

1257

C. B. ROBERTSON,
Plaintiff,

Vs.

D. Z. GROVE,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
LAW SIDE.

This matter coming on to be heard on Demurrer to a Motion to transfer the above styled cause to the Equity Side of the Circuit Court of Baldwin County, Alabama, and the Court being of the opinion that the Demurrer to such Motion should be sustained,

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Demurrer to such Motion is hereby sustained. *Defendant allowed 2 days*

DATED this 2nd day of March, 1944.

J. W. Hare

Judge.

D. Z. GROVE,	¶	IN THE CIRCUIT COURT OF
Complainant,	¶	BALDWIN COUNTY, ALABAMA
vs.	¶	IN EQUITY.
C. B. ROBERTSON,	¶	
Respondent.	¶	

The Court rendered a final decree in the above styled cause denying the Complainant the relief prayed for in his Bill of Complaint and dismissed such Bill and found that the Respondent was entitled to damages against the Complainant in the sum of Three Hundred Dollars (\$300.00), which decree taxed the Complainant with the costs which had accrued in said cause. The Complainant gave notice of appeal to the Supreme Court of Alabama and on March 22, 1951, the Supreme Court affirmed the decree of this court insofar as it denied the complainant the relief prayed for in the Bill of Complaint and taxed the Complainant with the costs of the equity proceeding but reversed and remanded said cause for the failure of said decree to comply with Title 13, Section 155 of the 1940 Code of Alabama with directions to this Court to enter an appropriate decree retransferring the case to the law docket for further proceedings as authorized by the Statute.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the Complainant D. Z. Grove, has failed to establish or maintain the question, right or defense asserted by him in his Bill of Complaint and that said cause of action cannot be finally disposed of on the equity side of the court and said cause is hereby retransferred to the law side of the court in which it arose originally and that it be placed on the civil jury docket of said court, a jury having been demanded by the Plaintiff C. B. Robertson, in the original cause of action.

It is further ORDERED, ADJUDGED AND DECREED that the Clerk of said Court shall place said case on the civil jury docket and shall tax D. Z. Grove with all of the costs which have accrued in said cause in the equity court for which let execution issue.

Dated this 27th day of March, 1951.

J. J. M. M. M. M. M.
 Judge.

FILED

MAR 27 1951

ALICE J. DUCK, Register

STATE OF ALABAMA
BALDWIN COUNTY

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

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

WITNESS R. S. DUCK, Register of said Court this the 6th day of February, 1945.


Register

D. Z. GROVE
COMPLAINANT

VS.

C. B. ROBERTSON
RESPONDENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY
No. 1257

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

And now comes the Complainant, and respectfully represents and shows unto your Honor and this Honorable Court as follows:

1.

That your Complainant and the Respondent are both bona fide residents of Baldwin County, Alabama, and over twenty-one years of age;

2.

That your Complainant was the owner and in possession of the following described land in Baldwin County, Alabama, to-wit:

West half of the Northwest Quarter of Section 26; North half of the Northeast Quarter of Northwest Quarter; the North half of the South half of the Northeast Quarter of the Northwest Quarter, and the West half of the Northeast Quarter of Section 27, all in Township 5 South, Range 4 East, being 100 acres more or less.

3.

That on to-wit October 10, 1941, the Complainant conveyed to G. C. Coggins, all the pine timber suitable for saw logs, poles, pilings and pulp wood, standing, lying and being upon the said land, a copy of said conveyance

having been filed for record in the Office of the Probate Judge of Baldwin County, Alabama, on October 15, 1941, and of record therein in Deed Book 76 NS, at page 125; that a copy of said conveyance is hereto attached, marked exhibit "A" and asked to be taken as a part hereof as though herein fully set out;

4.

That the Respondent had full knowledge, both actual and constructive, that the said lease was outstanding and in full force and effect at the time he agreed to purchase the property herein described, from the Complainant;

5.

That on to-wit August 20, 1943, the Respondent purchased the said property herein described, from the Complainant; that a copy of said conveyance is hereto attached, marked exhibit "B" and asked to be considered as a part hereof as though herein fully set out;

6.

That it was expressly understood and mutually agreed between the Complainant and the Respondent, that the Complainant, at the time of the conveyance to the Respondent, did not own the timber located upon the said land, and that it had been previously sold to G. C. Coggins; and that the Complainant only, and did, convey the said land to the Respondent subject to the said outstanding timber contract, but due to the mutual mistake of the Complainant and the Respondent the deed did not except the timber which had theretofore been conveyed from the deed, and that through the mistake of the party drafting the deed, it did not express the mutual understanding between the Complainant and the Respondent.

WHEREFORE, the premises considered, the Complainant prays that your Honor will by proper process, make the said C. B. Robertson party Respondent to this bill of complaint, requiring him to plead, answer, or demur to the same within the time and under the penalties prescribed by law and the practice of this Honorable Court.

Your Complainant further prays that upon a final hearing hereof, your Honor will make and enter an order and decree reforming the deed from the Complainant to the Respondent, dated August 20, 1943, and of record in the Office of the Probate Judge of Baldwin County, Alabama, in deed Book 80, at page 485, so as to express the true intent of the Complainant and the Respondent, and excepting therefrom the timber that had been conveyed prior to the time of execution of said deed as recited herein; that if your Complainant is mistaken in the relief prayed for, your Honor will enter a decree awarding to him such relief as he may be entitled to receive under the facts as herein set out; that your Honor will give and grant unto the Complainant such other, further, different, or general relief as he may be in equity and good conscience entitled to receive, and as in duty bound he will ever pray.

BEEBE & HALL

By: 

Solicitors for the Complainant

RECORDED 257

6

D. Z. GROVE
COMPLAINANT

VS.

C. B. ROBERTSON
RESPONDENT

Executed Feb. 26 1945
by serving copy of within Summons and
Complaint on

C. B. Robertson

C. E. Garrett Sheriff

By Fred Walters Deputy Sheriff

SUMMONS AND COMPLAINT

Recd Feb 6 1945
Reed
Regina

C. B. ROBERTSON,
PLAINTIFF

VS

D. Z. GROVE
DEFENDANT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW.

#846.

