

184

KNOW ALL MEN BY THESE PRESENTS that the undersigned
J. Wallace McMillan, _____ and _____,
are held and firmly bound unto John N. Standard in the sum of
One Hundred Dollars (\$100.00) for the payment of which well and
truly to be made we bind ourselves, our heirs, executors and ad-
ministrators. Sealed with our seals and dated this December 9th,
1935.

The condition of this obligation is that whereas the under-
signed J. Wallace McMillan has filed in the Circuit Court of Baldwin
County, Alabama, a petition to restrain the said John N. Standard
from proceeding with an unlawful detainer suit filed by him in the
court of J. M. Franklin, a Justice of the Peace, until the hearing
of said petition and an injunction is issued on the execution and
delivery of this bond. Now if the said J. Wallace McMillan shall
prosecute the said petition in affect or failing therein shall pay
the said John N. Standard the damages sustained by him by reason
of the wrongful issuing of said writ, this obligation shall be void,
otherwise to be and remain in full force and effect.

J. Wallace McMillan (SEAL)

M. M. Hodges (SEAL)

Approved Dec 9-11-1935 _____ (SEAL)
Robert L. DeLoach
Register

J. WALLACE McMILLAN,
Complainant,

VS.

JOHN N. STANDARD and J. M.
FRANKLIN,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 184.

MOTION TO DISSOLVE INJUNCTION.

Now come John N. Standard and J. M. Franklin, Respondents in the above entitled cause and each for himself separately and severally, move the Court to dissolve the injunction in said cause and as grounds therefor assign the following separate and several reasons, to-wit:

1. Because the Bill of Complaint does not contain equity.
2. Because Complainant has an adequate remedy at law.
3. Complainant has an adequate remedy at law in that he may transfer the unlawful detainer suit to the Circuit Court of Baldwin County, Alabama, by filing a sworn petition to the Judge of Probate of Baldwin County, Alabama as provided by Section 8024 of the 1923 Code of Alabama and Section 8025 as amended by Acts of 1927 page 637, and thereafter try the case in the Circuit Court as provided by Section 8026 of the 1923 Code of Alabama, because it affirmatively appears from the said Bill of Complaint that the defense relied on by the Complainant can be set up in a Court of law or if it cannot be set up in a Court of law, the said cause may be consolidated with case Number 130 on the equity side of the Circuit Court of Baldwin County, Alabama, on motion of the Complainant in this case, the said J. Wallace McMillan.
4. Because a superior court cannot control the action of an inferior court by injunction.
5. Because a Court of equity cannot, by injunction,

J. WALLACE McMILLAN,

Complainant,

VS.

JOHN N. STANDARD and
J. M. FRANKLIN,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. 184.

STATE OF ALABAMA,

BALDWIN COUNTY.

I, R. S. Duck, as Register of said Court, hereby certify that the Injunction Bond in said cause heretofore ordered by F. W. Hare, Circuit Judge in Equity, on the 19th day of August, 1936, has not been filed according to said order and the injunction heretofore issued in this cause stands dissolved.

Given under my hand and seal on this the 24th day of October, 1936.

Register in Chancery.

J. WALLACE McMILLAN,
Complainant,

VS.

JOHN N. STANDARD AND J. M.
FRANKLIN,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. 184.

NOTE OF TESTIMONY.

This cause is submitted in behalf of Complainant upon the original sworn Bill of Complaint and affidavit of J. W. McMillan; and,

In behalf of the Respondents upon sworn Answer of John N. Standard; sworn answer of J. M. Franklin; Motion to Dissolve Injunction and affidavit of W. C. Beebe.



Register.

McMillan & Deery

admitted

J. WALLACE McMILLAN,
Complainant,
VS.
JOHN N. STANDARD and
J. M. FRANKLIN,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 184.

MOTION TO REQUIRE INCREASE IN INJUNCTION BOND.

Now comes John N. Standard, one of the Respondents in the above entitled cause, and moves the Court to increase the injunction bond in this cause, and as grounds therefor, assigns the following separate and several reasons, to-wit:

1. The present injunction bond of \$100.00 is grossly inadequate to protect Respondent's interest in this cause.
2. The property involved in this suit consists of approximately 574 acres, which contains several residences, several barns and other improvements, and about 175 acres of land in a good state of cultivation. The balance of the land contains a fair growth of timber which is of considerable value and the Respondent, John N. Standard, has had an offer from more than one responsible party to rent the cultivated lands and improvements which are a part of the said property, for the year 1936, for the sum of \$3.00 per acre, which he was unable to do because the Complainant in this cause was and still remains in wrongful possession of the said property.
3. Due to the fact that all, or practically all of the Complainant's tangible property is mortgaged to the Home Owners Loan Corporation, Land Bank Commissioner, Baldwin County Bank, C. A. Nimmo, as Assignee of W. D. Stapleton, and C. A. Nimmo, the only way that the interest of the Respondent, Standard, can be properly protected in this suit is by an injunction bond in an amount large enough to adequately protect the said Respondent,

