  
JUN 10 1921  
Clerk of Court

that every installment (M), amount of balance due, and  
not because of state law but that the balance of the said  
of the balance of the said installment and that same is ordered  
the satisfaction of said installment.  
Your complaint further urges in each other, that  
general relief in the equity of the law, and your complaint

CLAUDE J. ROGERS d/b/a Rogers  
Builders Supply  
vs  
WALTER H. LINDSEY and V. R.  
SHOIBOY  
RESPONDENTS

From the  
C. LeRoy Thompson  
Daytonette, Alabama  
Alice J. Myers, Register

FILED  
AUG 16 1951

ALABAMA

CLAUDE M. ROGERS,  
d/b/a Rogers Builders Supply  
Company,

Complainant,

VS.

WALTER M. LINDSEY and  
W. R. THOMPSON,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY. NO. 2583

MOTION TO STRIKE AMENDED BILL OF COMPLAINT AND  
DISMISS CAUSE.

Now comes Walter M. Lindsey, one of the respondents named in this cause, and moves to strike the amended Bill of Complaint filed in this cause by the complainant on August 16, 1951, and dismiss this cause, and as grounds therefor assigns, separately and severally, the following:

1. The demurrer of the respondent, Walter M. Lindsey, to the Bill of Complaint as last amended was sustained by the Court on July 25, 1951 and the decree sustaining the demurrer to the said amended Bill of Complaint allowed the complainant twenty (20) days in which to amend his Bill of Complaint, if he desired to do so, and the said amended Bill of Complaint which was filed in this cause on August 16, 1951 was not filed within twenty (20) days from July 25, 1951.

2. The amended Bill of Complaint filed in this cause by the complainant on August 16, 1951 was not filed within twenty (20) days from the date on which the said respondent's demurrer to the complainant's amended Bill of Complaint, as last amended, was sustained.

WHEREFORE, the said respondent moves the Court to strike the amended Bill of Complaint that was filed in this cause by the complainant on August 16, 1951 and dismiss this cause.

*J. B. Blackburn*

Solicitor for Respondent, Walter M.  
Lindsey.



10  
CLAUDE M. ROGERS,  
d/b/a Rogers Builders Supply  
Company,

Complainants,

VS.

WALTER M. LINDSEY and W. R.  
THOMPSON,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY. NO. 2583

Filed -9-14-1957

Alice J. Duck, Register

CLAUDE M. ROGERS d/b/a Rogers  
Builders Supply

COMPLAINANT

VS

WALTER M. LINDSEY and W. R.  
THOMPSON

RESPONDENTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.

TO THE HONORABLE TELFAIR J. MASHBURN JR., JUDGE OF THE 28th  
JUDICIAL CIRCUIT, BALDWIN COUNTY, ALABAMA.

Comes now your Complainant, Claude M. Rogers d/b/a Rogers Builders Supply and complains of Respondents Walter M. Lindsey and W. R. Thompson, and respectfully shows unto your Honor and your Honorable Court as follows:

1.

That your Complainant and the Respondents are each over the age of twenty-one years and are residents of Baldwin County, Alabama.

2.

That on to-wit, the 1st day of May, 1950, your Complainant and Respondent W. R. Thompson entered into an agreement that your Complainant would furnish to Respondent W. R. Thompson certain building materials to be used in the construction of a house for Respondent Walter M. Lindsey. Said house being erected on Lot 1 Block 13 Mand Land Company addition to the town of Bay Minette, Alabama and that your Petitioner would furnish said materials as ordered by Respondent, W. R. Thompson, delivering said materials to the sight of the construction above described in Bay Minette, Alabama.

3.

That your Petitioner was not paid for said materials promptly and each month as is customary and proper and that on to-wit, the 5th day of September, 1950, Respondents Walter M. Lindsey and W. R. Thompson came to the business sight of Rogers Builders Supply on the edge of Bay Minette, Alabama and the said Walter M. Lindsey paid to your Complainant by personal check of the said Walter M. Lindsey the sum of Three Thousand (\$3,000.00) Dollars which sum was to be credited on the unpaid account

which had heretofore been charged to W. R. Thompson, aforesaid, for materials delivered to the building sight of the house being constructed for Walter M. Lindsey, Respondent.

4.

That the said Walter M. Lindsey inquired as to further delivery of materials to be used in the construction of his house which was being erected on Lot 1 Block 18 Hand Land Company addition to the town of Bay Minette and was informed by your Complainant that no further deliveries would be charged to W. R. Thompson or would be made to the sight of said house because of the difficulty in collecting the Three Thousand (\$3,000.00) Dollars just then paid by Walter M. Lindsey to Claude M. Rogers for the delinquent account of W. R. Thompson.

5.

Respondent Walter M. Lindsey, then and there requested your Complainant to furnish such materials for the completion of the said dwelling then being erected for Respondent Walter M. Lindsey on Lot 1 Block 18 Hand Land Company addition to the town of Bay Minette, by Respondent W. R. Thompson, as your Complainant could customary furnish in the course of his normal business AND FURTHER, Respondent Walter M. Lindsey informed your Petitioner that Respondent W. R. Thompson would continue the construction of said building and would order the materials and supplies as made in such construction but that Respondent Walter M. Lindsey would pay for all of such materials or supplies delivered. Your Complainant thereupon and by virtue of said agreement would furnish materials and or supplies both of general construction nature and by special custom built order all of which materials were delivered to the building sight aforesaid at the request of Respondent Walter M. Lindsey or of said Respondent's agent or contractor, and an itemized statement of such deliveries is hereto attached as Exhibit "C".

6.

Complainant claims of the Respondent the sum of Three Thousand Seven Hundred Sixty-Nine Dollars and .03/100 (\$3769.03) for material furnished by the Complainant at the request of Respondent or Respondent's agent or contractor, on a building or improvement on the following described property, viz., Lot 1 Block 18 Hand Land Company addition

to the town of Bay Minette, Hand Land Company addition to the town of Bay Minette, Alabama, and the same is being used for the purpose of building a house for the use of the Respondent.

to the town of Bay Minette, which said indebtedness accrued on, to-wit, the 1st day of December, 1950, and is now due and unpaid.

Complainant alleges that the above described property is the property of the Respondent, Walter M. Lindsey; that said materials were furnished for use in the construction of said buildings or improvements on said land, under and by virtue of a contract with the said Walter M. Lindsey, the owner or proprietor thereof, or W. R. Thompson, his agent or contractor, that within thirty days, after the said indebtedness had matured, on, to-wit, the 10th day of December, 1950, Complainant did file in the office of the Judge of Probate of the county wherein said land is situated, a verified statement as required by law, and on December 16, 1950, your Complainant did file in the office of the Probate Court of Baldwin County, Alabama, an amended verified statement, copies of both of which are attached hereto, made a part hereof, and marked Exhibit "A", and "B"; wherefore Complainant claims a lien for said amount upon said land and buildings and improvements situated thereon.

7.

Complainant claims of the Respondents the sum of Three Thousand Seven Hundred Sixty-Nine Dollars and .03/100 (\$3769.03) for material furnished by the Complainant to the Respondent, Walter M. Lindsey, at the request of Respondent, Walter M. Lindsey, on a building or improvement on the following described property, viz., Lot one Block eighteen Hand Land Company addition to the town of Bay Minette, which said indebtedness accrued on, to-wit, the 1st day of December, 1950, and is now due and unpaid.

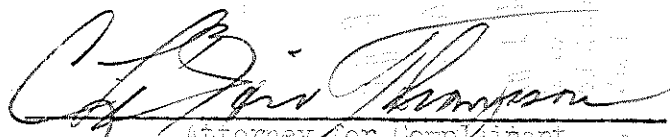
Complainant alleges that the above described property is the property of the Respondent, Walter M. Lindsey; that said materials were furnished for use in the construction of said buildings and improvements on said land, under and by virtue of a contract with the said Walter M. Lindsey, the owner or proprietor thereof, that within thirty days, after the said indebtedness had matured, on, to-wit, the 10th day of December, 1950, Complainant did file in the office of the Judge of Probate of the County wherein said land is situated, a verified statement as required by law, and on December 16, 1950, your Complainant did file in the office of the Probate Court of Baldwin County, Alabama, an amended verified statement, copies of both of which are attached to the original bill of complaint in this cause and made a part hereof, and marked Exhibit "A" and "B".

PRAYED:

WHEREFORE Complainant claims a lien for said amount upon said land and

buildings and improvements situated thereon, AND Complainant prays that said lien may be established and that said real estate be condemned for the satisfaction of said indebtedness and that same be ordered sold to satisfy said indebtedness.

Your Complainant further prays for such other, further, different or general relief as he maybe entitled to receive, and your Complainant ever prays, etc.

  
Attorney for Complainant.

Received in Sheriff's Office  
This 17 day of Aug, 1951  
TAYLOR WILKINS, Sheriff

2583

9.

Executed P-20- 1951  
by serving copy of within Summons and  
Complaint on amended  
Complaint

CLAUDE M. ROGERS d/b/a Rogers  
Builders Supply

Complainant

VS

WALTER M. LINDSEY and W. R.  
THOMPSON

RESPONDENTS

Taylor Wilkins Sheriff  
George Smith Deputy Sheriff

AMENDED COMPLAINT

FILED

AUG 18 1951

ALICE J. DICK, Register

From the law offices of  
C. LeNoir Thompson  
Bay Minette, Alabama

EXHIBIT "A"

STATE OF ALABAMA

BALDWIN COUNTY

Claude M. Rogers d/b/a Rogers Builders Supply, files this statement in writing, verified by the oath of Claude M. Rogers, who has personal knowledge of the facts herein set forth:

That said Claude M. Rogers claims a lien upon the following property, situated in Baldwin County, Alabama, to-wit: Lot one Block eighteen Hand Land Company addition to the town of Bay Minette, being that lot on the Northeast corner of Hoyle Avenue and Tenth Street in said town. This lien is claimed, separately and severally, as to both the buildings and improvements thereon, and the said land.

