

4321

PHILLIP J. RACK
COMPLAINANT
VS
PHYLLIS JANE STEMZIL
RESPONDENT

IN THE CIRCUIT COURT OF
BALEWIN COUNTY, ALABAMA,
IN EQUITY
NO. 4324

Comes now the Respondent in the above styled cause and for answer to the Complainant's complaint says:

1.

That she admits the allegations of Section 1.

2.

That she admits the allegations of section 2 thereof, and for answer to this section says that the delivery of the deed by the Complainant to the Respondent was by the Complainant putting this said deed on record.

3.

The Respondent denies the allegations of Section 3 and says emphatically that the Respondent did not agree to support, maintain or care for the Complainant during his life time as a part of the consideration to the execution of the said conveyance.

4.

For answer to Section 4 of the complaint the Respondent says, the conveyance to her by the Complainant is not subject to the provisions of Title 20 paragraph of the Code of Alabama and that the declaration of the Complainant is of no force and effect.

5.

The Respondent neither admits nor denies the allegations of Section 5 and demands strict proof thereof.

Walters & Brantley

BY



Solicitors for the Respondent

RECORDED 4324

PHILLIP J. RACK

COMPLAINANT

VS

PHYLLIS JANE STENZIL

RESPONDENT

ANSWER

FILED

SEP 3 1958

ALICE J. DUCK, Register

PHILLIP J. RACK,
Complainant,
VS.
PHYLLIS JANE STENZIL,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA. IN
EQUITY. NO. 4321


This cause coming on to be heard is submitted for final decree upon the original bill of complaint, answer and testimony of witnesses taken ore tenus.

The Court, after considering the pleadings and proof, is of the opinion that the Complainant is not entitled to the relief prayed for -

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the bill of complaint be and the same is hereby dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Complainant pay the costs herein accrued, for which execution issue.

This 30th day of October, 1958.


Judge, 28th Judicial Circuit of
Alabama.

FILED

NOV 17 1958

ALICE A. DUK, CLERK
REGISTER

PHILLIP J. RACK,

Complainant,

VS.

PHYLLIS JANE STENZIL,

Respondent.

IN THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA. IN EQUITY, NO. 4324

HON. HUBERT M. HALL, JUDGE OF THE 28TH JUDICIAL
CIRCUIT OF ALABAMA, PRESIDING.

TRIED ON OCTOBER 23, 1958.

A P P E A R A N C E:

FOR THE COMPLAINANT: HON. TELFAIR J. MASHBURN, JR.,
BAY MINETTE, ALABAMA.

FOR THE RESPONDENT: HON. HARRY J. WILTERS, JR.,
BAY MINETTE, ALABAMA

LOUISE DUSENBURY, COURT REPORTER
Bay Minette, Alabama.

PHILLIP J. RACK, THE COMPLAINANT, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

Direct Examination by Mr. Mashburn.

Q. Are you Phillip J. Rack?

A. I am.

Q. You are the Complainant in this cause, Mr. Rack?

A. Yes sir.

Q. Where do you live?

A. Fairhope, Alabama.

Q. Do you know the Respondent, Phyllis Jane Stenzil?

A. Yes sir.

Q. Where does she live?

A. Fairhope.

Q. Is Mrs. Stenzil your daughter?

A. She is.

Q. Is she over 21 years of age?

A. Yes sir.

Q. And you are over the age of 21 years?

A. Yes sir.

Q. When did your wife die?

A. June 5, 1950.

Q. After her death did you own some property in Fairhope, Alabama?

A. I did.

Q. Do you recall the legal description of the property?

A. I do in an off-hand way -- What did you want?

Q. Did you own some property in Fairhope, Alabama?

A. Yes sir.

Q. What is the legal description?

A. Lots 6, 7, 9 and 10 of the John W. Green Sub-division.

Q. Sometime after your wife*s death, did you have a conversation with your daughter here with regard to conveying that property to her?

A. Yes. They were going to take care of me and going to move in the house with me.

Q. When did she first start talking to you about that, Mr. Rack?

A. Oh I think it was in '54.

Q. All right - did you finally have a conveyance made to her?

A. I did.

Q. Is that a copy of the conveyance that you have there in your hands?

A. I don*t know what this is.

Q. Is that your signature down at the bottom of the first page?

A. Yes that is my signature.

Q. Now do you have the original of that conveyance, Mr. Rack?

A. I must have it some where.

Q. Have you looked for it? -- Do you have it here today?

A. I couldn't find it.

MR. MASHBURN: I offer in evidence as Complainant*s exhibit 1 this Photostatic certified copy of a deed from Phillip J. Rack to Phyllis -- to Phillip J. Rack and Phyllis Jane Stenzil, dated 25th day of January, 1956 and acknowledged the same date before a Notary Public, Baldwin

County, Alabama and filed for record on the 27th day of January, 1956 and of record in Book 234 at page 190-191 of the Baldwin County Probate Records.

Q. Now Mr. Rack, what was the consideration for your signing this deed?

A. They were going to move in with me is all.

Q. Who was that?

A. My daughter and son-in-law.

Q. Ort Stenzil?

A. Yes sir.

Q. And his wife, Phyllis?

A. Yes sir.

Q. After you executed the deed did they move in with you?

A. No sir.

Q. Have they given you any care and support since then?

A. No.

Q. Have you had to spend a considerable time in the hospital since then?

A. Four or five days on two different occasions.

Q. Have they paid any of the hospital and medical expenses?

A. No sir.

Q. Any taxes on the place?

A. No sir.

Q. Any of the expenses of the up-keep on the place?

A. No sir.

Q. Have you read the bill of complaint in this cause?

A. Yes sir.

Q. Are all of the allegations in that bill of complaint true and correct?

A. It is correct.

Q. You have brought this suit to set aside this conveyance?

A. That is right.

Q. You desire to have this Court set it aside under the provisions of the Code of Alabama?

A. That*s right.

ON CROSS EXAMINATION OF THE COMPLAINANT, HE TESTIFIED:

Examination by Mr. Wiker s.

Q. Mr. Rack, at the time you made this deed to you and Mrs. Stenzil, was she present when you made the deed?

A. When I made it --- I didn*t make it -- The Lawyer made it.

Q/ When you signed it?

