

JOE KRIEGER and JOHANNA	X	
K. PEREZ, as Co-Administra-	X	
tors of the Estate of	X	
Katherine Krieger, Deceased,	X	IN THE CIRCUIT COURT OF
JOE KRIEGER, JOHANNA K.	X	
PEREZ, ANNA GUENTHER, CHRIS-	X	BALDWIN COUNTY, ALABAMA
TINE STARKE and KATHERINE	X	
NOBLE,	X	
	X	
Complainants,	X	IN EQUITY NO. 4407
	X	
vs.	X	
	X	
ANDREW J. KRIEGER, JR., EVA	X	
HORN and ELIZABETH SCHNATZ,	X	
	X	
Respondents,	X	

AMENDED BILL OF COMPLAINT

(Come now the Complainants in the above styled cause, by their Solicitors, and amend the Bill of Complaint heretofore filed in this cause so that the same shall read as follows: /

1. That your Complainants and the Respondents are each over the age of twenty-one years. The Complainant Joe Krieger is a resident citizen of the State of Alabama residing at Lillian, Baldwin County, Alabama; the Complainant Johanna K. Perez is a resident citizen of the State of California residing at 6335 Acorn Street, San Diego, California; the Complainant Anna Guenther is a resident citizen of the State of Ohio, residing at 3115 West 99th Street, Cleveland, Ohio; the Complainant Katherine Noble is a resident citizen of the State of Ohio, residing at 1431 Maile Avenue, Lakewood, Ohio; and the Complainant Christine Starke is a resident citizen of the State of Ohio residing at 4051 West 226th Street, Fairview Park 26, Ohio. That the Respondent Andrew J. Krieger, Jr., is a resident citizen of Baldwin County, Alabama, residing at Lillian, Alabama; the Respondent Elizabeth Schnatz is a resident citizen of the State of Alabama, residing in Lillian, Alabama; and the Respondent Eva Horn is a resident citizen of the State of Florida, residing in Pensacola, Florida. That all of the Complainants are of sound mind.

2. That your Complainants and Respondents are brothers and sisters and are all of the heirs at law and next of kin of their parents, A. J. Krieger (who was also known as Andreas J.

Krieger) and Katherine Krieger, both of whom are deceased. That A. J. Krieger departed this life intestate on January 3, 1951, while a resident citizen of Baldwin County, Alabama; and Katherine Krieger departed this life intestate on May 4, 1957, while a resident citizen of Baldwin County, Alabama.

3. That subsequent to the death of A. J. Krieger Letters of Administration on his estate were issued to his widow, Katherine Krieger by the Probate Court of Baldwin County, Alabama, and his estate has never been finally settled but the same was removed from the Probate Court of Baldwin County, Alabama, to this Honorable Court by a decree made and entered on October 21, 1958, and is now pending in this Court, but there has never been an appointment either by this Court or by the Probate Court of Baldwin County Alabama, of an administrator de bonis non of the Estate of A. J. Krieger, Deceased.

In March of 1951 there was prepared for execution by all of the heirs at law and next of kin of A. J. Krieger, Deceased, (referred to therein as Andrew J. Krieger, Sr.) an instrument which purported to convey to Katherine Krieger "all the real and personal property, chattels, cash, bonds and securities owned by the said Andrew J. Krieger, Sr., at the time of his death". This instrument was circulated among all of the heirs at law and next of kin of the said A. J. Krieger, Deceased (the Complainants and the Respondents) to secure the execution thereof by all of them in consideration of the love and affection for their Mother, Katherine Krieger, and in the belief that upon the execution and delivery thereof that she would become vested with all of the real and personal property owned by A. J. Krieger at the time of his death through the relinquishment and conveyance by his heirs at law and next of kin (except his widow) of any right, title or interest which they might have under the laws of descent and distribution of the State of Alabama, and that she, Katherine Krieger, would thereby be provided with means of livelihood for the remainder of her life and the matter of the administration of the estate of her late husband would be simplified. It was expressly understood and agreed, however, among all of the Complainants and Respondents

as the heirs at law and next of kin of A. J. Krieger, Deceased, that an indispensable part of the consideration for the execution and delivery of said instrument was that it would be executed and delivered by all of the heirs at law and next of kin of A. J. Krieger and until such time as all of them had executed the instrument that the prior execution by any of the others was subject to the condition that there would be a failure of consideration if it were not executed by all of the remaining heirs at law and next of kin and that said instrument was not to be delivered unless and until it had been executed by all. That said instrument was executed (subject to the conditions referred to) by all of the heirs at law and next of kin of A. J. Krieger, Deceased, except the Respondent Eva Horn, but notwithstanding the fact that (because of the failure and refusal of Eva Horn to execute and deliver the same under the terms and conditions and for the consideration noted above) there had been a failure of consideration the instrument was, on April 19, 1955, filed for record and recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 220 at pages 349-350. A copy of said instrument is attached hereto and marked "EXHIBIT A" and by reference made a part hereof.

4. That at the time of his death A. J. Krieger owned an interest in the following parcels of land situated in Baldwin County, Alabama, to-wit:

PARCEL A

The Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ of SE $\frac{1}{4}$) of Section 22, Township 7 South, Range 6 East.

PARCEL B

The Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ of SE $\frac{1}{4}$) of Section 22, Township 7 South, Range 6 East.

PARCEL C

Beginning at the Northwest Corner of the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section 27, Township 7 South, Range 6 East, run thence East 330 feet, South 330 feet, West 330 feet, and North 330 feet to the point of beginning, containing 2 $\frac{1}{2}$ acres except the part thereof used for a public road.

PARCEL D

All that part of the Northeast Quarter of the Northeast Quarter ($NE\frac{1}{4}$ of $NE\frac{1}{4}$) of Section 27, Township 7 South, Range 6 East lying South of the Foley-Lillian Highway as it is now located, save and except the Northwest Quarter of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter ($NW\frac{1}{4}$ of $NW\frac{1}{4}$ of $NE\frac{1}{4}$ of $NE\frac{1}{4}$) of said Section 27, Township 7 South, Range 6 East.

That the title to "PARCEL A" and "PARCEL B" was conveyed by Baldwin County Colonization Company, a corporation, under and by virtue of those two certain deeds dated December 1, 1912, and November 1, 1912, and recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 22 N. S. at pages 245 and 245-46, respectively, to "Andreas Krieger and _____ Krieger, his wife". That the grantee named therein was one and the same person as A. J. Krieger, Deceased, and he was on said dates married to Katherine Krieger. That because of the omission of the Christian name of the wife of A. J. Krieger in both of said deeds they are subject to different construction as to how the title vested and, therefore, what interest A. J. Krieger owned in said lands at the time of his death.

That A. J. Krieger was vested at the time of his death with an undivided one-half ($\frac{1}{2}$) interest in and to the property described as "PARCEL C", having acquired the same by that certain deed from August Horn and Eva Horn, his wife, to A. J. Krieger and Katherine Krieger dated November 30, 1935, and recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 58 N. S. at page 306.

That A. J. Krieger was vested at the time of his death with the fee simple title to the property described as "PARCEL D" having acquired the same by that certain deed from Vera Bartling, unmarried, dated March 4, 1937, and recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 62 N. S. at page 190.

That the title to all of said property designated as "PARCEL A", "PARCEL B", "PARCEL C", and "PARCEL D" is now vested, under the laws of descent and distribution, in the Complainants and Respondents in equal parts; each owning an undivided one-

eighth (1/8th) interest therein, subject only to the effect, if any, of the instrument attached hereto and marked "EXHIBIT A".

5. Your Complainant Joe Krieger, alleges that on January 6, 1949, Magdalena Grimm executed and delivered to the said A. J. Krieger, now deceased, a Warranty Deed conveying the South Half of the Northeast Quarter ($S\frac{1}{2}$ of $NE\frac{1}{4}$) of Section 27, Township 7 South, Range 6 East, and that this deed was filed for record and recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 138, at page 202. That said conveyance was made pursuant to and in accordance with an agreement between your Complainant Joe Krieger and his Father, the said A. J. Krieger, now deceased, in and by the terms of which the said A. J. Krieger agreed to take, and did take, title to said property for the use and benefit of the Complainant Joe Krieger, because of the inability at that time of the Complainant Joe Krieger to pay to the grantor in said deed the full purchase price of said property of \$2,500.00, which said purchase price was paid for the use and benefit of the Complainant Joe Krieger by the said A. J. Krieger. That in and by the terms of said agreement the said A. J. Krieger was to hold the title to said property for the use and benefit of the Complainant Joe Krieger and to convey the same to him upon the payment by the Complainant Joe Krieger of the sum of \$2,500.00, the purchase price of said property, which was paid by the said A. J. Krieger for the use and benefit of the Complainant Joe Krieger. That the Complainant Joe Krieger immediately went into possession of said property in accordance with said agreement and since the date of said deed and his entry into the possession of said property he has used the property as his own and for his own individual use and benefit from that date up until the present time. That since the execution and delivery of said deed the Complainant Joe Krieger has spent large sums of money in improving said real property (by clearing said lands (for which he spent the sum of \$929.25), in improving the condition of the soil (for which he spent the sum of \$638.00 for lime), in improving the drainage on said property (for which he spent the sum of \$436.25 in ditching said land), in fencing said property (for which he spent the sum of \$242.25 for wire and fence posts). That the

Complainant Joe Krieger paid to the said A. J. Krieger during his lifetime the sum of \$200.00 to reimburse the said A. J. Krieger for monies advanced by him for the use and benefit of the Complainant Joe Krieger and that at the time of the death of the said A. J. Krieger, Deceased, there was a balance due and owing from the Complainant Joe Krieger to the said A. J. Krieger of \$2,300.00 in accordance with the terms of said trust and the agreement by the said A. J. Krieger to convey the title to said property to the Complainant Joe Krieger on the full payment of said sum of \$2,500.00.

At the time of the death of his Father, the said A. J. Krieger, he held title to said property in trust for the Complainant Joe Krieger, and/or subject to his oral agreement to convey the same to the Complainant Joe Krieger, who was then in the possession of said property and he had made a part payment on the purchase price thereof.

That subsequent to the death of the said A. J. Krieger, and his widow, Katherine Krieger, that all of the heirs at law and next of kin of the said A. J. Krieger and Katherine Krieger, both of whom died intestate, except Andrew J. Krieger, Jr. and Eva Horn executed and delivered to the Complainant Joe Krieger a deed conveying all of their right, title and interest in and to said property upon the payment by the Complainant Joe Krieger of the pro-rata share to which each of them were entitled out of the balance due under the terms of said trust and/or agreement of \$2,300.00. That although their sisters have recognized the existence of said trust in said lands for the use and benefit of the Complainant Joe Krieger and/or the existence of a valid and binding agreement by their Father to convey the said property to Complainant Joe Krieger upon the full payment of the agreed amount as hereinabove set forth, the Respondent Andrew J. Krieger, Jr. and Eva Horn have failed and refused and continue to fail and refuse to execute and deliver to the Complainant Joe Krieger a deed conveying any interest which they might have in said property as a result of the record title thereto being vested in the said A. J. Krieger, Deceased, at the time of his death, although the Complainant Joe Krieger has repeatedly offered to pay to them theirpro-

rata share as heirs at law and next of kin of the said A. J. Krieger, Deceased, of the balance due of \$2,300.00. And the Complainant Joe Krieger further alleges that he is ready, willing and able to pay to the said Andrew J. Krieger, Jr. and Eva Horn the amount to which they are each entitled under said trust and/or agreement as heirs at law and next of kin of the said A. J. Krieger, Deceased, and he does hereby offer to pay to, and does hereby tender to, the said Andrew J. Krieger, Jr. and Eva Horn their pro-rata share of said sum of \$2,300.00 and does hereby offer to do equity in the premises.

6. That the Complainants Joe Krieger and Johanna K. Perez as Co-Administrators of the Estate of Katherine Krieger, Deceased, allege that at the time of the death of Katherine Krieger, also known as Katherina Krieger, she was the owner of an undivided one-half interest in the property described as "PARCEL C" in paragraph "4", above, and, possibly an interest in the lands described as "PARCEL A" and "PARCEL B" in said paragraph "4" depending upon the construction placed upon said deed by this Honorable Court in view of the fact that the Christian name of one of the grantees in the deed to said parcels was omitted.

That in addition to the said interest and possible interest in real property the said Katherine Krieger was the owner on the date of her death of two savings accounts (#1245 and #2223) in the State Bank of Elberta, in which accounts there was a total of \$1,763.12, and a checking account in which there was a balance of \$627.16. In addition to said bank accounts the said Katherine Krieger was the owner and holder of two notes, one from Anna Guenther in the amount of \$2,000.00, and one from Katherine Noble in the amount of \$1,018.67. She also owned various items of personal property, a small amount of corn, five U. S. Series E Savings Bonds and 11 head of cattle together with an interest in a joint account with Johanna K. Perez in the Baldwin County Savings & Loan Association.

That there is attached hereto and marked "EXHIBIT B" and by reference made a part hereof, a statement of account of the Complainants Joe Krieger and Johanna K. Perez as Co-Administrators

of the Estate of Katherine Krieger, Deceased, showing all of the receipts by them as such together with all of the disbursements made by them as such and the balance which they now hold as such Administrators.

That your Complainants Joe Krieger and Johanna K. Perez were appointed as such Co-Administrators of the Estate of Katherine Krieger, Deceased, by the Probate Court of Baldwin County, Alabama, and they gave notice of their appointment as such and more than six months have elapsed since their appointment. That there are no unpaid claims against the Estate of Katherine Krieger Deceased and they have used none of the funds belonging to said Estate for their own use and benefit and said Estate admits, in all respects, of final settlement upon the issues and questions raised by this amended Bill of Complaint being resolved by this Honorable Court, to which the administration of said Estate was removed by a decree of this Court made and entered on October 21, 1958.

That, because of the manner in which said Estate was handled by the said Katherine Krieger, Deceased, your Complainants Joe Krieger and Johanna K. Perez, as Co-Administrators, aforesaid, have been unable to prepare a proper accounting of the actions of their decedent as Administratrix of the Estate of A. J. Krieger, Deceased, but respectfully allege that inasmuch as the heirs at law and next of kin of A. J. Krieger, Deceased, and of Katherine Krieger, Deceased, are the same that no injury can result to any heir at law and next of kin of A. J. Krieger, Deceased, because of not being presented with a true and accurate account of the actions of Katherine Krieger, Deceased, as Administratrix of the Estate of her deceased husband.

Your Complainants Joe Krieger and Johanna K. Perez are informed and believe and upon such information and belief allege that all of the funds which the said Katherine Krieger, received as Administratrix of the Estate of her deceased husband were expended by her for her own general welfare, support and medical and hospital care and that all of her children had full knowledge of the fact that their Mother was so using the said funds for her own use and benefit and they acquiesced in and approved the ac-

tion of their Mother in the premises.

That your Complainant Joe Krieger, in carrying out his duties as the Co-Administrator of the Estate of Katherine Krieger, Deceased, has performed special and extraordinary services in protecting and preserving the Estate and maintaining and working the pecan orchard which has been the only income producing asset of the Estate, in spending an extraordinary amount of time in conferences with the other heirs at law and next of kin, the attorneys for the Estate, and in appearances in court in the several hearings which have been had with respect to this administration; for all of the special and extraordinary services your Complainant Joe Krieger has received some payment but he has not received any payment which would fully compensate him for his time, expenses and efforts in performing such services.

That in the administration of both of the Estates it was necessary that counsel be employed and to that end Katherine Krieger, Deceased, did employ Arthur Epperson, Attorney at Law, Foley, Alabama, to represent her in the matter of the administration of the Estate of A. J. Krieger, Deceased, and your Complainant Joe Krieger and Johanna K. Perez, as Co-Administrators of the Estate of Katherine Krieger, Deceased, have employed Arthur Epperson, Attorney at Law, Foley, Alabama, and, since March 14, 1961, they have employed in addition to Arthur Epperson, the firm of Chason & Stone, Attorneys at Law, Bay Minette, Alabama. That in each of such instances it was necessary and to the best interest of said Estate that said attorney and attorneys be employed. That the said Arthur Epperson has been paid for his services for both estates the sum of \$100.00 and the said firm of Chason & Stone have not todate been paid any amount for their services.