That said lien is claimed to secure an indebtedness of Three Thousand Six Hundred Fifty-Nine and 67/100(\$3659.67) Dollars with interest, from, to-wit, the 10th day of December, 1950, for material furnished.

The name of the owner or proprietor of said property is Walter M. Lindsey.

(SIGNED) Claude M. Rogers  
CLAIMANT.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, C. LeNoir Thompson, a Notary Public in and for the County of Baldwin, State of Alabama, personally appeared Claude M. Rogers, who being duly sworn, doth depose and say: That he has personal knowledge of the facts set forth in the foregoing statement of lien, and that the same are true and correct to the best of his knowledge and belief.

(SIGNED) Claude M. Rogers.  
AFFIANT.

Sworn to and subscribed before me this the 16th day of December, 1950.

(SIGNED) C. LeNoir Thompson  
NOTARY PUBLIC.

AMENDED LIEN

STATE OF ALABAMA    0  
BALDWIN COUNTY       0

Claude M. Rogers d/b/a Builders Supply, files this statement in writing, verified by the oath of Claude M. Rogers, who has personal knowledge of the facts herein set forth:

That said Claude M. Rogers claims a lien upon the following property, situated in Baldwin County, Alabama, to-wit: Lot one Block eighteen Hand Land Company addition to the town of Bay Minette, being that lot on the Northeast corner of Hoyle Avenue and Tenth Street in said town. This lien is claimed, separately and severally, as to both the buildings and improvements thereon, and the said land.

That said lien is claimed to secure an indebtedness of Three Thousand Seven Hundred Sixty-Nine Dollars and .03/100 (\$3769.03) with interest, from, to-wit, the 10th day of December, 1950, for material furnished.

The name of the owner or proprietor of said property is Walter M. Lindsey.

(SIGNED) Claude M. Rogers  
CLAIMANT.

STATE OF ALABAMA    0  
BALDWIN COUNTY       0

Before me, C. LeNoir Thompson, a Notary Public in and for the county of Baldwin, State of Alabama, personally appeared Claude M. Rogers, who being duly sworn, doth depose and say: That he has personal knowledge of the facts set forth in the foregoing statement of lien, and that the same are true and correct to the best of his knowledge and belief.

(SIGNED) Claude M. Rogers  
AFFIANT.

Sworn to and subscribed before me this the 16th day of December, 1950.

(SIGNED) C. LeNoir Thompson  
NOTARY PUBLIC.



Exhibit C

SOLD TO WALTER M. LINDSEY, IN CARE OF BILL THOMPSON:

September 26, 1950	Balance due after receiving \$3,000 chk.	\$ 428.03
November 10, 1950	180 ft. shoemold @ 2.00	3.60
	8 bd. ft. 1 x 4 @ 160.00	\$ 1.28
		\$ 4.88
	Tax	.09
		\$ 4.97
November 14, 1950	Cabinet Hinges	\$ 5.90
	Tax	.11
		\$ 6.01
November 15, 1950	46 bd. ft. 3 x 12 #1 @ 140.00	\$ 6.44
	26 bd. ft. 3 x 6 #2 @ 100.00	2.60
	7 ft. Ast.	.70
		\$ 9.74
	Tax	.19
		\$ 9.93
November 20, 1950	Hardware	\$ 43.43
November 21, 1950	3 gallons O.W. paint @ 4.50	\$ 13.50
	Tax	.27
		\$ 13.77
November 16, 1950	26 bd. ft. 3 x 12 #2 @ 125.00	\$ 3.25
	15 bd. ft. 5/4 x 12 #1 @ 150.00	2.25
		\$ 5.50
	Tax	.11
		\$ 5.61
December 4, 1950	2 Pr. E. 1638 Cabinet Hinges	
	1 E 9485 Ditto Catch	
	1 E 485 Ditto Pull	
	1 E 01622 Elbow Catch	\$ 2.50
	Tax	.05
		\$ 2.55
December 9, 1950	Millwork on contract	\$ 2,792.00
	Tax	55.84
		\$ 2,847.84
December 9, 1950	1 gallon 5900	\$ 4.50
	1 gallon O. W. White	4.85
	2 astragle	2.00
		\$ 11.35
	Tax	.23
		\$ 11.58
November 9, 1950	1 mantal board	\$ 18.50
	Tax	.37
		\$ 18.87
September 6, 1950	128 bd. ft. Roch Lath @ 60.00	\$ 7.68
	Tax	.15
		\$ 7.83
September 6, 1950	6 sks. Keene Cement @ 2.75	\$ 16.50
	Tax	.33
		\$ 16.83

	133 bd. ft. 2 x 4 @ 90.00	\$ 11.97
	Tax	.24
		<u>\$ 12.21</u>
September 8, 1950	Angle still for wds.	\$ 104.00
	Tax	2.08
		<u>\$ 106.08</u>
September 5, 1950	Still lintels	7.50
	Fire place material	85.00
	18 argus block @ 80¢	14.40
		<u>\$ 106.90</u>
	Tax	2.14
		<u>\$ 109.04</u>
September 21, 1950	4 Sks. finish lime @ 1.25	\$ 5.00
	Tax	.10
		<u>\$ 5.10</u>
September 21, 1950	10 bags M.M.M. @ 95¢	\$ 9.50
	Deading felt	3.00
		<u>\$ 12.50</u>
	Tax	.26
		<u>\$ 12.76</u>
September 22, 1950	4 Sks. Cement @ 2.50	\$ 10.00
	Tax	.20
		<u>\$ 10.20</u>
September 20, 1950	106 Len ft. 3" Brown @ 5.00	\$ 5.30
	160 Len ft. shoemole @ 2.00	3.20
	48 bd. ft. 1 x 4 SWS #1 @ 130.00	6.24
		<u>\$ 14.74</u>
	Tax	.30
		<u>\$ 15.04</u>
September 20, 1950	10 bags M.M.M. @ 95¢	\$ 9.50
	Tax	.18
		<u>\$ 9.68</u>
September 20, 1950	280 Len ft. shoemole @ 2.50	\$ 7.00
	Tax	.14
		<u>\$ 7.14</u>
September 14, 1950	100 bd. ft. 1 x 4 @ 95.00	\$ 9.50
	200 ft. 3" crown mold @ 5.00	10.00
	16 bd. ft. 1 x 6 @ 95.00	1.52
		<u>\$ 21.02</u>
	Tax	.12
		<u>\$ 21.14</u>
September 12, 1950	1 keg #8 casin	\$ 12.00
	2 pas metallath	2.43
		<u>\$ 14.43</u>
	Tax	.28
		<u>\$ 14.71</u>
September 12, 1950	34 bd. ft. 1 x 8 #2 @ 95.00	\$ 3.23
	64 bd. ft. 1 x 12 #1 @ 125.00	8.00
	160 ft 3" crown mold @ 5.00	8.00
	3 sheets metal lath @ 45.00	3.65
		<u>\$ 22.88</u>
	Tax	.46
		<u>\$ 23.34</u>

October 13, 1950	20 bd. ft. 1 x 8 @ 100.00 Tax	\$ 2.00 .04 <u>\$ 2.04</u>
October 17, 1950	76 bd. ft. 1 x 6 (CM) @ 110.00 Tax	\$ 8.36 .17 <u>\$ 8.53</u>
October 20, 1950	72 sq. ft. alumin screen @ 15¢ Tax	\$ 10.80 .21 <u>\$ 11.01</u>
October 25, 1950	2 bags M.M.L. @ 95¢ Tax	\$ 1.90 .03 <u>\$ 1.93</u>
October 26, 1950	1 gallon shalok @ 5.50 2 gallons 5900 @ 4.50 1 ironing board @ 15.75 Tax	\$ 5.50 9.00 15.75 30.25 .61 <u>\$ 30.86</u>
October 26, 1950	160 len ft. 3" crown @ 4.50 Tax	\$ 7.20 .15 <u>\$ 7.35</u>
October 19, 1950	1 set windows 28 x 28 @ 5.50 Tax	\$ 5.50 .11 <u>\$ 5.61</u>
October 30, 1950	1 telephone cabinet Tax	\$ 12.50 .25 <u>\$ 12.75</u>
November 1, 1950	2 gallons 5900 Tax	\$ 9.00 .18 <u>\$ 9.18</u>
November 1, 1950	2 gallons flat wall white paint Tax	\$ 7.00 .14 <u>\$ 7.14</u>
November 4, 1950	2 gallons 5900 @ 4.50 Tax	\$ 9.00 .18 <u>\$ 9.18</u>
November 6, 1950	3 sheets 1/4 x 4 x 8 @ 4.50 1 sheet 3/4 x 4 x 8 @ 10.85 10 bd. ft. 5/4 x 12 (1) @ 125.00 Tax	\$ 13.50 10.85 1.25 25.60 .51 <u>\$ 26.31</u>
November 7, 1950	1 gallon of 5900 @ 4.50 1 gallon of white paint @ 3.50 Tax	\$ 4.50 3.50 8.00 .16 <u>\$ 8.16</u>
November 7, 1950	5# nails @ 15	\$ .75

1 sack M.M.M. @ 95¢

Tax

	.95
\$	1.70
	.04
\$	1.74

November 7, 1950

Hardware

Tax

\$	30.06
	.60
\$	30.66

TOTAL DUE AND UNPAID

\$ 3,769.03

STATE OF ALABAMA

BALDWIN COUNTY

Before me, C. LENOIR THOMPSON, a Notary Public personally appeared CLAUDE M. ROGERS who being duly sworn deposes and says: That the attached account is an itemized statement of lumber, building materials, custom cabinet work sold and delivered by the said CLAUDE M. ROGERS to WALTER M. LINDSEY at his building site, Lot one Block eighteen and Land Company addition to the town of Bay Minette and that the said CLAUDE M. ROGERS has knowledge of the sale and deliver of the items listed in the attached itemized statement and that said account so stated is due and unpaid to the CLAUDE M. ROGERS d/b/a ROGERS BUILDERS SUPPLY.