And now comes the Defendant, demurrers having been sustained to his original motion to transfer this cause to the Equity side of the docket, and amends his motion so that the same shall read as follows:

The Defendant moves the Court to transfer this cause from the law side of the docket to the Equity side thereof, and represents that there is an equitable question, the decision of which should dispose of the cause and which cannot be disposed of in the law side of the Court, and that he has an equitable defense to the Plaintiff's complaint as follows:

1.

The Plaintiff was the owner and in possession of the following described land in Baldwin County, Alabama, to-wit:

West half of the Northwest Quarter of Section 26, Township Five South Range Four East; North half of the Northeast Quarter of the Northwest Quarter, and North half of the South half of the Northeast Quarter of the Northwest Quarter; and the West half of the Northeast Quarter of Section 27, Township 5 South Range Four East;

2.

That on, to-wit, October 10th, 1941, the Defendant conveyed to G. C. Coggins all the pine timber, suitable for saw logs, poles, pilings and pulp wood standing, lying and being upon the said lands, a copy of said conveyance having been filed for record in the office of the Probate Judge of Baldwin County, Alabama, on October 15th, 1941, and of record therein in Deed Book 76 NS at page 125; that a copy of said conveyance is hereto attached marked Exhibit "A" and asked to be taken as a part hereof as though herein fully set out;

3.

That the Plaintiff had full knowledge, both actual and constructive, that the said lease was outstanding and in full force and effect at the time

he agreed to purchase the said property from the Defendant.

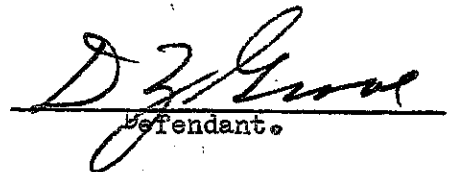
4.

That on, to-wit, August 20th, 1943, the Plaintiff purchased the said property from the Defendant; that a copy of the said conveyance is hereto attached marked Exhibit "B" and asked to be considered as a part hereof as though herein fully set out.

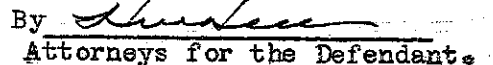
5.

That it was expressly understood and mutually agreed that the Defendant, at the time of the conveyance to the Plaintiff, did not own the timber located upon the said lands, and that he had been sold previously to that time to G. C. Coggins; and that the Defendant could only, and did, convey the said lands to the Plaintiff subject to the said outstanding timber contract but due to the mutual mistake of the Plaintiff and Defendant, the deed did not except the timber which had theretofore been conveyed, from the deed, and that through the mistake of the party drafting the deed, it did not express the mutual understanding between the Plaintiff and the Defendant.

Wherefore, the Defendant respectfully requests that this cause be transferred to the equity side of the docket that he may obtain the benefits of his equitable defense to this cause of action.


Defendant.

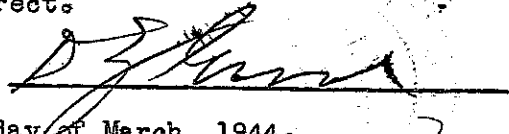
BEEBE & HALL

By 
Attorneys for the Defendant.

STATE OF ALABAMA
BALDWIN COUNTY.

Before me, the undersigned authority in and for said County, in said State, personally appeared D. Z. Grove, who is known to me and who having been by me first duly sworn, deposes and says that he is the Defendant in the above styled cause, that the facts stated in the foregoing motion to transfer this cause to the equity side of the docket are true and correct.

Sworn to and subscribed before me on this 21 day of March, 1944.


Notary Public, Baldwin County, Alabama.

Commission expires 2-16-46

STATE OF ALABAMA)
BALDWIN COUNTY.)

KNOW ALL MEN BY THESE PRESENTS, that we, D. Z. GROVE and HELEN G. GROVE, husband and wife, Grantors, for and in consideration of the sum of THIRTY SIX HUNDRED (\$3600.00) DOLLARS to us in hand paid by G. C. COGGINS, Grantee, the receipt of which is hereby acknowledged, do hereby GRANT, BARGAIN, SELL and CONVEY unto the said Grantee, all pine timber suitable for saw logs, poles, pilings and pulp wood, standing, lying and being upon the following described land situated in Baldwin County, Alabama, to-wit:

South half of Northeast Quarter and the West half of Southeast Quarter of Section 22;

Northeast Quarter of Northwest quarter; South half of Northeast Quarter of Southwest Quarter and the Southeast Quarter of Southwest Quarter of Section 23;

North half of Northwest Quarter; the Southwest Quarter of the Northwest quarter; the South half of Southwest quarter of the Southeast Quarter of the Northwest Quarter, the Northeast Quarter of the Northeast Quarter of the Northeast Quarter; the North half of the Southwest Quarter of the Northwest Quarter of Northeast Quarter; the Southeast Quarter of Southwest Quarter of Northeast Quarter; the Southwest Quarter of Southeast Quarter of Northeast Quarter; the North half of Northwest Quarter of Southeast Quarter of Northeast Quarter; the South half of the Northeast Quarter of the Southeast Quarter of Northeast Quarter; and the North half of Southeast Quarter of the Southeast Quarter of Northeast Quarter of Section 26;

All of the Northeast Quarter, except the North half of the Northeast quarter of Southeast Quarter of Northeast Quarter; the North half of Northeast Quarter of Northwest Quarter; North half of South half of Northeast Quarter of Northwest Quarter of Section 27;

All the foregoing lands lying and being in Township 5 South Range 4 East of St. Stephens Meridian.

TO HAVE AND TO HOLD unto the said Grantee, his heirs and assigns forever. And the said Grantors hereby covenant and agree with the said Grantee they are seized of an indefeasible estate in fee simple of said property, and that they have a lawful right to convey the same in fee simple; that said property is free from all encumbrances, and that we will keep the same free of encumbrances, and that we will forever warranty and defend the title to the same and the possession thereof against the claims and demands of all persons whomsoever, and indemnify them against any and all losses which they, their agents, servants or

assigns may suffer by reason of any defect in, or failure of the title to the said Grantors to said property, or failure to deliver possession of said property to said Grantee and maintain him in possession during the term hereinafter stated.

