

JACKSON OAKS CORPORATION,
COMPLAINANT.

vs.

J. E. DRYSDALE, S. M. BROWN,
WAGAR LAND COMPANY, AND
W. P. LEWIS,

RESPONDENTS,

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.

IN EQUITY. No. 537.

Comes the defendants J. E. Drysdale and
S. M. Brown and demur to the bill of complaint
exhibited against them in this cause, and for grounds thereof,
assign the following:

1st. Said bill is wanting in Equity.

2nd. Because it is vague, indefinite and uncertain
in this: (a) It claims the receipt of a deed from respondents
Brown and Drysdale and instead of attaching same to the bill of
complaint ~~or~~ alleged true copy thereof, merely claims to attach
a substantial copy, without assigning any excuse for attaching
a true copy thereof. (b) It does not show ^{or} allege any considera-
tion for the taking of Thirteen thousand (\$13,000.00) dollars
instead of alleged full purchase price.

3rd. Because said bill shows that the complainant is
in default in the payment of the first note, whereupon under the
terms of the alleged deed the entire balance of the purchase money
would be due, and it fails to allege that it has tendered same,
or to now make such tender.

4th. Because it fails to allege that it is now vested
with the title to said property.

W. H. & Shepard
Bush & Bush
ATTORNEYS FOR RESPONDENTS.

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

VS.

J. E. DRYSDALE, S. M. BROWN,
WAGAR LAND COMPANY, AND W. P.
LEWIS,

RESPONDENTS.

1. Said bill is wanting in Equity.

2. Because said bill shows that the alleged deed is unrecorded, and fails to allege that respondents had notice thereof.

3. Because said bill fails to allege that complainant is now the owner of said property.

ATTORNEYS FOR RESPONDENTS.

The State of Alabama }

BALDWIN COUNTY.

CIRCUIT COURT OF BALDWIN COUNTY,
IN EQUITY.

To Any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon J.E. Drysdale and S.M. Brown,

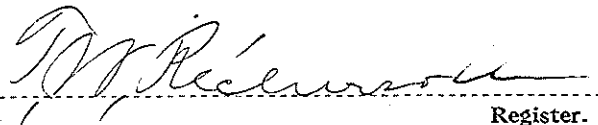
of Davenport, Iowa, ~~&c &c~~ to be and appear before the Judge of the Circuit Court of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by Jackson Oaks Corporation, a Corporation organized under the laws of Alabama,

against said J.E. Drysdale and S.M. Brown et al.

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

WITNESS, T. W. Richerson, Register of said Circuit Court, this 22nd, day of October,

1925.


Register.

N. B.—Any party defendant is entitled to a copy of the bill upon application to the Register.

Original

Serve on

Circuit Court of Baldwin County
In Equity

No.

SUMMONS

Jackson Oaks Corporation,

a Corporation organized under

the laws of the State of

Alabama,

vs.

J.B. Drysdale, S.M. Brown

Wagar Land Company, a
Corporation chartered under the
laws of the State of Michigan
and W.P. Lewis,

Gaillard, Mahorner & Arnold &
Stone & Starnes, Attorneys for Complainant.

Recorded in Vol.

Page

THE STATE OF ALABAMA
BALDWIN COUNTY

Received in office this

day of

192

Sheriff.

Executed this

day of

192

by leaving a copy of the within summons with

Defendant.

Sheriff.

By

Deputy Sheriff.

*Copy of summons
sent by Reg. Sec.
J.B. Drysdale &
S.M. Brown, Supt.,
Lawrenceport, Ala.*

JACKSON OAKS CORPORATION, a
corporation organized under
the laws of Alabama,
Complainant.

vs.