A. I don*t think so.

Q. Did you go to the Lawyer yourself and tell him what you wanted done?

A. Yes sir.

Q. At the same time you were in the Lawyer's office didn*t you make a will?

A. I think so.

Q. Who did you will your property to at that time?

A. That I wouldn*t remember. I think I willed it to my daughter.

Q. Mrs. Stenzil here?

A. Yes sir.

Q. Now Mr. Rack, when did you have any discussion with Mrs. Stenzil about

supporting you in consideration of this deed?

A. Oh we talked about that off and on -- I would not know the date --- ever since my wife died.

Q. I believe you said your wife died in June of 1950?

A. That is right.

Q. Now who stayed with you during that time? -- did you have a house-keeper?

A. Oh several of them -- half dozen of them.

Q. Was Mrs. Mallory one of the house-keepers you had?

A. She was.

Q. Now Mr. Rack, you have an independent income, don't you?

A. Independent income---

Q. --You have an income?

A. None except what I get from rent of the property.

Q. What is the rent you get?

A. About \$180.00 a month.

Q. Do you have Social Security?

A. I do.

Q. How many cabins do you have on the property?

A. Two houses.

Q. Do you keep them rented all of the time?

A. Most of the time.

Q. Now how much is your Social Security?

A. \$80.00.

Q. What was the figure you said the rent was from the property?

A. What was that?

Q. How much rent did you say you get from this property?

A. \$180.00.

Q. Now do you have any other income -- You have stocks and bonds, don't you Mr. Rack?

A. Not any more.

Q. You disposed of those already?

A. Yes sir.

Q. Who did you dispose of them to?

MR. MASHBURN: Judge, this is an equity matter, but I don't see the relevency of that.

MR. WILTERS: I am trying to show that this man is independent; he had no need for Mr. and Mrs. Stenzil's support.

A. I didn't ask for any support from them; I wanted a home.

Q. You didn't ask them to furnish you any money at all?

A. No.

Q. What did you specifically ask them to do?

A. What is that?

Q. What did you specifically ask them to do?

A. Make a home for me.

Q. Where did you want them to make their home?

A. At my place.

Q. You invited them to move in there?

A. Yes sir.

- Q. Had they ever invited you to move in their home?
- A. No.
- Q. At the time you made this deed had Mrs. Stenzil agreed to move in with you?
- A. There was talk of it all of the time.
- Q. Was there any agreement?
- A. No written agreement -- No.
- Q. Was there any oral agreement that they would move in with you according to this deed?
- A. Yes, we spoke of it all along; that was the idea.
- Q. Did you have an oral agreement?
- A. No written agreement.
- Q. I am asking you did you have an oral agreement?
- A. I said we spoke of it.
- Q. Did you agree that she move in because of this?
- A. We talked of it; there was no written agreement.
- Q. Just prior to the time you made the deed are you telling the Court that she agreed orally to move in with you?
- A. The supposition was that she was.
- Q. What do you mean?
- A. Exactly what that word means.
- Q. Had you made a binding agreement that she was to move in with you?
- A. That was the idea.
- Q. Did you have an agreement with her?
- A. We had no written agreement.
- Q. Did you have an oral agreement.

- A. They agreed that they would move in with me when they sold their place and that has been over eight years and they have not sold it yet.
- Q. Eight years since you made the deed?
- A. No that isn't eight years --- six years.
- Q. This deed is dated January, 1956?
- A. Well---
- Q. --Didn't you make a will prior to the time you made the deed? -- Say about 1954? ---Do you remember that?
- A. No I don't remember any dates.
- Q. Now at the time you made this deed here in Mr. Bailey's office, you testified that you made a will too, is that correct?
- A. That is correct.
- Q. And at the same time didn't you transfer your stocks and bonds into Mrs. Stenzil's name?
- A. No.
- Q. At that time did you not have your safety deposit box made jointly to both of you?
- A. I did, yes.
- Q. Now Mr. Rack, you have some other children, don't you?
- A. No, none now.
- Q. You don't have any living?
- A. No.
- Q. Mrs. Stenzil is your only child---
- A. --I thought you said securities.
- Q. You have other children?
- A. Yes.

Q. How many other children?

A. One daughter up in Chicago.

Q. In the will that you made at this time you didn't give this other daughter any property at that time?

A. I didn't at that time, but I have made another will which I do.

Q. Since your first wife's death in 1950 you have re-married?

A. Yes.

Q. When was it that you married again?

A. One year ago.

Q. Who did you marry?

A. Mrs. Johnson.

Q. Now was Mrs. Johnson working for you at that time?

A. Yes sir.

Q. How long had she been working for you?

A. Eight or nine months.

Q. In what capacity was she working?

A. House-keeper.

Q. Did you know that you had made this deed to Mrs. Stenzil?

A. Yes.

Q. You remembered that all of the time?

A. Yes, sure.

Q. Isn't it true that you were in Mr. Dailey's office one day with Mrs. Johnson and you were making the new will that you spoke of--

A. Yes

Q. And you were willing part of your property to Mrs. Johnson?

A. Yes sir.

Q. And didn't Mr. Bailey tell you that you could not will this property because you had already deeded it to your daughter, Mrs. Stenzil?

A. Yes sir.

Q. And isn't that the first time your present wife knew about the deed?

A. Yes.

Q. Isn't it at that time that you started this procedure to set the deed aside?

A. Yes.

Q. That's when you started to set the deed aside when your first -- when your present wife found out that you had made the deed?

A. I imagine -- yes.

Q. In any of these conversations which you have spoke about whereby Mrs. Stenzil had agreed to move in with you and care for you, was Mr. Stenzil present?

A. I guess he was at times -- yes.

Q. Now just what was your understanding of the complete agreement between you and Mrs. Stenzil concerning this deed here?

A. I don't know what you're driving at.

Q. Mr. Rack, what was the agreement that you had with Mrs. Stenzil which you say was the consideration for this deed here? -- what was that agreement?

A. There was absolutely no agreement -- they were to move in with me and I was to will everything to them.

Q. You made this deed in January of 1956 and you didn't commence this proceeding to set aside this deed until July of this year, is that correct-- Over two

and one-half years later?

A. I don't know the dates.

Q. This deed stayed in effect without you even contesting it for two and one half years?

A. I don't know; I've not paid any attention to that.

Q. During the two and one half years and up to the time you filed this action had Mrs. Stenzil moved in with you and lived at your house?

A. No sir.

Q. Then you were not disturbed about the fact that she had not moved in until your present wife found out you had a deed?