7. That there is a justiciable controversy existing between the Complainants Joe Krieger and Johanna K. Perez as Co-Administrators of the Estate of Katherine Krieger, Deceased, and the Respondent Andrew J. Krieger, Jr. and the Respondent Eva Horn as to the effect, if any, of the execution and recordation of the instrument referred to in paragraph "3" hereof; and there is a justiciable controversy existing between the Complainant Joe Krieger, individually, and Andrew J. Krieger, Jr. and Eva Horn with

reference to the matters set forth in paragraph "5" hereof.

8. That your Complainant Joe Krieger as one of the Co-Administrators of the Estate of Katherine Krieger, Deceased, has been advised by his counsel, that inasmuch as he is serving in a fiduciary capacity in the Estate of Katherine Krieger, Deceased, and that in such capacity he received on the death of the said Katherine Krieger all of the assets then on hand in the Estate of A. J. Krieger, Deceased, that there may be some question of the propriety of his asserting that at the time of his death, A. J. Krieger was not the owner of the property described in paragraph "5" hereof but was a trustee for your Complainant Joe Krieger in his individual capacity as set forth in paragraph "5" or that the title held by A. J. Krieger at the time of his death was subject to a valid and binding contract of purchase as set forth in paragraph "5" hereof. And your Complainant Joe Krieger, as one of the Co-Administrators of the Estate of Katherine Krieger, Deceased, further alleges that although he has been advised that there is no impropriety in his asserting this claim against the heirs of A. J. Krieger, Deceased, in that, even if A. J. Krieger, Deceased, was vested with the fee simple title to the property described in paragraph "5" that on his death intestate the title thereto would have vested immediately in his heirs subject only to the payment of debts and charges against his estate and that he, as one of the Co-Administrators of the Estate of Katherine Krieger, Deceased, happened to be the Administrator of the Estate of his Father, would not have any charge over the property involved for the reason that the Estate of A. J. Krieger, Deceased, was, although there has been no formal accounting or inventory, solvent and fully capable of paying all of the debts of the decedent out of the personal property with which the said A. J. Krieger died seised. But your Complainant Joe Krieger as one of the Co-Administrators of the Estate of Katherine Krieger, Deceased, does hereby specifically allege that, if, in the opinion of this Honorable Court, there is any degree of impropriety in his presentation herein of a claim in his individual capacity against property, the record title to which was in his Father, A. J. Krieger, Deceased, that he does

hereby offer to resign as one of the Co-Administrators of the Estate of Katherine Krieger, Deceased, or, that he does hereby consent to the appointment of an administrator ad litem of the Estate of A. J. Krieger, Deceased, or the Estate of Katherine Krieger, Deceased.

PRAYER FOR PROCESS

Your Complainants respectfully pray that upon the filing of this Amended Bill of Complaint that each of the named Respondents be made parties hereto and that they be required to plead, answer or demur to this amended Bill of Complaint within the time allowed by law and the rules of this Honorable Court.

PRAYER FOR RELIEF

The Complainants respectfully pray that upon a final determination of this cause that this Honorable Court will enter an order or decree declaring:

1. That the instrument attached to this Amended Bill of Complaint and marked "EXHIBIT A" be declared void and of no force and effect;
2. The extent of the ownership of each of the Complainants in their individual capacities and the Respondents in the parcels of land described in paragraph "4" of this Amended Bill of Complaint;
3. That because of the facts and circumstances hereinabove set forth that Joe Krieger and Johanna K. Perez as Co-Administrators of the Estate of Katherine Krieger, Deceased, are absolved from any duty in their capacity as such from filing or stating the account of their intestate as the Administratrix of the Estate of A. J. Krieger, Deceased, or in the event that your Complainants are mistaken in this regard that an administrator de bonis non of the Estate of A. J. Krieger, Deceased, be appointed by this Honorable Court or, in the alternative, that said Estate be removed from this Court back to the Probate Court of Baldwin County, Alabama, for further proceedings therein.

And your Complainants Joe Krieger and Johanna K. Perez as Co-Administrators of the Estate of Katherine Krieger, Deceased,

do hereby respectfully pray that this Honorable Court will, upon a final hearing of this cause, enter an order or decree as follows:

1. Passing and allowing their account which is attached hereto and marked "EXHIBIT B" and by reference made a part hereof;

2. Fixing and determining a reasonable attorneys' fee to be paid out of the funds now in said estate to Arthur Epperson and Chason & Stone for services rendered by said attorneys for said estate;

3. Fixing and determining a reasonable amount to be paid to the Complainant Joe Krieger as one of the Co-administrators of said estate for special and extraordinary services performed by him;

4. Decreeing the distribution of the assets now on hand in said estate among the persons entitled thereto in the amount to be determined by this Court, after deducting therefrom all costs of court, legal services, expenses and attorneys' fees decreed to be payable out of said estate.

5. Discharging and relieving Joe Krieger and Johanna K. Perez in their capacity aforesaid, and the surety on their bond as such from any further liability in the premises.

And your Complainant Joe Krieger respectfully prays that upon a final hearing of this cause that this Honorable Court will enter an order or decree declaring:

1. That A. J. Krieger, Deceased, acquired the title to the South Half of the Northeast Quarter of Section 27, Township 7 South, Range 6 East as trustee for your Complainant Joe Krieger under and as the result of a trust or agreement and that the said A. J. Krieger was not the owner of the fee simple title to said property at the time of his death on January 3, 1951; or

2. That on January 3, 1951, the date of the death of A. J. Krieger, in whom the record title to the South Half of the Northeast Quarter of Section 27, Township 7 South, Range 6 East was vested, that there existed a valid and binding contract of sale between said decedent and your complainant and that the Complainants Johanna K. Perez, Anna Guenther, Christine Starke and Katherine Noble and the Respondent Elizabeth Schnatz have fulfilled

their obligations under said contract of sale to the Complainant Joe Krieger by conveying to him any right, title and interest which they might have had in said property as heirs at law and next of kin of A. J. Krieger, Deceased; and that any title which the Respondents Andrew J. Krieger, Jr. and Eva Horn have in said property is subject to such contract of sale and to be specifically enforced in accordance with its terms;

3. The amount in which your Complainant Joe Krieger is liable to the Respondents Andrew J. Krieger, Jr., and Eva Horn under the terms of either the resulting trust or the contract of sale (whichever the case may be);

4. That upon the payment by your Complainant Joe Krieger of the amount or amounts decreed to be due from him to Andrew J. Krieger, Jr. and Eva Horn that they be required to convey to your Complainant Joe Krieger any right, title or interest which they might have in said property and upon their failure to do so that the Register of this Court be ordered and directed to do so. And your Complainant Joe Krieger respectfully prays for such other further and different relief as in the premises will be meet and proper.

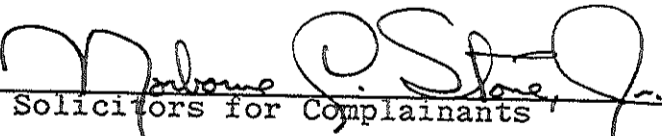
Respectfully Submitted,

ARTHUR EPPERSON

and

CHASON & STONE

By:


Solicitors for Complainants

STATE OF ALABAMA

BALDWIN COUNTY

Before me, Norborne C. Stone, Jr., a Notary Public, in and for said County in said State, personally appeared Joe Krieger, whose name is signed to the foregoing instrument and who is known to me, after being by me first duly and legally sworn, did depose and say under oath as follows:

That his name is Joe Krieger and he is one of the Com-plainants in the above styled cause both in his capacity as one of the Co-Administrators of the Estate of Katherine Krieger, Deceased, and in his individual capacity, and that the facts alleged therein are true and correct and those matters which are alleged on informa-tion and belief he verily believes to be true and correct. That the account attached to the Amended Bill of Complaint and marked "EXHIBIT B" is a true, accurate and full accounting of the actions of himself and Johanna K. Perez as Co-Administrators of the Estate of Katherine Krieger, Deceased.

Joe Krieger

Sworn to and subscribed before me on
this the 2nd day of August, 1961.

Melburn O. Stone
Notary Public, Baldwin County, Alabama

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, That we, EVA HORN, JOHANNA KRIEGER, ANDREW J. KRIEGER JR., KATHERINE NOBLE, ANNA GUENTHER, ELIZABETH SCHNATZ, JOE KRIEGER and CHRISTINE STARKE, being the sole and only surviving heirs of Andrew J. Krieger, Sr., deceased, except Katherine Krieger, the Grantee herein, Grantors, for and in consideration of the sum of TEN (\$10.00) DOLLARS and other good and valuable consideration to us in hand paid by KATHERINE KRIEGER, the Grantee, the receipt of which is hereby acknowledged, do hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, SET OVER, ASSIGN AND DELIVER unto the Grantee, all the real and personal property, chattels, cash, bonds and securities owned by the said Andrew J. Krieger Sr., at the time of his death.

TO HAVE AND TO HOLD unto the Grantee, her heirs and assigns forever.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the 13th day of April, 1955.

	(SEAL)
(Signed) Johanna Krieger	(SEAL)
(Signed) Andrew J. Krieger Jr.	(SEAL)
(Signed) Katherine Noble	(SEAL)
(Signed) Anna Guenther	(SEAL)
(Signed) Christine Starke	(SEAL)
(Signed) Joe Krieger	(SEAL)
(Signed) Elizabeth Schnatz	(SEAL)

STATE OF ALABAMA, BALDWIN COUNTY
Filed 4-19-55 10:30 A.M.
Recorded book page
and I certify that the following
Privilege Tax has been paid.

Deed Tax 50
Mortgage Tax

W. R. Stuart
Judge of Probate
By(Signed) G

STATE OF ALABAMA
BALDWIN COUNTY

I, (Signed) Arthur C. Epperson, a Notary Public, in and for said County, in said State, hereby certify that Johanna Krieger, Andrew J. Krieger Jr., Elizabeth Schnatz, Katherine Krieger, 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 said conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 13th day of April, 1955.

(Signed) Arthur C. Epperson
Notary Public, Baldwin County, Ala.

STATE OF ALABAMA
BALDWIN COUNTY

I, (Signed) Arthur C. Epperson, a Notary Public, in and for said County, in said State hereby certify that Joe Krieger whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of said conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 13th day of April, 1955.

(Signed) Arthur C. Epperson
Notary Public, Baldwin County, Ala.

STATE OF OHIO
COUNTY OF CUYAHOGA

I, (Signed) P. W. Efferth, a Notary Public, in and for said County, in said State, hereby certify that Katherine Noble, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 27th day of March, 1955.

(SEAL AFFIXED)

(Signed) P. W. Efferth
Notary Public, _____ COUNTY
Ohio

STATE OF OHIO
COUNTY OF CUYAHOGA

P. W. Efferth, Notary Public
My Commission Expires Apr. 30,
1961

I, (Signed) P. W. Efferth, a Notary Public, in and for said County, in said State, hereby certify that Anna Guenther and Christine Starke, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day, being informed of the contents of said conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 27th day of March, 1951.

(SEAL AFFIXED)

(Signed) P. W. Efferth
Notary Public, _____ COUNTY,
Ohio

P. W. Efferth, Notary Public
My Commission Expires Apr. 30,
1961

STATEMENT OF ACCOUNT

A. RECEIPTS:

1. State Bank of Elberta:

a. Savings Account #2223	\$1,532.78	
b. Savings Account #1254	230.34	
c. Checking Account	<u>627.16</u>	\$ 2,390.28

2. Interest:

a. Guenther note 9/ 9/57	\$ 80.00	
b. Guenther note 8/ 8/58	80.00	
c. Guenther note 7/22/59	80.00	
d. Guenther note 8/21/59	6.67	
e. Noble note 7/23/58	40.00	
f. Noble note 8/21/59	<u>40.00</u>	\$ 326.67

3. Principal:

a. Guenther note 8/21/59	\$2,000.00	
b. Noble note 8/21/59	<u>1,018.67</u>	\$ 3,018.67

4. Sale of Pecans:

a. 11/27/57	\$ 362.82	
b. 12/ 6/57	40.00	
c. 12/14/57	75.00	
d. 1/ 3/58	<u>45.50</u>	\$ 523.32
e. 11/15/58	\$ 719.29	
f. 12/ 3/58	147.05	
g. 12/27/58	<u>140.00</u>	\$ 1,006.34
h. 1/ 4/60	\$ 21.87	\$ 21.87
i. 11/15/60	\$ 882.75	
j. 11/28/60	387.50	
k. 12/ 5/60	<u>503.42</u>	\$ 1,773.67

5. Miscellaneous Sales:

a. Personal Property (Auction)	\$ 382.10	
b. Corn (Trinknell)	31.85	
c. Series E. Bonds	3,228.00	
d. Cattle	<u>558.17</u>	\$ 4,200.12

6. Other:

a. Oil Lease 1/18/58	\$ 22.00	
b. Oil Lease 1/14/59	22.00	
c. Oil Lease 1/15/60	22.00	
d. Joint account with Johanna Krieger, Baldwin County Savings & Loan	\$2,347.07	
e. Deposit in Savings Acc't 5/21/57	140.00	
f. Interest on Savings 6/29/57	<u>1.32</u>	\$ 2,654.39

TOTAL RECEIPTS.....\$15,815.33

DISBURSEMENTS:

<u>DATE</u>	<u>ACCOUNT</u>	<u>AMOUNT</u>
5/ 4/57	Revs. Pope, Hogood & Josephsen	\$ 135.00
5/10/57	Baptist Hospital	179.28
5/14/57	Fisher-Pou, funeral expenses	925.00
5/15/57	Blood Bank	32.00
5/15/57	Moulton's Drugs	69.67
6/ 7/57		25.00
6/ 8/57	Dr. Yorx, medical services	150.00
7/22/57	Bond premium	20.00
7/23/57	C. J. Ebert, appraisal	35.00
8/ 7/57	Probate Court, court costs	11.00
8/26/57	Baldwin Mutual, insurance	28.33
9/14/57	Blood Bank	30.00
10/11/57	Tax Collector, ad valorem taxes	58.82
3/11/58	Arthur Epperson, attorneys fees	100.00
3/31/58	Fertilizer, pecan orchard	205.00
6/18/58	Ebert Agency, insurance	19.50
10/10/58	Baldwin Mutual, insurance	23.09
10/18/58	Tax Collector, ad valorem taxes	52.92
2/20/59	Fertilizer, pecan orchard	150.00
6/23/59	Ebert Agency, insurance	19.50
8/21/59	Fertilizer (reimburse Joe Krieger)	181.49
8/21/59	Baldwin Mutual, insurance	27.71
8/21/59	Dr. W. C. Holmes, old account	356.00
10/15/59	Tax Collector, ad valorem taxes	52.92
12/12/59	Betty Schnatz, pecan work	3.55
2/25/60	Fertilizer, pecan orchard	219.00
2/26/60	Jesse Pope, labor orchard	10.00
2/27/60	Joe Krieger, labor & Mchy, orchard	73.00
6/ 3/60	La Rue Service, spray orchard	48.00
6/ 3/60	Bond premium ('58)	20.00
6/ 3/60	Ebert Agency, insurance	19.50
6/30/60	Bond premium ('59)	20.00
8/20/60	Baldwin Mutual, insurance	32.42
10/14/60	Tax Collector, ad valorem taxes	52.92
11/15/60	Joe Krieger, orchard work	65.00
11/16/60	Bond premium	20.00
4/12/61	Fertilizer, pecan orchard	177.50
4/28/61	La Rue Service, spray orchard	48.00
6/17/61	Ebert Agency, insurance	19.50
TOTAL DISBURSEMENTS		\$ 3,715.62

C. RECAPITULATION:

1. Total Receipts	\$15,815.33
2. LESS: Total Disbursements	3,715.62
3. Balance on Hand (State Bank of Elberta)	\$12,099.71

FILED

JUN 21 1961

ALICE I. DUCK, CLERK
REGISTER

JOE KRIEGER ET AL,)	
	)	IN THE CIRCUIT COURT OF
COMPLAINANTS	)	BALDWIN COUNTY, ALABAMA,
)	
VS	)	IN EQUITY
	)	NO. 4407
ANDREW J. KRIEGER, JR.,)	
AND EVA HORN,)	
)	
RESPONDENTS)	

Comes now the Respondents in the above styled cause and file the following demurrers to the Complainants' Amended Bill of Complaint:

The following demurrers are directed to Section 4 of the said Complaint:

1.