J. E. DRYSDALE, S. M. BROWN,
WAGAR LAND COMPANY, a corpo-
ration chartered under the
laws of the State of Michigan,
and W. P. LEWIS,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. _____

TO THE HONORABLE JOHN D. LEIGH, JUDGE OF SAID COURT:

The bill of complaint of Jackson Oaks Corpora-
tion respectfully shows unto Your Honor as follows:

FIRST

That respondents J. E. Drysdale and S. M. Brown
are upwards of twenty-one years of age and are non-resi-
dents of the State of Alabama, their place of residence
and postoffice address being Davenport, Iowa; that Wagar
Land Company is a corporation organized under the laws of
and has an office at Wagar, Washington County, Alabama,
the State of Michigan; and that said W. P. Lewis is upwards
of twenty-one years of age and resides in the County of
Mobile, State of Alabama.

SECOND

Complainant further shows unto Your Honor that
on and prior to the 12th. day of January, 1924,
the title to the land hereinafter described was vested in
the said J. E. Drysdale and S. M. Brown, by certain con-
veyances of record in the office of the Probate Judge of
Baldwin County, Alabama, and that on said date said J. E.
Drysdale and his said wife and said S. M. Brown and his
said wife, for a full and valuable consideration, executed
and delivered to your complainant, Jackson Oaks Corpora-
tion, a deed conveying to complainant the following de-

scribed lands situate in the County of Baldwin, State of Alabama, to-wit:

Start at the Southeast corner of Section Seven (7), Township Five (5) South, Range Two (2) East, and run West 40 and 66/100 chains to a point; thence run North 17 and 3/100 chains to a point, which is the beginning point of the lands hereby conveyed; from said point of beginning run North 6 and 18/100 chains to the South line of Division Three, Section Eight (8); thence East on said South line 35 chains, more or less, to Yancey Branch; thence up said Branch 3 and 50/100 chains, more or less, to the South line of Section Thirty-eight (38) in said Township; thence East on the South line of Section Thirty-eight (38) 15 chains, more or less, to the East line of Section Seven (7), in said Township; thence North 3 and 17/100 chains to a stake; thence West to the center of Yancey Branch; thence Northwesterly up said Branch to the fork thereof; thence Northeasterly up said fork to the South line of Lot No. Four (4) of the Dolive Division (which South line is about 50 chains North of Section Thirty-eight (38)); thence East along the South line of Lot No. Four (4) to Section Nine (9) of said Township; thence North 12 and 68/100 chains to the Northeast corner of said Lot No. Four (4); thence West 160 chains, more or less, to Mobile Bay; thence Southerly along said Bay to the middle of the West line of Section Thirty-nine (39); thence East 8 and 70/100 chains to a stake; thence South 3 and 9/100 chains to a stake; thence East 9 and 51/100 chains to the place of beginning; containing 575 acres, more or less, in Section Seven (7) (Spanish Grant), Sections Seven (7) and Eight (8), regular survey, and Sections Nineteen (19), Thirty-seven (37), thirty-eight (38) and Thirty-nine (39) (Spanish Grant), in Township Five (5) South, Range Two (2) East, Baldwin County, Alabama; excepting, however, from the said tract of land the following portions;

(1) The Dolive Graveyard, which is called one (1) acre, but which is about one-twentieth (1/20) of an acre;

(2) That part of said tract of land described as follows: Start at the Southeast corner of Section Seven (7), Township Five (5) South, Range Two (2) East; and run West 40.66 chains to a point; thence North 17.03 chains to a point; thence North 6.18 chains to a point of beginning; thence Easterly along the South line of Division Three (3), Section Eight (8), to the West side of the Public Road, as originally laid off, running from Daphne to Spanish Fort; thence Northerly along the West side of said road 150 feet; thence due West to Mobile Bay; thence Southerly along said bay to the middle of the West line of Section Thirty-nine (39); thence Easterly 8.70 chains to a point; thence South 5.09 chains to a point; thence East 9.51 chains to a point; thence Northerly to the point of beginning;

The recited consideration for said deed was the sum of Twenty Thousand Dollars (\$20,000.00), the receipt of Five Thousand Dollars (\$5000.00) of which was acknowledged in said deed, and the said Drysdale and Brown specifically reserved to themselves, by the terms of said deed, a lien to secure the payment to them of the sum of Fifteen Thousand Dollars (\$15,000.00), being the unpaid portion of said purchase money, said unpaid portion of the consideration being evidenced by 15 notes of your complainant, of even date with said deed, each for the sum of \$1000.00, with interest at 7% per annum from date, payable annually, said notes being payable to grantors at office of J.E.Drysdale & Company, at Davenport, Iowa, on or before five years.

