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HARLAN C. BANKESTER and
ANNIE A. BANKESTER,

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IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

Complainants,

vs.

VIRGINIA M. McLAIN,
Respondent.

IN EQUITY

ANSWER

Comes now the Respondent in the above styled cause, by her attorneys, and for answer to the Bill of Complaint heretofore filed in this cause, says as follows:

1. The Respondent admits the allegations of paragraph "1" of the Bill of Complaint.
2. The Respondent admits the allegations of paragraph "2" of the Bill of Complaint.
3. The Respondent denies the allegations of paragraph "3" of the Bill of Complaint and for further answer thereto says that the Respondent in the said contract referred to in the Bill of Complaint agreed to convey the property involved in this suit, and which is the property described in the said contract and situated in Baldwin County, Alabama, to the Complainants by Warranty Deed, free from all encumbrance when the full consideration has been paid.
4. The Respondent admits that the Complainants made one Five Hundred Dollar (\$500.00) payment on said contract, on, to-wit: September 1, 1949, and the Respondent admits that commencing on, to-wit: September 1, 1949, the Complainants made twenty-seven (27) monthly principal payments to apply upon said contract and the interest thereon. The Respondent admits that the last of said payments was made on, to-wit: February 2, 1952, and that such payment was the one that became due on November 1, 1951. The Respondent admits that the payments by the Complainants reduced the principal balance on said contract to One Thousand Five Hundred Fifty-five Dollars (\$1,555.00). The Respondent denies each of the other allegations of paragraph "4" of the Bill of Complaint and specifically denies that the two tax liens therein referred to were clouds on the title of the Respondent at the time the Complainants filed their motion

in the law side of this Honorable Court to transfer this cause to equity or that they were a cloud on the title of the Complainants under the contract. For further answer to the allegations of paragraph "4" of the Bill of Complaint, the Respondent alleges that the tax liens therein referred to were not an encumbrance on the property which is the subject matter of this suit in that said tax liens were liens against and upon the property of one Wm. A. Frazier individually and against Frazier Decorating Company, Wm. A. Frazier and not against Wilber A. Frazier, the grantor of the Respondent in the deed to the Respondent dated April 12, 1949, and recorded in Deed Book 142, at page 475, in the Office of the Judge of Probate of Baldwin County, Alabama. And the Respondent further alleges that neither at the time of the motion to transfer this cause to equity was filed by the Complainants nor at the time the said contract was declared null and void and this cause instituted by the Respondent to recover the possession were said liens an encumbrance against the property which is the subject matter of this suit nor were they clouds on the title of either the Respondent or the Complainants at either of said times in that the statute of limitation (Title 26, Sections 275-6, U. S. Code Annotated, Sections 6501-2 Internal Revenue Code of 1954) had run against said liens in that more than six (6) years had elapsed since the filing of said liens for record on September 21, 1948, and November 30, 1948, respectively.

5. The Respondent admits that on October 25, 1955, J. B. Blackburn, as attorney for the Complainants, did write a letter to Vincent F. Kilburn, who was at that time the attorney for the Respondent, and the Respondent admits that "EXHIBIT B" attached to the Bill of Complaint is a copy of such letter. The Respondent denies that such letter is evidence of an agreement on the part of the parties to this cause but alleges that such letter is merely an offer on the part of the Complainants to the Respondent and for further answer to the allegations of paragraph "5" of the Bill of Complaint alleges that such offer was refused, as evidenced by the reply of Vincent F. Kilborn to said letter of October 25, 1955, a copy of which reply is attached hereto and marked "EXHIBIT 1" and by reference made a part hereof.

6. The Respondent admits that on, to-wit: November 7, 1958,

the United States of America did release by proper written instruments the liens referred to in paragraph "4" of the Bill of Complaint but the Respondent denies that said liens were, until said releases were executed and filed for record, clouds on the title of the Respondent.

7. The Respondent neither admits nor denies the allegations of paragraph "7" of the Bill of Complaint except as to the extent that the Respondent does admit that it was necessary that the Complainants pay the sum of Twenty Dollars and Seventy-one Cents (\$20.71) to redeem the property which is the subject matter of this suit from a tax sale.