(SIGNED) Claude M. Rogers. %

Sworn to and subscribed before me on this the 16th day of December, 1950.

(SIGNED) C. LeNoir Thompson  
Notary Public, Baldwin County, Ala.

## EXHIBIT "A".

11/10/50	180 ft. shoemold @ 2.00 8 Bd. ft. 1 x 4 @ 160.00	\$ 3.60 1.28
	TOTAL	\$ 4.88
	TAX	.09
	TOTAL AMOUNT	\$ 4.97
11/14/50	Cabinet hinges	\$ 5.90
	TAX	.11
	TOTAL AMOUNT	\$ 6.01
11/15/50	46 Bd. ft. 1 x 12 #1 @ 140.00 26 Bd. ft. 1 x 6 #2 @ 100.00- 7 ft. Ast.	\$ 6.44 2.60 .70
	TOTAL	\$ 9.74
	TAX	.19
	TOTAL AMOUNT	\$ 9.93
11/20/50	Hardware	\$ 43.43
11/21/50	3 Gals. O.W. paint @ 1.50	\$ 13.50
	TAX	.27
	TOTAL AMOUNT	\$ 13.77
11/16/50	26 Bd. ft. 1 x 12 sus #2 @ 125.00 15 Bd. ft. 5/4 x 12 sus #1 @ 150.00	\$ 3.25 2.25
	TOTAL	\$ 5.50
	TAX	.11
	TOTAL AMOUNT	\$ 5.61
12/4/50	2 RR. E. 161 8 Cab. Hinge 1 E. 9485 Ditto Catch 1 E. 485 Ditto Pull 1 E. 01622 Elbow catch.	\$ 2.50
	TAX	.05
		\$ 2.55
12/9/50	Millwork on contract to McPhillips Manufacturing Company	\$ 2,792.00
	TAX	55.84
		\$ 2,847.84
12/9/50	1 gal. 5900 1 gal. O.W. white 2 Astragle	\$ 4.50 4.85 2.00
	TOTAL	\$ 11.35
	TAX	.23
	TOTAL AMOUNT	\$ 11.58
11/9/50	1 mantal board	\$ 16.50
	TAX	.37
	TOTAL AMOUNT	\$ 16.87
9/6/50	128 Bd. ft. rock lath @ 60.00	\$ 7.68
	TAX	.15
	TOTAL AMOUNT	\$ 7.83

9/6/50	6 sacks Keene cement @ 2.75	\$ 16.50
	TAX	.33
	TOTAL AMOUNT	\$ 16.83
	133 Bd. ft. 2 X 4 @ 90.00	\$ 11.97
	TAX	.24
		\$ 12.21
9/8/50	Angle still for windows	\$ 104.00
	TAX	2.08
	TOTAL AMOUNT	\$ 106.08
9/5/50	Still lintels	\$ 7.50
	Fire-place material	85.00
	18 argus block @80¢	14.40
	TOTAL	\$ 106.90
	TAX	2.14
	TOTAL AMOUNT	\$ 109.04
9/22/50	5 gals. Newrotic acid @ 2.50	\$ 12.50
	TAX	.24
	TOTAL AMOUNT	\$ 12.74
9/21/50	4 sacks finish lime @ 1.25	\$ 5.00
	TAX	.10
	TOTAL AMOUNT	\$ 5.10
9/21/50	10 bags M.M.M. <del>XXXXXXXXXX</del> @ 95¢	\$ 9.50
	deading felt	3.00
	TOTAL	\$ 12.50
	TAX	.26
		\$ 12.76
9/22/50	4 sacks cement @2.50	\$ 10.00
	TAX	.20
	TOTAL AMOUNT	\$ 10.20
9/20/50	106 Len ft. 3" crown @ 5.00	\$ 5.30
	160 Len ft. shoemole @ 2.00	3.20
	48 Bd. ft. 1 X 4 sus (#1) @ 130.00	6.24
	TOTAL	\$ 14.74
	TAX	.30
	TOTAL AMOUNT	\$ 15.04
9/20/50	10 bags M.M.M. @ 95¢	\$ 9.50
	TAX	.18
	TOTAL AMOUNT	\$ 9.68
9/20/50	280 Len ft. shoemole @ 2.50	\$ 7.00
	TAX	.14
	TOTAL AMOUNT	\$ 7.14
9/14/50	100 Bd. ft. 1 X 4 (sus) @ 95.00	\$ 9.50
	200 ft. 3" crown mold @ 5.00	10.00
	16 Bd. ft. 1 X 6 (sus) @ 95.00	1.52
	TOTAL	\$ 21.02
	TAX	.42
	TOTAL AMOUNT	\$ 21.44

9/12/50	1 keg #8 Casin	\$	12.00
	2 piece metal lath		2.43
	TOTAL	\$	14.43
	TAX		.28
	TOTAL AMOUNT	\$	14.71

9/12/50	34 Bd. ft. 1 X 8 #2 @ 95.00	\$	3.23
	64 Bd. ft. 1 X 12 #1 @ 125.00		8.00
	160 ft. 3" crown mold @ 5.00		8.00
	3 sheets metal lath @ 45.00		3.65
	TOTAL	\$	22.88
	TAX		.46
	TOTAL AMOUNT	\$	23.34

10/13/50	20 Bd. ft. 1 X 8 @ 100.00	\$	2.00
	TAX		.04
	TOTAL AMOUNT	\$	2.04

10/17/50	76 Bd. ft. 1 X 6 (CM) @ 110.00	\$	8.36
	TAX		.17
	TOTAL AMOUNT	\$	8.53

10/20/50	72 Sq. ft. Alumin screen @ 15¢	\$	10.80
	TAX		.21
	TOTAL AMOUNT	\$	11.01

10/25/50	2 bags M.M.M. @ 95¢	\$	1.90
	TAX		.03
	TOTAL AMOUNT	\$	1.93

10/26/50	1 gal. shalec @ 3.50	\$	5.50
	2 gals. 5900 @ 4.50		9.00
	1 Ironing board		15.75
	TOTAL	\$	30.25
	TAX		.61
	TOTAL AMOUNT	\$	30.86

10/26/50	160 Len. ft. 3" crown @ 4.50	\$	7.20
	TAX		.15
	TOTAL AMOUNT	\$	7.35

10/19/50	1 set window 21 X 28 @ 5.50	\$	5.50
	TAX		.11
	TOTAL AMOUNT	\$	5.61

10/30/50	1 telephone cabinet	\$	12.50
	TAX		.25
	TOTAL AMOUNT	\$	12.75

11/1/50	2 gals. 5900 @ 4.50	\$	9.00
	TAX		.18
	TOTAL AMOUNT	\$	9.18

11/1/50	2 gals. flat wall white paint	\$	7.00
	TAX		.14
	TOTAL AMOUNT	\$	7.14

11/4/50	2 gals. 5900 @ 4.50	\$	9.00
	TAX		.18
	TOTAL AMOUNT	\$	9.18



11/6/50	3 sheets 1/4 X 4 X 8 @ 4.50	\$	13.50
	1 sheet 3/4 X 4 X 8 @ 10.85		10.85
	10 Bd. ft. 5/4 X 12 (1) @ 125.00		1.25
	TOTAL	\$	25.60
	TAX		.51
	TOTAL AMOUNT	\$	26.11

11/7/50	1 gal. of 5900 @ 4.50	\$	4.50
	1 gal. of white paint @ 3.50		3.50
	TOTAL	\$	8.00
	TAX		.16
	TOTAL AMOUNT	\$	8.16

11/7/50	5# nails @ 15¢	\$	.75
	1 sack M.mix		.95
	TOTAL	\$	1.70
	TAX		.04
	TOTAL AMOUNT	\$	1.74

11/7/50	Hardware	\$	30.06
	TAX		.60
	TOTAL AMOUNT	\$	30.66

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY NO. 2583

PLEA

The respondent and cross complainant, by way of protest-  
ation to all of the relief sought and prayed for in and by Para-  
graphs 8, 9, 10, 11, 12, 13, 14, 15 and the prayer for relief of the  
complainant and cross respondent's amended Bill of Complaint which  
was filed in this cause on the 28th day of June, 1954, does hereby  
plead and for said plea saith that the complainant and cross re-  
spondent is estopped to add by way of amendment at this time the  
matters and things alleged in the said amended complaint because of  
the following:

The complainant and cross respondent did on the 28th day of January, 1952, file in this cause an amended Bill of Complaint, reference to which is hereby made as though fully incorporated herein, wherein the complainant and cross respondent, with knowledge of the facts in this case, assumed or took the position that the respondent and cross complainant was indebted to him for certain building materials which were alleged to have been sold and delivered by the complainant and cross respondent to the respondent and cross complainant. After the filing of this Bill of Complaint this court overruled the respondent and cross complainant's demurrer thereto and then the respondent and cross complainant filed his answer and cross bill herein on April 22, 1952. Thereafter and on, to-wit, April 22, 1952, this case was tried in and by this court which on, to-wit, the 25th day of September, 1952, rendered a decree granting the complainant and cross respondent the relief prayed for by him in his said amended Bill of Complaint and denying to the respondent and cross complainant the full relief prayed for by him in his said cross bill.

The respondent and cross complainant then appealed this case to the Supreme Court of the State of Alabama which on, to-wit, the 5th day of November, 1953, reversed and remanded this cause by an opinion which is reported in 260 Ala. 231, 69 So. 2d 445.