For the same consideration, the said Grantee is hereby granted free rights of ingress and egress in, over and upon the lands above described, for the purpose of cutting and removing the said timber, trees, saplings and pulpwood therefrom and the said Grantee is further granted the right to construct, maintain and operate on any or all of said lands all such roadways, bridges, landings or other means of ingress and egress in, over and upon said lands, and is granted such other rights as may be reasonably necessary for him or his assigns to cut and remove said timber, trees, saplings, and pulp wood hereby conveyed, including the right to cut such other trees from said lands as maybe reasonable for the purposes stated in this paragraph, and it is hereby agreed that all the rights contained in this clause shall be and remain effective as to said timber, trees, saplings, and pulp wood for a period of two years from this date, and that all timber, trees, saplings and pulp wood conveyed hereby and not removed from the said lands before the expiration hereunder of the right of the said Grantee to remove the same from said lands shall revert to the said Grantors, their heirs and assigns forever.

IT IS AGREED between the parties hereto that the provisions hereof shall run in favor of not only the said Grantee, but also his heirs and assigns.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this 10th day of October, 1941.

D. Z. GROVE (SEAL)

HELEN G. GROVE (SEAL)

STATE OF ALABAMA
BALDWIN COUNTY.

I, H. M. HALL, a Notary Public in and for said County, in said State, hereby certify that D. Z. Grove and Helen G. Grove, husband and wife, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

And I do further certify that on the 10th day of October, 1941, came before me the within named Helen G. Grove, known to me to be the wife of the within named D. Z. Grove, and who being examined separate and apart from her husband

touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, and without fear, constraints or threats on the part of her husband.

Given under my hand and seal on this 10th day of October, 1941.

H. M. Hall
Notary Public, Baldwin County, Alabama

Filed the 15th day of October, 1941, at 8 A. M. and duly recorded in Deed Book 76 at page 125.

WARRANTY DEED.

STATE OF ALABAMA
BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of NINE HUNDRED FIFTY & NO/100 DOLLARS to us in hand paid by C. B. ROBERTSON the receipt whereof is hereby acknowledged, D. Z. GROVE and HELEN G. GROVE, his wife, do GRAN, BARGAIN, SELL AND CONVEY unto the said C. B. ROBERTSON the following described lands situated in Baldwin County, Alabama, to-wit:

The West 1/2 of the Northwest 1/4 of Section Twenty Six (26) Township Five (5) South Range Four (4) East, The North half of the Northeast Quarter of the Northwest Quarter, and the North 1/2 of the South 1/2 of the Northeast 1/4 of the Northwest 1/4 and the West 1/2 of the Northeast 1/4 of Section Twenty seven (27) Township Five (5) South Range Four (4) East, being one hundred ninety acres, more or less.

TO HAVE AND TO HOLD to the said C. B. ROBERTSON, his heirs and assigns forever. And we do covenant with the said C. B. Robertson, that we are seized in fee of the above described premises; that we have the right to sell and convey the same, that the said premises are free from all incumbrances; and that we will and our heirs, executors and administrators shall forever warrant and defend the same to the said C. B. Robertson, heirs and assigns, against the lawful claims of all persons whomsoever.

WITNESS OUR HANDS AND SEAL this 20th day of August, 1943.

WITNESS:

D. Z. GROVE, L. S.
HELEN G. GROVE L. S.

STATE OF ALABAMA
BALDWIN COUNTY.

I, Ben Griffiths, a Notary Public, in and for said State and County, do hereby certify that D. Z. Grove and Helen G. Grove, his wife, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that being informed of the contents of the said conveyance, they executed the same voluntarily on the day the same bears date,

Given under my hand and official seal this 20th day of August, 1943.

Ben Griffiths
Notary Public, Baldwin County, Alabama

(SEAL)

STATE OF ALABAMA
BALDWIN COUNTY.

I, Ben Griffiths, a Notary Public in and for said State and County, do hereby certify that on the 20th day of August, 1943, came before me the within named Helen G. Grove, known to me to be the wife of the within named D. Z. Grove, who, being examined separate and apart from her husband in reference to her signature

to the within conveyance acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of the husband.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 20th day of August 194^o .

Ben Griffiths
Notary Public, Baldwin County, Alabama

(SEAL)

State of Alabama
Baldwin County.

Filed September 23th, 1943, at 1:20 P. M. and recorded in Deed Book 80 at page 485.

G. W. Robertson,
Judge of Probate.

C. B. ROBERTSON
PLAINTIFF
VS
D. Z. GROVE
DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW
No, 846

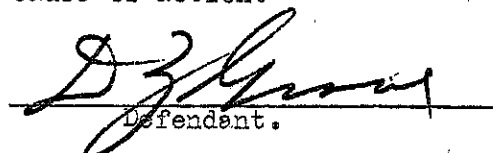
And now comes the Defendant and moves the Court to transfer this cause from the law side of the docket to the Equity side thereof, and represents that there is an equitable question, the decision of which should dispose of the cause and which can not be disposed of in the law side of the Court, and that he has an equitable defense to the Plaintiff's complaint as follows;

The Plaintiff and the Defendant had mutually agreed upon a sale and the purchase of the tract of land described in the Plaintiff's Complaint:


West half of the Northwest Quarter of Section 26, Township 5 South Range 4 East; North half of the Northeast Quarter of the Northwest Quarter, and North half of the Southwest Quarter of the Northeast Quarter, and West half of the Northeast Quarter of Section 27, Township 5 South Range 4 East, containing 190 acres, more or less, and situated in Baldwin County, Alabama

that it was expressly understood and mutually agreed that the Defendant did not own the timber located upon the said land, and that it had been sold previous to that time; and that the Defendant would convey the said lands to the Plaintiff subject to said outstanding timber contract, but due to the mutual mistake of the Plaintiff and the Defendant, the deed did not except the timber from the conveyance; that through the mistake of the party drafting the deed it did not express the mutual understanding between the Plaintiff and the Defendant.

WHEREFORE, the Defendant respectfully requests that this cause be transferred to the equity side of the docket that he might obtain the benefits of his equitable defense to this cause of action.


Defendant.

BEERE & HALL

By 
Attorneys for the Defendant.

STATE OF ALABAMA
BALDWIN COUNTY.

Before me, the undersigned authority in and for said County, in said State, personally appeared D. Z. GROVE who is known to me and who, having been by me first duly sworn, deposes and says that he is the Defendant in the above styled cause; that the facts stated in the foregoing motion to transfer this cause to the equity side of the docket are true and correct.