A. No I was concerned about it all of the time.

Q. Did you speak of her not moving in?

A. Yes all of the time.

Q. Didn't Mrs. Stenzil come and visit you quite often?

A. Sometimes; they were gone quite a lot that I didn't know where they were at -- San Francisco, Chicago, etc.

Q. Didn't she get a house-keeper and see that you had one?

A. Sometimes; we worked in conjunction. She interviewed some of them.

Q. You say you all started talking about this agreement soon after your wife's death?

A. Naturally I would not want to be left alone by myself--

Q. You talked about this for five or six years before you made the deed, didn't you?

A. I don't know how long it was; I don't count the years.

Q. Mrs. Stenzil has always lived near you, hasn't she?

A. She lives a mile and a half from me, if you call that near.

Q. Your other daughter is living in Chicago, is that correct?

A. Yes sir.

Q. How long has she lived in Chicago?

A. All of her life I guess.

Q. A long time?

A. Yes sir.

Q. During the time after this deed was made didn't your daughter, Mrs. Stenzil, take you to the Doctor a number of times?

A. Several times.

Q. Wasn't she recently taken you to the Doctor? -- Even after you filed this suit?

A. What?

A. After you filed the suit didn't she take you to the Doctor?

A. I don't know whether it was before or after; I guess it was after.

Q. Didn't she take you to Atmore?

A. A few weeks ago, yes. We went to Mobile mostly.

Q. She took you to Mobile a number of times?

A. Yes sir.

Q. She brought groceries to your house that she picked up in Mobile?

A. Yes when we went there.

Q. She would carry you and your present wife to Mobile?

A. No, I don't think to Mobile; we went to Atmore.

Q. Now Mr. Rakk, did Mr. and Mrs. Stenzil ever ask you to come and live with them?

A. No.

Q. They never did?

A. No.

Q. You say there was no binding agreement as to them moving in with you; you just discussed it?

A. That is all - sure.

Q. And you were not asking them to contribute any money to you whatever?

A. No and they never have.

Q. In other words, you have sufficient income to take care of yourself?

A. I have.

ON RE-DIRECT EXAMINATION OF THIS COMPLAINANT, HE TESTIFIED:

Examination by Mr. Mashburn.

Q. He asked you if you and your daughter --- if your daughter had worked in conjunction with you in getting house-keepers. Did you notice any difference in her after you executed the deed?

A. I don't understand you.

Q. After you executed this deed, did you notice any difference in the way your daughter treated you and before?

A. No, all the same.

Q. Did you ask her to move in with you?

A. I have, yes.

Q. Did she do it?

A. No.

Q. Did she tell you why?---

A. She said she knew on account of her husband's habits we would not get along.

ON RE-CROSS EXAMINATION OF COMPLAINANT, HE TESTIFIED:

Examination by Mr. Wilters.

Q. Mr. Rack, the truth of the matter is, when you made the deed here, the whole basis here is the fact that you didn't want your daughter in Chicago to get any of your property?

A. No sir.

Q. Isn't it a fact that you knew Mrs. Stenzil had been there and took care of you and your wife all of these years and that she should have the property and not your other daughter?

A. No sir, we never spoke of that.

Q. I ask you again, there was actually no agreement for them to support you or actually even to move in with you when you made the deed?

A. You get two questions at the time ---

Q. There was no agreement for them to give you any money for support?

A. No.

Q. There was actually no binding agreement or positive agreement ---

MR. MASHBURN: I object to him using the word "binding agreement". The man confuses binding agreement with written agreement. In fact, we have been over this two or three times--

THE COURT: Yes, the witness testified that there was no written agreement---

WITNESS: I didn't want to be a hermit.

Q. Did Mrs. Stenzil agree by mouth that she would move in with you?

A. Move in as soon as they sold the place.

ON RE-RE-DIRECT EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Mashburn.

Q. Would you have executed this deed if they had not promised to move in with you and look after you?

A. No.

THE COMPLAINANT REST

PATRICIA BERNHART, A WITNESS FOR THE RESPONDENT, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY MR. WILTERS.

Q. Is your name Pat Bernhart?

A. My name is Patricia Bernhart.

Q. Mrs. Bernhart, do you know Mr. Rack here?

A. I do.

Q. Did you know him in 1955 and 1956?

A. Yes I did.

Q. Did you ever have occasion in the latter part of 1955 to talk with him concerning a deed that he was going to make to his daughter, Mrs. Stenzil?

A. Not alone.

Q. Who was present?

A. We were at Stenzil's house for Christmas dinner and Grand-pa was there and we were talking about it, and it was my understanding at the time that he had done this.

MR. MASHEBURN: I object to her understanding.

Q. State what he said in substance?

A. It was to prevent this other child, who at the time I did not realize was only a step daughter, from having any part of his estate after he was gone.

Q. He had not made this deed at that time?

A. No he had not.

Q. And did you hear him say anything in that conversation which you heard concerning Mr. and Mrs. Stenzil moving in with him?

A. No I did not.

Q. And he said that the only reason he was making this deed was to prevent the other daughter from getting the property?

A. That was the heart of the whole thing, I would say.

Q. Did he say anything about Mrs. Stenzil caring for him through the years and looking out for him and also being there?

A. No, it was a fact that Mrs. Stenzel went to Grand-pa's house every Sunday I know after Church; I've been there with her on several occasions, and she did go look after her father; it was her job to hire the house keepers and interview them and Phyllis was there aside from her regular visits.

Q. Did you later find out after this conversation that Mr. Rack had made a deed to his daughter?

A. Yes I did and I could not tell you how long after it was made that I found out about it.

Q. You visit Mrs. Stenzil quite frequently and you have visited Mr. Rack's house quite frequently?

A. Yes sir.

Q. After you learned the deed was made did you notice any difference in the way Mrs. Stenzil cared for Mr. Rack?

A. No I didn't.

Q. Has Mr. Rack married recently?

A. Yes.

Q. Have you noticed any difference in his attitude towards Mrs. Stenzil after the marriage?

A. I do know that Phyllis has not possibly been as close to Mr. Rack as she had been prior to that; not in fact that she wouldn't be as willing to do what she had done, but he has a wife now and that takes part of the burden of looking after him when he is sick off of Phyllis.

ON CROSS EXAMINATION OF THIS WITNESS, SHE TESTIFIED:

Examination by Mr. Mashburn.