Standard from all costs and damages which may accrue because of the issuance of the said injunction, which will include the rents that he will lose before he can be put into possession of the said property, interest thereon, any other damages that may be done to the said property during the delay, Court costs and attorney's fees. The said Respondent further alleges that because the aforesaid mortgages cover all, or practically all of the tangible property of the said Complainant, J. Wallace McMillan, his only way of collecting any damages which he might sustain before he is put into possession of the said property, would be a suit on the injunction bond for the purpose of collecting from any party who may sign the said injunction bond other than the said Complainant in this cause, the said J. Wallace McMillan. Respondent further alleges that any bond under \$2,000.00 would be grossly inadequate to properly protect his interest in this suit.

WHEREFORE, this Respondent respectfully prays that the Court will take jurisdiction of the cause made by this his motion and that a day be appointed and set to hear and determine same; that due notice thereof will be given in the form and manner required by law; that on a final hearing of this cause your Honor will increase the said injunction bond to at least the sum of \$2,000.00 in order that Respondent's interest in this matter will be adequately protected.

This Respondent further prays for such other, further and general relief as he may be equitably entitled to the premises considered.



Solicitor for John N. Standard.

STATE OF ALABAMA }
BALDWIN COUNTY }

Before me, the undersigned authority, within and

for said County in said State, personally appeared John N. Standard,
who, after being by me first duly and legally sworn, deposes and
says: He has read over the foregoing Motion; that he has personal
knowledge of the facts stated therein, and that the same are true.

John N. Standard

Sworn to and subscribed before me on this
the 5 day of February, 1936.

Spencer Tompkins

Notary Public, Baldwin County, Alabama.

J. WALLACE McMILLAN,
Complainant,
VS.
JOHN N. STANDARD and
J. M. FRANKLIN,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 184.

ANSWER OF J. M. FRANKLIN.

Now comes J. M. Franklin, one of the Respondents in the above stated cause and for answer to the Bill of Complaint in said cause and to each and every count thereof, separately and severally says:

1. This Respondent admits that all parties to this proceeding are over twenty-one years of age and are residents of Baldwin County, Alabama.

2. This Respondent has no personal knowledge of the allegations contained in paragraphs numbered "First", "Second" and "Third" of the said Bill of Complaint and therefore denies that the said allegations are true and requires strict proof of same.

3. This Respondent admits that the other said Respondent, John N. Standard, commenced an unlawful detainer suit before him, the said J. M. Franklin, a Notary Public and Ex Officio Justice of Peace in and for Baldwin County, Alabama, ^{on to wit, May 15, 1935} for the purpose of securing possession of certain lands, namely, the following described property in Baldwin County, Alabama:

That part of the Joshua Kennedy Grant, Section 47, Township 2 South of Range 2 East, which lies in and would be the South Half of the North Half, the South Half of the Northwest Quarter of regular Government Section 10, Township 2 South of Range 2 East; and all that portion of said grant which would be that part of the North Half of the Southwest Quarter and the Northwest Quarter of the Southeast Quarter of regular Government Section 10, Township 2 South of Range 2 East, lying West of the public road leading from Carpenter Station to Stockton, in Baldwin County, Alabama, as now located, containing 240 acres, more or less; and also all that part of the Robert Wolfington Grant, Section 4, Township 2 South of Range 2 East, South of Seabury Creek which lies in and would be the North Half of the North Half of regular Government Section 10, Township 2 South of Range 2 East, and that part of regular Government Section 3, South of Seabury Creek in

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority, within and for said County in said State, personally appeared J. M. Franklin, who, after being by me first duly and legally sworn, deposes and says: That he is one of the Respondents in the above stated cause, that he has read over the foregoing answer, that he has personal knowledge of all matters stated therein and that the same are true.

J. M. Franklin

Sworn to and subscribed before me on
this the 31st day of December, 1935.

Orin Simon

Notary Public, Baldwin County, Alabama.