D. Z. Grove

Sworn to and subscribed before me on this 16th day of February,
1944.

Ben Griffiths
Notary Public, Baldwin County, Alabama.

846

(2)

RECORDED

C. B. ROBERTSON,
PLAINTIFF

VS

E. Z. GROVE
DEFENDANT.

MOTION TO TRANSFER.

Filed Dec 17 1944
R. J. [unclear]
[unclear]

C. B. ROBERTSON

COMPLAINANT

VS

D. Z. GROVE

RESPONDENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

IN EQUITY

NO. 1257

This cause coming on to be heard is submitted for a ruling on the Respondent's demurrers to the Complainant's original bill of complaint.

The Court after considering and understanding the matter is of the opinion that the demurrers are not well taken and should be over ruled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, by the Court, that the demurrers heretofore filed by the Respondent to the Complainant's original bill of complaint being the same are hereby over ruled.

IT IS FURTHER ORDERED and the Respondent is given 20 days in which to file additional pleadings.

Dated this the 15th day of July, 1947

E. W. Stase

Judge

9

RECORDED

C. B. ROBERTSON

COMPLAINANT

VS

D. Z. GROVE

RESPONDENT

DECREE OVER RULING
DEMURRERS.

Filed
2-15-47
Aling Welch
Dee

FINAL DECREE

D. Z. GROVE,
Complainant,
VS.
C. B. ROBERTSON,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 1257.

This matter coming on to be heard is submitted for final decree upon the Bill of Complaint, Answer of the Respondent, and complaint for breach of warranty and upon the testimony of D. Z. Grove, G. C. Coggin, D. S. Wilcox and C. B. Robertson, which testimony was taken orally before the court and the court having considered the same, the court is of the opinion that Complainant is not entitled to the relief prayed for by him in the Bill of Complaint filed by him in said cause; the Court is of the further opinion that there was a breach of the warranty in the deed from D. Z. Grove and wife as set out in the Bill of Complaint and the other pleadings in said cause and that Respondent, C. B. Robertson, is entitled to damages from D. Z. Grove for the breach of the warranty. The Court is of the further opinion that \$300.00 is adequate damages for the said breach of warranty. It is, Therefore,

ORDERED, ADJUDGED AND DECREED by the Court that the Bill of Complaint filed by D. Z. Grove against C. B. Robertson be, and the same is hereby dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the said C. B. Robertson shall recover of the said D. Z. Grove the sum of \$300.00 as damages for a breach of warranty contained in the deed from D. Z. Grove and wife to C. B. Robertson dated August 20, 1943, and recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 80 page 485, for the timber which was conveyed by said deed but which was cut and removed by G. C. Coggin under a timber deed from the said D. Z. Grove dated

October 10, 1941, and recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 76 page 125, for which let execution issue.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the said D. Z. Grove be and he hereby is taxed with the costs of this proceeding, for which execution may issue.

Dated this 19th day of June, 1950.

J. Fair A. Maddisberry, Jr.
Judge

(10)

RECORDED

Final Decree

FILED

JUN 22 1950

ALICE L. DUCK, Register

*Filed 6.22.50
Alice L. Duck
RD*

June 22-1950

D. Z. GROVE

COMPLAINANT

VS

C. E. ROBERTSON

RESPONDENT

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IN THE CIRCUIT COURT OF

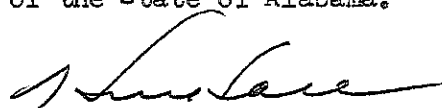
BALDWIN COUNTY, ALABAMA,

IN EQUITY

NO. 1257

NOTICE OF APPEAL

Now comes the Complainant, D. Z. Grove, and gives notice of appeal from the Judgment and Decree of the Circuit Court of Baldwin County, Alabama, in Equity, rendered on the 19 day of June, 1950, in the above styled cause, to the Supreme Court of the State of Alabama.


Solicitor for the Complainant

D. Z. GROVE

COMPLAINANT

VS

C. B. ROBERTSON

RESPONDENT

NOTICE OF APPEAL

Filed July 19, 1952

*W. J. Neuch
Register*

D. Z. GROVE,	)	IN THE CIRCUIT COURT OF
Complainant	)	BALDWIN COUNTY, ALABAMA.
VS.	)	IN EQUITY.
C. B. ROBERTSON,	)	No. 1257.
Respondent.)	

STATEMENT AS TO PLEADING

The Complainant, D. Z. Grove, in this suit, moved the Court to transfer an action brought by C. B. Robertson, as Plaintiff, vs. him in ejectment for the lands involved in this suit to the equity side of the docket, said cause of action was transferred from the Law side of the docket to the Equity side of same and Complainant D. Z. Grove, on February 6, 1945 filed his Bill of Complaint in this cause against C. B. Robertson, as Respondent, and sets up in said Bill of Complaint, among other things, that he is the owner and in possession of the lands involved in this suit. That he sold said land to the Respondent, C. B. Robertson, but prior thereto he had sold and conveyed all the pine timber suitable for saw logs, poles, piling and pulp wood, situated upon said land to G. C. Coggins, and that a copy of said conveyance to G. C. Coggins was duly recorded in the Probate office of Baldwin County, Alabama, on October 15, 1941, and that a copy of said conveyance is attached to said Bill of Complaint and that Respondent had full knowledge, both actual and constructive, that said Timber Lease was outstanding and in full effect at the time Respondent purchased said property. That on to-wit: August 20, 1943, he sold said property, described in the Bill of Complaint, to the Respondent and it was expressly understood and mutually agreed between the Complainant and the Respondent that Complainant, at the time of the conveyance, did not own the timber located upon the said lands and that the Complainant only and did convey the said land to Respondent subject to the outstanding Timber Contract, but due to the mutual mistake of Complainant and Respondent, the Deed did not except the Timber which had theretofore been conveyed and through the mistake of the party drafting the deed it did not express the mutual understanding between Complainant and the Respondent.