After this case was reversed and remanded and on, to-wit, the 28th day of June, 1954, the complainant and cross respondent filed in this cause his amended Bill of Complaint, a copy of which is hereto attached marked "Exhibit A" and by reference made a part hereof as though fully incorporated herein, in which and by which he alleged that the respondent and cross complainant agreed to pay him for the same building materials described in the amended Bill of Complaint filed herein on the 21st day of April, 1952, which said building materials are alleged to have been sold by the complainant and cross respondent to W. R. Thompson, who was the respondent and cross complainant's contractor, and that the respondent and cross complainant has breached his alleged agreement to pay for the said materials, because of which the complainant and cross respondent claims to be entitled to a decree against the respondent and cross complainant, which is a position inconsistent with that taken by the complainant and cross respondent in his said amended Bill of Complaint which was filed in this cause on the 28th day of January, 1952, and the testimony of the witnesses for the complainant and cross respondent which was taken in open court on the trial of this cause on, to-wit, April 22, 1952, which resulted in the said decree in his favor dated on the 25th day of September, 1952.

The respondent and cross complainant is ready to verify all of the matters and things set out above, and humbly prays the judgment of this Honorable Court thereupon and whether he is liable or shall be compelled to make any further or other answer to the said amended Bill of Complaint.

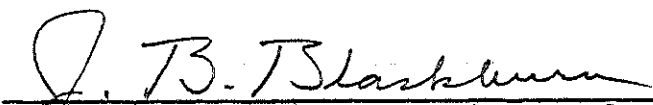
  
Solicitor for the respondent and cross  
complainant, Walter M. Lindsey.

EXHIBIT "A"

AMENDMENT TO COMPLAINT AS LAST AMENDED

CLAUDE M. ROGERS, d/b/a  
ROGERS BUILDERS SUPPLY,

COMPLAINANT,

VS

WALTER M. LINDSEY,

RESPONDENT.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE 28TH JUDICIAL  
CIRCUIT, BALDWIN COUNTY, ALABAMA:

Comes the Complainant in the above styled cause and amends  
his complaint as last amended in said cause to add to said com-  
plaint the following counts:

8.

That on, to-wit, April 1, 1950, the Respondent herein and  
one W. R. Thompson entered into a contract whereby the said W. R.  
Thompson was to erect for the said Walter M. Lindsey a residence  
for the aggregate sum of Twenty Thousand Fifty (\$20,050.00) Dollars,  
said contract being payable to the said W. R. Thompson in accord-  
ance with Article Six of said contract as hereinafter set forth:

ARTICLE 6. PAYMENTS TO CONTRACTOR - The above amount  
shall be paid by the Owner to the Contractor, according  
to the schedule, and upon completion of the several phases  
of construction as set out below:

- (a) Two Thousand Dollars (\$2000.00) upon completion of  
the Foundations, Installation of the first floor  
joists and subflooring.
- (b) Two Thousand Three Hundred Dollars (\$2300.00) upon  
completion of the Exterior and Interior stud walls,  
Roof, Rafters, and exterior Wall Sheathing.
- (c) Two Thousand Dollars (\$2000.00) upon completion of  
the roughing in of plumbing and Electrical Wiring,  
Installation of Windows and Roof Sheathing, Shingles  
and Metal Flashings.
- (d) Two Thousand Three Hundred Dollars (\$2300.00) upon  
completion of applying felt to Exterior Sheathing,  
Brick Veneering and Miscellaneous Brick Work, Gutters  
and Down Spouts.
- (e) Two Thousand One Hundred and Fifty (\$2150.00) upon  
completion of Rock Lath and Plastering, and Install-  
ation of Heating Equipment.
- (f) Two Thousand One Hundred and Fifty Dollars  
(\$2150.00) upon completion of the Installation of  
Kitchen and Bath Room Plumbing Fixtures and all  
cabinets.

- (g) Two Thousand One Hundred and Fifty Dollars (\$2150.00) upon completion of all Trim Work, Installation of all floors and Ceramic Tile Wainscots.
  - (h) Two Thousand One Hundred and Fifty Dollars (\$2150.00) upon completion of Painting (both Exterior and Interior) and sanding, filling and finishing of wood floors.
  - (i) Two Thousand Eight Hundred and Fifty Dollars (\$2850.00) upon final inspection by the Owner and Architect and their acceptance of the work.
- (Initialed) W R T  
W L.

(2)

All material and work covered by the partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility from the care and protection of materials and work upon which payments have been made or restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the contract including use of all equipment and materials delivered on the site.

The Contractor shall pay (1) for all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered, (2) for all materials, tools, and other expendable equipment to the extent of ninety (90%) percent of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the Project, and the balance of the cost thereof not later than the 30th day following the completion of that part of the work in or on which such materials, tools and equipment are incorporated or used, and (3) to each of his subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his subcontractors, to the extent of each such subcontractor's interest therein.

9.

That in the course of construction of said residence the said W. R. Thompson obtained from your Petitioner certain materials and supplies used in the construction of said residence of the Respondent, Walter M. Lindsey, and in the course of said construction on, to-wit, September 26, 1950, the said W. R. Thompson having become in arrears with his account owed your Petitioner in the sum of Three Thousand Four Hundred Thirty Eight (\$3438.00) Dollars your Petitioner stopped his deliveries to the Lindsey Project aforesaid.

10.

That the said Walter M. Lindsey paid over to W. R. Thompson for delivery to your Petitioner the sum of Three Thousand (\$3,000.00) Dollars by a check which check was received by your Petitioner and credited to the account of the said W. R. Thompson.

11.

That on, to-wit, September 26, 1950, the said Walter M. Lindsey entered into an agreement in writing with your Petitioner to pay for all materials furnished by your Petitioner to the said W. R. Thompson not to exceed the amount remaining in said contract on said date, which the said Walter M. Lindsey alleged to your Petitioner to be approximately Nine Thousand Three Hundred Dollars (\$9,300.00), which agreement in words and figures are as follows:

"Bay Minette, Alabama  
Sept. 26, 1950.

"Mr. Claude Rogers  
Rogers Building and Supply Company  
Bay Minette, Alabama

"Dear Mr. Rogers:

"Confirming our conversation of this date I am forwarding a check for \$3,000.00 to Mr. W. R. Thompson as an advance payment on my contract, and to enable him to pay your past due account for materials you have furnished him for use in my home.

"It is my understanding that you are to furnish Mr. Thompson other materials to enable him to finish my home, but as regards these other materials I am responsible for the costs only to the extent of any unpaid balance due Mr. Thompson under the contract.

"Yours very truly,  
Walter M. Lindsey".

"WML;bb

12.

Your Petitioner did on that date execute an acceptance of said agreement with the said Walter M. Lindsey, which acceptance was prepared by said Walter M. Lindsey and executed by your Petitioner and which in words and figures is as follows:

"Bay Minette, Alabama  
September 26, 1950.

Mr. Walter M. Lindsey  
Bay Minette, Alabama

Dear Mr. Lindsey:

Confirming our conversation this date and in consideration of your advance this date to Mr. W. R. Thompson to enable him to pay up his past due account with me (said past due account consisting of monies due for materials furnished to

him for use in your home such as windows, roofing and lumber, etc) I agree to supply Mr. Thompson with any other materials necessary in order to insure completion of your home including trim & mill-work doots, and cabinets, etc. It is agreed that your liability for payment for any of these other materials furnished Mr. Thompson is limited to any balance due Mr. Thompson under the contract.

Yours very truly

/s/ C. M. Rogers  
Claude Rogers  
Rogers Building Supply Co."

13.

That subsequent to the agreement, as set out in and by the exchange of letters set forth herein, your Petitioner delivered to W. R. Thompson as contractor for Walter M. Lindsey, Respondent in said cause, certain items of building material aggregate the sum of Three Thousand Seven Hundred Sixty-Nine and .03/100 (\$3769.03) Dollars, and as set forth in detail in Exhibit "C" heretofore filed in said cause of which items a certain bill of mill work delivered by McPhillips Manufacturing Company's truck, being cabinet work and other items detailed as set forth in Exhibit "D" as attached hereto, and made a part hereof, which said items were known to have been ordered for, delivered to and used by W. R. Thompson in the constructions of said residence of said Walter M. Lindsey at the time of the delivery of the same and before he had paid out the monies he had contracted and agreed with this Complainant to hold for the payment of such materials.

14.

That the said Walter M. Lindsey breached the agreement entered into with your Petitioner on September 26, 1950, as set forth in this petition in that, in violation of his said agreement to hold the balance on the said contract to W. R. Thompson for the payment of monies due for delivery of materials to W. R. Thompson for use in the Lindsey residence, and with full knowledge of the fact that such materials and supplies had been furnished to W. R. Thompson on the project and not paid for, in that, the said Walter M. Lindsey had paid out to various and sundry persons sums aggregating Nine Thousand Three Hundred Dollars (\$9300.00) alleged to

been that portion of said contract unpaid on September 26, 1950, the date said agreements were made wherein the said Walter M. Lindsey agreed to be responsible to your Petitioner to the extent of the unpaid monies under the contract.

15.

Complainant alleges that by virtue of the failure of the Respondent to keep and perform the agreement set forth in that certain letter from the Respondent to the Complainant dated September 26, 1950, as shown herein, that the said Respondent is indebted to your Petitioner for the materials delivered by your Petitioner to W. R. Thompson for use in the said Walter M. Lindsey residence, aforesaid which sum of money is due and unpaid being uncollected from the said W. R. Thompson, wherefore the said Respondent is indebted to your Petitioner in said sum, to-wit: Three Thousand Seven Hundred Sixty-Nine and .03/100 (\$3769.03) Dollars.

PRAYER FOR PROCESS

WHEREFORE the premises considered the Complainant prays that your Honor will by proper process make the said Walter M. Lindsey a party Respondent to this cause of action requiring him to plead, answer or demur to this complaint, as last amended, within the time and under the penalties prescribed by law and the practice of this Honorable Court.