And complainant further says that on, to-wit, the 9th day of February, 1924, your complainant, thru its President, Paul Schmohl, executed and delivered to the said Drysdale and Brown fifteen (15) notes, each for the sum of One Thousand Dollars (\$1000.00) and payable as provided by the terms of said deed from said Drysdale and Brown to your complainant.

A substantial copy of said deed is hereto attached, marked Exhibit "A" and made a part of this bill of complaint.

THIRD

Your complainant further shows unto Your Honor that by the terms of said deed referred to in paragraph second hereof and also by the terms of said fifteen (15) notes, each of said notes were payable on or before their recited dates of maturity; and complainant further shows to the Court that on, to-wit, the 4th day of June, 1925, said Drysdale and Brown agreed with your complainant to accept in full settlement of said unpaid part of the purchase money, aggregating Fifteen Thousand Dollars (\$15,000.00), the sum of Thirteen Thousand Dollars (\$13,000.00), and your complainant is ready, willing and able to pay to said Drys-

dale and Brown, or to whoever may, by assignment of said debt, be entitled thereto, and has offered to pay said Drysdale and Brown said sum of Thirteen Thousand Dollars (\$13,000.00), but they have refused to accept the same and have refused to permit your complainant to pay to them the balance of said purchase money due under said deed set forth and described in paragraph second hereof and have refused to negotiate with complainant for that purpose.

FOURTH

Your complainant has been informed and believes, and upon such information and belief says, that said Drysdale and Brown have heretofore assigned, transferred or conveyed to said respondent Wagar Land Company and to said respondent W. P. Lewis, all, or some portion, of said unpaid portion of the purchase price of said lands, or some right or interest vested in them by the terms of said deed referred to in paragraph two hereof, but just what right or interest or what part of said debt secured by said lands has been so assigned, your complainant does not know.

Complainant is further informed and believes, and upon such information and belief says, that the said Wagar Land Company and the said W. P. Lewis are setting up some claim to the said notes or some claim upon the lands described in said deed, as assignees or transferees of the said Drysdale and Brown.

FIFTH

Your complainant further shows unto Your Honor that said Drysdale and Brown have heretofore, and do now, deny that complainant is entitled to a release of its said real property set forth and described in said deed, a substantial copy of which is hereto attached, upon the payment of Thirteen Thousand Dollars (\$13,000.00), and have demanded and insisted that it is obligated to pay

the full sum of Fifteen Thousand Dollars (\$15,000.00), with interest thereon.

But your complainant shows unto Your Honor that by the terms of said deed to it, mentioned in paragraph second hereof, and by the terms of said fifteen (15) promissory notes, it is entitled to the privilege of paying all of said notes on or before their dates of maturity, and this complainant is now ready to pay to said Drysdale and Brown, or to such party or parties as may be entitled to receive the sum, such sum or sums of money due by it under the terms of said deed, and said notes, as may be ascertained and decreed by this Honorable Court to be the correct amount to be paid by it.

PRAYER FOR PROCESS

Complainant therefore prays that said J. E. Drysdale, S. M. Brown, W. P. Lewis and Wagar Land Company, a corporation as aforesaid, be made parties defendant to this bill of complaint; that due service may be had upon the said J. E. Drysdale and S. M. Brown by publication, as provided for by the laws of Alabama and the rules of this Honorable Court, and that an appropriate writ be issued out of this Honorable Court and served upon the said Wagar Land Company and said W. P. Lewis; and commanding all of said respondents to appear in this Honorable Court within the time fixed by law and the rules thereof, and demur, plead or make answer to this bill of complaint within the time required by law and the rules of this Honorable Court.