The allegations contained therein are ambiguous.

2.

The allegations contained therein are contradictory.

3.

The allegations contained therein are the conclusion of the Fleader .

4.

The agreement referred to in this section fails to show whether it is oral or in writing.

The following demurrers are directed to the Complainants' Bill of Complaint as a whole and each and every section separately and severally:

A.

There is no stating part in the Bill of Complaint.

B.

The names of the parties are not set out therein and their ages and conditions are not shown.

C.

There is no prayer for relief.

D.

The relief sought is improper.

E.

The inventory attached to the complaint is not full and complete.

F.

There is a misjoinder of causes of action.

FILED

AUG 24 1959

ALICE J. DUCK, CLERK
REGISTER

Wilters & Brantley

BY:

Robert M Brantley

Phosae

James A Brantley

Solicitors for the Respondents

U.S. DISTRICT COURT

MEMPHIS

U.S. DISTRICT COURT

MEMPHIS

JOE KRIEGER, ET AL,

COMPLAINANTS

VS

ANDREW J. KRIEGER, JR., ET AL,

RESPONDENTS

Aug. 24, 1959

DEMURRERS

JOE KRIEGER, Et Al,	⌘		
as co-administrators of			
the Estate of Katherine	⌘		
Krieger, Deceased, and			
JOE KRIEGER, Et Al,	⌘	IN THE CIRCUIT COURT OF	
Complainants,	⌘	BALDWIN COUNTY, ALABAMA	
	⌘		
vs.			
	⌘	IN EQUITY	NO. 4407
ANDREW J. KRIEGER, Et Al,	⌘		
Respondents.	⌘		

PETITION

Comes now the Complainant Joe Krieger in the above styled cause, by his solicitors, and respectfully represents and shows unto this Honorable Court as follows:

1. That on the ninth day of May, 1962, this Honorable Court entered its final decree in this cause which provided, among other matters, as follows:

"3. That the contract between the Complainant Joe Krieger and his late father, A. J. Krieger, Sr., Deceased, should be specifically enforced and to that end the Respondents Andrew J. Krieger, Jr. and Eva Horne should, and they are hereby ordered and directed to, convey to the said Joe Krieger all of their right, title and interest in and to said property as heirs at law and next of kin of A. J. Krieger, Sr., Deceased, and Katherine Krieger, Deceased, upon the payment to each of them of the sum of \$287.50 by the Complainant Joe Krieger, and upon their failure to do so within thirty days from the rendition of this decree, that the Register of this court be, and she is hereby, authorized and directed to convey all of said interest of said Respondents to the said Joe Krieger, upon his depositing said amounts in court for said Respondents."

2. That subsequent to the rendition of said decree of May 9, 1962, an appeal was taken from said decree by the Respondents Andrew J. Krieger, Jr. and Eva Horne to the Supreme Court of Alabama and that court did, on April 16, 1964, render an opinion in and by the terms of which the decree of this court of May 9, 1962, was affirmed.

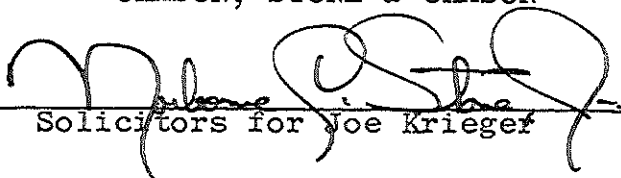
3. That more than thirty days have elapsed since the affirmance by the Supreme Court of Alabama of the decree of this court of May 9, 1962 and both the Respondent Andrew J. Krieger, Jr. and Eva Horne have failed and refused to convey to your Complainant Joe Krieger the property described in Paragraph 3

of the decree of this court of May 9, 1962 and which is described as the South Half S $\frac{1}{2}$) of the Northeast quarter (NE $\frac{1}{4}$) of Section 27, Township 7 South, Range 6 East. That the Complainant Joe Krieger does hereby present to and deposit with this court as required by its decree of May 9, 1962, two checks each in the amount of \$287.50 payable to each of the said Respondents as required by the decree of this court of May 9, 1962.

WHEREFORE the Complainant Joe Krieger respectfully prays that this Honorable Court will, in accordance with its decree of May 9, 1962, authorize and direct Alice J. Duck, as Register of the Circuit Court of Baldwin County, Alabama, to convey to the Complainant Joe Krieger all of the right, title and interest of the said Andrew J. Krieger, Jr. and Eva Horne in and to the above described property and authorize the Register to deliver said deed to the Complainant Joe Krieger and said checks to Andrew J. Krieger, Jr. and Eva Horne.

Respectfully submitted,
Arthur Epperson
and

CHASON, STONE & CHASON

By: 
Solicitors for Joe Krieger

STATE OF ALABAMA

BALDWIN COUNTY

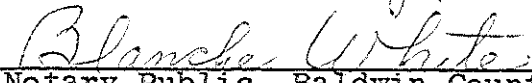
Before me, the undersigned authority, personally appeared Norborne C. Stone, Jr. who is known to me and who, after being by me first duly and legally sworn did depose and say under oath as follows:

That his name is Norborne C. Stone, Jr. and he is one of the Solicitors of record for the Complainant Joe Krieger in the above styled cause and he executed the foregoing petition as such. That the facts alleged therein are true and correct.

Sworn to and subscribed before


Norborne C. Stone, Jr.

me this 1st day of June, 1964.


Notary Public, Baldwin County, Alabama


ALICE J. DUCK, CLERK REGISTER

JAMES A. BRICE

ATTORNEY AT LAW
FOLEY, ALABAMA

POST OFFICE BOX 298

September 23, 1959

WHITEHALL 3-3601

Mrs. Alice J. Duck
Register in Equity
Bay Minette, Alabama

Re: Joe Kreiger, et als vs.
Andrew J. Kreiger, Jr. and
Eva Horn
In Equity

Dear Mrs. Duck:

I enclose the answer of Betty Schnatz in the above cause.

Copies of the answer are being mailed the attorneys of record for Andrew J. Kreiger, Jr. and Eva Horn.

Very truly yours,


James A. Brice

JAB/vd

Enclosure

BOOK 317 pg 335

JOE KRIEGER ET AL., as Co-	I		
Administrators of the Estate	I	IN THE CIRCUIT COURT OF	
of Katherine Krieger, De-	I		
ceased, and JOE KRIEGER,	I	BALDWIN COUNTY, ALABAMA	
ET AL.,	I		
Complainants,	I		
vs.	I	IN EQUITY	NO. 4407
	I		
✓ ANDREW J. KRIEGER, ET AL.,	I		
	I		
Respondents.	I		
	I		

FINAL DECREE:

This cause coming on to be heard was submitted for final decree on behalf of the Complainants Joe Krieger and Johanna K. Perez as Co-Administrators of the estate of Katherine Krieger, Deceased, on the Bill of Complaint, the accounting attached thereto and marked "EXHIBIT B" and on behalf of the Complainant Joe Krieger individually, on the Bill of Complaint, the testimony of Joe Krieger, Johanna K. Perez, J. W. Kinsey, Frank Koehler and Margaret Mullek and the several exhibits introduced in connection therewith taken and received in open court on the 8th day of May, 1962, and the stipulations of the parties with respect to the several muniments of title referred to in the Bill of Complaint; and on behalf of the Respondents Andrew J. Krieger, Jr., and Eva Horn on their respective answers and their testimony taken in open court on May 8, 1962; all of which testimony was transcribed by the court reporter; and the court having considered all of the above is of the opinion, and finds, that:

1. A justiciable controversy exists between the Complainants Joe Krieger and Johanna K. Perez as Co-Administrators of the estate of Katherine Krieger, Deceased, and the Respondents Andrew J. Krieger, Jr. and Eva Horn as to the validity and effect, if any, of the execution and recordation of the instrument, a copy of which is attached to the amended Bill of Complaint and marked "EXHIBIT A", the Complainants in their capacity aforesaid contending that said instrument was and is of no force and effect in that it was understood and agreed by all of the grantors therein that the instrument would not be of any force and effect unless and until all of the heirs at law and next of kin of A. J. Krieger, Sr.,

Deceased, executed and delivered the same and that since the Respondent Eva Horn did not execute and deliver the same that the instrument was and is void and of no force and effect; and the Respondents Eva Horn and Andrew J. Krieger, Jr. contending that said instrument is valid and binding on the Complainant Joe Krieger and the Complainant Johanna K. Perez, both individually and as Co-Administrators of the Estate of A. J. Krieger, Sr., Deceased, and further that the Complainant Joe Krieger, in his individual capacity, conveyed any right, title or interest which he might have had in the property described in section "5" of the amended Bill of Complaint;

2. That on January 6, 1949, A. J. Krieger, Sr., now deceased, purchased from Magdalena Grimm the South Half of the Northeast Quarter of Section 27, Township 7 South, Range 6 East for and on behalf of the Complainant Joe Krieger, under an agreement with him in and by the terms of which the said A. J. Krieger took title to said property in his own name (he having advanced the purchase price of \$2,500.00 therefor) and agreed to convey the same to the Complainant Joe Krieger upon the full payment to him of said \$2,500.00; that Joe Krieger immediately went into possession of said property and proceeded to clear the same and to use said property and on May 10, 1950, while in possession of the same, made a part payment to his Father, A. J. Krieger, Sr., of \$200.00 as evidenced by the check introduced into evidence as Complainant's "EXHIBIT 8". That all of the heirs at law and next of kin of the said A. J. Krieger, Sr., Deceased, except the Respondent Eva Horn and the Respondent Andrew J. Krieger, Jr., recognizes the existence of a contract of sale and purchase between their Father and the Complainant Joe Krieger, and they have, in consideration of the payment to them of their pro rata share of the balance due of \$2,300.00, executed and delivered to the Complainant Joe Krieger a deed conveying all right, title and interest in said property which they owned as heirs at law and next of kin of the said A. J. Krieger, Sr., Deceased, which said deed was introduced in evidence as Complainant's Exhibit "2".

3. That the Complainant Joe Krieger offered to the Respondents Eva Horn and Andrew J. Krieger, Jr. their pro rata share of said balance of \$2,300.00 and is now ready, willing and able to pay to said Respondents the amount to which each of them are entitled under said contract of sale and purchase.

4. That the statement of account of the Complainants Joe Krieger and Johanna K. Perez as Co-Administrators of the estate of Katherine Krieger, Deceased, which is attached to the amended Bill of Complaint is true and correct except that since the preparation and filing thereof said Complainants, in their capacity, aforesaid, have received for and on behalf of the estate the sum of \$910.00 from the sale of pecans and have disbursed the sum of \$105.42 for bond premium, ad valorem taxes and casualty insurance on the home, leaving a balance now on hand in said estate of \$12,904.29. That all of the parties to this cause, in their own proper persons and through their attorneys have agreed that the accounting of said Co-Administrators is true and correct and that the same should be passed and allowed, both with respect to the estate of Katherine Krieger, Deceased, and the estate of A. J. Krieger, Sr., Deceased.

5. That in the administration of both of the estates it was necessary that counsel be employed and to that end Arthur Epperson, Attorney at Law, Foley, Alabama, was employed by Katherine Krieger, now deceased, to represent the estate of A. J. Krieger, Sr., Deceased and the said Arthur Epperson and Chason & Stone, Attorneys at Law, Bay Minette, Alabama, were employed to represent the estate of Katherine Krieger, Deceased. That there has been no payment of any attorneys' fees to said attorneys except one payment of \$100.00 to the said Arthur Epperson.

6. That inasmuch as all parties are before the court and represented by counsel and this court has proceeded to adjust all equities between the parties the court feels that neither the appointment of an Administrator De Bonis Non of the estate of A. J.

BOOK 317 PAGE 337

Krieger, Sr., Deceased, nor the appointment of an Administrator Ad Litem of the estate of Katherine Krieger, Deceased, is necessary and would only tend to delay this cause and impose additional expense upon the heirs at law and next of kin and thereby diminish the amount which each of them would ultimately receive from the estates of their Father and Mother.

And the Court having considered all of the above, it therefore

ORDERED, ADJUDGED and DECREED by the Circuit Court of Baldwin County, Alabama, In Equity, as follows:

1. That the instrument dated April 13, 1955, and filed for record and recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 220, pages 349-50, be, and the same is hereby, declared and held to be void and of no force and effect.

2. That Joe Krieger, Johanna K. Perez, Anna Guenther, Christine Starke, Katherine Noble, Andrew J. Krieger, Jr., Eva Horn and Elizabeth Schnatz are each the owners of an undivided one-eighth interest in and to the following described parcels of land situated in Baldwin County, Alabama, to-wit:

PARCEL A.

The Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ of SE $\frac{1}{4}$) of Section 22, Township 7 South, Range 6 East.

PARCEL B.

The Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ of SE $\frac{1}{4}$) of Section 22, Township 7 South, Range 6 East.

PARCEL C.

Beginning at the Northwest Corner of the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section 27, Township 7 South, Range 6 East, run thence East 330 feet, South 330 feet, West 330 feet, and North 330 feet to the point of beginning, containing 2 $\frac{1}{2}$ acres except the part thereof used for a public road.

PARCEL D.

All that part of the Northeast Quarter of the North-

BOOK 317 PAGE 338

east Quarter (NE $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section 27, Township 7 South, Range 6 East lying South of the Foley-Lillian Highway as it is now located, save and except the Northwest Quarter of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$) of said Section 27, Township 7 South, Range 6 East.

3. That the contract between the Complainant Joe Krieger and his late Father, A. J. Krieger, Sr., Deceased, should be specifically enforced and to that end the Respondents Andrew J. Krieger, Jr. and Eva Horn should, and they are hereby ordered and directed to, convey to the said Joe Krieger all of their right, title and interest in and to said property as heirs at law and next of kin of A. J. Krieger, Sr., Deceased, and Katherine Krieger, Deceased, upon the payment to each of them of the sum of \$287.50 by the Complainant Joe Krieger, and upon their failure to do so within thirty days from the rendition of this decree, that the Register of this Court be, and she is hereby, authorized and directed to convey all of said interests of said Respondents to the said Joe Krieger, upon his depositing said amounts in court for said Respondents.

4. That Joe Krieger and Johanna K. Perez, as Co-Administrators of the estate of Katherine Krieger, Deceased, be, and they are hereby, authorized and directed to pay to Arthur Epperson and Chason & Stone, as attorneys for said estate the sum of \$1,650.00, which sum this Court finds to be a reasonable attorneys' fee for the services rendered by said attorneys after giving due consideration to the prior payment to the said Arthur Epperson of \$100.00.

5. That the Complainants Joe Krieger and Johanna K. Perez are entitled to a commission for their services as Co-Administrators in the amount of \$645.00 and they are hereby authorized and directed to pay said sum to themselves jointly.

6. That upon the payment of all sums herein directed to be paid together with the costs of this proceeding, which are hereby taxed against the estate, the said Joe Krieger and Johanna K. Perez are hereby ordered and directed to pay, in equal shares, the remaining funds in said estates to the heirs at law and next of kin; and that upon the payment of the same that they and the surety on their bond be relieved of all further liability in the

premises and forever discharged.

Done this the 9th day of May, 1962.

BOOK 317 PAGE 340

Hubert H. Stone
Circuit Judge

I, Alice J. Duck, Register of the Circuit Court of Baldwin County, Alabama, do hereby certify that the foregoing is a correct copy of the original decree rendered by the Judge of the Circuit Court in above stated cause, which said decree is on file and enrolled in my office.