State of Alabama,
County of Baldwin

Before me, Arthur Judge of
the Circuit Court for Baldwin
County, Alabama, personally appear
Ed Waller, William, who being
Wagon Ross, Applicant has never
knew the case himself in this
suit from the Respondent and the
allegations of paragraph 5 of the
answer are wholly untrue and the
petition of the alleged defendant.

Ed Waller
I have read and subscribed before
me this 3rd day of January 1935
Arthur Judge
Judge

J. WALLACE McMILLAN,
Complainant,
VS.
JOHN N. STANDARD and J. M.
FRANKLIN,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 184.

DEMURRER.

Now come John N. Standard and J. M. Franklin, the Respondents in the above entitled cause, each for himself separately and severally, and for demurrer to the Bill of Complaint and to each and every count thereof, separately and severally, say:

1. There is no equity in the bill.
2. It affirmatively appears that Complainant has an adequate remedy at law.
3. Complainant does not come into equity with clean hands.
4. It does not allege that the Complainant is rightfully in possession of the property in question.
5. It does not allege that Complainant is not in possession of the said property as a tenant of the Respondent, Standard.
6. The allegation "Petitioner has a perfect defense in equity but no such defense can be set up in a Court of law" is a conclusion of the pleader.
7. No facts are alleged to show that the Complainant does not have an adequate remedy at law.
8. The allegation "That he cannot maintain his rights in the premises without the aid of this Honorable Court" is a conclusion of the pleader.
9. No facts are alleged to show that the Complainant cannot maintain his rights without the aid of a Court of equity.

10. It does not allege any facts which authorize the issuance of an injunction against the Justice of Peace Court of J. M. Franklin.

11. It does not allege any facts which authorize the issuance of an injunction against J. M. Franklin, Justice of Peace.

12. Because it affirmatively appears that an injunction is not the proper method to be used by a superior court in controlling the actions of an inferior tribunal.

13. It does not sufficiently describe the deed referred to therein.

14. The description of the deed referred to in the said Bill of Complaint is not sufficient to enable Respondents to know what they are called upon to defend.


Solicitor for Respondents.

CHANCERY EXECUTION

BILL OF COSTS

No. 154

J. Wallace McMillan

VS.

John Standard
vs. Frank

PLAINTIFF

DEFENDANT

FEES OF REGISTER		Dollars	Cents	Brought Forward	
Filing each bill and other papers	\$ 10	1	10	For Receiving, keeping and paying out or distributing money, etc.: 1st \$1,000, 1%, all over \$1,000, and not over \$5,000, 3-4 of 1%; all over \$5,000 and not exceeding \$10,000, 1-2 of 1%, all over \$10,000 1-4 of 1%.	17
Issuing each subpoena	50		50	Receiving, keeping and paying out money paid into court, etc., 1-2 of 1% of amount received.	
Issuing each copy thereof	40		40	Each notice sent by mail to creditor	15
Entering each return thereof	15		15	Filing receipting for and docketing each claim, etc.	25
For each order of publication	1 00		1 00	For all entries on subpoena docket, etc.	50
Issuing Writ of injunction	1 50		1 50	For all entries on commission docket, etc.	50
For each copy thereof	50		50	Making final record. per 100 words	15
Entering each return thereof	15		15	Certified copy of decree	1 00
Issuing Writ of Attachment	1 00		1 00	Report of divorce to State Health Office (Acts 1915)	50
Entering each return thereof	15		15	TOTAL FEES OF REGISTER	107
Docketing each case	1 00		1 00	FEES OF SHERIFF	2325
Entering each appearance	25		25	Serving and returning subpoena on deft.	\$1 50
Issuing each decree pro confesso on per ser.	1 00		1 00	Serving and returning subpoena for witness	65
Issuing each decree pro confesso on publica	1 00		1 00	Levying attachment	3 00
Each order appointing guardian	1 00		1 00	Entering and returning same	25
Any other order by Register	50		50	Selling property attached	
Issuing Commission to take testimony	50		50	Impanelling Jury	75
Receiving and filing	10		10	Executing Writ of possession	2 50
Endorsing each package	10		10	Collecting execution for costs	1 50
Entering order submitting cause	50		50	Serving and returning sci. fa., each	65
Entering any other order of court	25		25	Serving and returning notice	65
Noting all testimony	50		50	Serving and returning writ of injunction	1 50
Abstract of cause, etc.	1 00		1 00	Serving and returning writ of exeat	1 50
Entering each decree	75		75	Taking and approving bonds, each	75
For every 100 words over 500	15		15	Collecting money on execution	
Taking account, etc.	3 00		3 00	Making Deed	2 50
Taking testimony, etc.	15		15	Serving and returning application, etc.	1 00
Each report, 500 words or less	2 50		2 50	Serving attachment, contempt of court	1 50
For every 100 words over 500	15		15	TOTAL FEES OF SHERIFF	
Amount claimed less than \$500, etc.	2 00		2 00	RECAPITULATION	
Issuing each subpoena	25		25	Register's Fees	2875
Witness certificate, each	25		25	Sheriff's Fees	150
Issuing execution, each	75		75	Commissioner's Fees	
Entering each return	15		15	Solicitor's Fees	
Taking and approving bond, each	1 00		1 00	Witness Fees	
Making copy of bill, etc.	15		15	Guardian Ad Litem	
Each notice not otherwise provided for	50		50	Printer's Fees	
Each certificate or affidavit, with seal	50		50	Trial Tax	3 00
Each certificate or affidavit, no seal	25		25	Recording Decree in Probate Court	
Hearing and passing on application, etc.	3 00		3 00	TOTAL	2775
Each settlement with Receiver, etc.	3 00		3 00		
Examining each voucher of Receiver, etc.	10		10		
Examining each answer, etc.	3 00		3 00		
Recording resignation, etc.	75		75		
Entering each certificate to Supreme Court	50		50		
Taking questions and answers, etc.	25		25		
For all other ser relating to such proceedings	1 00		1 00		
For services in proceeding to relieve minors, etc., same fee as in similar cases.					
Commission on sales, etc: 1st \$100, 2 per cent; all over \$100 and not exceeding \$1,000, 1 1-2 per cent; all over \$1,000, and not exceeding \$20,000, 1 per ct; all over 20,000, 1-4 of 1 per cent					
Sub Total Carried Forward					