PRAYER FOR RELIEF

And your complainant further prays that upon the hearing of this cause this Honorable Court will be pleased to decree that your complainant is entitled to relief against said respondents; that it will ascertain and adjudge what sum or sums are due by your complainant

to the said Drysdale and Brown, or to other of said defendants, and how much it is due to each of them, and that upon the payment to said respondents, or to such of them as may be decreed by this Honorable Court to be entitled thereto, of the sum or sums so ascertained by this Honorable Court to be due by the complainant under the terms of said deed set forth, a substantial copy of which is hereto attached as Exhibit "A" and by the terms of said promissory notes, Your Honor will adjudge and decree that said respondents shall, in such manner as may be decreed by this Court, release such of said property as is ~~xx~~encumbered by said vendor's lien; or if some of them are adjudged by this Honorable Court to have no interest in said lands, by virtue of said deed or said notes, that this Honorable Court will so adjudge and decree.

And your complainant further prays for all such other, further or different relief as, to this Honorable Court, may seem meet under all circumstances of the case.

Gillard & Mahoney Arnold
Solicitors for Complainant
Howe & Howe

FOOT-NOTE: Each of said respondents are required to answer each paragraph of the foregoing bill of complaint, numbered one to five, respectively, but answer under oath is expressly waived.

Gillard & Mahoney Arnold
Solicitors for Complainant
Howe & Howe

STATE OF ALABAMA (

COUNTY OF MOBILE (

Before me, Stella M. Miller

a Notary Public in and for said State

and County, personally appeared Paul Schmohl, who being by me first duly sworn, says that he is the President of said Jackson Oaks Corporation, the complainant in the foregoing bill of complaint, and that the allegations therein contained are true, except where they are based upon information and belief, and as to such allegations so based upon information and belief, he believes them to be true, and that F. L. Wagar is President of said Wagar Land Company.

Paul Schmohl

Subscribed and sworn to before
me this 8th day of Oct., 1925.

Stella M. Miller

Notary Public, Mobile Co., Ala.

EXHIBIT "A"

STATE OF ALABAMA)
 (SS
COUNTY OF BALDWIN)

THIS INDENTURE, made and entered into this 12th day of January, A.D. 1924, by and between J. E. Drysdale and Ada M. Drysdale, his wife, and S. M. Brown and Nellie G. Brown, his wife, all of Davenport, Iowa, parties of the first part, and Jackson Oaks Corporation, a corporation organized under the laws of the State of Alabama, party of the second part,

W I T N E S S E T H:

That for and in consideration of the sum of Twenty-Thousand (\$20,000.00) dollars, Five Thousand (\$5,000.00) dollars of which has been paid in cash, the receipt whereof is hereby acknowledged, and the remainder amounting to Fifteen Thousand (\$15,000.00) dollars, is to be paid as evidenced by that certain series of fifteen (15) notes of even date herewith, each of said notes being for the sum of One Thousand (\$1,000.00) dollars, with interest at seven (7%) per cent per annum from date, payable annually, the said notes being signed by the party of the second part and payable to parties of the first part at the office of J. E. Drysdale & Company at Davenport, Iowa, on or before five (5) years from the date hereof, provided, however, that default in the payment of any installment of interest, when and as same becomes due upon any of said notes, shall cause the entire amount of principal and interest upon each and all of said notes to become due and payable at once at the option of the payee or holder thereof without notice, the parties of the first part have granted, bargained, sold and conveyed and do by these presents grant, bargain, sell and convey unto the said party of the second part, subject, however, to the vendor's lien hereinafter set forth, the following described land situated in Baldwin County, Alabama, to-wit:

Start at the Southeast corner of Section Seven, Township Five South, Range Two East, and run West 40-66/100 chains to a point; thence run North 17-3/100 chains to a point which is the beginning point of the lands hereby conveyed; from said point of beginning run North 6-18/100 chains to the South line of Division Three, section Eight, thence East on said South line 35 chains more or less, to Yancey Branch; thence up said Branch 3-50/100 chains, more or less, to the South line of Section Thirty-eight in said Township; thence East on South line of Section Thirty-eight, 15 chains, more or less, to the East line of Section Seven, in said Township; thence North 3-17/100 chains to a stake; thence West to the center of Yancey Branch;

thence Northwesterly up said Branch to the fork thereof; thence North-easterly up said fork to the South line of Lot No. Four of the Dolive Division (which South line is about 50 chains North of Section Thirty-eight); thence East along the south line of lot No. Four to Section Nine of said Township; thence North 12-68/100 chains to the North-east corner of said Lot No. Four; thence West 160 chains, more or less, to Mobile Bay; thence Southerly along said Bay to middle of the West line of Section Thirty-nine; thence East 8-70/100 chains to a stake, thence South 3-9/100 chains to a stake; thence East 9-51/100 chains to the place of beginning, containing 375 acres, more or less, in Section Seven (Spanish Grant), Sections Seven and Eight, regular survey, and Sections Nineteen, Thirty-seven, Thirty-eight and Thirty-nine (Spanish Grant), in Township Five South, Range Two East, Baldwin County, Alabama; excepting however from the said tract of land the following portions:

(1) The Dolive Grave Yard which is called one acre, but which is about one-twentieth of an acre.

(2) That part of said tract of land described as follows:

Start at the Southeast corner of Section Seven (7), Township Five (5) South, Range Two (2) East, and run West 40.66 chains to a point, thence North 17.03 chains to a point; thence North 6.18 chains to a point of beginning; thence Easterly along the South line of Division Three (3), Section Eight (8), to the West side of the Public Road as originally laid off running from Daphne to Spanish Fort; thence Northerly along the west side of said road, 150 feet; thence due west to Mobile Bay; thence Southerly along said Bay to the middle of West line of Section Thirty-nine (39); thence Easterly 8.70 chains to a point; thence South 3.09 chains to a point; thence East 9.51 chains to a point; thence Northerly to the point of beginning.

Together with all and singular the rights, tenements, privileges and appurtenances unto said land, belonging or in anywise appertaining.

To have and to hold said lands unto the party of the second part, its successors or assigns, in fee simple.

And said parties of the first part, for themselves, their heirs, executors and administrators, hereby covenant with said party of the second part that they are seized of the title conveyed to them, in the above lands, by Warren W. Worcester by Warranty Deed dated May, 14, 1921, and recorded on the 7th day of June 1921, in Book No. 31 N.S., Page 651-32 in the office of the Judge of the Probate Court of Baldwin County, Alabama, and the covenant and warrant that said lands are free and clear from any and all encumbrances due to any act upon their part and that they will forever warrant and defend the title to and possession of said property unto party of the second part, its successors and assigns against the lawful claims of all persons claimed by, through or under parties of the first part or either of them.

In order to secure the payment of the notes for the aforesaid balance of purchase money amounting to Fifteen Thousand (\$15,000.00)

Dollars, with interest, etc., the parties of the first part hereby reserve and retain a vendor's lien upon all of the property herein conveyed, excepting only the following, to-wit:

Lots Nine (9) and Ten (10) in each of Blocks B, C, D, E, F, G, H, I and J, Lots One (1) and Two (2) in Blocks C and D, and the tract marked "Jackson Park" upon the plat of the certain portion of the above described land abutting on Mobile Bay and on each side of the creek called "Yancey Branch", which plat will be hereafter filed in the office of the Probate Judge in and for the county of Baldwin and State of Alabama, by party of the second part and which excepted ~~lots are shown upon the plat attached to this deed and made a part hereof~~, it being understood that the plat attached to this deed is referred to merely for purposes of substantially showing the location of the lots and blocks referred to with reference to said plat, but is not drawn to scale and is not intended to show the dimensions of said lots and blocks nor the dimensions of the streets appearing upon said plat nor the exact location of said platted land with reference to the boundary lines of the tracts conveyed by this deed, but that the exact dimensions of said lots, blocks and streets and the relative location of same with reference to the boundary lines of the tracts conveyed by this deed, will be shown upon the plat to be filed by party of the second part as above stated and such plat, when filed, shall be conclusive as to such matters.