WITNESS MY HAND AND SEAL THIS THE 9 day of May, 1962

Alice J. Duck
Register of Circuit Court, in Equity



STATE OF ALABAMA,
BALDWIN COUNTY

I certify that this instrument was filed on

MAY 10 1962 9:30 AM

and that no tax was collected. Recorded in Deed

Book 317
Page 335-40 W. B. Stewart
Judge of Probate

By 75

Handwritten notes:
b-420
9

JAMES A. BRICE
ATTORNEY AT LAW
FOLEY, ALABAMA
June 9, 1959

POST OFFICE Box 298

WHITEHALL 3-3601

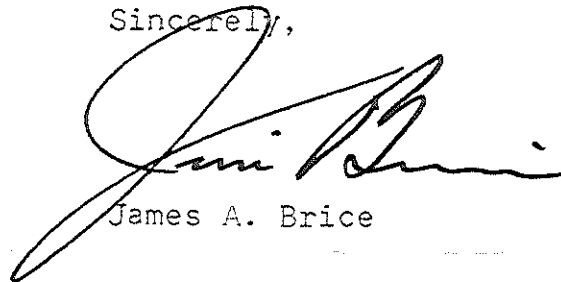
Mrs. Alice J. Duck
Circuit Clerk of Probate Court
Bay Minette, Alabama

Dear Mrs. Duck:

Please make record of James A. Brice and Richard C. Lacey as attorneys of Record for Elizabeth Schnatz, an interested party in the Matter of the Estate of Kathrine Krieger, deceased.

Thank you.

Sincerely,



James A. Brice

FILED

JAB/cc

6-11-59

ALICE J. DUCK, CLERK
REGISTER

COMMISSION TO TAKE DEPOSITIONS

THE STATE OF ALABAMA
Baldwin County

Circuit Court

TO: Dorothy Chason

KNOW YE: That we, having full faith in your prudence and competency, have appointed you Commissioner, and by these presents do authorize you, as such time and place as you may appoint, to call before you and examine Eva Horn and Betty Schnatz

a witness in behalf of Respondents and Cross Complainants in a cause pending in our Circuit Court in Baldwin County, of said State, wherein

Andrew J. Krieger, Jr. and Eva Horn are Respondents and Cross Complainants

, Complainant

and

Joe Krieger, individually and as Co-Administrator of the Estate of Andrew J. Krieger, Sr. Deceased, et al are Complainants and Cross Respondents

Respondent

on oath, to be by you administered, upon to take and certify the deposition of the witness and return the same to our Court, with all convenient speed, under your hand.

Witness 18 day of

Nov

, 1950.

Alvin J. ...
Register.

Commissioner's Fee, \$

Witness' Fees, \$

No. 4407

THE STATE OF ALABAMA
Baldwin County

CIRCUIT COURT

Krueger

VS. Complainant

Defendant

COMMISSION TO TAKE DEPOSITION

COMMISSIONER:

WITNESSES:

CECIL G. CHASON

**ATTORNEY-AT-LAW
FOLEY, ALABAMA**

February 15, 1961

Mrs. Alice J. Duck, Register
Circuit Court of Baldwin County
Bay Minette, Alabama

Dear Mrs. Duck:

I am enclosing herewith testimony of Eva Horn and Betty Schnatz
in the estate proceeding of Andrew J. Krieger and Katherine Krieger,
deceased.

Yours very truly,



Cecil G. Chason

CGC:bms

JOE KRIEGER, Individually,
etc.,

Complainant,

vs.

ANDREW J. KRIEGER, JR. and
EVA HORN,

Respondents.

¶
¶
¶
¶
¶
¶
¶

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

~~5917~~ 4407

TO THE HONORABLE ALICE J. DUCK, REGISTER OF THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA, IN EQUITY:

Comes your Petitioner, the undersigned Joe Krieger, and re-
spectively represents and shows as follows:

1. That he did, in full compliance with the terms of the
decree of this Honorable Court made and entered on May 9, 1962,
pay to and deposit with the Register of this Court the sum of
\$287.50 each for Andrew J. Krieger, Jr. and Eva Horn. That the
said Eva Horn has returned the check payable to her and the same
has never been cashed; that the check to Andrew J. Krieger, Jr.
has not been returned but said check has never been cashed. That
because of the failure or refusal of the said Andred J. Krieger
Jr. and Eva Horn to accept the money ordered to be paid to them
by the undersigned he has had to carry in his bank account the
total of said checks and the existence of these two unpaid checks
outstanding against his account have caused confusion in his ac-
count and uncertainty as to its status. That your Complainant
has this day, because of the above, stopped payment on both of
these checks and does hereby and herewith deposit with the Regis-
ter of this Court his check in the amount of \$575.00 so that he
will have fully complied with the terms and provisions of said
final decree of May 9, 1962.

2. That your Complainant has received the deed to the pro-
perty described in said final decree and the same has been placed

51
Vol ~~51~~ P. ~~389A~~ 180-c

of record in the Office of the Judge of Probate of Baldwin County, Alabama.

WHEREFORE, the premises considered, your Complainant respectfully prays that upon the filing of this petition and the deposit with the Register of this Court of the check hereinabove referred to payable to her, that he be relieved of any further responsibility with respect to the payment of the sums heretofore ordered to be paid by him to the said Andrew J. Krieger, Jr. and Eva Horn.

Respectfully submitted,

Joe Krieger

Joe Krieger

Sworn to and subscribed before me on this the 16th day of December, 1964.

Norborne C. Stone, Jr.

Notary Public, Baldwin County, Alabama

C E R T I F I C A T E

STATE OF ALABAMA

BALDWIN COUNTY

I, Norborne C. Stone, Jr., one of the Solicitors of Record for the above named Joe Krieger, do hereby certify that I have this day mailed a copy of the foregoing petition to the Hon. Cecil G. Chason, Attorney at Law, Foley, Alabama, the Solicitor of Record for the Respondent Eva Horn, and to the Hon. Tolbert M. Brantley, Attorney at Law, Bay Minette, Alabama, Solicitor of Record for the Respondent Andrew J. Krieger, Jr., by United States Mail, postage prepaid and properly addressed to them at their offices at Foley and Bay Minette, respectively.

Dated this 17th day of December, 1964

FILED

DEC 17 1964

ALICE L. DUCK

CLERK REGISTER

51
180-D
Vol-18 *P-287B*
Norborne C. Stone, Jr.

Norborne C. Stone, Jr.

CECIL G. CHASON

ATTORNEY-AT-LAW
FOLEY, ALABAMA

August 25, 1959

Mr. Tolbert Brantley
Wilters and Brantley, Attorneys
Bay Minette, Alabama

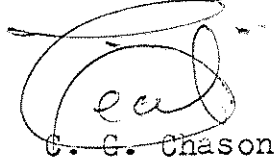
Dear Tolbert:

I am enclosing the Petition for the sale and distribution of the real estate in the Krieger estate which I have re-drafted, omitting therefrom any reference to personalty. If you find it in order, please sign and file with Mrs. Duck, seeing that she attaches summons and requires personal service against Joe Krieger and Betty Schnatz, and since the others have probably returned to their homes, service by registered mail on them.

attached

I note that I still have in my file the order sustaining our original demurrer which should be a part of the Court file. You can have Mrs. Duck date it as you desire, but prior to our hearings.

Yours very truly,


C. G. Chason

CGC:dc

Enclosures

*Tolbert
one copy for
you*

1. Brantley sign
2. Add summons

JOE KRIEGER and JOHANNA
K. PEREZ, as Co-Administra-
tors of the Estate of
Katherine Krieger, Deceased,
JOE KRIEGER, JOHANNA K.
PEREZ, ANNA GUENTHER, CHRIS-
TINE STARKE and KATHERINE
NOBLE,

Complainants,

Vs.

ANDREW J. KRIEGER, JR., EVA
HORN and ELIZABETH SCHNATZ,

Respondents,

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY

CASE NO. 4407

DEMURRER

Comes now the Respondent, Andrew J. Krieger, Jr., and
demurs to the Complainant's Amended Bill of Complaint and
for grounds therefore says:

1.

That it fails to state a cause of action.

FILED
SEP 27 1961
ALICE L. DICK, CLERK
REGISTER

WILTERS & BRANTLEY

BY: Robert M Brantley

JOE KRIEGER, et al, X IN THE CIRCUIT COURT OF
 X BALDWIN COUNTY, ALABAMA
 X
 X IN EQUITY
Vs. X
ANDREW J. KRIEGER, JR., et al, X CASE NO. 4407
 X
 X Respondents. X

Comes now the Respondents, Andrew J. Krieger, Jr., Eva Horn and Elizabeth Schnatz, and files the following additional demurs to the Complainant's Amended Bill of Complaint:

1.

Section 3 of the Complaint is ambiguous in this, that it avers first that the consideration of the execution of the instrument to Katherine Krieger was love and affection for their mother, and later in this Section the Bill states that there is a failure of consideration within, showing wherein the consideration failed.

2.

In Section 5 of this Complaint, the Complainant, Joe Krieger, attempts to set up a resulting trust. The allegations contained therein are not sufficient as a basis for granting a resulting trust.

3.

Joe Krieger fails in Section 5 to show that he paid for the property he seeks to recover either before or at the time the deed was made to Andrew J. Krieger. Hence, a resulting trust cannot be created.

4.

For ought appearing, the resulting trust set up in Section 5 is barred by the Statute of Limitations.

5.

For aught appearing, the resulting trust set up in Section 5 is barred by the Statute of Fraud.

The following demurs are directed to the Bill of Complaint as a whole.

6.

On the face of the Bill of Complaint, it is shown that Joe Krieger is an Administrator of the Estate of Katherine Krieger, and hence, represents all her heirs in a fiduciary capacity. In Section 5 of the Bill of Complaint, he sets up a claim against the heirs of Katherine Krieger, and he is barred by the rules of equity and good conscience from doing this.

7.

In this Bill of Complaint, the Complainant seeks to settle the administration of two estates to set up and create a resulting trust in himself individually against the other heirs of the Estate, and seeks to have a declaratory judgment created. This makes the Bill of Complaint multifarious.

8.

The Complainant, in this Bill, has joined distinct and independent matters, thereby confounding them. The matter of the resulting trust, and the settlement of the Estate of Katherine Krieger are two distinct and unconnected matters, hence, they should not be joined in one suit. The matters which the Complainant seeks to have the Court adjudicate are distinct, independent, from one another, and unrelated, hence they should not be joined in this suit.

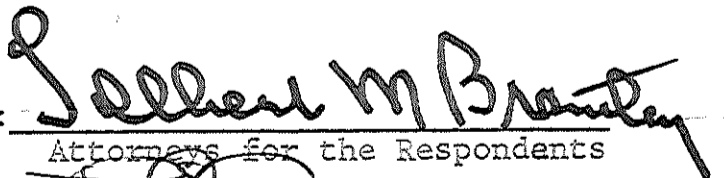
WILTERS & BRANTLEY

FILED

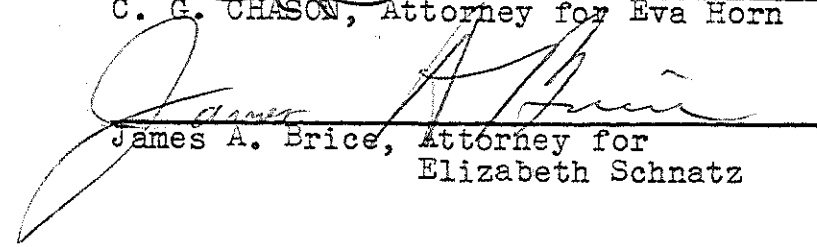
JAN 26 1962

ALICE J. DUCK, CLERK
REGISTER

BY:


Attorneys for the Respondents


C. G. CHASON, Attorney for Eva Horn


James A. Brice, Attorney for
Elizabeth Schnatz

4407

'8

JOE KRIEGER, et al,

Complainants,

Vs.

ANDREW J. KRIEGER, JR., et al,

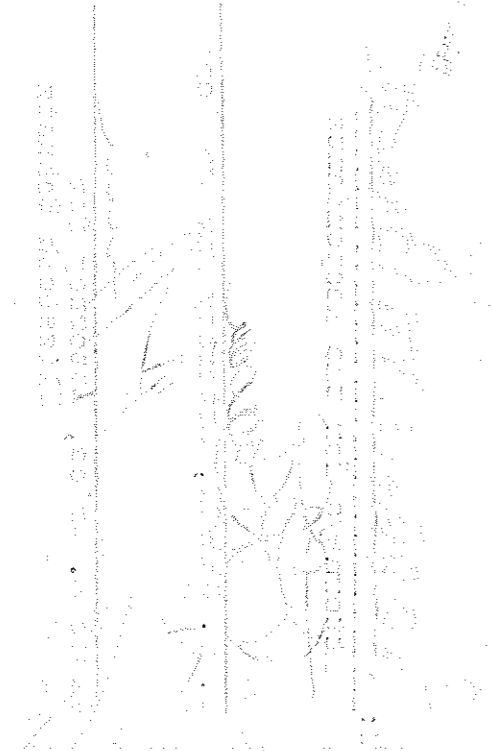
Respondents

Additional demurs to the
Complainant's Amended Bill
of Complaint.

FILED

JAN 26 1962

ALICE J. DUCK, CLERK REGISTER



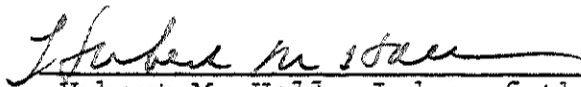
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Faint, mostly illegible text from the reverse side of the page, appearing as bleed-through.

JOE KRIEGER, et al, X
Complainants, X IN THE CIRCUIT COURT OF
Vs. X BALDWIN COUNTY, ALABAMA
ANDREW J. KRIEGER, JR., et al, X IN EQUITY
Respondents. X CASE NO. 4407

Demurrers having been filed in this cause by the Respondent, Andrew J. Krieger, Jr., on the 27th day of September, 1961, and by the Respondents, Andrew J. Krieger, Jr., Eva Horn and Elizabeth Schmatz, on the 26th day of January, 1962, to the Amended Bill of Complaint filed on August 21, 1961, and argued in open court, the Court being of the opinion that said Demurrers should be over-ruled, it is, therefore, ORDERED, ADJUDGED and DECREED by the Court that the said Demurrers be, and they are, hereby over-ruled.

Done this the 16th day of April, 1962.



Hubert M. Hall, Judge of the 28th Judicial Circuit Court, Baldwin County, Alabama

JOE KRIEGER, et al,	X	
Complainants,	X	IN THE CIRCUIT COURT OF
Vs.	X	BALDWIN COUNTY, ALABAMA
ANDREW J. KRIEGER, JR.,	X	IN EQUITY
et al,	X	
Respondents.	X	CASE NO. 4407

Comes now the Respondent, Andrew J. Krieger, Jr., and for answer to the Complainants' Amended Complaint filed in this cause August 21, 1961 says as follows:

1.

He admits the allegations of Section 1.

2.

That he admits the allegations of Section 2.

3.

For answer to Section 3 of this amended complaint, the Respondent says, he admits the allegations of the first paragraph thereof, but emphatically denies all other allegations contained therein, and says further, that all of the children of Katherine Krieger, except Eva Horn, gave Katherine Krieger a deed to the property involved in this litigation. That there was no agreement that this was to be a conditional deed.

4.

For answer to Section 4, the Respondent says that the Complainants and Respondents own the property described in this complaint in the following fractional parts:

Eva Horn owns a $23 \frac{1}{8}$ part of the lands described as Parcels A, B, and C. That each of the other parties to this suit own an undivided $15 \frac{1}{28}$ part. That Eva Horn owns an undivided $\frac{16}{64}$ part of that land described as Parcel D. That each of the other parties to this suit own an undivided $\frac{7}{64}$ part.

5.

The Respondent denies the allegations of this section of the Complaint, and demands strict proof of the same. He says that, assuming the allegations set out herein are true, the Complainants cannot recover under this section on the Bill of Complaint for it is in violation of Statutes of Fraud.

6.

The Respondent denies the allegations of Section 6 of this Complaint, and demands strict proof of the same.