The State of Alabama, Baldwin County

No. 154 Circuit Court, In Equity Term, 1934

To any Sheriff of the State of Alabama—GREETING:

You are hereby commanded, That of the goods and chattels, lands and tenements of

J. Wallace McMillan Defendant
you cause to be made the sum of *Five hundred and 21* Dollars,
which *John Standard and Frank* Plaintiff,
recovered of *McMillan* on the *21* day of *April* 1934
by the judgment of our Circuit Court, held for the county of Baldwin, besides the sum of _____ Dollars,

costs of suit, and have the same to render to the said and make return of this Writ and the execution thereof, according to law.

Interest from 193 to date of collection.

Witness my hand, this *12* day of *April* 1934 *J. Wallace McMillan* Register

CHANCERY EXECUTION

BILL OF COSTS

No. 184

J Wallace McMillian

VS.

John Standard and J M Frank

PLAINTIFF

DEFENDANT

FEES OF REGISTER	Dollars	Cents	Brought Forward	
Filing each bill and other papers	\$ 10	110	For Receiving, keeping and paying out or distributing money, etc.: 1st \$1,000, 1%, all over \$1,000, and not over \$5,000, 3-4 of 1%; all over \$5,000 and not exceeding \$10,000, 1-2 of 1%, all over \$10,000 1-4 of 1%.	175
Issuing each subpoena	50	50	Receiving, keeping and paying out money paid into court, etc., 1-2 of 1% of amount received.	
Issuing each copy thereof	40	40	Each notice sent by mail to creditor	15
Entering each return thereof	15	40	Filing receipting for and docketing each claim, etc.	25
For each order of publication	1 00	15	For all entries on subpoena docket, etc.	50
Issuing Writ of injunction	1 50	150	For all entries on commission docket, etc.	50
For each copy thereof	50	100	Making final record, per 100 words	15
Entering each return thereof	15	100	Certified copy of decree	1 00
Issuing Writ of Attachment	1 00	100	Report of divorce to State Health Office (Acts 1915)	50
Entering each return thereof	15	100	TOTAL FEES OF REGISTER	175
Docketing each case	1 00	100	FEES OF SHERIFF	2325
Entering each appearance	25	25	Serving and returning subpoena on deft.	\$1 50
Issuing each decree pro confesso on per ser.	1 00	25	Serving and returning subpoena for witness	65
Issuing each decree pro confesso on publica	1 00	25	Levying attachment	3 00
Each order appointing guardian	1 00	60	Entering and returning same	25
Any other order by Register	50	60	Selling property attached	75
Issuing Commission to take testimony	50	60	Impaneling Jury	2 50
Receiving and filing	10	60	Executing Writ of possession	1 50
Endorsing each package	10	60	Collecting execution for costs	65
Entering order submitting cause	50	60	Serving and returning sci. fa., each	65
Entering any other order of court	25	60	Serving and returning notice	65
Noting all testimony	50	150	Serving and returning writ of injunction	1 50
Abstract of cause, etc.	1 00	150	Serving and returning writ of exeat	1 50
Entering each decree	75	150	Taking and approving bonds, each	75
For every 100 words over 500	15	150	Collecting money on execution	2 50
Taking account, etc.	3 00	150	Making Deed	1 00
Taking testimony, etc.	15	150	Serving and returning application, etc.	1 50
Each report, 500 words or less	2 50	150	Serving attachment, contempt of court	1 50
For every 100 words over 500	15	150	TOTAL FEES OF SHERIFF	300
Amount claimed less than \$500, etc.	2 00	150	RECAPITULATION	2875
Issuing each subpoena	25	150	Register's Fees	150