PRAYER FOR RELIEF

AND your Complainant further prays that upon the hearing of the cause made by this bill of complaint as last amended this Honorable Court will make and enter a decree, decreeing an accounting of the said funds then unpaid in said contract between Walter M. Lindsey and W. R. Thompson expended by the Respondent, Walter M. Lindsey, subsequent to September 26, 1950, and upon said accounting having been made this Honorable Court will then make and enter a decree determining and adjudicating that the said Respondent, Walter M. Lindsey, is indebted to the said Claude M. Rogers d/b/a Rogers Builders Supply in the amount of Three Thousand Seven Hundred Sixty-Nine and .03/100 (\$3769.03) Dollars for materials fur-



nished by the Complainant to W. R. Thompson, contractor of Walter M. Lindsey, which materials were furnished by the Complainant in accordance with the written agreement entered into on the 26th day of September, 1950, for delivery of building materials for use in the dwelling then being erected on Lot 1, Block 18, Hand Land Company addition to the Town of Bay Minette. AND that so much of said monies as the accounting shall show to have been expended by the Respondent, Walter M. Lindsey, subsequent to September 26, 1950, shall equal to the amount of said indebtedness being applied to said indebtedness. That the Respondent be ordered and required to pay the said indebtedness so determined as owing your Complainant within the time and according to the rules of this Honorable Court and the laws of the State of Alabama in such matters and that this Honorable Court will make and enter such orders and decrees that may be necessary and proper in the judgment of this Honorable Court for the payment of such sums that the Court may have found and determined to be owing to your Complainant by said Respondent, and your Complainant prays for such other, further, or different relief as in equity and good conscience he shall be entitled to receive, and in the premises, places himself within the jurisdiction of this Honorable Court and offers to do and perform whatever this Honorable Court shall in equity and good conscience require of him in this cause.

/s/ C. LENOIR THOMPSON  
Attorney for the Complainant

I hereby certify that I delivered a copy of the foregoing amended complaint to J. B. Flackburn, Esquire, Solicitor for Respondent and Cross-Complainant, on this the 28th day of June, 1954.

/s/ C. LENOIR THOMPSON  
Attorney for the Complainant.

SUMMONS AND COMPLAINT

Moore Printing Co.

THE STATE OF ALABAMA,  
BALDWIN COUNTY,

CIRCUIT COURT, BALDWIN COUNTY

No. 2583

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon WALTER M. LINDSAY and

W. R. THOMPSON

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

WALTER M. LINDSAY and W. R. THOMPSON, Defendant

by CLAUDE M. ROGERS, d/b/a ROGERS BUILDERS SUPPLY

, Plaintiff

Witness my hand this 16th day of December 19 50

Arcif. Luck, Clerk

No. 2583 Page -----

THE STATE OF ALABAMA  
BALDWIN COUNTY

CIRCUIT COURT

CLAUDE M. ROGERS d/b/a

ROGERS BUILDERS SUPPLY

Plaintiffs

**vs.**

WALTER M. LINDSAY

W. R. THOMPSON

## Defendants

## SUMMONS and COMPLAINT

Filed December 16, 19 50

Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED IN OFFICE

19.-----

Sheriff

I have executed this summons

this \_\_\_\_\_, 19 \_\_\_\_\_  
by leaving a copy with \_\_\_\_\_

Sheriff

Deputy Sheriff

CLAUDE M. ROGERS d/b/a Rogers  
Builders Supply

COMPLAINANT

VS

WALTER M. LINDSEY and W. R.  
THOMPSON

RESPONDENT

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

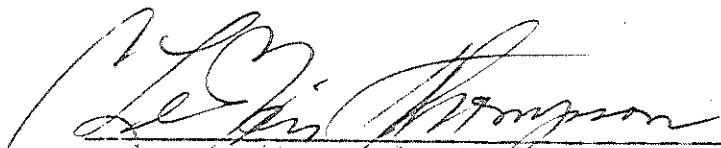
TO THE HONORABLE Telfair J. Masheum Jr., JUDGE OF THE 28th  
JUDICIAL CIRCUIT, BALDWIN COUNTY, ALABAMA.

Comes your complainant, CLAUDE M. ROGERS and shows unto your  
Honor as follows:

Complainant claims of the Respondent the sum of Three Thousand  
Seven Hundred Sixty-Nine Dollars and .03/100 (\$3769.03) for material  
furnished by the complainant at the request of respondent and respondents  
agent and/ or contractor, on a building or improvement on the following  
described property, viz., Lot one Block eighteen Hand Land Company  
addition to the town of Bay Minette, which said indebtedness accrued on,  
to-wit, the 1st day of December, 1950, and is now due and unpaid.

Complainant alleges that the above described property is the  
property of the respondent, Walter M. Lindsey; that said materials were  
furnished for use in the construction of said buildings or improvements  
on said land, under and by virtue of a contract with the said Walter M.  
Lindsey, the owner or proprietor thereof to W. R. Thompson, his agent or  
contractor, that within thirty days, after the said indebtedness had matured,  
on, to-wit, the 10th day of December, 1950, complainant did file in the  
office of the Judge of Probate of the county wherein said land is situated, a  
verified statement as required by law, and on December 16, 1950, your  
complainant did file in the office of the Probate Court of Baldwin County,  
Alabama, an amended verified statement, copies of both of which are attached  
hereto, made a part hereof, and marked Exhibit "A"; wherefore complainant  
claims a lien for said amount upon said land and buildings and improvements  
situated thereon.

Your complainant further prays for such other, further, different or  
general relief as he maybe entitled to receive, and your complainant ever  
prays, etc.

  
Attorney for Complainant.

no 2583  
CLAUDE M ROGERS, d/b/a ROGERS  
BUILDERS SUPPLY

VS

WALTER M. LINDSAY  
W. R. THOMPSON

(1)

Executed 12-16-50  
By serving copy of the  
within on

Walter M. Lindsay  
- W. R. Thompson

Jayla Wilkins Sheriff  
14714 all D.S.

SUIT FOR MECHANIC'S LIEN

From the Law Offices of  
C. LeNoir Thompson  
Bay Minette, Ala.

Filed 12-16-50  
Arie J. Luck  
Register

CLAUDE M. ROGERS  
d/b/a ROGERS BUILDERS SUPPLY  
COMPLAINANT.

vs

WALTER M. LINSEY and  
W. R. THOMPSON

RESPONDENTS

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY SITTING  
CASE NO. \_\_\_\_\_

This cause was submitted to the Court for a ruling on demurrers heretofore filed in this case by the Respondent, W.R. Thompson.

Upon consideration thereof the Court is of the opinion that the said demurrers are well grounded and should be sustained and that this cause should be discontinued and dismissed as relates to the Respondent W. R. Thompson.

The above said demurrers are hereby sustained; AND IT IS ORDERED, ADJUDGED AND DECREED, that this case be dismissed in-so-far as it relates to the Respondent W. R. Thompson.

Done and ordered, this the 5<sup>th</sup> day of November 1951.

Jefferson J. Maddebury, Jr.

CIRCUIT JUDGE

SITTING IN EQUITY

M 2383

11.

Deer  
Sunt Thompson's  
den, and  
denning suit as  
to W. R. Thompson.

FILED

NOV 18 1951

ALICE J. DUCK, Register

AMENDED COMPLAINT

CLAUDE M. ROGERS d/b/a Rogers  
Builders Supply

COMPLAINANT

VS

WALTER M. LINDSEY and W. R.  
THOMPSON

RESPONDENTS

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

TO THE HONORABLE TELFAIR J. MASHEURN JR., JUDGE OF THE 28th  
JUDICIAL CIRCUIT, BALDWIN COUNTY, ALABAMA.

Comes your complainant, CLAUDE M. ROGERS and shows unto your  
Honor as follows:

1.

Complainant claims of the Respondents the sum of Three Thousand  
Seven Hundred Sixty-Nine Dollars and .03/100 (\$3769.03) for material  
furnished by the complainant at the request of respondent and respondents  
agent and/ or contractor, on a building or improvement on the following  
described property, viz., Lot one Block eighteen Hand Land Company  
addition to the town of Bay Minette, which said indebtedness accrued on,  
to-wit, the 1st day of December, 1950, and is now due and unpaid.

Complainant alleges that the above described property is the  
property of the respondent, Walter M. Lindsey; that said materials were  
furnished for use in the construction of said buildings or improvements  
on said land, under and by virtue of a contract with the said Walter M.  
Lindsey, the owner or proprietor thereof to W. R. Thompson, his agent or  
contractor, that within thirty days, after the said indebtedness had matured,  
on, to-wit, the 10th day of December, 1950, complainant did file in the  
office of the Judge of Probate of the county wherein said land is situated,  
a verified statement as required by law, and on December 16, 1950, your  
complainant did file in the office of the Probate Court of Baldwin County,  
Alabama, an amended verified statement, copies of both of which are  
attached hereto, made a part hereof, and marked Exhibit "A"; wherefore  
complainant claims a lien for said amount upon said land and buildings  
and improvements situated thereon.

2.


Complainant claims of the Respondents the sum of Three Thousand  
Seven Hundred Sixty-Nine Dollars and .03/100 (\$3769.03) for material  
furnished by the complainant to the respondent, Walter M. Lindsey, at



the request of respondent, Walter M. Lindsey, on a building or improvement on the following described property, viz., Lot one Block eighteen Hand Land Company addition to the town of Bay Minette, which said indebtedness accrued on, to-wit, the 1st day of December, 1950, and is now due and unpaid.

Complainant alleges that the above described property is the property of the respondent, Walter M. Lindsey; that said materials were furnished for use in the construction of said buildings or improvements on said land, under and by virtue of a contract with the said Walter M. Lindsey, the owner or proprietor thereof, that within thirty days, after the said indebtedness had matured, on, to-wit, the 10th day of December, 1950, complainant did file in the office of the Judge of Probate of the county wherein said land is situated, a verified statement as required by law, and on December 16, 1950, your complainant did file in the office of the Probate Court of Baldwin County, Alabama, an amended verified statement, copies of both of which are attached to the original bill of complaint in this cause and made a part hereof, and marked Exhibit "A"; wherefore complainant claims a lien for said amount upon said land and buildings and improvements situated thereon, AND complainant prays that said lien may be established and that said real estate be condemned for the satisfaction of said indebtedness and that same be ordered sold to satisfy said indebtedness.

