

584

TO THE HON. THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA, AND TO THE HON. JOHN D. LEIGH, JUDGE OF
SAID COURT, SITTING IN EQUITY:-

Your Orator, Tom Denton, brings this his Bill of Complaint
against James A. Prout, and respectfully shows to the Court and to
your Honor:-

1. That Orator and the said James A. Prout, are both
over the age of twenty-one years, and both reside in the County of
Baldwin, State of Alabama.

2. That Orator is the father and Filmore Denton, Agnes
Bonner, Sadie Wilson, Lena Hudson, Tudia Vickers, Blanch Denton
and Ernest Denton are the brothers and sisters and Dannie Weeks
and Joe Denton is the niece and nephew of Frank Denton, who died
intestate in the County of Baldwin, State of Alabama, on or about
the 20th. day of September, 1925, the said Dannie Weeks and Joe
Denton being the children of Joe Denton, who was a brother of the
said Frank Denton and who died about fifteen years prior to the
death of the said Frank Denton; that Orator and the aforementioned
person are all and the only next of kin of the said Frank Denton,
the said Frank Denton having left no lineal descendents.

3. That on or about to-wit: the month of October, 1921,
the said Frank Denton entered into an executory contract with
Louisa Stafford, in and by which the said Frank Denton agreed to
buy and the said Louisa Stafford agreed to sell for a consideration
of Eleven Hundred Dollars (\$1100.00), that certain piece or par-
cel of land situated in the County of Baldwin and State of Ala-
bama, described as follows:- That certain lot of land beginning
at a point from the northeast corner of section nineteen, township
six south, range two east, running west forty two hundred and
eighty feet to a stake on the bluff at Mobile Bay, thence south 20°
west fourteen hundred and seventy four feet to a stake, in the nor-
th line of the tract conveyed for a point of beginning, thence
south 74½° east three hundred and two and one-half feet to a stake;
thence south 4° fifty seven and one half feet to the edge of Big
Head Gulley; thence north 86½° west one hundred and twenty-three
and one half feet to a corner; thence south 41° west eighty-six and
two thirds feet to a corner; thence north 71° west four hundred

feet to a stake on edge of Gulley, thence 26° east one hundred and forty-eight feet to a corner, thence south $74\frac{1}{2}^{\circ}$ east two hundred and fourteen and three quarters feet to a point of beginning, four acres, more or less; that in said contract it was agreed that the said Frank Denton should pay for said land in monthly installments of Twenty Dollars (\$20.00) each and should also pay interest at the rate of Six per cent (6%) per annum on the deferred payments, it being agreed that interest should be paid semi-annually and in pursuance of said agreement the said Frank Denton executed and delivered to the said Louisa Stafford his promissory notes to evidence the monthly payments, both as to principal and interest agreed to be paid by him.

4. That at the time the said Frank Denton entered into said contract with the said Louisa Stafford, he was occupying and residing upon said land as a tenant of the said Louisa Stafford and he continued to occupy and reside upon said lands up to the time of his death and after the execution of said contract he claimed said lands as his own and continued to so claim the same up to the time of his death subject to the right of said Louisa Stafford and a subsequent right of the defendant James A. Prout as hereinafter more fully set out.

5. That the said Frank Denton from time to time made payments to the said Louisa Stafford under said executory contract until he had paid all that he had agreed to pay her except the sum of To-wit: Three Hundred Sixteen and 40 /100 dollars (\$316.40); that while the said Frank Denton was so indebted to the said Louisa Stafford in the sum aforesaid, under said contract for the purchase of said land the defendant James A. Prout, on to-wit: September 26th., 1924, advanced him the money with which to pay the said Louisa Stafford in full for the balance due for the land above described, which he, the said Frank Denton had agreed to purchase from her and by agreement between the said Frank Denton and the said James A. Prout, the said Louisa Stafford, together with her husband, Robert Stafford, conveyed said land to the said James A. Prout, a copy of the deed from the said Louisa Stafford and her husband to the said James A. Prout, marked exhibit "A", being

(page three)

hereto attached and made a part hereof as though fully set out herein.