Witness certificate, each	25	150	Sheriff's Fees	150
Issuing execution, each	75	150	Commissioner's Fees	300
Entering each return	15	150	Solicitor's Fees	300
Taking and approving bond, each	1 00	150	Witness Fees	300
Making copy of bill, etc.	15	150	Guardian Ad Litem	300
Each notice not otherwise provided for	50	150	Printer's Fees	300
Each certificate or affidavit, with seal	50	150	Trial Tax	3 00
Each certificate or affidavit, no seal	25	150	Recording Decree in Probate Court	300
Hearing and passing on application, etc.	3 00	150	TOTAL	2775
Each settlement with Receiver, etc.	3 00	150		
Examining each voucher of Receiver, etc.	10	150		
Examining each answer, etc.	3 00	150		
Recording resignation, etc.	75	150		
Entering each certificate to Supreme Court	50	150		
Taking questions and answers, etc.	25	150		
For all other ser relating to such proceedings	1 00	150		
For services in proceeding to relieve minors, etc., same fee as in similar cases.	3 00	150		
Commission on sales, etc: 1st \$100, 2 per cent; all over \$100 and not exceeding \$1,000, 1 1-2 per cent; all over \$1,000, and not exceeding \$20,000, 1 per ct; all over 20,000, 1-4 of 1 per cent	3 00	150		
Sub Total Carried Forward				

The State of Alabama, Baldwin County, No. 184, Circuit Court, In Equity *Facel* Term, 193*6*

To any Sheriff of the State of Alabama—GREETING:
 You are hereby commanded, That of the goods and chattels, lands and tenements of *J Wallace McMillian* Defendant
 you cause to be made the sum of *Twenty Seven and 75/100* Dollars,
 which *John Standard and J M Frank* Plaintiff,
 recovered of *the* on the *15* day of *Sept* 193*6*
 by the judgment of our Circuit Court, held for the county of Baldwin, besides the sum of _____ Dollars,

costs of suit, and have the same to render to the said _____ and make return of this Writ and the execution thereof, according to law.

Interest from _____ 193_____ to date of collection.
 Witness my hand, this *15* day of *Nov* 193*6* *J. R. [Signature]* Register

J. WALLACE McMILLAN,

Complainant,

VS.

JOHN N. STANDARD AND J. M.
FRANKLIN,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY.

NO. 184.

DECREE.

This cause coming on to be heard and being submitted on the Motion of the Respondent, John N. Standard, to increase the Injunction Bond in said cause and on agreement of counsel for Complainant, J. Wallace McMillan, and Respondent, John N. Standard, made in open Court on this date, IT IS THEREFORE Ordered, Adjudged and Decreed by the Court as follows:

1. That the Injunction Bond in said cause be and it is hereby fixed at the sum of Five Hundred Dollars.
2. The Complainant in this cause shall file a good and sufficient Injunction Bond in the said sum of Five Hundred Dollars, with the Register of this Court before September 4, 1936, conditioned as required by law, to be approved by such Register as required by law, and upon Complainant's failure so to do the Injunction heretofore issued in this cause shall stand dissolved.

Done on this the 19th day of August, 1936.



Judge.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority, within and for said County and said State, personally appeared W. C. Beebe, who, after being by me first duly and legally sworn, deposes and says:

He is an attorney at law practicing at Bay Minette, in Baldwin County, Alabama.