Your complainant further prays for such other, further, different on general relief as he maybe entitled to receive, and your complainant ever prays, etc.

  
Attorney for Complainant

25-83

4

Received in Sheriff's Office  
this 30 day of Jan, 1951  
TAYLOR WILKINS, Sheriff

CLAUDE M. ROGERS d/b/a Rogers  
Builders Supply

Complainant

VS

WALTER M. LINDSEY and W. R.  
THOMPSON

Respondents

ATTENDED COMPLAINT

Executed \_\_\_\_\_ 19 51  
By serving copy of within Summons and  
Complaint on

Walter M. Lindsey 2-1-51  
W. R. Thompson 2-3-51

Taylor Wilkins Sheriff  
By H. F. Hall Deputy Sheriff

FILED  
JAN 30 1951  
ALICE J. BUCK, Clerk

From the law offices of  
C. LeNoir Thompson  
Bay Minette, Alabama



Measure surrounding (16)  
Respirator Unit  
Amended Comp

1-21-52

Filed 4-22-52  
A. J. French  
clerk

VS.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY. NO. 2583

## Respondents.

This cause coming on to be heard on this date is submitted on the amended demurrer of the Respondent, Walter M. Lindsey, to the Bill of Complaint as last amended and the same having been argued to and understood by the Court, it is Ordered, Adjudged and Decreed by the Court as follows:

2. The Complainant is allowed twenty (20) days in which to amend his said Bill of Complaint, if he desires so to do.

Jeffrey J. Marshall, Jr.  
Judge.

11 8  
DECREE SUSTAINING DEMURRER TO  
AMENDED COMPLAINT.

CLAUDE M. ROGERS,  
d/b/a Rogers Builders Supply  
Company,

Complainant,

VS.

WALTER M. LINDSEY and W. R.  
THOMPSON,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY. NO. 2583

FILED

JUL 26 1951

ALICE A. DICK, Register

CLAUDE M. ROGERS,

Complainant and  
Cross Respondent,

VS.

WALTER M. LINDSEY,

Respondent and  
Cross Complainant.

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

DECREE SETTING PLEA FOR HEARING TO TEST ITS  
LEGAL SUFFICIENCY.

On application of the respondent and cross complainant,  
and with the consent of the complainant and cross respondent, act-  
ing by and through his solicitor of record, the plea filed in this  
cause by the respondent and cross complainant on this date shall be  
and the same is hereby set for hearing to determine its legal suf-  
ficiency at nine o'clock A. M. on May 4, 1955.

ORDERED, ADJUDGED AND DECREED on this the 18 day of  
April, 1955.

*Robert M. Hall*  
Judge

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY



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DECREE CONTINUING CAUSE

CLAUDE M. ROGERS,

Complainant and Cross  
Respondent,

VS.

WALTER M. LINDSEY,

Respondent and Cross  
Complainant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY NO. 2583

FILED  
MAY 13 1954  
WILLIAM J. DICK, Register

CLAUDE M. ROGERS, )  
Complainant and )  
Cross Respondent, )  
VS. )  
WALTER M. LINDSEY, )  
Respondent and )  
Cross Complainant. )

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY NO. 2583

ORDER CONTINUING DATE FOR HEARING TO DETER-  
MINE LEGAL SUFFICIENCY OF PLEA.

This being the date heretofore set for testing the legal  
sufficiency of a plea filed in this cause by the respondent and  
cross complainant, it is by consent of the parties ORDERED, ADJUDGED  
AND DECREED that the said matter be and it is hereby continued  
until nine o'clock A. M. on the 16 day of May, 1955.

ORDERED, ADJUDGED AND DECREED on this the 4 day of  
May, 1955.

*Hubert M. Hall*  
Judge

CLAUDE M. ROGERS

WALTER M. LINDSEY

CLAUDE M. ROGERS

WALTER M. LINDSEY

CLAUDE M. ROGERS

WALTER M. LINDSEY

CLAUDE M. ROGERS

WALTER M. LINDSEY

CLAUDE M. ROGERS



CLAUDE M. ROGERS,	)	
	)	
Complainant and	)	IN THE CIRCUIT COURT OF
Cross Respondent,	)	BALDWIN COUNTY, ALABAMA
VS.	)	
	)	
WALTER M. LINDSEY,	)	IN EQUITY NO. 2583
	)	
Respondent and	)	
Cross Complainant.	)	

DECREE DENYING LEGAL SUFFICIENCY OF PLEA

The plea filed in this cause by the respondent and cross complainant on April 18, 1955, was heretofore set down for hearing on May 4, 1955, to test its legal sufficiency, as will appear from the decree of this court dated April 18, 1955, and was thereafter continued until May 16, 1955, as will appear from the order of this court dated May 4, 1955, at which time the matter was taken under submission and the same being understood by the court, it appears to the court that the said plea is not legally sufficient as a defense to the complainant and cross respondent's amended Bill of Complaint, which was filed in this cause on June 28, 1954; upon consideration of all of which it is, therefore, ORDERED, ADJUDGED AND DECREED by the court as follows:

1. The said plea of the respondent and cross complainant is insufficient and does not constitute a defense to the Bill of Complaint as last amended.

2. The respondent and cross complainant shall be and he is hereby allowed thirty days from the date of this decree to plead to the merits of the said amended Bill of Complaint by demurrer or answer.

ORDERED, ADJUDGED AND DECREED on this the 21 day of February, 1956.

Hubert M. 78  
Judge

CLAUDE M. ROGERS,	)	
	)	
Complainant and	)	IN THE CIRCUIT COURT OF
Cross Respondent,	)	BALDWIN COUNTY, ALABAMA
VS.	)	
	)	
WALTER M. LINDSEY,	)	IN EQUITY NO. 2583
	)	
Respondent and	)	
Cross Complainant.	)	

DECREE DENYING LEGAL SUFFICIENCY OF PLEA

The plea filed in this cause by the respondent and cross complainant on April 18, 1955, was heretofore set down for hearing on May 4, 1955, to test its legal sufficiency, as will appear from the decree of this court dated April 18, 1955, and was thereafter continued until May 16, 1955, as will appear from the order of this court dated May 4, 1955, at which time the matter was taken under submission and the same being understood by the court, it appears to the court that the said plea is not legally sufficient as a defense to the complainant and cross respondent's amended Bill of Complaint, which was filed in this cause on June 28, 1954; upon consideration of all of which it is, therefore, ORDERED, ADJUDGED AND DECREED by the court as follows:

1. The said plea of the respondent and cross complainant is insufficient and does not constitute a defense to the Bill of Complaint as last amended.

2. The respondent and cross complainant shall be and he is hereby allowed thirty days from the date of this decree to plead to the merits of the said amended Bill of Complaint by demurrer or answer.

ORDERED, ADJUDGED AND DECREED on this the 21 day of February, 1956.

Hubert M. 78  
Judge

RECORDED

DECREE DENYING LEGAL SUFFICIENCY  
OF PLEA

CLAUDE M. ROGERS,

Complainant and Cross  
Respondent,

VS.

WALTER M. LINDSEY,

Respondent and Cross  
Complainant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY NO. 2583

CLAUDE M. ROGERS,  
doing business as  
ROGERS BUILDERS SUPPLY,

Complainant,

VS.

WALTER M. LINDSEY,

Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY. NO. 2583.

#### FINAL DECREE

This cause coming on to be heard is submitted for Final Decree upon the pleadings and the testimony heard ore tenus by the Court, upon consideration of which, the Court finds the following facts in the case:

1. That the Respondent and Cross Complainant, Walter M. Lindsey, entered into a contract with W. R. Thompson on April 1, 1950, whereby the said W. R. Thompson agreed to construct a residence for the said Walter M. Lindsey for the sum of Twenty Thousand Fifty Dollars (\$20,050.00); that the said Thompson was to furnish all the materials and labor and complete the job; that Claude M. Rogers, doing business as Rogers Builders Supply, became the chief supplier of materials for the, hereinafter referred to as, Lindsey job;

2. That after a few months it became apparent that Thompson had taken the Lindsey job at a price that was far too low; that Thompson fell behind in his payments to Rogers for materials furnished by Rogers to the Lindsey job; that on September 26, 1950, Thompson being about Three Thousand Four Hundred Dollars (\$3,400.00) behind in his payments to Rogers, Rogers went to Lindsey and told him that he had to have some money to pay his creditors;

3. That at a conference between Thompson, Rogers and Lindsey it was agreed that Lindsey would make an advance payment of Three Thousand Dollars (\$3,000.00) on his contract to Thompson to be used to pay Rogers; that as a part of this same transaction Claude M. Rogers and W. M. Lindsey exchanged letters stating that Rogers would continue to furnish materials to Thompson for the Lindsey job, for which Lindsey would be liable only to the extent of the balance he owed Thompson under his contract;



4. That after this conference on September 26, 1950 Rogers, realizing Thompson's financial difficulties under his contract with Lindsey, refused to deliver more materials to the Lindsey job, despite his letter of September 26, until Lindsey would agree to guarantee payment; that Rogers continued refusing to deliver materials to the Lindsey job for some two weeks or more; that on or about October 13, 1950 Lindsey did agree with Rogers to guarantee payment for materials delivered to the Lindsey job in the future;

5. That on October 13, 1950, Rogers resumed delivering materials to Thompson for the Lindsey job; that between October 13, 1950, and December 10, 1950, Rogers delivered to the Lindsey job materials in the amount of Three Thousand Seven Hundred Sixty-nine and 03/100 Dollars (\$3,769.03), for which he has not been paid and for which Lindsey owes him;

6. That on December 9, 1950, Rogers delivered to the Lindsey job one bill of goods, the McPhillips millwork, costing Two Thousand Eight Hundred Forty-seven and 84/100 Dollars (\$2,847.84); that Walter M. Lindsey personally accepted delivery of this order at a time when he knew that W. R. Thompson had a balance coming due under the contract of less than One Thousand Dollars (\$1,000.00);