6. That contemporaneously with the making of the above-mentioned payment by the said James A. Prout and the execution and delivery of the aforementioned deed to him by the said Louisa Stafford and her husband the said James A. Prout and Frank Denton entered into a contract in writing wherein and whereby the said James A. Prout agreed and bound himself to convey said land to the said Frank Denton when he, the said Frank Denton, had paid in full the money so advanced by the said James A. Prout, together with the interest thereon; that soon after the death of the said Frank Denton, his brother Filmore Denton, called upon the said James A. Prout and showed to him the said agreement in writing in which the said James A. Prout had bound himself to re-convey to the said Frank Denton the lands above described upon the said Frank Denton complying with the terms and conditions named in said contract and the said James A. Prout upon seeing said contract admitted that the same had been executed by him and the said Frank Denton and that he was bound and obligated to convey said lands to the said Frank Denton, upon the said Frank Denton complying with the terms and conditions set forth in said contract but the said James A. Prout retained the said contract and refused to give it back to the said Filmore Denton and for that reason Orator is not able to state the terms and conditions of said contract in full or attach a copy thereof as an exhibit to this Bill of Complaint.

7. That soon after the said Frank Denton Orator, together with the brothers of the said Frank Denton employed the firm of Stone & Stone, Attorneys at Law, Bay Minette, Alabama, to represent them in obtaining a conveyance from said James A. Prout conveying said lands to those entitled thereto; that the said James A. Prout admitted to Frank S. Stone, a member of the firm of Stone & Stone, the existence of the aforementioned contract but stated that he was not claiming said lands through Frank Denton but other sources and admitted that he had said contract in his possession.

(page four)

8. That the said James A. Prout has refused to perform and carry out said contract although Orator or one or more of the brothers and sisters of the said Frank Denton have expressed to him their willingness to comply with said contract and to perform all of the duties therein placed upon them or the said Frank Denton and to pay whatsoever amount might be due or owing to the said James A. Prout under and by the terms of said contract; that the above named brothers and sisters, niece and nephew of the said Frank Denton have transferred, assigned or conveyed to Orator all of their right, title and interest in and to the aforementioned contract between Frank Denton, which said James A. Prout, together with any and all right that they may have under or by virtue of said contract and Orator is ready, able and willing and hereby offers to pay to the said James A. Prout any and all money that he may be entitled to have and receive under or by virtue of the aforementioned contract between him and the said Frank Denton.

9. That since the death of the said Frank Denton, the said James A. Prout has cut a large quantity of timber from the above described land which timber was of great value and Orator respectfully submits that in arriving at the amount that should be paid to the said James A. Prout on account of the balance of the purchase money due or owing under said contract, the reasonable market value of said timber should be deducted therefrom so that equity may be done in the premises.

10. Orator hereby subjects himself to the jurisdiction of this Honorable Court and hereby offers to make any and all payments that may be required of him and is ready, able and willing and hereby offers to do equity and to faithfully perform and carry out any and all orders or decrees that this Honorable Court may make in the premises.

PRAYER FOR PROCESS.

WHEREFORE, THE PREMISES CONSIDERED, your Orator prays that the said James A. Prout be made party defendant to this Bill of Complaint and that the usual process of this Honorable Court be forthwith issued to him requiring him to appear, demur, plead to

(page five)

or answer this Bill of Complaint within the time and under the pains and penalties provided by law and by the rules of this Honorable Court.

PRAYER FOR RELIEF.

Orator further prays that upon a final hearing of this cause a decree be made and entered that Orator is entitled to a conveyance from the said James A. Prout conveying said lands to Orator upon the payment by Orator of the amount found to be due to the said James A. Prout; that this cause be referred to the Register of this Honorable Court with directions to hold a reference and state an account showing the amount that may be due to the said James A. Prout and that on such reference the Register be instructed to ascertain the full amount due to the said James A. Prout together with the interest thereon on account of the purchase money for the lands hereinabove described and also to ascertain the reasonable market value of the timber cut by the said James A. Prout from said land or under his directions and that the reasonable market value of the timber so cut be deducted from the total amount ascertain to be due under said contract and that in said reference the Register be directed in his report to state the full amount due the said James A. Prout under said contract, the reasonable market value of the timber cut from said land and the difference between the two; Orator further prays that if upon said reference it be ascertained that the reasonable market value of the timber cut from said lands exceeds the balance due under the aforementioned contract to the said James A. Prout that a decree be rendered against the said James A. Prout for such excess and that the said James A. Prout be ordered and directed to execute a conveyance of the lands hereinabove described to your Orator but if upon said reference it be ascertained that the reasonable market value of the timber is less than the total balance under said contract to the said James A. Prout the Orator prays that upon his paying the difference so found the said James A. Prout be ordered and directed to execute a deed conveying to Orator the lands hereinabove described. Orator further prays that if relief is granted him as herein prayed for the decree for specific performance be so framed

(page six)

and drawn that it will as provided by Section 6850 of the Alabama Code of 1923 operate as a deed to convey said land to Orator without any deed being executed by the said James A. Prout and if Orator has not asked for the proper relief he prays that he may have such other, further, different and general relief in the premises as the nature of the case shall require and as to the Court and your Honor may seem fit.