Q. You don't know anything about the conversation between Mr. Rack and Mrs. Stenzil?

A. No.

Q. Most of your information has come from Mrs. Stenzil?

A. No it has not.

Q. Wasn't she the one that told you about the deed?

A. No, Mrs. Mallory told me more than any one else.

Q. You are a good friend of Mrs. Stenzil?

A. Yes I am.

MRS. ODALEE MALLORY, A WITNESS FOR THE RESPONDENT, BEING FIRST DULY SWORN,
TESTIFIED AS FOLLOWS:

Direct Examination by Mr. Willyers.

Q. State your name, please mam?

A. Odalee Mallory.

Q. Mrs. Mallory, during the years 1955 and 1956 were you house-keeper for Mr. Rack here?

A. Yes sir.

Q. Did you live at the house?

A. Yes sir.

Q. Do you remember around January of 1956 him discussing with you the making of a deed to his daughter, Mrs. Stenzil?

A. Yes sir.

Q. What did he say concerning that?

A. He just said he had made this will -- this joint account -- with his daughter because he didn't want his other daughter to get anything he had and he felt safe that he had did that.

Q. Now he discussed with you the making of this deed the morning before he made it, didn't he?

A. No I don't think he did; he didn't tell me anything about it until after he came back from the Lawyer's.

Q. After he had made the deed?

A. Yes sir, he came back and he was tickled to death and said he felt like he had done something that he had wanted to do for a long time and he felt better satisfied that it was done.

Q. Mrs. Mallory, did he ever discuss with you his daughter moving in the house with him as a part of the consideration of the deed?

A. No sir, he did not.

Q. Did you ever hear anything -- any conversation between Mr. Rack and Mrs. Stenzil about her moving into his house?

A. No sir I never did.

Q. When he told you about making the deed he said nothing about Mrs. Stenzil moving in as a part of the consideration for it?

A. No sir he did not.

Q. Now Mrs. Mallory, during the time that you were in the employ of Mr. Rack did Mrs. Stenzil come there on numerous times?

A. Yes sir, she came there any time; I have 'phoned her at one and two o'clock in the morning and she was there and she took him to Mobile every time he went; in fact, she has gone as much as twice in one day and when he was in the hospital she was there every day.

Q. Mrs. Mallory, after Mr. Rack had told you he had made the deed did you notice in difference in the treatment of Mrs. Stenzil than before?

A. No sir.

Q. Did she continue to come to his house and aid and assist him?

A. Yes she certainly did.

ON CROSS EXAMINATION OF THIS WITNESS, SHE TESTIFIED AS FOLLOWS:

Examination by Mr. Mashburn.

Q. How old a man was Mr. Rack when you were working there?

A. I think he was 66 or 67.

Q. Was his health good or bad?

A. Well it was pretty good.

Q. He had to have somebody in the house all of the time?

A. Oh yes.

Q. And this is a pretty valuable piece of property, isn't it?

A. I should think it would be.

Q. Did you sit in on all of the conversations between him and his daughter?

A. No.

Q. Did they discuss their private affairs before you?

A. No sir.

Q. Wasn't he a very close-mouthed man before you?

A. Yes.

Q. He discussed his private affairs before you?

A. Yes sir.

Q. You don't know what kind of agreement they had between themselves, do you?

A. I couldn't say --- No I don't know.

MR. ART STENZIL, A WITNESS FOR THE RESPONDENT, BEING FIRST DULY SWORN,

TESTIFIED AS FOLLOWS:

Direct Examination by Mr. Wilters.

Q. You are Mr. Art Stenzil?

A. Yes

Q. Mrs. Stenzil who is the Respondent in this cause is your wife?

A. Yes sir.

Q. Mr. Rack here, who is the Complainant, is your father-in-law?

A. That is right.

Q. Mr. Stenzil, Mr. Rack has alleged in his complaint and testified that a part of the consideration of this deed which he made to your wife was the fact that you and your wife were supposed to move in with him in his home. Do you know anything about that?

A. No, because we have our own home.

Q. Did you ever have any conversation with Mr. Rack yourself either in the presence of your wife or alone concerning making of a deed to your wife by him?

A. Well he asked me at one time about the way we had it between my mother and myself; we had some property in joint tenancy and there had been some will made excluding his step daughter from the thing and he decided that making this deed would take care of it the way my mother and I had the property together and some time after that he went and made that deed.

Q. Did he ever discuss with you in front of Mrs. Stenzil or alone the fact that she was in with him as a part of the consideration for this deed?

A. No sir.

Q. You never heard any conversation concerning that?

A. No.

Q. You or Mrs. Stenzil or Mr. Rack have never discussed you all moving in with him?

A. No sir.

Q. Have you ever asked or suggested that he move in with you all?

A. Well actually there wasn't anything much said about any moving in at any time because we had our home and he had his home and I don't know whether Phyllis

ever talked to him about that or not, but I didn't.

Q. Now Mr. Stenzil, your wife has always gone to her mother's and father's home and looked out for them and cared for them?

A. Yes sir.

Q. She was the only child living in Fairhope or near them?

A. That's correct.

Q. Did she visit him often after his first wife's death?

A. A lot of times three and four times a day.

Q. Go and buy groceries?

A. Yes sir, and assisted in seeing that he had a house-keeper all of the time. She put all of the ads in the paper and we always put our telephone number on the ad and they would have to call our house and she would meet them at the bus and take them out there and they would interview them.

Q. Do you remember the day that Mr. Rack came and told you that he had made the deed to Mrs. Stenzil?

A. He came over and was very happy and said he had done it and that he had been over to the Lawyer and had all of the papers made out and all of that and was very happy about it.

Q. At that time did he mention anything about part of the consideration being that you and Mrs. Stenzil move in with him?

A. No sir.

Q. Did he say anything about why he had made this deed to her?

A. Well he had made the will before excluding the other daughter - the step-daughter and Phyllis wanted him to put her in the will and he didn't want her to

to have anything and so this way - like this - he figured the will might be broken and this would not be broken, because it was a joint tenancy and would pass over from either one - if either one died first the other one would get it back or he would get it if Phyllis died first or Phyllis would get it if he should die first and there wouldn't be anything in the Probate Court or anything like that.

Q. Mr. Stenzil, did you and your wife, or you in the presence of your wife and Mr. Rack have any discussing trying to discourage Mr. Rack from making the deed to Mrs. Stenzil?