8. The Respondent neither admits nor denies the allegations of paragraph "8" of the Bill of Complaint.

And now having fully answered the Bill of Complaint and for further answer thereto and as a cross-bill the Respondent alleges that the Complainants are now, and have been since April 5, 1952, in default under their contract with the Respondent and that they have no right, title, interest, claim, equity or demand in and to the property described therein on account of such default. The Complainants have consistently and repeatedly refused to pay the Respondent, or offer to pay to the Respondent, the amounts to which she was entitled under said contract and they have not paid, or offered to pay, rent for said property and/or the improvements located thereon during any or all of the time from April 5, 1952, to the date hereof. The Respondent further alleges that in and by the terms of the note referred to in the contract, a copy of which is attached to the Bill of Complaint and marked "EXHIBIT A", a copy of which note is attached hereto and marked "EXHIBIT 2" and by reference made a part hereof as though fully incorporated herein, the Complainants agreed to pay all costs of collection, including a reasonable attorney's fee on failure to pay any installment of principal and interest of this note on the due date thereof, and the Respondent alleges that it was necessary that she employ attorneys to protect her interest under said contract and to collect the amount due thereunder. The Respondent is now, and has been since February 2, 1952, ready, willing and able to convey the property described in said contract upon

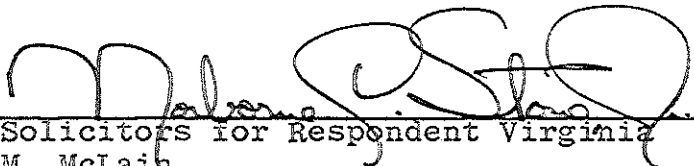
the payment to her of all amounts due thereunder, including a reasonable attorney's fee, and the Respondent alleges that the Complainants are indebted to her under the terms of said contract in the total amount of Two Thousand Three Hundred Eighty-nine Dollars and Fifty-one Cents (\$2,389.51), which amount represents the principal amount due of One Thousand Five Hundred Fifty-five Dollars (\$1,555.00) on November 1, 1951, plus interest at the rate of seven percent (7%) per annum (as provided in said contract) for seven (7) years and eight (8) months computed to July 1, 1959, and that said indebtedness will increase at the rate of thirty cents (.30¢) per day from that date; and the further and additional sum of Five Hundred Dollars (\$500.00), which the Respondent alleges is a reasonable attorney's fee for the collection of the amount due from the Complainants to the Respondent. The Respondent does hereby offer to do equity.

WHEREFORE, the premises considered, the Respondent respectfully prays that this Honorable Court will take this matter under submission and will ascertain and fix the amount due from the Complainants to the Respondent under the terms of the contract, a copy of which is attached to the Bill of Complaint and marked "EXHIBIT A" and of the note executed by the Complainants in conjunction with and as a part of said contract, a copy of which note is attached to this Answer and Cross-bill and marked "EXHIBIT 2", and will require the Complainants to pay to the Respondent the amount so fixed and determined by this Honorable Court within a time to be specified in the final decree in this cause; and will provide in said decree that upon the failure of the Complainants to pay such amounts that they be required to forthwith surrender the possession of said property to the Respondent, or her authorized agents or attorneys.

And the Respondent prays for such other, further and different relief as in the premises will be meet and proper.

Respectfully submitted,

CHASON & STONE

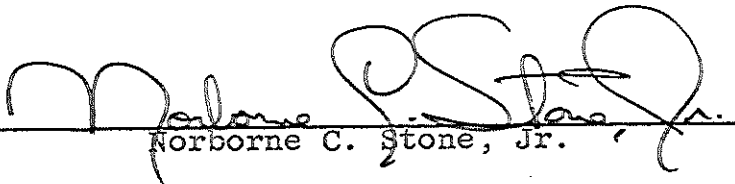
By: 
Solicitors for Respondent Virginia
M. McLain

STATE OF ALABAMA

BALDWIN COUNTY

Before me, Blanche White, a Notary Public, in and for said County in said State, 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 he is one of the Solicitors for the Respondent Virginia M. McLain in that certain cause now pending in the Circuit Court of Baldwin County, Alabama, In Equity, and that he signed the foregoing Answer and Cross-bill in said cause. That he is informed and believes and upon such information and belief alleges that the facts therein are true and correct.


Norborne C. Stone, Jr.

Sworn to and subscribed before me
on this the 29th day of June, 1959.