For answer to so much of this section as refers to special and extraordinary services, Respondent says that most of this special and extraordinary service has come about because Joe Krieger is attempting to claim title to the eighty (80) acres of land described in Section 5, and says further that he should not be allowed to recover for special and extraordinary services for working and maintaining a pecan orchard, because it is clearly shown from his statement of account that the total income received from the sale of pecans was \$1,773.67. That he has paid out \$1,172.05 in maintaining this orchard, and that part of it was paid to himself. Respondent says further that the extra hearing that was had in this cause was brought on the Complaint by his own doing. That by injecting into this administration of the estate a suit to create a trust, the Complaint has confounded the issues and caused extra hearings which would not have otherwise been necessary, hence he should not be allowed to recover.

7.

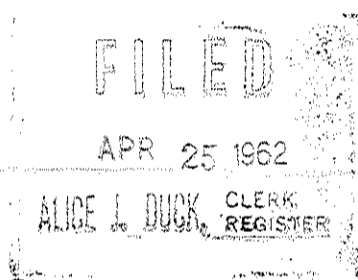
For answer to Section 7, the Respondent says that there is a controversy between the Complainants, Joe Krieger, and Johanna K. Perez, and the Respondents in this cause.

8.

For answer to this section, the Respondent, Andrew J. Krieger, Jr., says that he feels that Joe Krieger, as administrator of his parents estate, should not be entitled to prosecute a claim for lands belonging to the estate in that capacity, nor should he be allowed to do it in this cause of action.

WILTERS & BRANTLEY

BY: *J. Oliver M. Brantley*
Attorney for the Respondent,
Andrew J. Krieger, Jr.



JOE KRIEGER and JOHANNA
 K. PEREZ, as Co-Administra-
 tors of the Estate of
 Katherine Krieger, Deceased
 JOE KRIEGER, JOHANNA K.
 PEREZ, ANNA GUENTHER, CHRIS-
 TINE STARKE and KATHERINE
 NOBLE,
 Complainants,
 vs
 ANDREW. J. KRIEGER, JR., EVA
 HORN and ELIZABETH SCHNATZ,
 Respondents

IN THE CIRCUIT COURT OF
 BALDWIN COUNTY, ALABAMA
 IN EQUITY NO. 4407

ANSWER

Comes the Respondent, Eva Horn, and for answer to the Bill of Complaint as last amended, shows as follows:

1. She admits the allegations of paragraph One.
2. She admits the allegations of paragraph Two.
3. She admits that Letters of Administration on the Estate of A. J. Krieger were issued to his widow, Katherine Krieger, and admits that the administration has been removed to this Court, and further admits that a conveyance was made by all of the heirs-at-law and next of kin of Andrew J. Krieger, Sr., deceased, to Katherine Krieger, now deceased, except the Respondent, Eva Horn, which instrument was executed, delivered and recorded by the said heirs and resulted in 15/16ths ownership in Katherine Krieger as she already owned an undivided one-half interest. The remaining material allegations of paragraph Three are denied and strict proof thereof demanded.
4. That she is informed and believes that A. J. Krieger owned an undivided one-half interest in the property described in paragraph Four at the time of his death, and that Katherine Krieger owned an undivided one-half interest, and shows that the ownership of Parcels A, B, C, and D of paragraph Four is as follows: Eva Horn 17.96875 percent and the remaining heirs 11.71875 per cent each. All of the other allegations of paragraph Four not herein specifically admitted are denied and strict proof thereof demanded.
5. Respondent Eva Horn admits that A. J. Krieger at the time of his death was the owner of property described as the South

half of the Northeast Quarter of Section 27, Township 7 South, Range 6 East, Baldwin County, Alabama, and further shows that the Complainant, Joe Krieger is estopped from claiming said property as he made a conveyance of any interest he might have had to his mother, Katherine Krieger, and that this voluntary execution of the instrument to his mother would now prevent him from alleging that the property was being held for him in trust and for his benefit. The Respondent, Eva Horn, shows that she is informed that conveyance has been made to the Complainant, Joe Krieger, for this property by all of the heirs except she and Andrew J. Krieger, Jr. who have refused to sell their interest to him for the price offered and, therefore that ownership of this property is now 17.96875 per cent belonging to her, 70.3125 per cent belonging to Joe Krieger, and 11.71875 per cent belonging to Andrew J. Krieger, Jr. Respondent denies all other material allegations of paragraph Five not herein specifically admitted and demands strict proof thereof and further that not only is no sum due to Joe Krieger for clearing, etc., but that he, in fact, owes rent to the estate and money for the sale of timber, etc.

6. Respondent denies paragraph Six and demands strict proof thereof and strict proof of all items of account both as to income and as to disbursements.

7. The Respondent denies that there is any justifiable controversy, and further denies the right of Joe Krieger and Johanna Perez as administrators of the estate to file any proceeding at law or equity in order to attempt to gain advantage in ownership of property over the persons entitled thereto, and further alleges that any trust would be in violation of the statute of frauds, and therefore unenforcible, and that no trust existed, and this proceeding, as it concerns an attempt to vest title out of the heirs, is improper and should not be heard when filed by the administrators

8. Respondent admits that there is a question of propriety of one of the administrators of the estate in asserting a personal claim of this nature, and should there be any material allegations in this paragraph, denies each and every one other than as admitted, and demands strict proof thereof.

c. g. c.

174

James A. Davis
Atty for Betty Schuatz

Eva Horn
Attorney for Respondent, Eva Horn

JOE KRIEGER, ET AL.,)	
	)	IN THE
Complainants,)	
	)	CIRCUIT COURT OF BALDWIN
VS.)	
	)	COUNTY, ALABAMA.
ANDREW J. KRIEGER, JR., AND)	
EVA HORN,	)	IN EQUITY
)	
Respondents.	)	NO. 4407

The Complainant in the above styled cause having filed a separate additional amended petition setting out therein that certain personalty belonging to the estate of Andrew J. Krieger and Katherine Krieger can not be equitably divided among the heirs, and petitioning the Court for authority to sell said personalty, being all personalty listed in the inventory heretofore filed, not however, considering an alleged contract of purchase of real estate as personalty to be sold, the parties appeared in open Court, the Respondents being present and represented by their Solicitors and said Respondents acting by and through their Solicitors having accepted service of the amended complaint and being agreeable to said of said personalty as set out in the final inventory, and the matter having been by the Court considered, it is

THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the co-administrators be and they are hereby authorized and directed to sell said listed items of personalty at public auction at the place where said property is located at Lillian Alabama, for cash, after giving notice of sale by suitable advertisement in the Foley Onlooker, a newspaper published in Foley, Alabama, for two consecutive weeks prior to the date of sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that thereafter an amendment be made to the final accounting including therein receipts and expenses connected with said sale.

Done this the 24th day of October, 1959.

FILED

Oct 24 1959

ALICE J. DUCK, CLERK
REGISTER

Robert M. Wall

JUDGE

JOE KRIEGER, et al)	
Complainants	)	IN THE CIRCUIT COURT OF
)	
VS.	)	BALDWIN COUNTY, ALABAMA
)	
Andrew J. Krieger, Jr.	)	IN EQUITY
and Eva Horn,)	
Respondents	)	No. <u>4467</u>

In the Matter of the Estate of Andrew J. Krieger, Dec.
Inventory of Personal
Property

To the Honorable Hubert M. Hall, Judge of the Circuit Court.

The following is a full inventory of the goods and chattels, all debts and demands accruing to the deceased, Andrew J. Krieger and all money, books, papers and evidence of debts of the said deceased as of the date of his death, i.e. January 3, 1951.

ITEM NUMBER (A) GOODS AND CHATTELS

1. Truck, 1½ ton 1938 Ford
2. Hay rake, 10 foot
3. Tractor, 1935 Oliver 70
4. Plow, 2 bottom 16 inch
5. Disc.
6. Cultivator
7. Hay mower, 5 foot
8. Weeder
9. Irish Potatoe Planter
10. Harrow, spring tooth 6 foot
11. Corn Planter, 2 row Moline
12. Wagon
13. Duster 6 row

(B) CASH

1. State Bank of Elberta, Elberta, Ala. \$520.02

(C) MORTGAGES & CONTRACTS

1. Mortgage, Eva & August Horn \$5000.00
2. Sales Contract Joseph Krieger on 80 acres;
(\$2500.00 less \$200.00 paid to decedant) \$2300.00

Johanna Krieger (Pres)
Co-Administratrix De Bonis Non.

State of Alabama, Baldwin County

Johanna Krieger Prez Co-Administratrix De Bonis Non of the Estate of Andrew J. Krieger, Deceased, being duly sworn, makes oath, that the foregoing inventory, made by her is full and complete as to the goods, chattels, debts and money, which were of the deceased at the time of his death, so far as the same has come to her knowledge.

Johanna Krieger (Pres)
Subscribed and sworn to before me this 22 day of Aug., 1959.

JOE KRIEGER, et al)
 Complainants)
 VS.)
 ANDREW J. KRIEGER, JR.)
 and EVA HORN)
 RESPONDENTS)

IN THE CIRCUIT COURT OF
 BALDWIN COUNTY, ALABAMA
 IN EQUITY

No. _____

In the Matter of the Estate of Andrew J. Krieger, Dec.

Statement of Account

To: The Honorable Hubert M. Hall, Judge of the Circuit Court.

The undersigned Co-Administratrix of the Estate of Andrew J. Krieger, Deceased, would respectfully submit to the Court the following report of the acts of the administratrix of the said estate and the Co-Administratrix De Bonis Non and the CO-Administratrix of the said estate from the date of the death of the said Andrew J. Krieger to August 24, 1959 and charges the Administratrix, the Co-Administratrix De Bonis Non and Administrator De Bonis Non as follows, to-wit:

Item No.	Date	Item of Receipt	Amount
1.	JAN. 3, 1959	Cash (state Bank Elberta)	\$520.02
2.	May 18, 1951	Mortgage Eva Horn	\$ 5302.10
3.		Sale of Ford Truck	\$ 400.00
4.		Sale of Oliver Tractor, 16 inch plow, disc and cultivator (group)	\$ 550.00
Total amount of Money Received & Collected			\$ 6772.12

CONTRA

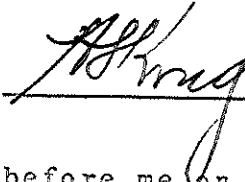
AND ASKS THAT the Administratrix and the Co-Administratrix De Bonis Non and Co-Administrator De Bonis Non of the said estate be credited with the following payments, as per vouchers herewith submitted:

Date	For What Paid out	Amount
1. Jan. 10, 1951	Riveria Utilities	\$6.10
2. Jan. 11, 1951	Vault	\$102.00
3. Jan 5, 1951	Flowers for Funeral	\$ 70.00
4. Feb. 23, 1951	Funeral Expenses	\$470.42
5.	Tombstone	
6.	Administrators Bonds- April 20, 27, 1951	\$48.00
	June 2, 1952	\$48.00
	April 15, 1954	\$48.00
	June 7, 1955	\$48.00
	April 16, 1956	\$48.00
7.	Dr. W. C. Holmes Medical claim Aug 21, 1959.	\$356.00
Total amount paid out		\$1244.52

STATE OF ALABAMA

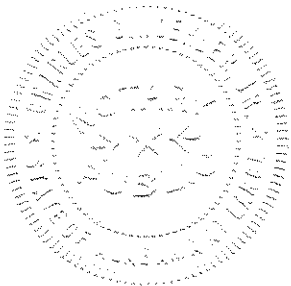
BALDWIN COUNTY

I, the undersigned officer of the State Bank of Elberta, Elberta, Alabama, hereby certify that on the 3rd day of January, 1951, the balance in the account of A. J. Krieger with the State Bank of Elberta, was the sum of \$520.02.


_____ Pres.

Sworn to and subscribed before me on this the 20th day of August, 1959.


_____ MY COMMISSION EXPIRES FEBRUARY 12, 1963



RECAPITULATION

Total Amount Recieved \$6772.12

Total Amount Paid Out \$1244.52

Balance ~~XXXXXXXX~~ \$5527.60

Johanna Krieger (Perez)
Co-Administratrix De Bonis Non

STATE OF ALABAMA

BALDWIN COUNTY

Before me Hubert M. Hall, Judge of the Circuit Court of said County, personally appeared Johanna Krieger Perez, Co-Administratrix ~~xfxkxk~~ De Bonis Non of the Estate of Andrew J. Krieger, Deceased, who being duly sworn, makes oath that the foregoing account current is a full and correct statement of all dealings and transactions and all monies and effects and paid outs by the Administratrix or the Co-administratrix De Bonis Non and Co-Administrator De Bonis Non of the said estate and that they ahve not used any of the funds for their own benefit.

Johanna Krieger (Perez)
Joel Krieger

Subscribed and sworn to before me this the 24th day of August, 1959.

Judge of the Circuit Court

JOE KRIEGER, ET AL,)
 Complainants)
 VS)
 ANDREW J. KRIEGER, JR.)
 and EVA HORN)
 Respondents)

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

In the Matter of the Estate of Andrew J. Krieger, Dec.
 Final Inventory of
 Personal Property

To the Honorable Hubert M. Hall, Judge of the CIRCUIT COURT:

The following is a full inventory of the goods and chattels remaining in the Estate of Andrew J. Krieger, Deceased and not disposed of by the widow and Administratrix before her decease, as of August 24, 1959:

1. Hay rake, 10 foot
2. Hay mower, 5 foot
3. Weeder
4. Harrow, Springtooth 6 foot.
5. Wagon
6. Duster, 6 row

The above items have no cash value other than for junk in the opinion of the undersigned.

The following items were disposed of by Andrew J. Krieger, Jr. with no accounting to the estate for their value.

1. Irish Potatoe Planter estimated value \$
2. Corn Planter, 2 row, Moline. estimated value \$

Johanna Krieger Perez

 Co-Administratrix De Bonis Non

STATE OF ALABAMA
 BALDWIN COUNTY

Johana Krieger Perez, CoAdministratrix of the estate of Andrew J. Krieger, Dec. being duly sworn, makes oath, that the foregoing inventory, made by her is full and complete as to the goods and chattels remaining in the estate of Andrew J. Krieger, Deceased as of August 24, 1959, so far as the same comes to her knowledge.

Johanna Krieger Perez

 Co-Administratrix De Bonis Non

Subscribed and sworn to before me this the 24th day of August, 1959.

 Circuit Judge.

FILED

Aug 24 1959

ALICE J. DUCK, CLERK
 REGISTER

Joe Krieger, et al.,	(
Complainants	)	IN THE CIRCUIT COURT OF
)	
VS.	)	BALDWIN COUNTY, ALABAMA
)	
Andrew J. Krieger, Jr.	)	IN EQUITY
and Eva Horn)	
Respondents	)	NO. <u>4407</u>

TO The Honorable Hubert M. Hall, Judge of the Circuit Court of Baldwin County, Alabama, sitting in Equity:

Comes the complainants and amends the bill of complaint heretofore filed as follows: BY substituting the following:

And adopting the latter aspects and amendments of the Original bill.
 Four

That in March of 1951, the attorney for the widow and Administratrix of the Estate of Andrew J. Krieger, deceased, prepared a conveyance of all of the real and personal property belonging to the said Andrew J. Krieger, at the time of his decease from all of the children and heirs of the said Andrew J. Krieger to Katherine Krieger, his widow. That this deed was delivered into the hands of Johanna Krieger Perez by the widow's attorney for the purpose of obtaining the execution of said instrument by all of the children and heirs of the said Andrew J. Krieger, without exception and with the condition that said conveyance would not be effective or delivered to Katherine Krieger, the widow, until the conveyance was signed by all of the heirs. That three of the heirs, Anna Guenther, Katherine Noble and Christine Starke signed said conveyance on the 27th day of March, 1951 and delivered the same back into the possession of Johanna Krieger. That Eva Horn refused to sign said conveyance at that time. That in April of 1955, the said widow, Katherine Krieger enlisted the aid of Attorney Arthur C. Epperson to secure the execution of said conveyance by the rest of the heirs. That Joe Krieger, Johanna Krieger Perez, Andrew J. Krieger, Jr and Elizabeth Schnatz then signed said conveyance on the 13th day of April, 1955 without receiving any consideration and on the condition that there was to be no effect or delivery as to said deed until such time as all of the heirs executed this conveyance. That the said Eva Horn

(continued on next page....)