He was attorney for J. Wallace McMillan and John H. Standard during the latter part of the year of 1933 and during the first part of the year of 1934, during which time he represented both of the said parties in connection with all of the matters hereinafter mentioned. During this time, the said McMillan was indebted to other parties, who were pressing him for payment and he desired to raise money to save his home place and as much of the adjoining land as possible, and in an effort to raise money therefor, made an application to the Federal Land Bank for a loan on what was known as the "Martin Place" and adjoining lands, with other property, which said application was rejected by the Federal Land Bank. After rejection of the said application, said McMillan decided to sell the "Martin Place" and adjoining lands, totaling about 574 acres, to the said Standard. The said McMillan and Standard, in making this said trade, often discussed the matter with Affiant. In all of these conferences the said McMillan always stated and admitted that he was indebted to the said Standard in a sum in excess of \$2500.00, but it was finally agreed between the said McMillan and Standard in Affiant's presence, that Standard would accept \$2500.00 in extinction of the said obligation and that McMillan would sell Standard the property described in the deed hereinafter referred to for the sum of \$5900.00. When this agreement was made between the said parties, the said McMillan instructed Affiant to draft the deed from J. Wallace McMillan and wife to John N. Standard, dated October 17, 1933 and recorded in Deed Book 54 N. S. at page 435, a copy of which is attached to the answer of John N. Standard in equity case numbered 184, Baldwin County Circuit Court. This deed was executed by the said McMillan and wife and delivered to Beebe & Hall to be delivered to Standard when he secured a loan from the Federal Land Bank and paid the proceeds therefrom to said McMillan, who agreed to pay the cost of obtaining same. Said Standard made an application to the Federal Land Bank for a loan, which was approved for \$3400.00. The deed was delivered, the loan closed and the net proceeds therefrom amounting to approximately \$3047.00 was paid by Standard to McMillan. At the time the said deed was delivered by McMillan to Beebe & Hall, John N. Standard delivered them a written receipt and release and an option which he had executed, which said instruments were to be delivered and were delivered to said McMillan after the transaction was closed.

J. Wallace McMillan talked with Affiant after delivery of the deed referred to above and told Affiant that he had rented the property described in the said deed from John N. Standard.

Sworn to and subscribed before me
on this the 1st day of January, 1936.

Notary Public, Baldwin County, Alabama.

184 RECORDED
Buchle
6.271

Shallcross Merrill
Esq

John M Standards
and
Jim Anselmi

Buchle

30 Dec 35
Buchle

J. WALLACE McMILLAN,
Complainant,

VS.

JOHN N. STANDARD and
J. M. FRANKLIN,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. 184.

ANSWER OF JOHN N. STANDARD.

Now comes John N. Standard, one of the Respondents in the above stated cause, and for answer to the Bill of Complaint in said cause and to each and every count thereof, separately and severally says:

1. This Respondent admits that all parties to this proceeding are over twenty-one years of age and are residents of Baldwin County, Alabama.

2. This Respondent admits that J. Wallace McMillan filed a Bill of Complaint in the Circuit Court of Baldwin County, Alabama against this Respondent, which is cause No. 130 on the equity side of the Circuit Court of Baldwin County, Alabama, and that this proceeding is still pending in the said Court.

3. This Respondent admits that the Complainant, together with his wife, made a deed to him dated October 17th, 1933, and recorded in Deed Book No. 54 N. S. at page 435, Baldwin County Records, a true copy of which is hereto attached, marked Exhibit "A" and made a part hereof as though fully incorporated herein, and further says that this said deed was given for a valuable consideration and is a valid instrument.

4. This Respondent admits that the said deed hereinreferred to as Exhibit "A" is absolute on its face, but positively and emphatically denies that it was obtained by fraud or misrepresentation.

5. At the time the said deed hereinreferred to as Exhibit "A" was executed Complainant, J. Wallace McMillan, was in possession of the said lands described therein but about the time the said deed was delivered the said J. Wallace McMillan came to

this Respondent and rented the said property from him for the calendar year of 1934 at a yearly rental of \$2.50 per acre for each and every acre of cultivated land on the said property which is approximately 175 acres, and that the total rental for the said property, which amounts to the sum of \$437.50 for the year 1934, with interest thereon, is still due and unpaid, and there is also due an unpaid a like amount of \$437.50 for rental on the said property for the calendar year of 1935, as the said tenant, J. Wallace McMillan, did not surrender possession of the said land at the end of the year 1934. Respondent had a written demand for possession of the said property served on the said J. Wallace McMillan, on to-wit, May 4, 1935, and after the said J. Wallace McMillan refused to surrender possession of it an unlawful detainer suit was commenced before J. M. Franklin, Notary Public and Ex Officio Justice of Peace, ^{on to-wit May 15, 1935} which was continued from the time it was originally filed until shortly before December 10, 1935, when it was set for trial on December 10, 1935, at the request of this respondent, but the case could not be tried on December 10, 1935, because of the temporary restraining order issued in this cause, even though the said McMillan is still in wrongful possession of the said property.