Blanche White
Notary Public, Baldwin County, Alabama

EXHIBIT 2

\$3,000.00

Mobile, Alabama
June 23, 1949

For value received the undersigned jointly and severally promise to pay to Virginia M. McLain or order, the principal sum of \$3,000.00, with interest thereon from date, at the rate of seven per cent per annum. The said principal and interest shall be payable at the banking house of Merchants National Bank in Mobile, Alabama, in monthly installments as follows, namely:

Beginning on the 1st day of September, 1949, the sum of \$500.00, and the sum of \$35.00 on the 1st day of each month thereafter, until the principal indebtedness hereby secured has been fully paid; with interest on the principal sum at the rate of seven per cent, per annum, payable as follows: Beginning on the 1st day of September, 1949, and on the 1st day of each month thereafter, on the balance of said principal sum remaining due and unpaid on the said 1st day of each month; both principal and interest being payable in lawful money of the United States of America.

Privilege is given to make additional payments on said principal sum at any interest payment date; such additional payments, however, to be made in multiples of \$35.00.

Each maker and endorser waives the right of exemption under the Constitution and laws of Alabama, and each maker and endorser waives demand, protest, and notice of protest, and all requirements necessary to hold them liable as makers and endorsers.

It is further agreed that the undersigned shall pay all costs of collection, including a reasonable attorney's fee on failure to pay any installment of principal and interest of this note on the date due thereof.

This note is to be construed according to the laws of the State of Alabama, and is secured by a Sales Contract on real estate executed to Virginia M. McLain by the undersigned on

Upon failure to pay any installment of principal and/or interest when due or if any of the conditions and requirements in said Sales Contract be not complied with, the entire principal sum at the option of the holder, shall become due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

/s/ Harlan C. Bankester

/s/ Annie A. Bankester

c/o
Durant Engineering Co.

EXHIBIT 1

October 28, 1955

J. B. Blackburn, Esq.
Bay Minette, Alabama

re: Mr. & Mrs. H. C. Bankester

Dear J. B.

Your letter of October 25th is not acceptable. I already told Mr. LeNoir Thompson I would have to have the interest on the balance due. Certainly they are entitled to the credit for the taxes paid.

The tax lien did not affect the Bankester's property. We were prepared to give them a warranty deed at all times. The difficulty arose that their attorney would not accept it. If they had delivered up possession of the property I would agree with you. However, they have had the possession of the property for all this period without any payment of rent. Hence I feel that they should pay interest.

I will recommend to Mrs. McLain that the interest on the amount be cut to 5 per cent, simple and not compounded. If this is agreeable kindly advise me.

I enclose form of deed proposed by me. Kindly advise if it is agreeable.

J. B. you know perfectly well that if we all agree on the price I will just send the deed to you and let you handle the whole matter.

Very truly yours,

Vincent F. Kilbarn

VFK/ja
Encl:

CC: Mrs. G. W. McLain
3606 W Fifteenth Street,
Panama City, Florida

45A

4. The complainants made one \$500.00 payment on the said contract on, to-wit, September 1, 1949, and commencing on, to-wit, September 1, 1949, made twenty-seven (27) monthly principal payments to apply on the said contract and the interest thereon. The last of the said payments was made on, to-wit, February 2, 1952, which was the payment that became due on November 1, 1951. The said payments reduced the principal balance on the said contract to \$1555.00 as of November 1, 1951. On or about November 1, 1951, the complainants discovered that the property involved in this proceeding, which is the property described in the said contract and that which the respondent had agreed to sell to them as provided in the said contract, was encumbered by a recorded tax lien in favor of the United States of America against Frazier Decorating Company, Wm. A. Frazier, in the amount of \$1434.33, which lien is recorded in Judgment Book 4 at page 187, Baldwin County, Alabama Records, and by a tax lien in favor of the United States of America against Wm. A. Frazier for \$315.62, which lien is recorded in Judgment Book 4 at page 218, Baldwin County, Alabama Records. At the time the motion to transfer this cause was filed the said liens had not been cancelled and were clouds on the defendants' title to the property described in the said contract. The said Wm. A. Frazier, the party against whom the two said liens were filed, was a former owner of the above described property and the said liens had been recorded prior to the execution, delivery and recording of the warranty deed to the respondent, Virginia M. McLain, which said deed is dated April 12, 1949, and was filed for record on June 24, 1949, and is recorded in Deed Book 142 at page 475, Baldwin County, Alabama Records.