A. No.

Q. Were you present when Mrs. Stenzil told Mr. Rack that his other daughter ought to have a part of the property?

A. That is when he made the will out.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Masburn.

Q. Actually, Mr. Stenzil, you and your wife had been after him practically ever since his wife died to make this deed to her?

A. No sir.

Q. You had had quite a bit of experience with these deeds?

A. Yes sir.

Q. You and your mother had deed fixed this way?

A. Yes.

Q. And it was at your suggestion - He never knew anything about this deed?

A. He asked me about it.

Q. You and your wife asked him to convey this property this way?

A. No, it was his own free will.

Q. Isn't it a fact that your wife told him that you all would move in with him as soon as you could sell your place?

A. No sir.

Q. He was an old man and needed you?

A. He was being taken care of.

Q. Isn't it a fact that that is the reason he made the deed - that you all agreed to sell your home and move in with him?

A. He has his own home and income.

Q. Up until the time he married he had to hire somebody to take care of him?

A. Yes sir.

PHYLLIS STENZIL, THE RESPONDENT, BEING FIRST DULY SWORN, TESTIFIED:

Direct Examination by Mr. Wilters.

Q. You are Mrs. Phyllis Stenzil?

A. Right.

Q. Mrs. Stenzil, Mr. Rack, the Complainant in this case is your father?

A. Right.

Q. You have heard him testify that the material part of the consideration for this deed which he has made to you and him jointly was that you were to move into his home?

A. I heard that.

Q. Is that true or not true?

A. No it is untrue.

Q.

Q. Have you ever had any discussion with Mr. Rack concerning moving in with him at all?

A. Oh yes from the time my mother passed away he wanted us to move in with him and on the other hand we asked him if he wanted to come live with us and he stated he would not live with us.

Q. It wasn't a part of the consideration of this deed that you move in with him?

A. Absolutely no.

Q. Did you know Mr. Rack was going to make the deed until he told you he had made it?

A. He had mentioned having a deed made up but I didn't know he had actually made it up until he came ^{to} our house after he went to the Lawyer.

Q. Do you remember what Lawyer he went to?

A. Ernest Bailey.

Q. Did he record this deed himself?

A. He certainly did.

Q. You knew nothing about it until he told you that he had made a deed and it had been recorded?

A. Right.

Q. Since your mother's death, have you also looked after your father?

A. Yes.

Q. Have you gone to visit him many times?

A. Absolutely.

Q. What did your care for him consist of?

A. Well it was cooking food for him - many times he wouldn't come to our house

and I would take the food out to his home and cook it and serve it and I have gone and stripped the beds and brought the soiled linen to my house and did the washing and ironing and carried him to the Doctor and when he was in the hospital we were in the hospital with him and any care we could give him we did and did it lovingly.

Q. Mrs. Stenzil, after this deed was made did you continue to aid and assist him in that manner?

A. Yes sir.

Q. Did you ever talk to him about making this deed before he actually did it?

A. Yes it was discussed, but as I said, he had made the will excluding my half sister and I asked him to remember her and he wouldn't, so then he spoke to my husband about the joint tenancy deed with the right of survivorship and he said if he put it in a joint tenancy deed there would not be any chance of my sister fighting that.

Q. I will ask you again: Did you ever agree with him that if he made a deed to you that you and Mr. Stenzil would move in with him?

A. No.

Q. That was not a part of the consideration of this deed?

A. No sir.

Q. There was never such an agreement reached between you and him?

A. Never.

ON CROSS EXAMINATION OF THE RESPONDENT, SHE TESTIFIED:

Examination by Mr. Mashburn.

Q. What was the consideration of the deed?

A. Wasn't any consideration; he was doing that of his own volition because he didn't want my sister to have it.

Q. When he recited "\$1.00 and other consideration", there wasn't any?

A. No sir.

Q. Your husband had had experience with these kind of deeds, hadn't he?

A. Yes sir.

Q. Isn't it a fact that the idea was actually your's?

A. No sir.

Q. Your father didn't know anything about this kind of stuff?

A. I don't know.

Q. Would not have if you all had not told him?

A. Probably not.

Q. He asked you to re-convey this to him before he filed the suit?

A. Yes.

Q. And you refused?

A. Absolutely.

ON RE-DIRECT EXAMINATION OF THE RESPONDENT, SHE TESTIFIED:

Examination by Mr. Wilters.

Q. When he asked you to re-convey the property, it was after he re-married?

A. Yes sir.

Q. Now didn't you ask him at one time not to make a deed like this and leave your sister out?

A. Not the deed. He went up and had the deed drawn up when I didn't know about it, but when he made the will excluding my sister I asked that he remember her.

Q. You were not present when Mr. Rack made this deed?

A. No sir.

Q. You didn't know that he was going to have the deed made, did you?

A. No sir.

Q. He made the deed of his own free will and accord?

A. Absolutely and came to the house after he had had it drawn up and told us that he had made it.

Q. Did he say why at that time?

A. At that time no; he was so happy that he had taken care of that and had it all drawn up and was having it recorded.

ON RE-CROSS EXAMINATION OF THIS WITNESS SHE TESTIFIED:

Examination by Mr. Mashburn.

Q. You all had discussed it many times?

A. No sir, not many times; he asked my husband what the set-up was between my husband and his mother and he explained it to him.

ERNEST M. BAILEY, A WITNESS FOR THE RESPONDENT, BEING FIRST DULY SWORN, TESTIFIED:

Examination by Mr. Wilters.

Q. Are you Mr. Ernest M. Bailey?

A. Yes sir.

Q. Mr. Bailey, are you an Attorney at law?

A. Yes sir.

Q. Were you an Attorney at law in January, 1956?

A. Yes sir.

Q. I want to show you a deed and ask you did you prepare this deed for Mr. Rack?

A. I did.

Q. Mr. Bailey, at the time Mr. Rack had this deed made were there any discussions between you and him concerning the consideration in that deed?

A. I don't recall.

Q. Did he say anything to you about Mrs. Stenzil moving in with him as a part of the consideration of this deed?

A. Not to my best knowledge and recollection.

Q. Mr. Bailey, was any one present with him when this deed was made?

A. That's been a long time ago --- I don't believe there was.

Q. To your knowledge there was no discussion concerning the consideration in that deed?

A. No. Do you want me to elaborate on that?

Q. Go ahead?

A. As I recall, Mr. Rack came in and stated to me that he wanted a deed so that everything would go to Mrs. Stenzil on his death, or this piece of property would go to Mrs. Stenzil on his death and I was the one that suggested that what he wanted was a survivorship deed and that is about all I recall about the time Mr. Rack was there.