In the event that default is made in the payment of any part of the above described indebtedness when the same shall become due and payable, the parties of the first part shall have the right to sell any or all of said property at public outcry in front of the courthouse of Baldwin County, Alabama, for cash, to the highest bidder, after first giving three (3) weeks' notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks in a newspaper published in Baldwin County, Alabama, to make proper conveyance to the purchaser in the name of party of the second part and the proceeds of said sale to be applied, first, to the payment of the costs of said sale, including a reasonable attorney fee; second, to the payment of the amount of the debt secured by said lien and at the option of parties of the first part to the payment of any and all unpaid taxes upon said property or any part thereof and to the repayment of any taxes or special assessments paid by parties of the first part upon said premises or any part thereof after the date of this agreement; third, the balance, if any, to be paid over to the said party of the second part.

It is further understood and agreed that in case party of the second part shall fail to pay any taxes or special assessments against the real estate herein conveyed or any part thereof, when and as same become due, and before same become delinquent, parties of the first

part shall have the right to pay such taxes or special assessments at their option and to recover same, with interest at seven (7%) per cent per annum, payable annually, from the proceeds of any sale under vendor's lien and that the vendor's lien of parties of the first part herein reserved, shall extend to and include any all sums paid by parties of the first part for taxes or special assessments upon said real estate or any part thereof, on account of the failure of party of the second part to pay such taxes or special assessments when due.

It is further understood and agreed that in case party of the second part fails to pay any taxes or special assessments upon the above described real estate or any part thereof, but allows same to become delinquent, parties of the first part shall, at their election, have the right and option to declare the entire amount of unpaid principal and interest of the above described notes for Fifteen Thousand (\$15,000.00) dollars, to be due and payable at once and to proceed to the collection thereof by sale under vendor's line as herein provided, and it is further understood that the provisions for foreclosure of vendor's lien above set out shall not bar parties of the first part from proceeding to foreclose same by action in equity or other appropriate legal proceeding.

IN TESTIMONY WHEREOF, the parties of the first part hereunto set their hands and seals this 12th day of January, A. D. 1924.

J. E. Drysdale (Seal)

Ada M. Drysdale (Seal)

S. M. Brown (Seal)

Nellie G. Brown (Seal)

STATE OF IOWA ()ss
COUNTY OF SCOTT)

I, A. G. Bush, a Notary Public in and for said county and state, hereby certify that J. E. Drysdale and S. M. Brown, whose names are signed to the foregoing conveyance and who are personally known to me to be the identical persons whose signatures are affixed to said conveyance, acknowledged before me on this day, that, being informed of the contents of said conveyance, they executed the same voluntarily on the day the same bears date and acknowledged the execution of said instrument to be their voluntary act and deed.

IN WITNESS WHEREOF, I have hereto set my hand and seal
notarial this 12th day of January, A. D. 1924.

(SEAL)

A. G. Bush
Notary Public.

STATE OF IOWA)
 (ss
COUNTY OF SCOTT)

I, A. G. Bush, a Notary Public in and for said county and state,
do hereby certify that on the 12th day of January, A.D. 1924, came
before me the within named Ada M. Drysdale and Nellie G. Brown, made
known to me to be respectively the wives of the within names J. E.
Drysdale and S. M. Brown respectively and who, being examined sepa-
rate and apart from their husbands, attached their respective signa-
tures to the foregoing deed and acknowledged that they respectively
signed same of their own free will and accord and without fear, con-
straint or threats on the part of the husbands, and being to me per-
sonally known to be the identical persons whose names are attached
to the foregoing instrument, acknowledged the execution thereof to be
their voluntary act and deed.

IN WITNESS WHEREOF, I have hereto set my hand and seal notarial
this 12th day of January, A. D. 1924.

A. G. Bush.
Notary Public. x