5. On, to-wit, October 25, 1955, Vincent F. Kilborn was attorney for the respondent, Virginia M. McLain, and the complainants, through their attorney, J. B. Blackburn, did by letter dated October 25, 1955, a copy of which is hereto attached, marked Exhibit B, and by reference made a part hereof as though fully incorporated herein, agree to pay to the respondent the sum of

\$1555.00 and interest thereon for one year at seven percent (7%), less the sum of \$20.71 which the complainants paid to redeem the property from tax sale, provided the respondent executed and delivered to them a warranty deed drawn as provided in the said contract.

6. Subsequently, and on, to-wit, November 7, 1958, the United States of America, by proper written instruments which have been recorded in the office of the Judge of Probate of Baldwin County, Alabama, released the two above described tax liens which, until the said release, were clouds on the defendants' title to the said property.

7. Complainants are now ready and willing to pay to the respondent the principal sum of \$1555.00 and interest thereon, as provided in the said contract, up to November 1, 1951, less the sum of \$20.71 which they were required to pay to redeem the said property from tax sale, on execution and delivery of a warranty deed from the respondent to them conveying the said property described in the said contract to them, free of and from all liens and encumbrances as provided in the said contract.

8. Complainants offer to do equity.

WHEREFORE, complainants pray that the court will ascertain and fix the amount which they are due to pay to the respondent under the said contract and will upon its payment require the respondent to specifically perform the said contract and convey the property described in the said contract to the complainants in the manner provided therein. Complainants further pray for such other, further and general relief as they may be equitably entitled to, the premises considered.


Solicitor for complainants

EXHIBIT A

SALES CONTRACT

THIS AGREEMENT, made and entered into this 23rd day of June, 1949, between Virginia M. McLain, a widow, party of the first part, and Harlan C. Bankester and Annie A. Bankester, husband and wife, parties of the second part, WITNESSETH:

That the party of the first part, for and in consideration of the sum of \$500.00, the receipt of which is hereby acknowledged hereby agrees to sell and convey unto the said party of the second part as tenants in common with equal interests for the period of term that said parties of the second part shall both survive and unto the survivor of said parties at the death of the other, all that real property situated in the County of Baldwin, State of Alabama, described as follows, to-wit:

Commencing at the Southeast corner of the Southwest Quarter of Section 22, Township 4 South, Range 2 East, thence running West along the Section line 209 feet to a point, thence running North 418 feet to a point, thence East 209 feet to the East line of said Quarter Section, thence South 418 feet to the point of beginning.

The consideration for said sale being the sum of \$3500.00 of which sum \$500.00 hereinabove mentioned is paid on account, the balance \$3000.00 shall be paid as follows: \$500.00 seventy days from the date of this instrument with interest at the rate of 7% per annum, monthly amortizing, and the balance of \$2500.00 shall be payable as follows: Beginning on the 1st day of September, 1949 the sum of \$35.00 and the sum of \$35.00 on the 1st day of each month thereafter, until the principal indebtedness hereby secured has been fully paid, with interest on the principal sum at the rate of 7% per annum payable with each monthly payment.

Privilege is given to make additional payments on said principal sum at any interest payment date; such additional payments, however, to be made in multiples of \$35.00

The party of the first part agrees to convey the above described property by a Warranty Deed free from all encumbrances when the full consideration has been paid.

All taxes, insurance premiums and rents are to be prorated as of the date and delivery of this instrument.

Parties of the second part agree to keep the buildings on, or which may hereafter be erected upon, said premises insured against fire and tornado in the sum of, not less than, the amount due the party of the first part, by policies made payable to and deposited with the party of the first part and to pay all premiums, taxes and assessments that may be levied against the premises from the date of this agreement. Parties of the second part agree to keep all buildings erected hereon in good repair.

In the event the parties of the second part default for a period of sixty days after same becomes due and payable, in making any installment payments provided herein, or fails to perform any of the duties herein specified, the party of the first part may at his/their option declare this agreement null and void and of no further effect, and the amount paid under this agreement up to that time shall be retained by the party of the first part as liquidated damages for the breach of this agreement and the parties of the second part agree to give up quiet and peaceable possession, and hereby authorizes the party of the first part to enter upon and take possession of said premises.