The Respondent, Robertson, has filed several grounds of Demurrer to this Bill of Complaint. The first, second, third,

fourth and fifth grounds of the demurrer are to the effect that even though the parties knew that the Timber had been conveyed to Coggins, was no reason as to why the defendant could not contract to convey the land, with the timber, to the Respondent Robertson. The sixth, seventh, and eighth grounds of Demurrer are to the effect that from aught appearing the draftsman was then agent of Complainant or that he was not made acquainted with the terms of the contract agreed upon or that he did not have full knowledge of the terms of the contract entered into between the Complainant and Respondent. The Respondent, Robertson, has added or filed additional grounds of demurrer to said complaint to the effect that the Complainant, Grove, was negligent in executing said conveyance by neglecting to read or make inquiry of its contents at or prior to its execution. That from aught appearing, the parties were dealing with each other at arms length and no reason is shown as to why the Defendant did not read or ascertain the contents of the contract or conveyance before he executed the same.

STATEMENT AS TO THE LAW.

"An unexplained signing of a contract without excuse for neglecting to read or to make inquiry and without any fraud, deceit or misrepresentation being practised on the maker or grantor by which he was induced to execute the paper, is not grounds for relief or defense to an action on this paper."

Greil vs. Tillis,
170 Ala. 394.
54 So. 524.

Cannon vs. Lindsey,
85 Ala. 398, 3rd So. 676.

Dawson vs. Burrus,
73 Ala. 111.

Pacific Company vs. Anglin,
82 Ala. 402, 1 So. 852.

"Mistake of a conveyancer acting by the direction of one party is not reformable."

Dougherty vs. Dougherty,
204 Mo. 228. 102 S.W. 1099.

"It is elementary that a party can make any contract he sees fit which is not contrary to public policy or the law of the land, binding himself to convey property that he does not presently have title to, and as stated, in one of the grounds

of demurrer, that from aught appearing, the defendant had a valid contract with Coggins or his successors in title to purchase said timber theretofore sold by him.

"A mistake in a deed must be pleaded with particularity, and before relief will be granted it must be shown by clear, exact and satisfactory proof that the mistake exists and that the right deviated from the intention and understanding of both parties at the time of the execution of the conveyance, sought to be corrected."

Brumfield vs. Hall,
215 Ala. 517, 110 So.898.

ARGUMENT.

It is alleged in the Bill of Complaint that a mistake was made by the scrivener. This is certainly an allegation not in conformity with the requirements of the law that such allegations should be made with great particularity. From aught appearing, the scrivener was not made acquainted with the agreement between the parties and was capable of carrying out their instruction in the premises. The Bill of Complaint should specifically with particularity and with precision set out the mistake and how it occurred and the particular facts or circumstances constituting the mistake. A mere allegation that a mistake was made without allegations of facts tending to show it, is insufficient and we submit that the demurrer to this phase of the Bill of Complaint should be sustained.

Then again, the Bill of Complaint is as silent as the tombs as to whether the defendant read the contract or conveyance before executing the same and if he did not so read the same, there is no excuse offered in said Bill of Complaint for not having done so. There is no allegation of any fraud and deceit or misrepresentation being practised upon him by which he was induced to execute the paper without reading the same. From aught appearing the parties were dealing at arms length and, as stated, no disability and no fraud, misrepresentation or deception was practised on the defendant by the plaintiff or anyone else, and having failed to read said contract or conveyance or make a reasonable showing as to why he did not, then his application to a Court of Equity

for relief will be denied.

Respectfully submitted,

HYBART & CHASON,

BY: 
Attorneys for Plaintiff.

We hereby certify that we have this day handed a copy of the within brief to H. M. Hall, as the Solicitor for the Complainant in this cause.

Dated this 4th day of February, 1947.

HYBART & CHASON

BY: 

Statement as to plead-
ing.

Dent record

Filed

1-4-47

Alice J. Duck
Registrar

D. Z. GROVE,)	
Complainant	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
VS.	)	IN EQUITY
	)	No. 1257
C. B. ROBERTSON,)	
Respondent)	

Comes the Respondent in the above styled cause and demurs to that phase of the Bill of Complaint filed in said cause as set out in paragraph 4 of said Complaint in which the Complainant alleges that the Respondent had full knowledge, both actual and constructive, that said lease was outstanding and in full force and effect at the time he agreed to purchase the property herein described from the Complainant, and as grounds therefor says:-

1. That it is of no consequence whether the Respondent had such knowledge of such lease.
2. That if the Complainant saw fit, he could enter into a binding contract to convey said lands together with the timber thereon.
3. That from aught appearing, at the time the Complainant executed the Warranty Deed to the Respondent for the said land and timber, the Complainant had a binding contract with the owners of the timber to convey the same to him.
4. That the conveyance executed by the Complainant to the Respondent was not against public policy or the law of the land.
5. That from aught appearing the said conveyance of the land and the timber by the Complainant to Respondent was a bona fide transaction.

As to that phase of the Bill of Complaint which states that the Scrivener who prepared the conveyance made a mistake, the Defendant demurs and assigns the following grounds therefor:-

6. That from aught appearing said Scrivener was the Agent

of Complainant.

7. That from aught appearing the Complainant and Defendant did not acquaint said Scrivenor with the terms of the Contract that they had agreed upon.

8. That from aught appearing the Scrivenor did not have full knowledge as to the contract entered into between the Complainant and Respondent.


Solicitors for Respondent

RECORDED 125-3 ②

DEMURRER

D. Z. GROVE,
Complainant

VS.

C. B. ROBERTSON,
Respondent

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

Filed March 28, 1945.


Register

Div. No. _____

CERTIFICATE OF APPEAL (Civil Cases)

No. 1257

Baldwin County, Circuit Court.

D. Z. GROVE

Plaintiff
vs.

C. B. ROBERTSON

Defendant

I, Alice J. Duck, Clerk of Circuit Court,
of Baldwin County, Alabama, hereby certify that in the cause of
D. Z. GROVE Plaintiff,
vs.

C. B. ROBERTSON Defendant,

which was tried and determined in this Court, on the 19th day of June 1950
in which there was a judgment for _____ Dollars, in favor of the ~~Plaintiff~~
(or judgment for Defendant), the Plaintiff on the 19th day of July
1950 took an appeal to the Supreme Court of Alabama to be holden of and for said State.

I further certify that D. Z. Grove, Searcy Smith, and Ruth Hand filed
security for cost of appeal, to the Supreme Court, on the 19th day of July
1950, and that D. Z. Grove, Searcy Smith, and Ruth Hand

are sureties on the appeal bond.