Q. Mr. Bailey, later on Mr. Rack married and he and his wife came to your office to make another will, is that true?

A. To make a will.

Q. At that time did you advise him that the property which he owned could not be willed because it had already been deeded?

A. Yes sir.

Q. Did his wife then make the statement: " You never told me about this"?

A. I believe words to that effect.

Q. Do you remember what he said at that time?

A. Mr. Rack didn't recall having made the deed.

Q. But his wife did state that she had never heard of it until then?

A. Words to that effect.

CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Mashburn.

Q. Did he tell you why he was making this deed, Mr. Bailey? Did he tell you it was a deed of gift or he was selling it to his daughter or what?

A. As I recall the conversation Mr. Rack stated he wanted a deed drawn that would leave on his death - his property would automatically go to his daughter.

Q. I notice that you recited \$1.00 and other consideration. Was any consideration paid to your knowledge?

A. I don't know that it was actually paid.

Q. You don't know anything about the consideration between Mr. Rack and his daughter before he came there?

A. No.

Q. He did come to you later and discussed with you, after you told him he couldn't will the property, the bringing of an action to set the deed aside?

A. Yes he did.

Q. You offered to do it for a considerable fee?

A. No, we had no discussion whatsoever; I told him it would be quite costly for him; I'm not so sure but what --I never had any agreement - I don't know that

I ever discussed filing the suit with him.

Q. I believe you have already testified that you don't know anything about the conversation that went on between him and his daughter and his daughter's husband before he came to you?

A. No.

ON RE-DIRECT EXAMINATION OF THIS WITNESS HE TESTIFIED:

Examination by Mr. Wilters.

Q. Had you known Mr. Rack prior to the time he came to your office?

A. I don't remember knowing Mr. Rack prior to that.

Q. You have seen him several times after that?

A. Yes sir.

Q. At the time he made this deed, in your opinion, did he have all of his faculties? ---Was he of sound mind?

A. Yes, in my opinion he was.

Q. He knew what he was doing in your opinion?

A. Yes.

THE RESPONDENT REST.

BOB COVINGTON, A WITNESS FOR THE COMPLAINANT, BEING FIRST DULY SWORN, TESTIFIED
ON REBUTTAL, AS FOLLOWS:

Examination by Mr. Mashburn.

Q. Are you Bob Covington?

A. I am.

Q. Where do you live, Mr. Covington?

A. Fairhope.

- Q. Do you know Mr. Rack here?
- A. Yes I do.
- Q. How long have you known him?
- A. Oh about eight years.
- Q. During that time what has been your relationship with him, Mr. Covington?
- A. I first went to Mr. Rack's to do some repair work and maintenance about his home; I imagine in the eight years or more I have been there 100 times or more for similiar work - minor work - mostly - some of the jobs were considerably larger - I had gotten to know him quite well during the years I had worked for him; seemed that he had had a poor workman there and he liked the work I did for him and he called me back frequently and many times I didn't have time and would have to do the work when I could get to it and during the time I knew him we became friends.
- Q. Does he call you when he needs help or transportation to the Doctor's office or to carry him around town?
- A. I have done many errands for Mr. Rack - as friendship - I have taken him out of town and carried his house-keepers in to town when he couldn't drive. I have not carried him to the Doctor.
- Q. You know about when he made the deed that is the subject of controversy?
- A. I knew nothing about the deed until about a year ago.
- Q. Let me ask you this: Did you notice --- Do you know now about when the deed was executed?
- A. I have learned since I became aware of it.
- Q. In your visits there in the home have you noticed any difference in the way his daughter treated him prior to the execution of the deed and since that time?

Q. Well there has been a marked difference - I would like to say a little more on that.

I'm not in Mr. Rack's home every day and every week; there are occasions when I might go there two or three times a week and other times once or twice a month; I first met Mr. Rack's daughter in his home; they used to be there frequently - the son was there occasionally - his son-in-law used to come occasionally; In fact, I met him there for dinner; I used to visit in the home frequently; through the years he had had a series of house-keepers; some of them were the run of the mill house-keepers - I recall one especially - I think she=quite three different times and she would quit at the most inopportune times; I have helped him locate replacements and he has run ads and some stay a week or two and some a couple of months and none satisfactory . I do know during the periods the house-keepers were absent that his daughter came in the home and tried to look after his welfare and on other occasions I have gone and my wife has gone when no one else was available and helped out until he could make arrangements. Early last year he hired a new house-keeper; she came into his home as a housekeeper and I noticed immediately that she was the only one who ever seemed concerned about the job; I can say that he gave the others one or two days a week and took them where they wanted to go or sent them in cabs and let them buy and use what they wanted; in addition to what he paid them he gave them a home and treated them well and none seemed to appreciate it, but the last one that he hired, his wife, immediately took over; Mr. Rack was sick and instead of taking days off she stayed there and cared for him; she immediately became a nurse as well as a housekeeper and to the best of my knowledge she has not been absent from the home over one or two days since she came there . I have been in the

the house more or less frequently since she arrived; his daughter I believe met the lady at the bus station and seen that he had a good house-keeper at last and my impression is that since she came there they have more or less dropped out of the picture.

Q. That was since the execution of the deed?

A. Early last year I have not seen them there but one time; ---I have seen them there only once - the boy there once and his daughter there once since that time.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Wilters.

Q. Mr. Covington, you noticed that the difference in the attention given to Mr. Rack occurred after his last house-keeper came, didn't it?

A. Yes.

Q. It started then, isn't that correct?

A. I think I stated that.

Q. Mr. Covington you were the one that took Mr. Rack and Mrs. Rack to Mississippi to be married?

A. That is true.

Q. How many house-keepers did you hire for Mr. Rack?

A. I never hired any house keeper; I assisted him in locating them.

Q. Which ones did you assist with?

A. I say I assisted in locating -- He would say: "Do you know where I can find a housekeeper - my house keeper is quitting" and I made repeated efforts around town and he interviewed them and I made such efforts as I could to find out who

was available; I never hired any house keeper; I sent several to him.