It is understood and agreed that the parties of the second part shall have the right, at any time to pay in advance any payments that may be due the party of the first part with interest to the date of the said payment.

It is understood and agreed that this agreement shall include the heirs, executors and assigns of the parties herein named.

In Witness Whereof the parties have hereunto set their hands and seals, in duplicate, the day and date first above written.

Mrs. Virginia M. McLain (Seal)

Harlan C. Bankester (Seal)

Annie A. Bankester (Seal)

This instrument is evidenced
by note of even date.

WITNESSES: Two
(Signatures illegible)

EXHIBIT B

OCTOBER 25, 1955

Mr. Vincent F. Kilborn
Attorney at Law
First National Bank Building
Mobile, Alabama

Dear Vince:

Mr. and Mrs. Harlan C. Bankester have authorized me to advise you that they are willing to pay your client, Mrs. Virginia McLain, the principal sum of \$1555.00 which is due her, interest on the said amount for one year at seven percent, less the sum of \$20.71, which the Bankesters paid to redeem the property from tax sale.

If this is agreeable to your client, please send a warranty deed, drawn as provided in the contract, to the Baldwin County Bank here with instructions to deliver it to the Bankesters upon payment of the amount due, as set out above.

As you know, it was no fault of the Bankesters that the tax lien which affected the property was filed. Had it not been for this tax lien, they could have refinanced the indebtedness and paid your client a long time ago.

Sincerely yours,

(S) J. B. BLACKBURN

J. B. BLACKBURN

JBB*MLB

HARLAN C. BANKESTER and)	
ANNIE A. BANKESTER,)	IN THE
)	
Complainants,)	CIRCUIT COURT OF BALDWIN
)	
VS.)	COUNTY, ALABAMA.
)	
VIRGINIA M. McLAIN,)	IN EQUITY.
)	
Respondents.)	
)	
)	

This cause of action was originally begun in the Circuit Court of Baldwin County, Alabama, at Law, by Virginia M. McLain, as Plaintiff against Harlon C. Bankester and Annie A. Bankester, and on behalf of the Respondents, transferred to the equity docket, after which the Respondents, Harlon C. Bankester and Annie A. Bankester filed their suit in equity against Virginia M. McLain, as Respondent, and the Respondent, Virginia M. McLain, filed her answer.

This cause coming on to be heard was submitted upon the original bill of complaint on behalf of Harlon C. Bankester and Annie A. Bankester against Virginia M. McLain, in equity, the answer of the said Virginia M. McLain and the testimony of witnesses taken orally and by deposition.

The Court, after considering the pleadings and the proof finds as follows:

1. That on the 23rd day of June, 1949, a contract of purchase and sale was entered into between Virginia M. McLain, a widow, of the first part, and Harlon C. Bankester and Annie A. Bankester, husband and wife, parties of the second part, involving a tract of land, situated in Baldwin County Alabama, described as follows, to-wit:

Commencing at the Southeast corner of the Southwest Quarter of Section 22, Township 4

South, of Range 2 East, thence running West along the Section Line 209 Feet to a point, thence North 418 feet to a point, thence East 209 feet to the East line of said quarter Section, thence South 418 feet to the place of beginning.

2. That along with the execution of the contract of purchase and sale the said Complainants in equity, Harlon C. Bankester and Annie A. Bankester, executed and delivered to the Respondent in equity, Virginia M. McLain, a promissory note providing for the payment of the purchase price in accordance with the terms and conditions of the contract, and also contained a waiver of rights of exemption under the Constitution and Laws of the State of Alabama, and agreed to pay all costs in the event of default in the collection of the amount due under said contract, including a reasonable Attorney's fee.

3. That subsequent to the execution of the contract of purchase and sale the Complainants in Equity, Harlon C. Bankester and Annie A. Bankester, learned that there were liens outstanding against the property, and ceased to make payments in accordance with the terms and conditions of the contract, after which suit was filed.

4. That the principal amount due upon the said contract is FIFTEEN HUNDRED FIFTY-FIVE AND 00/100 (\$1555.00) DOLLARS, plus interest at the rate of seven per cent (7%) per annum.

5. That the liens in favor of the Government and against former owner of the land, which constituted a lien against the same, were released on November 7, 1958.

6. That in addition to the liens of the Government, there was a tax sale against the property, from which it was redeemed by the Complainants in equity, they paying

the sum of TWENTY AND 71/100 (\$20.71) DOLLARS.