I further certify that notice of the said appeal was, on the 19 day of July
1950, served on Chason & Stone as attorney of record for said
appellee, and that the amount sued for was _____ ~~XXXXXX~~
(or certain lands) (~~or personal property~~)

Witness my hand and seal of this Court, this the 21 day of July 1950.

Clerk of the Circuit Court of

Baldwin County, Alabama

D. Z. GROVE
COMPLAINANT
VS
C. B. ROBINSON
RESPONDENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY
NO. 1257

SUPERSEDEAS BOND

We, D. Z. Grove, as principal, and the undersigned as sureties, are held and firmly bound unto C. B. Robinson, in the sum of SEVEN HUNDRED FIFTY (\$750.00) DOLLARS, for the payment of which well and truly to be made, we and each of us, do jointly and severally bind ourselves, our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this the 19 day of July, 1950.

The condition of the above obligation is such that whereas, at the June 19, 1950, term of the Circuit Court of Baldwin County, Alabama, in Equity, judgment was rendered against the above bound D.Z. Grove for a cause therein pending styled D. Z. Grove, Complainant VS C. B. Robinson, Respondent, for (\$300.00) THREE HUNDRED DOLLARS and costs of suit, from which judgment D. Z. Grove has applied for and obtained an appeal to the Supreme Court of the State of Alabama; and

WHEREAS, it is desired to stay or suspend the execution of such judgment until the final determination of said appeal.

Now, if the said D. Z. Grove shall prosecute said appeal to execution, or if he fails therein, shall satisfy such judgment as the Supreme Court of Alabama may render in the premises, then this obligation to be null and void otherwise to be and remain in full force and effect.

D. Z. Grove (SEAL)
George Smith (SEAL)
Ruth Hand (SEAL)

Taken and approved this the 19 day of July, 1950.

W. J. Duck
Register

D. Z. GROVE

COMPLAINANT

VS

C. B. ROBERTSON

RESPONDENT

SUPERSEDEAS BOND

Filed July 19, 1950

*Alicia J. [unclear]
Reynolds*

D. Z. GROVE

COMPLAINANT

VS

C. B. ROBERTSON

RESPONDENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY

NO. 1257

STATE OF ALABAMA

BALDWIN COUNTY

To: C. B. Robertson and Messrs. Chason & Stone, Solicitors for
C. B. Robertson:

WHEREAS, D. Z. Grove, has taken an appeal from the Judgment and
Decree rendered by the Circuit Court of Baldwin County, Alabama, in
Equity, in the cause of D. Z. Grove Complainant VS C. B. Robertson
Respondent.

Now, you are therefore cited to appear at the next term, 1950,
of the Supreme Court of Alabama to defend on said appeal if you shall
think proper so to do.

Witness my hand and seal of office on this the 19 day of July,
1950/

Amie J. Busch
Register

1257

D. Z. GROVE

COMPLAINANT

VS

C. B. ROBERTSON

RESPONDENT

Citation of Appeal

Filed July 19, 1950

W. J. French
Register

& Henry accept
return the 21st
day of July 1950

W. J. French
attorney for

D. Z. GROVE,)	
Complainant,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA,
C. B. ROBERTSON,	)	IN EQUITY.
Respondent.)	

Comes the Respondent in the above styled cause and for answer to the Bill of Complaint in said cause says:

ONE:

The Respondent admits the allegations of the first paragraph of the Bill of Complaint.

TWO:

The Respondent admits the allegations of the second paragraph of the Bill of Complaint except that he says that the description contained in said paragraph and the lands involved in this suit amount to 190 acres instead of 100 acres.

THREE:

In answer to paragraphs three and four of the Bill of Complaint, Respondent says that on to-wit: August 20, 1943, the Complainant sold and conveyed to him the lands described in paragraph two of the Bill of Complaint and represented to him that he, the said Complainant was the owner in fee simple of said land and the timber thereon, that he relied upon the representation of the Complainant, that he was the owner of said land and timber and parted with a valuable consideration for the same and made no further inquiry or examination as to Complainant's title in and to the real property conveyed therein and Respondent further says that the Complainant should now be estopped from setting up any outstanding conveyance or lease made by him to G. C. Coggins or anyone else.

FOUR:

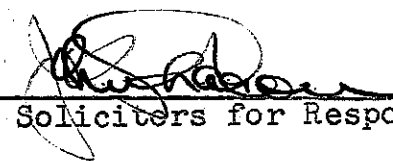
The Respondent admits the allegations of the fifth paragraph of the Bill of Complaint and says that the Deed that was executed to him conveyed the timber rights as well as the land.

FIVE:

The Respondent denies the allegations of the sixth

paragraph of the Bill of Complaint and demands strict proof thereof.

HYBART & CHASON

BY: 
Solicitors for Respondent.

1257

NOTICE FOR RESPONDENT

ANSWER

D. Z. GROVE,

Complainant,

VS.

C. B. ROBERTSON,

Respondent.

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

Filed August 14, 1947

Alice J. Leach

D. Z. GROVE, | IN THE CIRCUIT COURT OF
Complainant, | BALDWIN COUNTY, ALABAMA
VS. | AT LAW.
C. B. ROBERTSON, | #846.
Respondent. |

Now comes the Respondent in the aforesaid cause and files the foregoing additional grounds of demurrer to the Bill of Complaint in this case.

A.

That said Bill of Complaint fails to show that the Complainant did not read the contract or conveyance before he executed the same.

B.

That said Bill of Complaint shows that the Complainant was negligent in executing the contract or conveyance without reading same.

C.

From aught appearing the Complainant was conscience of the contents of the contract or conveyance at the time that he executed the same.

D.

That from aught appearing the parties of the contract or conveyance was dealing with each other at arms length and no reason is shown as to why the Complainant did not read or ascertain the contents of the contract or conveyance before he executed the same.

E.

The point appears construing the Bill of Complaint against the Respondent that the Complainant was negligent in failing to read the contract or conveyance or to make inquiry as to its contents before he executed the same.

HYBART & CHASON

BY: 
Attorneys for Respondent.

RECORDED

ADDITIONAL GROUNDS OF DEMURRER.