(FOUR Continued.....

never executed said instrument and that the attorney for the widow, Katherine Krieger, recorded said instrument which is recorded in the office of the Judge of Probate of Baldwin County, Alabama in Deed Book 220, pages 349-350, without proper authority.

Your Complainants aver that there was no consideration for the conveyance and that there was no delivery of said conveyance to the grantee Katherine Krieger and therefore said conveyance is a nullity and void and should be removed from the Probate records of Baldwin County, Alabama, and be of no force and effect.

SEVEN

The Complainants aver that prior to the death of Andrew J. Krieger, Sr. that Joe Krieger desired to purchase lands for his individual use and after making inquiries as to buying different parcels of land in South Baldwin County, was informed by the then owner of the South Half (S $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section 27, Township 7 South, Range 6 East, Baldwin County, Alabama, that he would sell said lands for the sum of \$2500.00 cash. The said Joe Krieger then discussed the purchase of said parcel of land with the said Andrew J. Krieger, Sr. for the purpose of obtaining help in getting the money to pay the owner cash for said property. The said Andrew J. Krieger, Sr. informed the said Joe Krieger that he would purchase said lands for the said Joe Krieger and that the said Joe Krieger could give him a mortgage for the purchase price or for that part which the said Joe Krieger could not pay at that time. Upon this understanding and agreement, the said Andrew J. Krieger, Sr., through the State Bank of Elberta made arrangements for the purchase of said parcel of land and title for said parcel of land through mistake or error was conveyed to the said Andrew J. Krieger, Sr.. The said Andrew J. Krieger, Sr. upon receiving the conveyance agreed with the said Joe Krieger to convey said parcel of land to the said Joe Krieger and accepted the payment of \$200.00 from the said Joe Krieger as

(Seven Cont.)

partial payment of the purchase price on said parcel of land.

The complainants further aver that the said Joe Krieger took immediate possession of said parcel of land for his own individual use with the knowledge and consent of the said Andrew J. Krieger Sr. prior to or at the time of making the partial payment of the purchase price for said parcel of land to the said Andrew J. Krieger, Sr. and has had the continued possession of said property since that time. The complainants further aver that the said Joe Krieger upon taking possession of said lands immediately spent much time, labor and money in clearing and improving said land; that he paid \$929.25 for bulldozing and clearing said lands; that he paid \$638.00 for lime put on said lands; that he paid \$436.25 for ditching said land and that he paid \$242.25 for fence and fence post for said fencing of said land.

The complainants further aver that the said Andrew J. Krieger's Sr. health was such that he was prevented from completing his agreement to convey title to said property to the said Joe Krieger and died without making such conveyance. And the complainants aver that they each, namely, Johanna Krieger Perez, Anna Guenther, Christine Starke, Katherine Noble and Elizabeth Schnatz have conveyed their interest as heirs of Andrew J. Krieger, Deceased to the said Joe Krieger and have been paid their pro-rata share as heirs of the said Andrew J. Krieger, Deceased, of the purchase price remaining owing by the said Joe Krieger. The said Joe Krieger has offered and tendered payment to Eva Horn and Andrew J. Krieger Jr. of their pro-rata share of the unpaid purchase price for their execution of a conveyance of their interest as heirs of the said Andrew J. Krieger, Deceased in said lands but that both have refused; that the said Joe Krieger stands able, ready and willing to pay said Eva Horn and Andrew J. Krieger, Jr. their pro-rata share of the unpaid purchase price for said lands as heirs of the said Andrew J. Krieger, Deceased.

The complainants further amend their bill of complaint by adding the following:

EIGHT

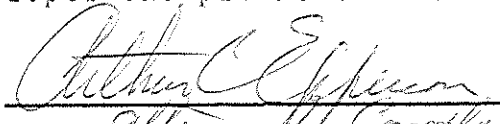
Your Co-Administratrix and Co-Administrator of the Estate of

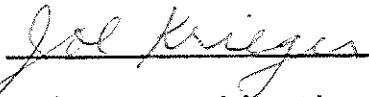
Katherine Krieger, Deceased and Co-Administratrix De Bonis Non and Co-Administrator De Bonis Non of the Estate of Andrew J. Krieger, deceased respectfully submit to the Honorable Court that subject to the Courts disposal of the foregoing aspects set out in the bill of complaint that both estates are in condition to be immediately closed and herewith submits verified inventories of each of the estates and sworn to statements of accounts as between the Co-Administratrix and Co-Admininstrtor and the Estate of Katherine Krieger and the Co. Administratrix De Bonis Non and the Co-administrator De Bonis Non of the Estate of Andrew J. Krieger, Deceased.

Your Complainants aver that all of the heirs are over the age of twenty one years and all are of sound mind.

Your Co-Administrators aver that they are entitled to compensation for thier services in and about the affairs of the two estates and that they have employed the services of Arthur C. Epperson as thier attorney with respect to the administration of the estates and that he was employed by Katherine Krieger before her death with respect to the administration of the Estate of Andrew J. Krieger, Deceased, and with respect to her personal affairs for all of which the said attorney has received the amount of \$100.00 on account and the Co-Administrators have received nothing for their personal services. The said Co-Administrators aver that said attorney is entitled to additional compensation for his services. The petitioners prays that this Honorable Court will determine and allow a reasonable fee for the Co-Administrators and for the said attorney for his services in connction with the estates; that the Court shall pass and allow the accounts as herwith submitted; and that the Court grant any and all other relief as may be meet and proper the premises considered.

State of Alabama
Baldwin County


Attorney for Complainant
Before me the undersigned authority personally appeared Joe Krieger, who first being duly sworn, doth depose and say on oath: that he is one of the complainants in the foregoing causes of action that he known of his own personal knowledge of the facts alledged therein and that such averments and allegations contained therein are true and correct.


Sworn to and subscribed before me this the 24th day of August, 1959.

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, that we, EVA HORN, JOHNNA KRIEGER, ANDREW J. KRIEGER JR., KATHERINE NOBLE, ANNA GUENTHER, ELIZABETH SCHNATZ, JOE KRIEGER and CHRISTINE STARKE, being the sole and only surviving heirs of Andrew J. Krieger, Sr., deceased, except Katherine Krieger, the Grantee herein, Grantors, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to us in hand paid by KATHERINE KRIEGER, the Grantee, the receipt of which is hereby acknowledged, do hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, SET OVER, ASSIGN AND DELIVER unto the Grantee, all the real and personal property, chattels, cash, bonds and securities owned by the said Andrew J. Krieger, Sr., at the time of his death.

TO HAVE AND TO HOLD unto the Grantee, her heirs and assigns forever.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the 13th day of April, 1955.

(SEAL)

JOHNNA KREIGER _____ (SEAL)

ANDREW J KREIGER, JR. _____ (SEAL)

KATHERINE NOBLE _____ (SEAL)

ANNA GUENTHER _____ (SEAL)

CHRISTINE STARKE _____ (SEAL)

JOE KREIGER _____ (SEAL)

ELIZABETH SCHNATZ _____ (SEAL)

STATE OF ALABAMA, BALDWIN COUNTY
Filed 4-19-55 10:30 a. m.
Recorded Deed Book 220 page 349-50
and I certify that the following
Privilege Tax has been paid.
Deed Tax _____ 50
Mortgage Tax _____
M. R. Stuart
Judge of Probate

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, That we Johanna Krieger Perez, Eva Krieger Horn, Katherine Krieger Noble, Christine Krieger Starke, Anna Krieger Guenther, non residents of the State of Alabama, Andrew J. Krieger, Elizabeth Krieger Schnatz and her husband Pete Schnatz, GRANTORS, for and in consideration of the sum of Ten Dollars and other good and valuable considerations to us in hand paid by Joseph Krieger, GRANTEE, the receipt whereof is upon the delivery of these presents hereby acknowledged, have GRANTED, BARGAINED, and SOLD and by these presents do hereby GRANT, BARGAIN, SELL and CONVEY unto the said GRANTEE, his heirs and assigns the following described real property situated in the County of Baldwin, State of Alabama, to-wit:

South half (S½) of the Northeast Quarter (NE¼) of Section 27, Twonship 7 South, Range 6 East, containing 80 acres more or less.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD unto the said GRANTEE, his heirs and assigns forever, And we do covenant with the said GRANTEE, his heirs and assigns that we are lawfully seized in fee simple to the aforementioned premises that they are free from all liens and encumbrances: That we have a good right to sell and convey the same to the said GRANTEE, his heirs and assigns and that we will WARRANT and DEFEND the said premises to the said GRANTEE, his heirs and assigns against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the 14th day of September, 1957.

Johanna Krieger Perez (SEAL) Elizabeth Krieger Schnatz(SEAL)

Katherine Krieger Noble (SEAL) Pete M. Schnatz (SEAL)

Christine Krieger Starke (SEAL) _____ (SEAL)

Anna Krieger Guenther (SEAL) _____ (SEAL)

STATE OF ALABAMA
BALDWIN COUNTY

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Andrew J. Krieger and Elizabeth Krieger Schnatz and her husband Pete Schnatz, 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 said conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 14th day of September, 1957.

ARTHUR C. EPPERSON
NOTARY PUBLIC

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Johanna Krieger Perez whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of said conveyance, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 9th day of October, 1957.

WILLIAM CARLYE
NOTARY PUBLIC

STATE OF OHIO
COUNTY OF CUYAHOGA

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Katherine Krieger Noble, Christine Krieger Starke, and Anna Krieger Guenther, 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 said conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 28th day of September, 1957.

GUSTAVE A. BARNOW
NOTARY PUBLIC

STATE OF FLORIDA
COUNTY OF _____

I, the undersigned authority, a Notary Public, in and for the said County, in said State, hereby certify that Eva Krieger Horn, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of said conveyance, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the _____ day of _____, 1957.

NOTARY PUBLIC

FILED
AUG 24 1959
ALICE J. DUNN
CLERK
REGISTER

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN THE CHANCERY COURT OF BALDWIN COUNTY

To JOE KRIEGER, et al

Or To x Arthur Epperson or W. C. Stone, Solicitors of record.

Whereas, on the 6th day of June, 1962,

Andrew J. Krieger, Jr., and Eva Horn, et al

took an appeal from the decree rendered on the 9th day of May
1962, by the Circuit Court of said county, in the cause of JOE KRIEGER, et al

versus ANDREW J. KRIEGER, JR. and

EVA HORN, et al

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

Witness my hand this 7th day of June, 1962.

Alice J. ...
Register in Chancery.

70.4407

Received 7 day of June 1962
Served on 12 day of June 1962
Served a copy of the within Citation
Joe Krueger, Arthur
Epperson or N.C. Stone
Service on N.C. Stone

Joe Krueger Complainant

vs.

Andrew Krueger Respondent

CITATION OF APPEAL

IN EQUITY

TAYLOR WILKINS, Sheriff

By W. A. Lambert
om

Issued _____ day of _____, 19____

JOE KRIEGER, et al,	X	
Complainants,	X	IN THE CIRCUIT COURT OF
Vs.	X	BALDWIN COUNTY, ALABAMA
ANDREW J. KRIEGER, JR.,	X	IN EQUITY
and EVA HORN, et al,	X	CASE NO. 4407
Respondents.	X	

We the undersigned hereby acknowledge ourselves for all costs of appeal to the Supreme Court of Alabama, from the decree rendered in the above entitled cause on the 9th day of May, 1962; hereby agree to pay all costs for payment of this bond we hereby waive our rights of exemption of personal property under the constitution of the State of Alabama.

Witness our hands and seals on this the day of May, 1962.

Solomon M. Brandy (SEAL)
 G. A. Casan (SEAL)

Taken and approved this the 6 day of June, 1962.

Alice J. Welch
 Register

JOE KRIEGER, et al,

X

Complainants,

X

IN THE CIRCUIT COURT OF

Vs.

X

BALDWIN COUNTY, ALABAMA

ANDREW J. KRIEGER, JR.,
and EVA HORN, et al,

X

IN EQUITY

X

CASE NO. 4407

Respondents.

X

NOTICE OF APPEAL

Comes now the Respondents, Andrew J. Krieger, Jr., and
Eva Horn, and gives notice of appeal from the decree of the
Circuit Court of Baldwin County, Alabama, in Equity Sitting,
rendered in this cause on, to-wit: the 9th day of May, 1962.

WILLIAMS & BRANTLEY

BY:

Tolbert M. Brantley
Tolbert M. Brantley

Cecil Chason
Cecil Chason

Filed
6-6-62

Arice J. Hunk
clerk

JOE KRIEGER, et al,

Complainants,

Vs.

ANDREW J. KRIEGER, JR.,
and EVA HORN, et al,

Respondents.

X
X
X
X
X
X
X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

CASE NO. 4407

We the undersigned hereby acknowledge ourselves for all costs of appeal to the Supreme Court of Alabama, from the decree rendered in the above entitled cause on the 9th day of May, 1962; hereby agree to pay all costs for payment of this bond we hereby waive our rights of exemption of personal property under the constitution of the State of Alabama.

Witness our hands and seals on this the ___ day of May, 1962.

(SEAL)

(SEAL)

Taken and approved this the 6 day of June, 1962.

 Richard L. ...
Register

Div. No. _____

CERTIFICATE OF APPEAL. (Equity Cases.)

No. _____

JOE KRIEGER, et al.
Complainants

vs.

ANDREW J. KRIEGER, JR., and EVA HORN, ET AL,
Respondents

I, Alice J. Duck Register of the Circuit Court In Equity,
Baldwin County, Alabama, hereby certify that in the cause of
JOE KRIEGER, et al. Complainant,

vs.

ANDREW J. KRIEGER, JR., and EVA HORN, et al. Respondent,

which was tried and determined in this Court on the 9th day of
May 1962, in which there was a decree in favor of the
Complainants.

On the 6th day of June 1962 the Respondents
took an appeal to the Supreme
Court of Alabama, to be holden of and for said State.

I further certify that Respondents
filed security for cost of appeal, to the Supreme Court,
on the 6th day of June 1962, and that Tolbert M. Brantley
and C.G. Chason
are sureties on the appeal bond.

I further certify that notice of said appeal was on the _____
day of _____, 19____, served on Arthur Epperson
as attorney of record for said appellee.

Witness my hand and the seal of this Court, this the 7th day
of June, 1962

Alice J. Duck
Register of the Circuit Court In Equity of

Baldwin County, Alabama.

JOE KRIEGER, Individually,) IN THE CIRCUIT COURT OF
 JOE KRIEGER as co-administrator)
 of the Estate of Andrew J. Krieger, Sr.,) BALDWIN COUNTY, ALABAMA
 Deceased, Joe Krieger as co-adminis-)
 trator of the Estate of Katherine) IN EQUITY
 Krieger, Deceased, Johanna Krieger)
 Perez, individually, Johanna Krieger)
 Perez as co-administratrix of the)
 Estate of Andrew J. Krieger, Sr.,)
 Deceased, Johanna Krieger Perez as co-administratrix of the Estate
 of Katherine Krieger, Deceased, Anna Guenther, Christine Starke,
 Katherine Noble and Betty Schnatz, heirs of Andrew J. Krieger, Sr.,
 Deceased, and Katherine Krieger, Deceased.

COMPLAINANTS

VS.

ANDREW J. KRIEGER, JR. and
 EVA HORN

RESPONDENTS

This cause being submitted to the Court upon the sworn petition of Joe Krieger, individually, and as co-administrator of the Estate of Andrew J. Krieger, Sr., Deceased, and as co-administrator of the Estate of Katherine Krieger, Deceased, for removal of the Estates of Andrew J. Krieger, Sr., Deceased, and Katherine Krieger, Deceased, from the Probate Court of Baldwin County, Alabama to the Circuit Court of Baldwin County, Alabama.

Upon consideration thereof, it is hereby ordered, adjudged, and decreed that the Estates of Andrew J. Krieger, Sr., Deceased, and Katherine Krieger, Deceased, be removed from the said Probate Court of Baldwin County, Alabama to the Circuit Court of Baldwin County, Alabama, in Equity, forewith.