Q. In otherwords, you were on the look-out for one for him?

A. Yes.

Q. You say prior to the time the present Mrs. Rack came there Mrs. Stenzil and her family did give him quite a bit of attention?

A. They visited frequently in his home, to the best of my recollection - the attention --the assistance that he received from them was as I previously stated - was on emergencies when he house-keeper was not there and there were occasions when his daughter was not in town or available and other people out - his tenants and other people.

Q. You are not saying the change came in the relationship at the time the deed was made, but the change came when the new house-keeper moved in -- the present Mrs. Rack?

A. I said that and I attribute the change to this one thing---

Q. You have answered the question--

A. ---But I want to get my meaning clear. I imagine it was quite a source of trouble to Mr. Rack's daughter to have to come in and help out -- I know there were times when she was not available; she herself was very familiar with the house-keepers there and the type people and when the last one came in she apparently met the requirements and she was relieved I imagine to have that off her hands.

ON RE-DIRECT EXAMINATION OF THIS WITNESS HE TESTIFIED:

Examination by Mr. Mashburn.

Q. Did you visit Mr. Rack frequently in the hospital in '55 and '56?

A. Yes -- I didn't know he was in the hospital - I have had calls from

from him through the years before '50 and since - his house-keeper would call or he would call for me to come out and see him or sit with him; he would call me many times when they were absent.

Q. Did he discuss with you the making of the deed?

A. He did not; I knew nothing about the making of the deed until early this year when he called me to the house.

Q. Did you ever hear him discuss his business affairs before you or his housekeepers? --In otherwords, was he a close-mouthed man about his business?

A. Other than the maintenance of his home and work required on the property - the houses and the land, the other matter had never been discussed until the time he called me out regarding his will.

Q. He didn't discuss that in front of his house-keeper?

A. No, he called me out at his little desk and showed it to me; it never suspected it before then.

ON CROSS EXAMINATION BY MR. WILTERS, WITNESS TESTIFIED:

Examination by Mr. Wilters.

Q. Did he say at that time why he had made this deed?

A. He asked me to look that over -- he said: "I have a deed here" and I looked it over and I said, "well it's a deed" and he said-- I said: "where did you get it" and he said: "It has been in the safety deposit box in the bank" and I said: "What is it" and he said: "I never made a deed of this nature -- I never made such a deed and never had any intention of making such a deed" and I said: "There is a signature on it" and I looked it over and asked if that was his signature

and he said said: "Yes, it is my signature -- there is no question on that".

Q. He didn't say he had given the deed to his daughter for her to come and live with him?

A. He did not; he told me that - he had referred one time that he had 10 acres of property in the rear of the property where he is living - a pecan grove - we had discussed disposing of that property; we had discussed developing the 10 acres in the rear of the lot on which he now lives and I had some property adjacent to it and we wanted to get a street opened through there and to get the street opened it required developing the property and we discussed it at various times and he decided to sub-divide the property and dispose of it. Those discussions went on, I would say, for a half year and nothing was ever done, except he finally did tell me on one occasion that he had a joint tenancy agreement with his daughter he he would have to clear that up before we could go ahead with it; I was asked earlier if we discussed business - that did come out about three years ago.

ON RE-DIRECT EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Mashburn.

Q. Did he tell you the reason he made the joint tenancy deed with his daughter that she was to move in and take care of him?

A. It's hard for me to answer yes or no; I have heard so much about it recently that it is hard to separate what I heard three or four years back from that; I don't think I even questioned him as to why he did it, because that was his own family affairs.

THE COMPLAINANT REST
THE RESPONDENT REST

C E R T I F I C A T E:

I hereby certify that the foregoing, consisting of pages 1 to 38, both inclusive, correctly sets forth a true and correct transcript of the testimony as taken by me in open Court in the above styled cause, on the 23rd day of October, 1958.

This 10th day of November, 1958.

Louise R. R. R.
Official Court Reporter, 28th Judicial
Circuit of Alabama.

STATE OF ALABAMA)
BALDWIN COUNTY)

Compliments of 234 REG 190
- Oct 23, 1958 - BX

KNOW ALL MEN BY THESE PRESENTS that PHILIP J. RACK, the grantor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations hereby acknowledged to have been paid to the said grantor by PHILIP J. RACK and PHYLLIS JANE STENZEL, the grantees, does hereby GRANT, BARGAIN, SELL AND CONVEY unto the said grantees, and the survivor of them, all that real property in the County of Baldwin, State of Alabama, and described as follows, to-wit:

Lots numbered SIX, SEVEN, NINE and TEN of the John W. Green Subdivision in the West half of the Northeast Quarter of Section Seventeen, Township Six South of Range Two East as recorded in Deed Book X, page 589 of the Probate Records of Baldwin County, and being that property conveyed to Floyd B. Moore and Grantor by deeds of Orville C. Green and wife, dated August 30th, 1933 and recorded in Deed Book 54 NS, pages 250-251, and Edward R. Leach and wife, dated September 28th, 1914 and recorded in Deed Book 24 NS, pages 6-7, and Herman F. Heinecke and wife, dated September 21st, 1920 and recorded in Deed Book 90, pages 9-10 of the Probate Records of Baldwin County, Alabama.

together with all and singular the rights, members, privileges, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining. TO HAVE AND TO HOLD the same unto the said grantees, during their joint lives and upon the death of either of them, then to the survivor of them in fee simple, and to the heirs and assigns of such survivor, forever.

And, except as to taxes hereafter falling due, the said grantor, for himself and for his heirs, executors and administrators, hereby covenants with the said grantees, and the survivor of them, and the heirs and assigns of such survivor, that he is seized on an indefeasible estate in fee simple in and to the said property, that said property is free and clear of all encumbrances, and that he does hereby WARRANT AND WILL FOREVER DEFEND the title to said property unto the said grantees, and the survivor of them, and the heirs and assigns of such survivor, against the lawful claims of all persons, whomsoever.

IN WITNESS WHEREOF, the said grantor has hereunto set his hand and seal on this the 25th day of January, 1956.

Philip J. Rack (SEAL)
Philip J. Rack

STATE OF ALABAMA)
BALDWIN COUNTY)

I, the undersigned notary public in and for the state of Alabama at Large, hereby certify that Philip J. Rack, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this date that, being informed of the contents of the conveyance he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 25th day of January, 1956.



T. D. Dailey
Notary Public

STATE OF ALABAMA, BALDWIN COUNTY
Filed 1-27-56 8A.M.