D. Z. GROVE,
Complainant,

vs.

C. B. ROBERTSON,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW.

Filed February 14, 1947.

Alice J. Necker
Register

C. B. ROBERTSON,)	
)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA.
VS.)	
	)	LAW SIDE.
D. Z. GROVE,)	
)	
Defendant.)	

Now comes the Plaintiff in the aforesaid cause and files this his Demurrer to the Motion to Transfer the cause from the Law Side of the Court to the Equity Side of the Court, and for grounds says:-

FIRST:

That it does not appear from the Motion that the scrivener was the agent of the Plaintiff.

SECOND:

From ought appearing the party drafting the alleged instrument was in the employ and the agent of the defendant.

THIRD:

It does not appear that the Defendant was the owner of the land at the time he conveyed the same to the Plaintiff.

FOURTH:

That the Motion should have a copy of the deed attached as an exhibit which was executed by the defendant.

FIFTH:

That the Motion should have attached as an exhibit a copy of the deed that was intended to be executed.

SIXTH:

That the Motion should have attached thereto as an exhibit a copy of the alleged timber deed wherein the defendant conveyed the timber to someone else than the Plaintiff.

SEVENTH:


That it does not appear that the parties agreed to the terms of the alleged conveyance from the Defendant to the Plaintiff prior to its execution.

EIGHTH:

That it does not appear that the agreement sought to be established was made before the writing or deed was signed.

NINTH:

That it does not appear when said timber was sold and its dimensions.


Attorneys for Plaintiff.

D. Z. GROVE

COMPLAINANT

VS

C. B. ROBERTSON

RESPONDENT

§

§

§

§

§


IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY
NO. 1257

NOTICE OF APPEAL

To: C. B. Robertson and/or Messrs. Chason & Stone, Solicitor for
C. B. Robinson.

Notice is hereby given that the Complainant, D. Z. Grove, having
given notice of his taking an appeal to the Supreme Court of the State
of Alabama, from the Judgment and Decree of the Circuit Court of Baldwin
County, Alabama, in equity, rendered on the 19 day of June, 1950.

Dated this the 19 day of July, 1950.


Solicitor for the Complainant

D. Z. GROVE

COMPLAINANT

VS

C. B. ROBERTSON

RESPONDENT

NOTICE OF APPEAL

Filed July 19, 1952

*Alice J. Luck
Reporter*

STATE OF ALABAMA
BALDWIN COUNTY

)
) IN THE CIRCUIT COURT_ LAW SIDE
)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon D. Z. GROVE to appear within thirty days from the service of this Writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Complaint of C. B. ROBERTSON.

WITNESS my hand this 6th. day of January 1944.


Clerk

C. B. ROBERTSON,
Plaintiff,
VS.
D. Z. GROVE,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

The Plaintiff claims of the Defendant the sum of Seven Hundred Fifty Dollars (\$750.00) as damages for and on account of the breach by Defendant of a certain covenant of warranty contained and embraced in a deed executed by Defendant to Plaintiff on to-wit: the 20th day of August, 1943, and conveying to Plaintiff the following described lands, together with the timber situated, located, growing and being thereon, to-wit:-

West half of Northwest Quarter of Section 26, Township 5 South, Range 4 East; North half of Northeast Quarter of Northwest Quarter and North half of South half of Northeast Quarter of Northwest Quarter and West half of Northeast Quarter of Section 27, Township 5 South, Range 4 East, being 190 acres, more or less situated in Baldwin County, Alabama;

And Plaintiff avers in and as a part of said deed Defendant did covenant with Plaintiff that he was lawfully seized in fee simple of said premises and that he had a good right to sell and convey the same to Plaintiff, and did warrant and defend the title to same to Plaintiff, his heirs and assigns, which warranty, covenant and agreement is breached by Defendant in that at the time of said conveyance said Defendant did not own the title or right in and to the following timber situated, being and lying upon said lands, to-wit:-

all pine timber suitable for saw logs, poles, pilings, and pulp wood;

and Plaintiff further avers that since said conveyance to him that said pine timber suitable for saw logs, poles, pilings and pulp wood has been cut and removed from said lands and that he has lost the value of the same, all to his damages in the sum aforementioned.

Hybart & Hason
Attorneys for Plaintiff.

Plaintiff demands a trial
by Jury.

Hybart & Hason
Attorneys for Plaintiff.

MAR 22 1951

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1950-51

2 Div. 431

D. S. Grove,

v.

C. B. Robertson,

Appeal from Baldwin Circuit Court,
In Equity.

BROWN, JUSTICE.

The appellee Robertson instituted a common law action of covenant against the appellant to recover \$750 damages for breach of the warranties embodied in a deed executed by appellant and wife to the plaintiff on the 20th of August, 1943, conveying to the plaintiff 190 acres of timber land situated in Baldwin County, Alabama, for and in consideration of the payment to said grantor of the sum of \$950. The complainant avers that "in and as a part of said deed Defendant did

2.

covenant with Plaintiff that he was lawfully seized in fee simple of said premises and that he had a good right to sell and convey the same to Plaintiff, and did warrant and defend the title to same to Plaintiff, his heirs and assigns, which warranty, covenant and agreement is breached by Defendant in that at the time of said conveyance said Defendant did not own the title or right in and to said lands, to-wit:- all pine timber suitable for saw logs, poles, pilings, and pulp wood; and Plaintiff further avers that since said conveyance to him that said pine timber suitable for saw logs, poles, pilings and pulp wood has been cut and removed from said lands and that he has lost the value of the same, all to his damages in the sum aforementioned." —Casland v. McAdox, 100 Ala. 553, 13 So. 545.

While the case was pending on the law docket the defendant made motion to transfer the same to the equity docket, alleging facts in his motion, verified by appellant, which if true made a case for the reformation of the deed in question. In response thereto an appropriate order was entered as provided by the statute removing the case to the equity docket. —Code of 1940, Tit. 13, § 155; Ex parte Holzer, 219 Ala. 431, 122 So. 421.

The defendant thereupon filed his bill seeking to reform the deed, the material averments of which are: "5. That on to-wit August 20, 1943, the Respondent purchased the said property herein described, from the Complainant; that a copy of said conveyance is hereto attached, marked exhibit 'B' and asked to be considered as a part hereof as though herein fully set out:

"6. That it was expressly understood and mutually agreed between the Complainant and the Respondent, that the Complainant, at the time of the conveyance to the Respondent, did not own the timber located upon the said land, and that it had been previously sold to G. C.