7. That on November 17, 1950, Walter M. Lindsey indorsed a note to the Baldwin County Bank for Claude M. Rogers in the amount of One Thousand Dollars (\$1,000.00); that on April 15, 1951, Walter M. Lindsey had to pay the Baldwin County Bank the One Thousand Dollars (\$1,000.00) due on said note; that Walter M. Lindsey is entitled to have the One Thousand Dollars (\$1,000.00) due on said note set off against the Three Thousand Seven Hundred Sixty-nine and 03/100 Dollars (\$3,769.03) he owes to Rogers; that since Lindsey was indebted to Rogers from October, 1950 to the present time and further since there was no demand by Lindsey on Rogers for payment of said note prior to Lindsey filing suit on said note, he is not entitled to an attorney's fee for collecting same;

8. That the Complainant and Cross Respondent, Claude M. Rogers, on December 10, 1950, did file in the office of the Judge of

Probate of Baldwin County, Alabama, a verified statement of materials furnished by him to the Respondent and Cross Complainant, Walter M. Lindsey, in accordance with the provisions of paragraph 41, Title 33 of the Code of Alabama of 1940; that on December 16, 1950, the Complainant and Cross Respondent, Claude M. Rogers, filed in the office of the Probate Judge of Baldwin County, Alabama, an amended verified statement of materials furnished by him to the Respondent and Cross Complainant, Walter M. Lindsey, in accordance with the provisions of paragraph 41, Title 33 of the Code of Alabama of 1940; that the Complainant and Cross Respondent, Claude M. Rogers, is entitled to a lien on Lot One (1) Block Eighteen (18) of the Hand Land Company Addition to Bay Minette and the building situated thereon for the sum of Three Thousand Seven Hundred Sixty-nine and 03/100 Dollars (\$3,769.03) with interest from December 10, 1950, at six percent (6%) per annum, less One Thousand Dollars (\$1,000.00) with interest from April 15, 1951, at six percent (6%) per annum:

UPON CONSIDERATION OF ALL OF WHICH, it is thereupon ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That the Complainant and Cross Respondent, Claude M. Rogers, have and recover of and from the Respondent and Cross Complainant, Walter M. Lindsey, the sum of Three Thousand Seventy-nine and 77/100 Dollars (\$3,079.77).

2. That the Complainant and Cross Respondent, Claude M. Rogers, is the owner of a lien on

Lot One (1) Block Eighteen (18) of Hand Land Company's Addition to Bay Minette, Baldwin County, Alabama,

and the building situated thereon to secure the payment of the Three Thousand Seventy-nine and 77/100 Dollars (\$3,079.77) as aforesaid.

3. That unless the Respondent and Cross Complainant, Walter M. Lindsey, pay to the Complainant and Cross Respondent, Claude M. Rogers, the sum of Three Thousand Seventy-nine and 77/100 Dollars (\$3,079.77) as aforesaid, within sixty days from the date of this decree, the Register of this Court be and she is hereby authorized, directed and empowered to sell the property herein referred to:

Lot One (1) Block Eighteen (18) of Hand Land Company's  
Addition to Bay Minette, Baldwin County, Alabama,

to the highest bidder, for cash, in front of the Court House at Bay Minette, Alabama, after having given notice of said intended sale by publication once a week for three successive weeks in the Onlooker, a newspaper published at Foley, in Baldwin County, Alabama, and report her actions to this Court for further decrees.

4. That the Respondent and Cross Complainant, Walter M. Lindsey, pay the costs of these proceedings, for which let execution issue.

Done this 25th day of September, 1952.

Telfair J. Maddox, Jr.  
Judge

The State of Alabama }  
Baldwin County }

IN THE CHANCERY COURT OF BALDWIN COUNTY

To ~~C. LeNoir Thompson~~ Claude M. Rogers

Or To C. LeNoir Thompson, Solicitors of record.

Whereas, on the 20th day of November, 1932,

Walter M. Lindsey

took an appeal from the decree rendered on the 25th day of September  
1932, by the Circuit Court of said county, in the cause of

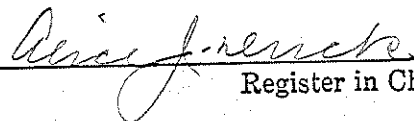
CLAUDE M. ROGERS d/b/a ROGERS BUILDERS SUPPLY

versus

WALTER M. LINDSEY

Now, therefore, you are cited to appear as required by law, before the Supreme Court of  
Alabama, to defend on said appeal, if you think proper so to do.

Witness my hand this 20th day of November, 1932



Register in Chancery.

The State of Alabama  
Baldwin County

IN THE CHANCERY COURT OF BALDWIN COUNTY

To ~~C. LeNoir Thompson~~ Claude M. Rogers

Or To C. LeNoir Thompson, Solicitors of record.

Whereas, on the 20th day of November, 1932,

Walter M. Lindsey

took an appeal from the decree rendered on the 25th day of September

1932, by the Circuit Court of said county, in the cause of

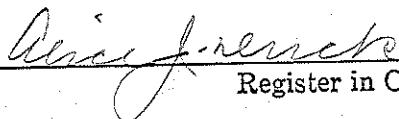
CLAUDE M. ROGERS d/b/a ROGERS BUILDERS SUPPLY

versus

WALTER M. LINDSEY

Now, therefore, you are cited to appear as required by law, before the Supreme Court of Alabama, to defend on said appeal, if you think proper so to do.

Witness my hand this 20th day of November, 1932



Register in Chancery.

Received in Sheriff's Office  
this 27 day of Nov, 1952  
TAYLOR WILKINS, Sheriff

Serve on  
Hon. C. L. Thompson

No. 2583

Executed Nov. 24, 1952  
By serving a copy  
of the within  
citation of appeal  
on C. Leroy Thompson  
Solicitor of record

CLAUDE M. ROGERS Complainant

vs.

WALTER M. LINDSEY Respondent

## CITATION OF APPEAL

IN EQUITY

Issued \_\_\_\_\_ day of \_\_\_\_\_ 193\_\_\_\_

Moore Ptg. Co., Bay Minette

Taylor Wilkins  
Sheriff  
By H. F. Hall D.S.

CLAUDE M. ROGERS,	)	
	)	
Complainant and	)	IN THE CIRCUIT COURT OF
Cross Respondent,	)	BALDWIN COUNTY, ALABAMA
VS.	)	
	)	
WALTER M. LINDSEY,	)	IN EQUITY NO. 2583
	)	
Respondent and	)	
Cross Complainant.	)	

DECREE

This cause coming on to be heard on this day, being the date heretofore set by a former order of this court for the trial and disposition of this cause, and it appearing to the court that the respondent and cross complainant and his solicitor were present in court and ready for trial on this date and that the complainant and cross respondent and his solicitor were not in court and ready for trial on the said date, and, further, that C. LeNoir Thompson, the complainant and cross respondent's solicitor of record, has withdrawn his appearance as solicitor for the complainant and cross respondent, upon consideration of all of which it is, therefore, ORDERED, ADJUDGED AND DECREED by the court as follows:

1. This cause shall be and it is hereby continued until nine-thirty A. M. on October 3, 1956, which date shall be and it is hereby set as the date for the trial of this cause.

2. The Register of this court shall immediately have a copy of this decree served on the complainant and cross respondent so that he may employ other counsel in this cause and be ready for trial on October 3, 1956, if he shall elect to do so.

ORDERED, ADJUDGED AND DECREED on this the 5th day of September, 1956.

Hubert M. Hall  
Judge

Received 6 day of Sept 1956  
and on 25 day of Sept 1956  
I served a copy of the within  
on Claude M Rogers  
by service on \_\_\_\_\_

TAYLOR WILKINS, Sheriff  
By W. A. Talbert D. S.  
3 miles South  
of D.M.

Sheriff claims 6 miles at  
Ten Cents per mile Total \$ 60  
TAYLOR WILKINS, Sheriff  
BY Talbert  
DEPUTY SHERIFF

DECREE

CLAUDE M. ROGERS,  
Complainant and Cross  
Respondent,  
VS.

WALTER M. LINDSEY,  
Respondent and Cross  
Complainant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY NO. 2583

To be served on  
Claude Rogers

FILED

SEP 6 1956

ALICE J. BUCK, Register



*Croft*

Div. No. 2583

CERTIFICATE OF APPEAL. (Equity Cases.)

No. 2583

CLAUDE M. ROGERS d/b/a ROGERS BUILDERS SUPPLY  
Complainant.

vs.

WALTER M. LINDSEY

Respondent.

I, Alice J. Duck

Register of the Circuit Court In Equity,

Baldwin

County, Alabama, hereby certify that in the cause of

CLAUDE M. ROGERS d/b/a ROGERS BUILDERS SUPPLY

Complainant,

vs.

WALTER M. LINDSEY

Respondent,

which was tried and determined in this Court on the 25th day of

September

19 52,

in which there was a decree in favor of the

Complainant

On the 20th day of November 19 52, the Respondent

took an appeal to the

Supreme Court

of Alabama, to be holden of and for said State.

I further certify that J. B. Blackburn

filed security for cost of appeal, to the Supreme Court,

on the 20th day of November 19 52, and that

J. B. Blackburn

are sureties on the appeal bond.

I further certify that notice of said appeal was on the 22nd

day of November, 19 52 served on Hon. C. L. Thompson

as attorney of record for said appellee.

Witness my hand and the seal of this Court, this the 21st day

of November, 19 52

Register of the Circuit Court In Equity of

County, Alabama.

CLAUDE M. ROGERS,  
Doing business as Rogers  
Builders Supply,

Complainant,

VS.

WALTER M. LINDSEY,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 2583

APPEAL

Now comes the respondent in the above entitled cause and  
appeals to the Supreme Court of the State of Alabama from the de-  
cree of the Circuit Court of Baldwin County, Alabama, rendered in  
this cause on the 25th day of September, 1952.