It is ordered, adjudged and decreed that a copy of this order be served upon the Honorable W. R. Stuart, Judge of the Probate Court of Baldwin County, Alabama, and a copy of this decree and a copy of the original bill of complaint be mailed by the Register of the Circuit Court of Baldwin County, Alabama, to each of the named respondents or their attorney of record.

This the 21 day of October, 1958.



 Judge of Circuit Court

JOE KRIEGER, et al,
COMPLAINANTS

VS

ANDREW J. KRIEGER, JR.,
AND EVA HORN
RESPONDENTS

∅
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∅
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∅

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

Comes now the Respondent, Andrew J. Krieger Jr., and files the following demurrers to the Complainants' Complaint:

1.

The bill fails to allege the age and residence of the parties to this suit.

2.

Section 4 of the bill is ambiguous.

3.

Section 4 of the bill is contradictory.

4.

Section 4 does not allege sufficient facts to show why the deed referred to therein is void.

5.

The allegations of Section 5 of the Complaint are but conclusions of the pleader.

6.

Section 5 of the Complaint fails to allege sufficient facts to show why the heirs would be prejudiced by Eva Horn's failure to have a consent settlement of Andrew J. Krieger's estate.

7.

Section 6 of the Complaint fails to show why Andrew J. Krieger Jr., should vacate the property described therein.

8.

The allegations of Section 6 are conclusions of the pleader.

9.

Section 7 does not show why the trust agreement referred to therein is oral or in writing.

10.

Section 7 fails to state sufficient facts on which to base a trust.

11.

There is no equity in the Bill of Complaint.

12.

There are no facts on which to base the relief sought.

13.

The bill fails to state sufficient facts on which to cancel the deed.

14.

No reason is shown in the bill of complaint why an accounting should not be had of these two estates.

15.

The Bill of Complaint has failed to allege sufficient facts on which to create or establish a trust.

Wilters & Brantley

BY:

Andrew M. Brantley
Solicitors for the Respondent
Andrew J. Krieger, Jr.

4407

JOE KRIEGER, ET AL,
COMPLAINANTS

VS

ANDREW J. KRIEGER, JR., ET AL,
RESPONDENTS

DEMURRERS

FILED
NOV 25 1958
ALICE J. DUCK, Register

JOE KRIEGER, Individually,
JOE KRIEGER, as co-administrator
of the Estate of Andrew J.
Krieger, Sr., Deceased, Joe
Krieger as co-administrator of the
Estate of Katherine Krieger,
Deceased, Johanna Krieger Perez,
Individually, Johanna Krieger
Perez, as co-administratrix of
the Estate of Andrew J. Krieger,
Sr., Deceased, Johanna Krieger
Perez, as co-administratrix of
the Estate of Katherine Krieger,
Deceased, Anna Guenther, Christine
Starke, Katherine Noble and Betty
Schnatz, Heirs of Andrew J. Krieger,
Sr., Deceased, and Katherine
Krieger, Deceased,

Complainants,

-vs-

ANDREW J. KRIEGER, JR., and
EVA HORN,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

Comes the Respondent, Eva Horn, and demurs to the Bill of Complaint heretofore filed therein, and to each paragraph and aspect thereof, separately and severally, and assigns the following separate and several grounds:

1. There is no Equity in the Bill.
2. That the Bill is vague and indefinite.
3. That the ages and conditions of the parties complainant and respondent are not shown.
4. That the Complaint is prolix.
5. That improper relief is prayed.
6. That there is a misjoinder of causes.
7. That there is a misjoinder of parties complainant.
8. That the Complaint is based on conclusions of the pleader.
9. That the exhibit referred to in said Complaint is not attached.


Attorney for Eva Horn

STATE OF ALABAMA)
BALDWIN COUNTY)

CIRCUIT COURT

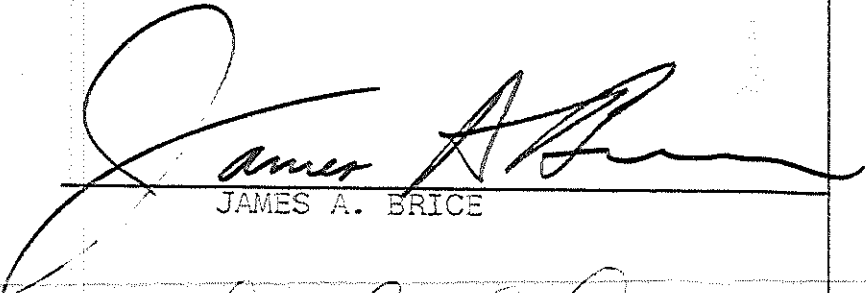
IN THE MATTER OF THE ESTATE
OF KATHRINE KRIEGER, DECEASED

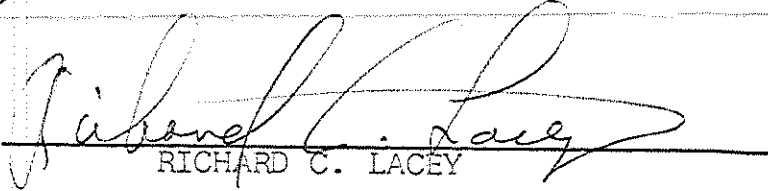
Comes Elizabeth Schantz, the daughter of Kathrine Krieger, deceased and shows that said she is an interested party in the Matter of the Estate of Kathrine Krieger, deceased, that letters of administration of said Estate were granted to Joe Krieger and Johanna Krieger Perez by the Probate Court of this County on the 25th day of July, 1957; that one year and 10 months have been consumed without any settlement of the estate or any distribution of the estate by said administrators; that said Elizabeth Schantz prays that said administrators be directed by this Honorable Court to give an accounting of the assets of the said estate and your petitioner moves that a final settlement of the said estate be required.

FILED

JUN 11 1959

ALICE I. DUCK, CLERK
REGISTER


JAMES A. BRICE


RICHARD C. LACEY

ATTORNEYS FOR ELIZABETH SCHNATZ

STATE OF ALABAMA
BALDWIN COUNTY

IN THE CIRCUIT COURT

IN THE MATTER OF THE ESTATE OF

KATHERINE KRIEGER, DECEASED

To the HONORABLE H. M. HALL, Judge of the Circuit Court:

Comes the petitioner, Elizabeth Schnatz, an interested party in the estate of Katherine Krieger, deceased, and prays that this Honorable Court strike her name from the Bill of Complaint heretofore filed in this cause and in this Court.

Done this 10 day of June 1959.

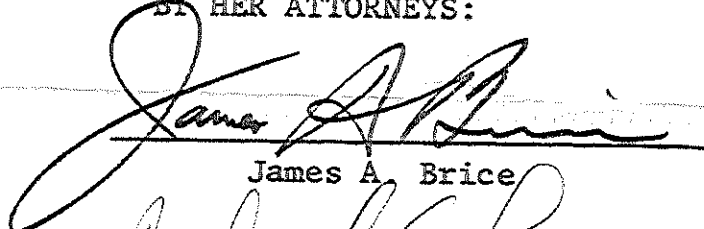
FILED

JUN 13 1959

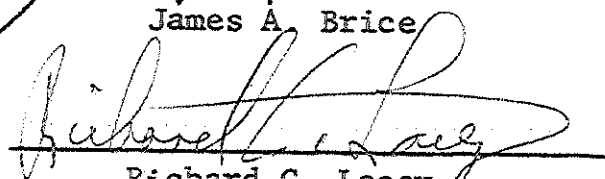
ALICE L. DUCK, CLERK
REGISTER

ELIZABETH SCHNATZ

BY HER ATTORNEYS:



James A. Brice



Richard C. Lacey

Joe Krieger, et al. complainats	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
Andrew J. Krieger, Jr and Eva Horn	)	IN EQUITY
Respondents)	

Comes the Complainats in said caus eand further amends the billof
Complaint hereto fore filed by adding the following and adopting that
part of the original bill of complaint originaly filed and not
amended and that amendmennt made to said original bill:

Nine

The complaintants aver thatthere is chattel property belonging to
eabh of the two estates that remains in said estates as part of thd
assets of the estates and that the same cannot be equitably divided
and therefore prays that the Court will order a sale of said personalty
for division among the heirs.

Arthur L. Epperson
Attorney for the complainant

Service of above accepted 8/24/59.

Eva Horn
By *[Signature]*
Her attorney

Andrew J. Krieger, Jr Elizabeth Schnatz
By *[Signature]* By *[Signature]*
His attorney Her attorney

FILED
AUG 24 1959
ALICE J. DUCK, CLERK
REGISTER

JOE KRIEGER, ET AL,

COMPLAINANTS

VS

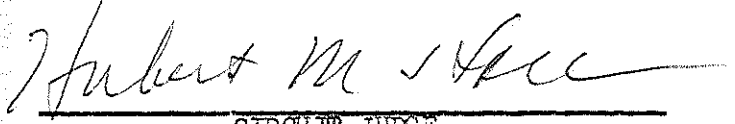
ANDREW J. KRIEGER, JR., ET AL,

RESPONDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

IN EQUITY

Demurrers having been filed in the above styled cause and argued in open court and the court being of the opinion that the said demurrers are well taken, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, by the court that the demurrers be and they are hereby sustained.



CIRCUIT JUDGE

m
12

JOE KRIEGER, ET AL,

COMPLAINANTS

VS

ANDREW J. KRIEGER, ET AL,

RESPONDENTS

DECREE SUSTAINING DEMURRERS

FILED
602-259
JULIE L. RYAN, CLERK

JOE KRIEGER, ET AL.)	
Complainants	)	IN THE CIRCUIT COURT OF
)	
VS.	)	BALDWIN COUNTY, ALABAMA
)	
ANDREW J. KRIEGER, JR.	)	IN EQUITY
AND EVA HORN)	
Respondents	)	NO. <u>4407</u>

IN RE THE MATTER OF THE ESTATE OF KATHERINE
KRIEGER, DECEASED

Inventory of Personal Property

To Honorable Hubert M. Hall, Judge of the Circuit Court:

The following is a full inventory of the goods and chattels, all debts and demands accruing to the deceased Kathereine Krieger, and all money, books, papers and evidence of debts of the said deceased as of the date of here death, i.e. May 4, 1957.

(A) GOODS AND CHATTELS

Item No.

1. Dining Set and six chairs
2. Wicker set, 3 peices, one table
3. 2 piece Living room set
4. Book case
5. Table and 2 chairs
6. 1 desk
- 7 Sewing machine
8. three dressers
- 9 Three beds, springs and mattresses
10. Refrigerator
11. Couch
12. Table
- 13 two Kitchen tables
14. Seven Chhirs
15. Butane Stove
16. Washing Machine
- 17 Eleven head of cattle.

(B) CASH

1. State Bank of Elberta, Checking account-- \$627.16
2. State Bank of Elberta, Savings Account ---\$1532.78

(C) Notes & Bonds

1. Promissory Note- Anna Guenther-- \$2000.00
2. Promissory Note- Katherine Noble-- \$1000.00
3. Eight U.S. Savings Bonds Series E (\$375.00) \$3000.00

Page Two
Inventory -- Katherine Krieger, Dec.

STATE OF ALABAMA

BALDWIN COUNTY

Joe Krieger, Co-Administrator of the Estate of Katherine Krieger, Deceased, being duly sworn makes oath, that the foregoing inventory, made by him is full and complete as to the goods and chattels, debts and monies, which were of the deceased at the time of here death, so far as the same have come to his knowledge.

Joe Krieger
Hanna Krieger (Pres)

Subscribed and sworn to before me this the 24 th day
of August, 1959.

Circuit Judge.

STATE OF ALABAMA

BALDWIN COUNTY

I, the undersigned officer of the STATE BANK OF ELBERTA, Elberta, Alabama, hereby certify that on the 4th day of May, 1957, the balance in the account of Katherine Krieger with the State Bank of Elberta, was the sum of \$1,532.78 Savings account.

Al King Pres.

Sworn to and subscribed before me this the 20th day of August, 1959.

Charles Koehler, Jr.
MY COMMISSION EXPIRES FEBRUARY 12, 1963

131-A

STATE OF ALABAMA

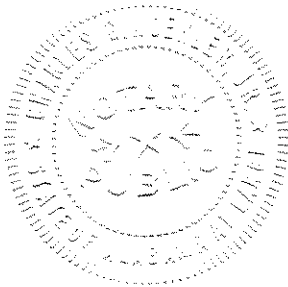
BALDWIN COUNTY

I, the undersigned officer of the State Bank of Elberta, Elberta, Alabama, hereby certify that on the 4th day of May, 1957, the balance in the checking account of Katherine Krieger with the State Bank of Elberta, was the sum of \$627.16.

Arthur J. ...

Pres.

Sworn to and subscribed before me on this the 20th day of August, 1959.



Charles W. Keeler, Jr.

MY COMMISSION EXPIRES FEBRUARY 12, 1961

131-13

JOE KRIEGER, ET AL)
 COMPLAINANTS) IN THE CIRCUIT COURT OF
 V.S.) BALDWIN COUNTY, ALABAMA
 ANDREW J. KRIEGER) IN EQUITY
 and EVA HORN)
 RESPONDENTS) NO. _____

IN RE THE MATTER OF KATHERINE KRIEGER, DECEASED,
 ESTATE.

Statement of Account

To The Honorable Hubert M. Hall, Judge of the Circuit Court:

The undersigned Co-Administrator and Co-Administratrix of the Estate of Katherine Krieger, Deceased, would respectfully submit to the Court the following report of their acts as administrators of the said estate from the date of the death of the said Katherine Krieger to August 24, 1959, and charge the Co-Administrators as follows, to-wit:

Item No.	Date	Item of Receipt	Amount
1.	May 4, 1957	Cash -Checking account	\$627.16
2.	May 4, 1957	Cash- Savings account	\$1532.78
3.	Sept. 9., 1957	Interest-Guenther note	80.00
4.	Oct. 11, 1957	Corn - Sold	31.85
5	June 3, 1957	Cattle 11head	558.17
6.	Nov. 27, 1957	Pecans	523.32
7.	Jan. 18, 1958	Oil Lease-rental	22.00
8.	July 23, 1958	Interest-Noble note	40.00
9.	August 8, 1958	Interest. Guenther note	80.00
10.	Nov. 11, 1958	Sale of Pecans	\$1006.34
11.	Jan. 14, 1959	Oil Lease Rental	22.00
12.	August 21, 1959	U. S. Bonds- Series E.	\$3228.00
13.	August 21, 1959	Guenther note & int.	\$2006.00
14.	August 21, 1959	Noble note and int.	\$1058.67
15.	August 21, 1959	Joint survivorship account with Johanna Krieger Perez in Baldwin County Savings and Loan Co. Robertsdale, Ala.	\$2347.07
Total amount of money collected			\$13,163.36

CONTRA

Your Co-Administratrix and Co-Administrator of the said estate asks that they be credited with the following payments, as per vouchers herewith submitted:

Date	For What Paid out	Amount
1. May 10, 1957	Baptist Hosp. Hospital	\$179.28
2. May 10, 1957	Moulton Drug -Drugs	\$ 69.67
3. May 10, 1957	Blood Bank, - Blood	32.00
4. May 10, 1957	Fisher Pou- Funeral	925.00
5. May 4, 1957	Dr. York- Medical	150.00
6. May 4, 1957	Rev. Leroy Josephsen -Services	35.00
7. May 4, 1957	Rev. Haygood- Services	50.00
8. May 4, 1957	Rev. Pope-- Services	50.00
9. July 20, 1957	Administrators Bond	20.00
10. July 20, 1957-	Property appraisal	35.00
11. August 2, 1957-	K. Krieger Estate Costs	11.00
12. August 24, 1957-	Baldwin Mutual Ins.	28.33
13. Sept. 11, 1957-	Blood Bank, Blood	30.00
14. Oct. 9, 1957-	Property taxes	58.82
15. June 3, 1957	Fertilizer for Pecans	181.49
16. March 7, 1958	Attorney Account estate	100.00
18. March 25, 1958	Fertilizer for pecans	205.00
19. June 16, 1958	Insurance -	19.50
20. Sept. 16, 1958	Insurance-	23.09
21. Oct. 15, 1959.	Property taxes	52.92
22. Feb. 18, 1959	Fertilizer for Pecans	150.00
23. June 19, 1959	Insurance	19.50
24. Aug. 21, 1959	Insurance	27.71
25. August 24, 1959	Estate of Andrew J. Krieger, for money deposited in the personal account of Katherine Krieger belonging to Estate of Andrew J. Krieger, \$5527.60	

TOTAL AMOUNT PAID OUT ----- \$7,980.91

RECAPITULATION

Total amount received ----- \$13,163.36

Total amount paid out----- 7,980.91

Balance \$ 5,182.45

Joe Krieger

STATE OF ALABAMA

BALDWIN COUNTY

Before me Hubert M. Hall, Judge of the Circuit Court of said County, Personally appeared Joe Krieger and Johanna Krieger Perez Co-Administrators of the Estate of Katherine Krieger, Deceased, who being duly sworn, makes oath that the foregoing account current is a full and correct statement of all dealings and transactions and all monies and effects and paid outs by the Co-administratrix and the Co-administrator of the said estate and that they have not used any of the funds for their own benefit.