3.

Coggins; and that the Complainant only, and did, convey the said land to the Respondent subject to the said outstanding timber contract, but due to the mutual mistake of the Complainant and the Respondent the deed did not except the timber which had theretofore been conveyed from the deed, and that through the mistake of the party drafting the deed, it did not express the mutual understanding between the Complainant and the Respondent."

The answer filed by the respondent (the plaintiff in the action) admitted the allegations of the fifth paragraph of said bill and denied the allegations of the sixth paragraph.

On submission on the pleading and proof for final decree the testimony having been given argu issus, the court entered a final decree, denying the complainant relief and declaring that there was a breach of warranty embodied in the deed, ascertained the amount of the damage, sustained by the grantee, dismissed the bill and taxed the complainant with the costs.

The evidence is without dispute that Robertson had nothing to do with the preparation of the deed, that he was not present at the time and the deed was delivered by the bank and the purchase money therefor was paid to the bank. The testimony given by the complainant falls far short of showing that there was a mutual agreement and understanding between the parties that an exception was to be embodied in the deed as to the timber, poles and pulp wood. The most it shows was matters of conclusion without facts. The evidence as a whole shows that the deed expressed all that the parties intended that it should and we concur in the conclusion expressed in the decree that the complainant was not entitled to the relief prayed.

4.

The law requires that there must have been a meeting of the minds of the parties and as a result of a mutual mistake the deed did not express their common intent, and on this point the evidence must be clear and convincing. —McCay v. Jenkins, 244 Ala. 650, 15 So. 2d 409, 149 A. L. R. 746; Holland Blaw Slave Co. v. Barclay, 193 Ala. 200, 69 So. 118; Brunfield v. Hall, 215 Ala. 515, 110 So. 898.

The statute, Code of 1940, Title 13, § 155, provides:

"Whenever any cause on the motion or application of any party thereto is transferred as provided by this article, and the party moving for such transfer fails to establish or maintain the question, right or defense asserted by him and the cause cannot then be finally disposed of on the side of the court to which the same was transferred, the judge hearing the cause shall so state in his judgment or decree, but shall not dismiss the cause and shall direct in such judgment or decree that the cause be retransferred to the side of the court in which the same was originally filed and shall tax all the costs then accrued against the party who moved or applied for a transfer of the cause and failed to establish or maintain the question, right or defense asserted by him. * * *." —Smith v. Grayson, 214 Ala. 197, 107 So. 448.

Breach of the covenants of warranty in a deed is redressable by an action at law which affords the parties an adequate remedy and in such cases courts of equity are without jurisdiction. — Code of 1940, Title 13, § 129; Decker Roofing Co. v. Weharg, 223 Ala. 163, 134 So. 364.

5.

In the case of Randolph v. Randolph, 245 Ala. 689, 18 So. 2d 555, there was a basis for equity jurisdiction, --the cancellation of a recorded deed to real property, relief that could not be obtained in the law court. A like situation was presented in Ex parte State ex rel Dicks, 246 Ala. 277, 20 So. 2d 232, where both parties, the complainant in his bill and the defendant in the cross-bill, sought the cancellation of deeds as a cloud on their alleged title.

We are therefore of opinion that the trial court erred in dismissing the complainant's bill but properly denied relief and taxed the costs of the equity proceeding against the complainant Grove, and to that extent the decree is affirmed. The court also erred in proceeding to settle the purely legal questions in the case and in rendering a personal decree against Grove for damages for breach of warranty and dismissing the bill. In this latter respect the decree is reversed and the cause is remanded to the circuit court with directions to enter an appropriate decree retransferring the case to the law docket for further proceedings as authorized by the statute.

Affirmed in part and in part reversed and remanded.

Livingston, C. J., Simpson and Stakely, JJ., concur.

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 431,

D. Z. Grove, Appellant,

vs.

C. B. Robertson, Appellee,

From Baldwin Circuit Court.
in Equity

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 5 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 22nd day of

March, 19 51
J. Render Thomas
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 1950-51

1 Div., No. 431

D. Z. Grove

Appellant,

vs.

C. B. Robertson

Appellee.

From Baldwin Circuit Court.
in Equity

COPY OF OPINION

March 22, 1951

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1950-51.

1 Div. 431

D. Z. Grove

v.

C. B. Robertson,

Baldwin Circuit Court,
In Equity.

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court, In Equity, there is no error in that part of the decree of the Circuit Court, In Equity, in which it denied relief to the complainant and taxed the costs of the equity proceeding against the complainant, D. Z. Grove, and to this extent it is CONSIDERED, ORDERED, ADJUDGED, AND DECREED that that part of the decree of the Circuit Court, In Equity, be and the same is hereby affirmed.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the decree of the Circuit Court, In Equity, in the respect that it dismissed the complainant's bill of complaint and proceeded to settle the purely legal questions in the case and rendered a personal decree against D. Z. Grove for damages for breach of warranty, be reversed and annulled, and the cause is remanded to said Circuit Court, In Equity, with directions to enter an appropriate order and decree retransferring the case to the law docket for further proceedings as authorized by the statute.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the costs of appeal of this Court and of the Circuit Court, In Equity, be taxed against the appellant, D. Z. Grove, and Searcy Smith and Ruth Hand, sureties on the supersedeas bond, for which costs let execution issue accordingly.

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 431

D. Z. Grove, Appellant,

v.

C. B. Robertson, Appellee,

From Baldwin Circuit Court.

In Equity

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 two inclusive, contain a full, true, and correct copy of the Decree of Affirmance in part and Reversal and Remandment in part, made and entered March 22, 1951, by ... 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 22nd day of

March 19 51.

[Handwritten signature of J. Render Thomas]

Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

1st Div., No. 431

D. Z. Grove

Appellant,

v.

C. B. Robertson

Appellee.

From Baldwin Circuit Court.
In Equity

Certified Copy of

Decree of Affirmance in part,
Reversal and Remandment in
part - March 22, 1951.

HOWE PRINTING CO., MONTGOMERY, ALA., 1944

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