Respondent denies that the Complainant has a perfect defense in equity and that the said Complainant cannot maintain his rights in this case without the aid of a court of equity

6. For further answer to the said Bill of Complaint this Respondent says that according to the allegations of the said Bill of Complaint the said Complainant has a full, adequate and complete remedy at law in that the said unlawful detainer ^{which was commenced on to-wit: May 15, 1935} suit may be removed to the Circuit Court of Baldwin County, Alabama, as provided by Section 8024, Section 8025 as amended by Acts of 1927 at page 637, and Section 8026 of the 1923 Code of Alabama, or if the said Complainant's alleged grounds for suit cannot be set up in a Court of law the said cause may then be consolidated with equity case No. 130 in the said court in the manner provided by law.

7. Respondent denies each and all other allegations of the said Bill of Complaint and demands strict proof of same.

J. B. Blackburn
Solicitor for Respondent, John N. Standard.

STATE OF ALABAMA }
BALDWIN COUNTY }

Before me, the undersigned authority, within and for said County in said State, personally appeared John N. Standard, who, after being by me first duly and legally sworn, deposes and says: That he is one of the Respondents in the above stated cause, that he has read over the foregoing answer, that he has personal knowledge of all matters stated therein and that the same are true.

John N. Standard

Sworn to and subscribed before me on this the 2nd day of January, 1936.

Robert Lee

Notary Public, Baldwin County, Alabama.

EXHIBIT "A"

STATE OF ALABAMA.

BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS, that we, JOHN WALLACE Mc MILLAN and ALLENE K. McMILLAN, his wife, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration tous in hand paid by JOHN N. STANDARD, the receipt of which is hereby acknowledged, do GRANT, BARGAIN, SELL and CONVEY unto the said JOHN N. STANDARD, all the following described real property situated in the County of Baldwin, State of Alabama, to-wit:

That part of the Joshua Kennedy Grant, Section 47, Township 2 South of Range 2 East, which lies in and would be the South half of the North half, the South half of the Northwest quarter of regular Government Section 10, Township 2 South, Range 2 East; and all that portion of said grant which would be that part of the North half of the Southwest quarter and the Northwest quarter of the Southeast quarter of regular Government Section 10, Township 2 South, Range 2 East, lying West of the public road leading from Carpenter Station to Stockton, in Baldwin County, Alabama, as now located, containing 240 acres, more or less; and also all that part of the Robert Wolfington Grant, Section 4, Township 2 South, Range 2 East South of Seabury Creek which lies in and would be the North half of the North half of regular Government Section 10, Township 2 South of Range 2 East, and that part of regular Government Section 3, South of Seabury Creek in regular Government Section 3, Township 2 South, Range 2 East, containing in all 334 acres, more or less, said total acreage of said two tracts being 574 acres, more or less.

TOGETHER WITH, all and singular, the rights, members, privileges, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD unto the said JOHN N. STANDARD, his heirs and assigns, forever. And we do for ourselves, our heirs, executors and administrators, covenant with the said JOHN N. STANDARD, his heirs and assigns, that we are lawfully seized in fee simple of said premises; that they are free from all incumbrances and that we have a good right to sell and convey the same as aforesaid; that we will and our heirs, executors and administrators shall warrant and defend the same to the said JOHN N. STANDARD, his heirs and assigns, forever, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, on this the 17 day of October, 1933.

J. W. McMillan (SEAL)

Allene K. McMillan (SEAL)

STATE OF ALABAMA.

BALDWIN COUNTY.

I, W. C. Beebe, a Notary Public in and for said County in said State, hereby certify that John Wallace McMillan and Allene K. McMillan, his wife, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

And I do further certify that on the 17th day of October, 1933, came before me the within named Allene K. McMillan, known to me to be the wife of the within named John Wallace McMillan, 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 the 17th day of October, 1933.

W. C. Beebe
Notary Public, Baldwin County,
Alabama.

(Notary Seal)

STATE OF ALABAMA, |
COUNTY OF BALDWIN. |

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

You are hereby commanded to forthwith serve the enclosed notice on John N. Standard and J. M. Franklin and make your return to this court of your proceedings hereunder. Witness my hand this December 9th, 1935.


Clerk.

STATE OF ALABAMA, |

COUNTY OF BALDWIN. |

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

Your petitioner J. Wallace McMillan, a resident citizen of Baldwin County, Alabama, and over the age of twenty-one years, brings this petition against John N. Standard and J. M. Franklin who are also residents of Baldwin County, Alabama, and over the age of twenty-one years, and respectfully shows unto Your Honor:

FIRST.