Joe Krieger

Subscribed and sworn to before me this the 24th day of August, 1959.

Judge of the Circuit Court

JOE KRIEGER, ET AL.)
 Complainants)
 VS:)
 ANDREW J. KRIEGER, JR.)
 AND EVA HORN)
 Respondents)

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

IN THE MATTER OF THE ESTATE OF KATHERINE
 KRIEGER, DECEASED

Final Inventory of Personal Property

To the Honorable Hubert M. Hall, Judge of the Circuit Court:

The following is a full inventory of the goods and chattels, all debts and demands accruing to the deceased Katherine Krieger, as of the date of August 24th, 1959.

(A) GOODS AND CHATTELS

Item No.

1. Dining Set and six chairs
2. Wicker set, 3 pieces, one table
3. Two piece living room set
4. Book case
5. Table and two chairs
6. One desk
7. Sewing machine
8. Three dressers
9. Three beds, springs and mattresses
10. Refrigerator
11. Couch
12. Table
13. Two kitchen tables
14. Seven chairs
15. Butane Stove
16. Washing machine

Joe Krieger

XX

State of Alabama
 Baldwin County

Joe Krieger, Co-Administrator of the estate of Katherine Krieger, Deceased, being duly sworn makes oath, that the foregoing inventory made by him is full and complete as to the goods and chattels, debts and demands belonging to the said estate as of the 24th day of August, 1959.

Joe Krieger

Subscribed and sworn to before me this the 24th day of August, 1959.

 Circuit Judge

FILED
 AUG 24 1959
 ALICE A. DUCK, CLERK
 BALDWIN COUNTY, ALABAMA

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 63-64

To the Register of the Circuit Court, Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court In Equity of said county, in a certain cause lately pending in said Court between Andrew J. Krieger, Jr., et al., Appellant, and Joe Krieger et al., Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, adjudged, and decreed by our Supreme Court, on the 16th day of April, 1964, that said decree of said Circuit Court be in all things affirmed, and that it was further considered, ordered, adjudged, and decreed that the appellant, Andrew J. Krieger, Jr., and Eva Horn, and Tolbert M. Brantley and C. G. Chason, sureties on the appeal bond pay

the costs accruing on said appeal in this Court and in the Court below:

It is further certified that, it appearing that said parties have waived their rights of exemption under the laws of Alabama, it was ordered that execution issue accordingly.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 16th day of April, 1964

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

THE SUPREME COURT OF ALABAMA

October Term, 19⁶³⁻⁶⁴

1 Div., No. 74

Andrew J. Krieger, Jr., et al.

Appellant,

vs.

Joe Krieger et al

Appellee.

From Baldwin Circuit *Court.*

In Equity

**CERTIFICATE OF
AFFIRMANCE**

The State of Alabama,

FILED

County.

} *Filed*

this day of 1964 19

ALICE J. DUCK, CLERK
REGISTER

APR 16 1964

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1963-64

1 Div. 74

Andrew J. Krieger, Jr., et al.

v.

Joe Krieger et al.

Appeal from Baldwin Circuit Court, in Equity

PER CURIAM.

Appellees, two of whom act both in a fiduciary and individual capacity, filed their amended declaratory bill of complaint in the Equity Division of the Circuit Court of Baldwin County (a) to effect final settlement of two related estates; (b) praying the court to declare a resulting trust in eighty

2.

acres of land, or in the alternative, to decree specific performance of an alleged oral contract for the conveyance of the acreage; (c) praying the court to decree null and void a certain deed for want of authorized delivery pending execution of the instrument by all the children of the grantee.

It appears from the pleadings on file that Andrew J. Krieger and his wife, Katherine Krieger, both died intestate, leaving certain property subject to administration and the payment of debts. Mr. Krieger having died first, his wife, Katherine Krieger, was duly appointed and entered upon the duties of administratrix of her husband's estate, but never made final settlement. Declaratory petitioners, Joe Krieger and his sister, Johanna Perez, were appointed co-administrators of the estate of Mrs. Krieger and in the bill of complaint filed an account for settlement of both estates. According to the findings of the trial court, all parties to this suit agreed that the accounting was correct. No challenge is here made that the accounts were not correct.

Joe Krieger in his individual capacity alleges that he and his father entered into an oral agreement whereby the father was to purchase in his own name, at a consideration of \$2500, eighty acres of land, which he agreed to convey to his son on payment of the consideration which the father had paid. All of the children except Andrew J. Krieger and Eva Horn conveyed their interest in this land to Joe Krieger, who paid each his pro rata share of the alleged balance due on the consideration. The grantee, Joe Krieger, alleged that he paid to his father the sum of \$200 on the consideration, leaving a balance due of

3.

\$2300. The trial court in its decree ordered appellants Andrew Krieger, Jr., and Mrs. Eva Horn to execute and deliver a conveyance to appellee Joe Krieger on his payment of their pro rata share, or failing, that the Register execute a deed for them and deliver to appellee Joe Krieger.

Complainants in their individual capacities further contend that on April 13, 1955, they conditionally executed a deed to their mother, with a recited consideration of ten dollars and other good and valuable consideration, conveying to her all the real and personal property owned by the said Andrew J. Krieger, Sr. (their father), at the time of his death; that according to the agreement of the grantors said instrument was not to be valid and binding, nor to be delivered without the signature of all the children; that Eva Horn, one of the children, never joined in the execution of the instrument. The trial court, in accordance with the prayer of the complaint, declared the deed null and void.

One assignment of error made and argued by appellants is that the court erred in overruling their demurrer which contained a ground that the complaint is multifarious. This is the only ground of demurrer argued and the only one here to be considered.

We think this ground is untenable. We held in Graham v. Powell, 250 Ala. 500, 35 So. 2d 175(3), as follows:

"Although a bill is not necessarily multifarious when it seeks alternative or inconsistent reliefs growing out of the same subject matter, or founded on the same contract or transaction, or relating to the same property

between the same parties, Equity Rule 15, Code 1940, Title 7, p. 1055; *Gaines v. Stevens*, 248 Ala. 572, 28 So. 2d 789, it is multifarious when it seeks relief as to two distinct subjects having no connection with or dependence on each other. *Singer v. Singer*, 165 Ala. 144, 51 So. 755, 29 L. R. A., N. S., 819, 138 Am. St. Rep. 19, 21 Ann. Cas. 1102; *East v. East*, 80 Ala. 199, 200; *Marsh's Administrator v. Richardson's Administrator*, 49 Ala. 430, 432; *Hardin & Williams v. Swoope*, 47 Ala. 273, 276." (35 So. 2d, 176)

Under the allegations of the complaint all parties to the suit are the children and heirs of Mr. and Mrs. Krieger, with identity of interest in the estates of both parents. The question is presented as to what comprises the estate of each parent. The subjects under consideration are kindred, and not distinct, with no connection or dependence on each other. *York v. York*, 202 Ala. 306, 80 So. 371, cited by appellants, is readily distinguishable from the case at bar. There a single bill sought to remove two distinct estates from the probate court to the equity court for administration. The heirs of the two estates were different. There was no interrelation of the two estates - no connecting link or merging circumstance. Here Mrs. Krieger never made a final settlement of her husband's estate. By merging the two, settlement was facilitated as shown by the agreement of all the parties. Likewise, a determination was necessary as to the ownership of the eighty acres.

We cited with approval in Singer v. Singer, 165 Ala. 144, 51 So. 755, the case of Ferry & Akin v. Laible, 27 W. J. Eq. 146, 150, wherein we quoted therefrom as follows:

"No general rule defining what causes of action may be properly joined, and what cannot, can be laid down. The question is always one of convenience in conducting a suit, and not of principle, and is addressed to the sound discretion of the court."

This court, in Singer v. Singer, supra, held that a bill is not multifarious unless the several matters are "perfectly distinct and unconnected against the defendant."

We also held in Littleton et al. v. Littleton et al., 238 Ala. 40, 188 So. 902 (cited by appellants), as follows:

"As often observed, no universal rule in regard to multifariousness is admitted to be established to cover all possible cases. The objection relates largely to a matter of discretion, and every case must in a measure be governed by what is convenient and equitable under its peculiar facts, subject to the recognized principles of equity jurisprudence. It is, therefore, always proper to exercise this discretion in such a manner as to discourage future litigation and prevent multiplicity of suits, and never so as to do plain violence to the maxim that "courts of equity

'delight to do justice, and not by halves.'"

City of Marion v. Underwood, 231 Ala. 225,
164 So. 296; O'Neal v. Cooper, 191 Ala. 182,
67 So. 689." (188 So., 903)

In the suit at bar we further observe that it was necessary to determine the validity of the deed from all the children, except Eva Horn, to their mother.

We think the court did not err in overruling the demurrer on the ground stated and argued on this appeal. It was within its sound discretion to merge all the contentions for judicial determination. Several separate actions by such merger were prevented.

Did the trial court err in its judicial determination that Joe Krieger was the owner of the eighty acres of land pursuant to the alleged oral contract with his father? The correctness of this determination depends on (a) was there an oral agreement between Joe Krieger and his father; (b) did Joe Krieger have notorious and exclusive possession of the eighty acres so as to obviate the bar to such agreement by the statute of frauds.

Joe Krieger could not lawfully testify to such an agreement because of the so-called "dead man's statute," § 433, Title 7, Code 1940. But he produced two other witnesses who were not disqualified and who testified that Mr. Krieger, the father, purchased the land and had an agreement with his son that on payment of the consideration of \$2500 the land was to belong to the son. Joe Krieger introduced in evidence a paid

check for \$200, payable to his father and bearing his endorsement, which he (Joe) contended was in part payment of the \$2500. The respondents contended that the check was in repayment of a sum of money loaned the son by the father to purchase a truck. This testimony presented a question of fact for decision of the trial judge.

Of more serious import is whether or not Joe Krieger ever assumed exclusive and notorious possession of the lands so as to meet the demand of the statute of frauds. - § 3(5), Title 20, Code 1940.

We held in Smith v. East Alabama National Bank, 221 Ala. 322, 128 So. 600 (1-3):

"The prescriptions of the statute of frauds (Code 1923, § 8034) are not to be denied or evaded. The single exception which will withdraw a parol contract for the sale or lease of land from the operation of the statute is, when the purchase money, or a portion thereof, is paid, and the purchaser is put in possession by the seller. Heflin v. Milton, 69 Ala. 357. It may be conceded that the transaction between Brown, the president of the plaintiff bank, and the defendant, construed according to the testimony of the former, satisfied the statute in respect to the payment of part of the purchase money, which need not be made in money, but may be made in anything of money value; but we are unable on the evidence to say that defendant was

placed in possession as owner or that the evidence fairly interpreted with all permissible favor to the plaintiff, permitted of that interpretation. Defendant was therefore entitled to the affirmative charge as to the item of \$200 requested by him in due form." (128 So., 601)

Defining the character of possession, we held in Knight v. Smith, 250 Ala. 113, 33 So. 2d 242(5), that such possession must be notorious and exclusive to bring the case within the exception of the statute. There are many other decisions of like import which we will not undertake to cite.

There was much evidence touching the character of Joe Krieger's possession that presented a question of fact for determination of the trial court. The statement of Joe Krieger's testimony on this subject of possession and other contentions appearing in appellants' brief, which appellees acknowledge is correct, with one exception, is as follows:

"Joe [Krieger] testified that his brother, Andrew, cleared up part of this land; that he cleared up about 2 1/2 acres in one 40 and 5 acres in the other. He testified further that his brother helped fence part of the land; that his brother sold some timber from this land; that his daddy made Andrew J. Krieger, Jr., buy some wire from the money he received from the sale of the timber. Joe Krieger testified that his brother farmed part of this land until

his mother died; that he did not pay rent to anyone for it; that he did not get permission from Joe to farm the land. Joe's testimony further shows that his mother cut timber from this 80 acre tract of land and used the money to 'fix up the bathroom.' The testimony of Joe Krieger shows further that his mother, Katherine Krieger, was administratrix of her husband's estate and that he is the administrator of both the father and mother's estate. It shows further that the ditching done on this land was done after his mother's death; that the liming was done before and after his mother's death; that part of the fencing was done after his mother's death."

In addition to the above, the testimony of Joe Krieger shows he fenced the property, cleared part of it, and planted crops on it continuously since 1950. He testified further that he hired different people to clear part of the land; that he has fertilized, drained it, and put lime on it. The land was assessed to Andrew J. Krieger, Sr., the father, until the year 1951, during which year he died. It was assessed to Katherine Krieger, the widow, from 1952 to 1957. She died in this latter year. It was assessed to Joe Krieger as administrator for the tax year 1958, and assessed by Joe Krieger individually for the tax year 1959. The deed to the father was made in January, 1949. The alleged payment of \$200 was by check dated May 10, 1950.

Also the following questions to Joe Krieger and answers thereto appear in the record of the evidence.

"Q. Did he (Andrew Krieger, Jr.) come to you for permission to rent the land, or use the land -- I want to know whether he did or not?

"A. No sir, he didn't pay me no rent.

"Q. Did he ask you about renting it from you?

"A. No sir.

"Q. He didn't ask you anything about it?

"A. He didn't ask nobody; whenever he wanted to do anything, he done it; he didn't ask anybody.

"Q. You didn't make any effort to throw him off?

"A. I did.

"Q. What did you do?

"A. I told him to leave it alone."

This complainant further testified that he had been in possession of the land since January 6, 1949, which was the date the father acquired title to the land; also that he had used the property, making certain improvements and cultivating it as above stated.

We held in Morris v. Card, 223 Ala. 254, 135 So.

340(2):

" . . . The testimony of a witness, as a collective fact, that he is in possession, is sufficient evidence of possession, if it is not further shown on cross examination that the statement was a mere conclusion without

11.

the required supporting fact. *Sovereign Camp, W. O. W., v. Hoopes*, 219 Ala. 560, 564, 122 So. 686, and authorities there cited."

The next witness for complainants was Frank Koehler.

This witness testified that he was a neighbor of Joe Krieger; that he was familiar with the eighty-acre tract of land; that he cleared the land for Joe Krieger on two different occasions and that Joe paid him for such services. Checks representing the payments were introduced in evidence. He also testified that he had seen Andrew Krieger farm part of this land; that he had seen Joe put a fence around this tract; also that he had seen Andrew clear a small portion of the tract. He further said that it had been seven or eight years since he had seen Andrew Krieger farm on this tract.

Johanna K. Perez, witness for complainants, stated that she was the sister of Andrew Krieger, and was familiar with the eighty-acre tract of land in question. She said that Joe wanted to buy this land, but did not have the money; that her daddy said, "I will pay for the land, but I am not getting it in your name." That he agreed to deed it to Joe whenever he could repay his father for it. The purchase price was \$2500. She said further that Andrew and his wife did not know anything about this transaction between her father and Joe; that only her father and her brother, Joe, and her mother knew anything about it. She was asked the question:

"Q. Did any of the rest of the family?

"A. No sir.