Dated this 20th day of November, 1952.

*J. B. Blachman*

Solicitor for respondent.

APPEAL

CLAUDE M. ROGERS,  
Doing business as Rogers Builders  
Supply,

VS.

WALTER M. LINDSEY,

Complainant,

Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY NO. 2583

*Filed 11-20-52*  
*Wm. J. Smith*  
*Register*

CLAUDE M. ROGERS,	)	
	)	
Complainant and	)	IN THE CIRCUIT COURT OF
Cross Respondent,	)	BALDWIN COUNTY, ALABAMA
VS.	)	
	)	IN EQUITY NO. 2583
WALTER M. LINDSEY,	)	
	)	
Respondent, and	)	
Cross Complainant.	)	

# FINAL DECREE

This cause coming on to be heard on this date, being the date heretofore set by a former decree of this court for the final disposition of this cause, is submitted for a final decree upon the pleadings and proof as noted by the Register, from all of which it appears to the court as follows:

A decree was heretofore rendered in this cause in favor of the complainant and cross respondent against the respondent and cross complainant, and this cause was then appealed by the respondent and cross complainant to the Supreme Court of Alabama, which reversed and remanded the said cause and held that the respondent and cross complainant was not responsible to the complainant and cross respondent, as will appear from the Supreme Court's opinion in the said cause, 260 Ala. 231, 69 So. 2d 445.

It also appears to the said court that the respondent and cross complainant has agreed to reduce the amount due him by the complainant and cross respondent on the promissory waive note for \$1,000.00, which was originally given by the complainant and cross respondent, Claude M. Rogers, to the Baldwin County Bank and transferred by the Baldwin County Bank to the respondent and cross complainant, Walter M. Lindsey, which is hereinafter described, to the sum of \$500.00; upon consideration of all of which, it is, therefore, ORDERED, ADJUDGED AND DECREED by the court as follows:

1. The complainant and cross respondent, Claude M. Rogers, is not entitled to recover against the respondent and cross complainant, Walter M. Lindsey, because of the matters alleged by him in his Bill of Complaint as last amended, which said Bill of Complaint as last amended shall be and the same is hereby dismissed.

2. The respondent and cross complainant, Walter M. Lindsey, shall have and recover of the complainant and cross respondent, Claude M. Rogers, the sum of \$500.00 due on a promissory waive note dated November 17, 1950, made by the said Claude M. Rogers to the Baldwin County Bank and due on February 15, 1951, which note was assigned and endorsed by the said Baldwin County Bank to the said Walter M. Lindsey, upon which execution may issue, as is herein-after provided. Execution on this judgment is hereby suspended until April 1, 1957.

3. The costs of this proceeding are hereby taxed against the complainant and cross respondent, Claude M. Rogers, for which execution may issue.

4. This decree has been consented to by the parties to this cause.

ORDERED, ADJUDGED AND DECREED on this the 3rd day of October, 1956.

Hubert M. Hall  
Judge

CLAUDE M. ROGERS,	)	
doing business as	)	
Rogers Builders Supply,	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
Complainant,	)	IN EQUITY NO. 2583
VS.	)	
WALTER M. LINDSEY,	)	
Respondent.	)	

SUPERSEDEAS BOND

KNOW ALL MEN BY THESE PRESENTS: That the undersigned Walter M. Lindsey, as Principal, and the undersigned Fidelity and Casualty Company of New York, a Corporation, as Surety, are held and firmly bound unto Claude M. Rogers in the full sum of Sixty-six Hundred Dollars (\$6600.00), for the payment of which well and truly to be made and done, the Principal binds himself, his heirs, executors and administrators, and the Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated on this the 2nd day of October, 1952.

The condition of the above obligation is such that, Whereas, Claude M. Rogers obtained a decree in the above styled cause in the Circuit Court of Baldwin County, Alabama, in Equity, on the 25th day of September, 1952, from which decree the said Walter M. Lindsey has obtained an appeal, returnable to the next term of the Supreme Court of Alabama. Now, therefore, if the said Walter M. Lindsey shall prosecute the said appeal to effect and satisfy such decree as may be rendered against him in the said cause by the said Supreme Court, then this obligation is to be null and void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, the Principal has hereunto set his hand and affixed his seal, and the Surety has caused its corporate seal to be hereto affixed and this instrument to be executed by Robert L. Smith, as its Attorney, on this the day and year first above written.

Affix Corporate Seal.

Walter M. Lindsey (SEAL)  
 FIDELITY AND CASUALTY COMPANY OF NEW YORK,  
 a Corporation, (SEAL)  
 By Robert L. Smith  
 As its Attorney

Taken and approved on this the  
20<sup>th</sup> day of ~~October~~, 1952.  
*November*

*Alvin L. Hester*

Register of the Circuit Court of  
Baldwin County, Alabama, in Equity.

# The Fidelity and Casualty Company of New York

The Pioneer Bonding Company of the United States

BONDING DEPARTMENT

80 MAIDEN LANE, NEW YORK, N. Y.

Know all Men by these Presents:

That The Fidelity and Casualty Company of New York has made, constituted, and appointed, and by these presents does make, constitute, and appoint Robert L. Smith of Birmingham, Alabama

its true and lawful attorney for it and in its name, place, and stead to execute on behalf of the said Company, as surety, bonds, undertakings, and contracts of suretyship to be given to

all obligees

provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of two hundred fifty thousand dollars.

In Witness Whereof The Fidelity and Casualty Company of New York has caused its official seal to be hereunto affixed, and these presents to be signed by one of its vice presidents and attested by one of its assistant secretaries this 28th day of June, 1951

The Fidelity and Casualty Company of New York

By John C. Brodsky

Vice President.

Attest:

A. J. Miller

Assistant Secretary.

Bond 1245F. 5M. ★ (51011745)



STATE OF NEW YORK,

COUNTY OF NEW YORK,

ss.:

A. J. Miller

, being duly sworn, deposes and says:

That he is an assistant secretary of The Fidelity and Casualty Company of New York, the corporation which is described in and which executed the instrument overleaf; that he knows the corporate seal of the said corporation; that the seal affixed to the instrument overleaf is the corporate seal of The Fidelity and Casualty Company of New York, and was thereto affixed by order and authority of the board of directors of the said Company; that he signed his name thereto by like order and authority; that he is acquainted with JOHN C. BRODSKY, and knows him to be a Vice President of the said Company; that the signature of the said JOHN C. BRODSKY subscribed to the said instrument is in the genuine handwriting of the said JOHN C. BRODSKY, and was thereto subscribed by order and authority of the said board of directors of the said Company; that the said Company is duly and legally incorporated under the laws of the State of New York, and has complied with and is now complying with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds.

The deponent further states that the following is a true copy of an extract from the minutes of a meeting of the board of directors of the said Company held at its office in the City of New York on the 17th day of January, 1951, a quorum being present, and the resolution contained in the said extract was unanimously adopted and is now in full force and effect:

"RESOLVED, That FRANK A. CHRISTENSEN, President of the Company, J. VICTOR HERD, Executive Vice President of the Company, WILLIAM L. BATES and JOHN C. BRODSKY, each a Vice-President of the Company, be, and that each of them hereby is, authorized to execute powers of attorney qualifying the attorney named in the given power of attorney to execute in behalf of The Fidelity and Casualty Company of New York bonds, undertakings, and all contracts of suretyship; and that any Vice-President, or any Secretary, or any Assistant Secretary be, and that each of them hereby is, authorized to attest the execution of any such power of attorney, and to attach thereto the seal of the Company."

Sworn to before me this

A. J. Miller

Assistant Secretary.

28th day of June, 1951

Florence Carroll

COMMISSIONER OF DEEDS,  
CITY OF NEW YORK.

I, Constance E. Zimmerly, an attorney of The Fidelity and Casualty Company of New York, do hereby certify that I have compared the copy of the power of attorney overleaf and the foregoing copy of the affidavit annexed to the said power of attorney with the originals now on file in the home office of the said Company, and that the same are correct transcripts therefrom and of the whole of the said originals, and that the said power of attorney has not been revoked and is now in full force and effect.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Company this

2nd day of October

, in the year of one thousand nine hundred and fifty-two

Constance E. Zimmerly  
Attorney.

CLAUDE M. ROGERS,  
Doing business as Rogers  
Builders Supply,

Complainant,

VS.

WALTER M. LINDSEY,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 2583

SECURITY FOR COSTS OF APPEAL

The respondent, Walter M. Lindsey, having appealed to the Supreme Court of the State of Alabama from the decree of the Circuit Court of Baldwin County, Alabama, rendered in this cause on September 25, 1952, I hereby acknowledge myself security for costs of the said appeal.

J. B. Blackburn

Taken and approved on this the  
20th day of November, 1952.

Walter M. Lindsey

Register.

SECURITY FOR COSTS OF APPEAL

CLAUDE M. ROGERS,  
Doing business as Rogers Builders  
Supply,

VS.

WALTER M. LINDSEY,

Complainant,

Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY NO. 2583

*Filed 11-20-52*  
*Reice J. Rucker*  
*Register*

Lam Office of  
Horne & Brantley  
Mauriceville, Alabama  
March 9, 1951

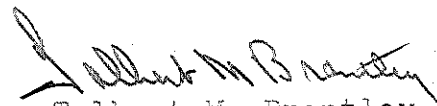
FRANK G. HORNE  
TOLBERT M. BRANTLEY

Mrs. Alice J. Duck  
Clerk of the Circuit Court  
Bay Minette, Alabama

Dear Mrs. Duck:

Enclosed you will find demurrers that I am filing in the behalf of W. R. Thompson, the Respondent in the case of 'Rogers vs. Lindsey and Thompson'. Please file these in this cause for me. I am sending a copy of these demurrers to C. Lenoir Thompson, the attorney for the Complainant in this cause.

Sincerely yours,

  
Tolbert M. Brantley

TMB:fp  
encl.

FILED

MAR 12 1951

ALICE J. DUCK, Register