Petitioner on to-wit May 21st, 1935, filed a bill in this court against John N. Standard in which the complainant prayed that a deed heretofore executed by him to the said John N. Standard be set aside for the reasons therein stated and that petitioner be granted other affirmative relief. The said cause numbered 130 on the docket of the equity side of said court is now referred to and by reference made a part of this petition. The said proceeding is still pending in this court.

SECOND.

Petitioner shows that at the time he made the said deed to John N. Standard the said Standard represented that petitioner was indebted to him in the sum of Twenty-five Hundred Dollars (\$2500.00); The said Standard had been the bookkeeper and trusted agent of the complainant and complainant did not certainly know that he was not so indebted as represented by the said Standard and he made the deed referred to which is absolute on its face.

THIRD.

Complainant later ascertained that he did not owe the said Standard as claimed by him and when he ascertained this fact he filed a bill in cause numbered 130 as hereinabove stated, but the deed is absolute on its face and while it was procured by the fraudulent representation of the GRANTEE therein named it can be set aside only through the courts of equity and in the courts of common law your petitioner would have no defense.

FOURTH.

At the time the said deed was executed petitioner was in possession of the land therein described, is still in such possession

and has been in such possession since the execution of said deed but some time ago the said John N. Standard commenced a suit in unlawful detainer before J. M. Franklin, a Justice of the Peace in Bay Minette, Alabama, to oust complainant from the possession of said land; The suit was thereafter continued and complainant thought that it was continued to await the outcome of the Chancery proceeding above referred to but he has on this day received a notice from the said J. M. Franklin that the cause is set for hearing in said unlawful detainer suit for December 10th and it will be heard by the said J. M. Franklin on that day unless the plaintiff, John N. Standard, and the said J. M. Franklin are restrained from further prosecution of said cause until the equities are settled. Petitioner has a perfect defense in equity but no such defense as he can set up in a court of common law.

And he therefore shows unto Your Honor he cannot maintain his rights in the premises without the aid of this honorable court. The premises considered complainant prays that Your Honor will set a day for the hearing of this petition and that pending said hearing Your Honor will enter an order restraining the said John N.

Standard and J. M. Franklin from proceeding with the trial of said unlawful detainer suit until petitioner can be heard on this petition and that upon a final hearing of this petition the said John N. Standard and J. M. Franklin be restrained from further proceeding of said cause until the final disposition of cause numbered 130 on the equity side of this court.

J. Wallace McMillan
Solicitor for Petitioner.

NOTE: The respondents John N. Standard and J. M. Franklin are required to answer each and every allegation and paragraph in the foregoing petition but oath thereto is hereby waived.

J. Wallace McMillan
Solicitor for Petitioner.

STATE OF ALABAMA, |
COUNTY OF MOBILE. |

Before me, Julia P. McMillan, a Notary Public in and for said State and County, personally appeared J. Wallace McMillan who is known to me and who being sworn says on oath that the allegations in the foregoing petition are true.

J. P. McMillan

Sworn to and subscribed before me this 7th day of December, 1935.

Julia P. McMillan
Notary Public, Mobile County, Alabama.

IN THE CIRCUIT COURT OF BALDWIN COUNTY. IN EQUITY.

To John N. Standard and J. M. Franklin:-

You will take notice that on the 8th day of December, 1935, J. Wallace McMillan filed in the Circuit Judge of Baldwin County, Alabama, his bill of complaint praying for an order restraining you from proceeding with the trial of an unlawful detainer suit filed in the Justice of the Peace Court of J. M. Franklin by John N. Standard vs J. Wallace McMillan: That the said Bill was presented to ^{him} ~~me~~ as Judge of said Court on the 8th day of December, 1935, and that ^{as} ~~I~~ have entered the following order:

To Robert S. Duck,
Register of Circuit Court,
Baldwin County, Alabama.

"On complainants entering into bond in the sum of One Hundred Dollars with surety to be approved by the register, conditioned to pay the defendant such damages as he may sustain for the wrongful issuing of said order let the injunction issue as prayed for in the foregoing bill of complaint" 12/8/1935.

F. W. Hare.
Judge.

You will take further notice that said J. Wallace McMillan has entered into bond in the sum of One Hundred Dollars as prescribed by law and that said bond has been approved by me. In Witness whereof I, Robert S. Duck, Register of said Court, have hereunto set my hand as Register this 9th day of December, 1935.

Robert S. Duck
Register.