The Court is, therefore, of the opinion that the Complainants in Equity, Harlon C. Bankester and Annie A. Bankester, are entitled to the relief prayed for, subject to the conditions hereinafter set out. It is, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that the Complainants in Equity, Harlon C. Bankester and Annie A. Bankester, pay into the hands of the Respondent in Equity, Virginia M. McLain, the sum of FIFTEEN HUNDRED FIFTY-FIVE (\$1555.00) DOLLARS, plus interest at the rate of seven per cent (7%) per annum from the 7th day of November, 1958, less TWENTY AND 71/100 (\$20.71) DOLLARS paid by the Complainants to remove a tax lien referred to above, plus TWO HUNDRED FIFTY (\$250.00) DOLLARS due Messrs. Chason & Stone, Attorneys for the Respondent, Virginia M. McLain. It is further

ORDERED, ADJUDGED AND DECREED by the Court that the Respondent in Equity, Virginia M. McLain, upon the payment to her by the Complainants in Equity, Harlon C. Bankester and Annie A. Bankester, of the amounts herein set forth, immediately convey to the Complainants in Equity, Harlon C. Bankester and Virginia A. Bankester, the lands described in the contract for sale and purchase and the bill of Complaint, being situated in Baldwin County, Alabama, and being described as follows, to-wit:

Commencing at the Southeast corner of the Southwest Quarter of Section 22, Township 4 South of Range 2 East, thence running West along the Section Line 209 feet to a point, thence North 418 feet to a point, thence East 209 feet to the East line of said Quarter Section, thence South 418 feet to the place of beginning.

It is further

ORDERED, ADJUDGED AND DECREED by the Court that if the said Respondent in equity, Virginia M. McLain, should fail or refuse to make conveyance to Complainants in equity, Harlan C. Bankester and Annie A. Bankester, in accordance with the terms of this decree, and such default continues for 30 days from the date the amount has been received by her to her credit, then the Clerk of the Circuit Court of Baldwin County, Alabama, be, and she is hereby directed, authorized and empowered to make proper conveyance to the said complainants in the name of the Respondent, conveying to them all of the lands described in the original contract and hereinabove described. It is further


ORDERED, ADJUDGED AND DECREED that the Complainants be and they are hereby allowed the period of 60 days from the date hereof to pay the amount herein adjudged against them!

It is further

ORDERED, ADJUDGED AND DECREED that if the said Harlan C. Bankester and Annie A. Bankester should fail to comply with the terms hereof, then all their rights hereunder shall be forfeited. It is further

ORDERED, ADJUDGED AND DECREED that the Complainants in Equity, Harlan C. Bankester and Annie A. Bankester be, and they are taxed with the costs herein incurred, for which execution may issue.

Dated at Bay Minette, Alabama, this the 1st day of September, 1960.



Judge, 28th Judicial Circuit of
Alabama.

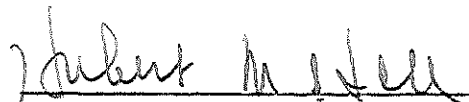
VIRGINIA M. McLAIN,)
)
Plaintiff,) IN THE CIRCUIT COURT OF
VS.) BALDWIN COUNTY, ALABAMA
)
H. C. BANKESTER, ET AL.,) AT LAW NO. 3424
)
Defendants.)

DECREE TRANSFERRING CAUSE TO EQUITY COURT

This cause coming on to be heard on this date by agreement of the parties is submitted on the defendants' motion to transfer this cause to the equity side of this court, and the plaintiff's demurrer to the said motion; upon consideration of all of which, it is, therefore, ORDERED, ADJUDGED AND DECREED by the court as follows:

1. The plaintiff's demurrer to the defendants' said motion shall be and it is hereby overruled.
2. The defendants' said motion to transfer this cause to the equity side of this court is hereby granted, and this cause transferred from the law side of the court to the equity side of the court where the same shall be docketed and shall proceed in the equity side of the court.

ORDERED, ADJUDGED AND DECREED on this the 5th day of May, 1959.



Judge

70
DECREE TRANSFERRING CAUSE TO
EQUITY COURT.

VIRGINIA M. McLAIN,

Plaintiff,

VS.