Recorded _____ book _____ page _____
and I certify that the following Privilege Tax
has been paid.

Deed Tax 1.00

Mortgage Tax _____

M. O. Stewart
Judge of Probate

By B

BOOK 204 PAGE 101

The State of Alabama,
Baldwin County

PROBATE COURT

I, W. R. STUART, Judge of Probate Court in and for said State and County, hereby certify
that the within and foregoing _____ pages
contain a full, true and complete copy of the Deed from Philip J. Rack to Philip J. Rack

and Phyllis Jane Stenzel

as the same appears of record in my office in _____ Deed _____ Book No. 234
page 190-1.

Given under my hand and seal of office, this 27th day of June, 1958



Judge of Probate.

STATE OF ALABAMA,
COUNTY OF BALDWIN.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon PHYLLIS JANE STENZIL to appear and plead, answer or demur, within thirty days from the service hereof, to the Bill of Complaint filed in the Circuit Court of Baldwin County, Alabama, in Equity, by PHILIP J. RACK, as Complainant, against PHYLLIS JANE STENZIL, as Respondent.

WITNESS my hand this the 28 day of June, 1958.

Philip J. Rack
REGISTER

PHILIP J. RACK,
Complainant,
VS.
PHYLLIS JANE STENZIL,
Respondent.

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

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY SITTING:

Your Complainant, PHILIP J. RACK, humbly complaining against the Respondent, PHYLLIS JANE STENZIL, respectfully represents and shows unto your Honor and this Honorable Court, as follows:

1. That your complainant is over the age of twenty-one years and is a bona fide resident citizen of Baldwin County, Alabama, residing in Fairhope, Alabama; that the respondent, PHYLLIS JANE STENZIL, is over the age of twenty-one years and is a resident of Baldwin County, Alabama, residing at Fairhope, Alabama;

2. That on, to-wit: the 25th day of January, 1956, complainant executed and delivered to the respondent a deed conveying the following described lands in Baldwin County, Alabama, viz:

Lots Numbered SIX, SEVEN, NINE and TEN of the John W. Green Subdivision in the West half of the Northeast quarter of Section Seventeen, Township Six South of Range Two East as recorded in Deed Book X, page 589 of the Probate Records of Baldwin County;

that said deed is of record in the Office of the Probate Judge of Baldwin County, Alabama, in Deed Book 234 at pages 190 and 191; and that a copy of said is attached hereto, marked Exhibit "A",

and, by reference, made a part hereof as though fully set out herein;

3. That a material part of the consideration for the execution of the said conveyance was a promise on the part of the respondent to support, maintain and care for your complainant during his lifetime; that the said respondent has failed or refused to support your complainant in accordance with the said agreement;

4. That, in accordance with the provisions of Title 20, Paragraph 15, of the Code of Alabama of 1940, your Complainant has elected to, and does hereby, declare the said conveyance void, and files this proceeding to have the said conveyance declared null and void by this Honorable Court, as provided by law.

5. That your complainant submits himself to the jurisdiction of this Honorable Court and offers to do equity and abide by any decree of the Court.

PRAYER FOR PROCESS

WHEREFORE, THE PREMISES CONSIDERED, Complainant prays that this Honorable Court will, by proper process, make the said PHYLLIS JANE STENZIL a party respondent to this Bill of Complaint, requiring her to plead, answer or demur to the same within the time and under the pains and penalties prescribed by law and the practice of this Honorable Court.

PRAYER FOR RELIEF

Complainant further prays that upon a final hearing of this cause, your Honor will make and enter a decree, declaring the said conveyance from the complainant to the respondent null, void and of no effect; and ordering said conveyance to be expunged from the records in the Office of the Judge of Probate of Baldwin County, Alabama; Complainant prays for such other, further, different or general relief as he may in equity and good conscience be entitled to receive, and, as in duty bound, he will ever pray, etc.

J. Otis A. Maddox
SOLICITOR FOR COMPLAINANT.

Exhibit "A"

STATE OF ALABAMA)
BALDWIN COUNTY)

KNOW ALL MEN BY THESE PRESENTS that PHILIP J. RACK, the grantor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations hereby acknowledged to have been paid to the said grantor by PHILIP J. RACK and PHYLLIS JANE STENZEL, the grantees, does hereby GRANT, BARGAIN, SELL AND CONVEY unto the said grantees, and the survivor of them, all that real property in the County of Baldwin, State of Alabama, and described as follows, to-wit:

Lots numbered SIX, SEVEN, NINE and TEN of the John W. Green Subdivision in the West half of the Northeast Quarter of Section Seventeen, Township Six South of Range Two East as recorded in Deed Book X, page 589 of the Probate Records of Baldwin County, and being that property conveyed to Floyd B. Moore and Grantor by deeds of Orville C. Green and wife, dated August 30th, 1933 and recorded in Deed Book 54 NS, pages 250-251, and Edward R. Leach and wife, dated September 28th, 1914 and recorded in Deed Book 24NS, pages 6-7, and Herman F. Heinecke and wife, dated September 21st, 1920 and recorded in Deed Book 90, pages 9-10 of the Probate Records of Baldwin County, Alabama.

together with all and singular the rights, members, privileges, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining. TO HAVE AND TO HOLD the same unto the said grantees, during their joint lives and upon the death of either of them, then to the survivor of them in fee simple, and to the heirs and assigns of such survivor, forever.

And, except as to taxes hereafter falling due, the said grantor, for himself and for his heirs, executors and administrators, hereby covenants with the said grantees, and the survivor of them, and the heirs and assigns of such survivor, that he is seized on an indefeasible estate in fee simple in and to the said property, that said property is free and clear of all encumbrances, and that he does hereby WARRENT AND WILL FOREVER DEFEND the title to said property unto the said grantees, and the survivor of them, and the heirs and assigns of such survivor, against the lawful claims of all persons, whomsoever.

IN WITNESS WHEREOF, the said grantor has hereunto set his

hand and seal on this the 25th day of January, 1956.

s/s Philip J. Rack _____ (SEAL)
Philip J. Rack

STATE OF ALABAMA)
)
BALDWIN COUNTY)

I, the undersigned notary public in and for the state of Alabama at Large, hereby certify that Philip J. Rack, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this date that, being informed of the contents of the conveyance he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 25th day of January, 1956.

s/s Ernest M. Bailey _____
Notary Public