H. C. BANKESTER, ET AL.,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3424

*File 515159
Ainsworth
Reg.*

HARLAN C. BANKESTER and)	
ANNIE A. BANKESTER,)	
)	
)	IN THE CIRCUIT COURT OF
VS.)	BALDWIN COUNTY, ALABAMA
)	
VIRGINIA M. McLAIN,)	IN EQUITY
)	
)	
Respondent.)	

DEMURRER

I

Now come the complainants and cross respondents, each separately and severally, and demur to the cross bill of the respondent and cross complainant and as grounds of such demurrer assign, separately and severally, the following:

1. There is no equity in the cross bill.

2. No facts are alleged on which the relief sought can be granted.

3. No facts are alleged to entitle the respondent and cross complainant to the attorney's fees claimed.

4. It affirmatively appears that the tax liens described therein were clouds on the title of the complainants and cross respondents at the time this suit was filed.

5. It affirmatively appears that the tax liens described therein were clouds on the title to the property which the respondent and cross complainant had agreed to sell to the complainants and cross respondents.

6. It affirmatively appears that the tax liens described therein were clouds on the title to the property which the respondent and cross complainant had agreed to sell to the complainants and cross respondents at the time this suit was removed from the law side of this Court to the equity side thereof.

7. It affirmatively appears that the consideration for the alleged contract between the respondent and cross complainant and the complainants and cross respondents failed in part when it was made on, to-wit, June 23, 1949, because the tax liens described in the cross bill were then clouds on the title to the property which

the respondent and cross complainant had agreed to sell and the complainants and cross respondents had agreed to purchase.

8. It affirmatively appears that the respondent and cross complainant does not come into equity with clean hands.

9. It affirmatively appears that the respondent and cross complainant breached the terms of the alleged written sales agreement dated June 23, 1949, at the time it was made because the said tax liens were then clouds on the property described therein.

10. No facts are alleged to show that the said tax liens were not clouds on the title to the property which the respondent and cross complainant agreed to sell to the complainants and cross respondents at the time the alleged written sales agreement was made.

II

Now come the complainants and cross respondents, each separately and severally, and demur to that aspect of the cross bill that has been filed in this cause in which the respondent and cross complainant is seeking payment of attorney's fees, and as grounds of such demurrer assign, separately and severally, grounds Numbered 1 through 10, both inclusive, which appear above, just as though the said grounds were each specifically rewritten here.

ANSWER TO CROSS BILL

Now come the complainants and cross respondents, each separately and severally, and without waiving the above and foregoing demurrer, but insisting thereon, file this as their answer to the respondent and cross complainant's cross bill.

A. The complainants and cross respondents admit that they have made no payment on their contract with the respondent and cross complainant since April 5, 1952, but for further answer to the said cross bill allege that the reason for their failure to make the payments due under the contract is because the said tax liens were clouds on the title to the property which the respondent and cross complainant had agreed to sell to them.

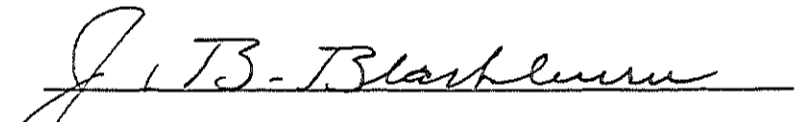
B. The note, which was executed by the complainants and

cross respondents to the respondent and cross complainant and which is referred to in the cross bill, is a part and was given as a part of the written contract between the respondent and cross complainant and the complainants and cross respondents, and as the respondent and cross complainant could not convey an unencumbered title to the property described in the said contract between the parties, the complainants and cross respondents are not liable for attorney's fees on the said note.

C. The tax liens which are described in the cross bill continued as clouds on the title to the property which the respondent and cross complainant agreed to sell to the complainants and cross respondents until they were released by written instruments dated November 7, 1958, which were filed for record in the office of the Judge of Probate of Baldwin County, Alabama, on November 30, 1958.

D. Complainants and cross respondents deny each and all of the other allegations of the said cross bill and demand strict proof of same.

Respectfully submitted,


Solicitor for complainants and cross respondents

DEMURRER

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HARLAN C. BANKESTER and ANNIE A. BANKESTER,

Complainants,

vs.

VIRGINIA M. McLAIN,

Respondent..

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY

*Filed August
2nd, 1960*

*Huddle
Judge.*

W. H. ...

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