Orator reiterates that he submits himself to the jurisdiction of the Court and offers to do whatever the Court may consider necessary or proper to be done on his part toward making the decree which he seeks just and equitable with regard to the other defendant to this suit.

Stone & Stone
Edington Leigh & Gordon
Solicitors for Complainant.

The defendant is required to answer each and every paragraph of the above and foregoing Bill of Complaint but not under oath, answer under oath being hereby expressly waived.

Stone & Stone
Edington Gordon & Leigh
Solicitors for Complainant.

1st

RECORDED

Original Bill

Filed Apr 28/1926
T. W. Richardson
Register

208
19
2616

181
12
2172
2616
4788

Tom Denton,

Complainant,

Vs.

James A. Prout,

Respondent.

IN THE CIRCUIT COURT OF BALDWIN

COUNTY, ALABAMA.

IN EQUITY.

This cause coming on to be heard is submitted for decree on demurrer to the original bill of complaint, and upon consideration thereof, I am of the opinion that said demurrer is not well taken.

It is therefore, ordered, adjudged and decreed that said demurrer be, and the same hereby is, overruled.

Done at Chambers at Monroeville, Alabama, this the 16th., day of August, 1929.

F. W. Hare
Judge.

in RECORDED

Tom Denton

vs

James A. Prout

Deer on

Deerover

Filed this
day of Aug^{17th} 1929

J. W. Dickinson
Reporter

TOM DENTON,
Complainant,

vs.

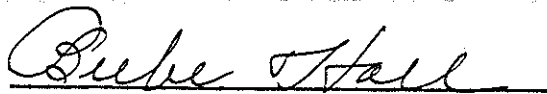
JAMES A. BROUT,
Defendant.

CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY.

Comes the defendant in the above styled cause and moves the court to set aside the decree heretofore rendered on August 16th, 1929, and to grant a rehearing on the said demurrer and as grounds therefor says that:

FIRST: The Court erred in overruling the demurrers to the said bill of complaint.

SECOND: That the ruling of the Court on the said demurrers was contrary to law.



Attorneys for Defendant.

Honorable Francis W. Hare,
Monroeville,
Alabama.

Dear Judge:

We have carefully read the case of Haggerty vs. Elyton Land Company, 89 Ala. 428, cited by opposing counsel in support of their motion to set aside the decree rendered August 16, 1929 overruling demurrer to bill of complaint in the case of Tom Denton versus James A. Prout.

We do not construe the case cited as opposing counsel would have the same construed. In that case the demurrer to the bill was sustained because it affirmatively appeared from the allegations thereof that complainant's ancestor had, (a) violated a condition precedent, (b) forfeited his right to specific performance prior to his death and that complainants had been guilty of gross laches in that the bill was not filed until more than sixteen years after the day fixed for the completion of certain improvements agreed to be made by the decedent and thirteen years after decedent's death. The bond for title there in question expressly stipulated that the decedent would "erect, or cause to be erected, upon the lot or parcel of land hereinafter described and by or before the 13th day of August 1873, improvements of not less value than \$800.00," and further stipulated that "The erection and completion of the aforesaid improvements

being the principal consideration and inducement for the sale aforesaid, it is expressly understood that if the said improvements are not erected as herein stipulated, then, and in that event, said Haggerty is to forfeit all money or monies paid upon said lot and also all right and claims upon the materials furnished, or work done for or upon said improvements, and said lot and improvements and materials shall become the property of said Elyton Land Company and this bond shall be null and void."

Touching this phase of the case the Court said:

"The bill alleges that Haggerty remained in Birmingham a year or more after the expiration of the time fixed for the completion of the improvements, at which time he left the State, without taking any steps whatever to perform the condition, leaving the taxes for the year 1874 unpaid, certainly knowing the lot would have to be sold for their payment, and died in 1876, three years after the specified day. This conduct indicates an intention of abandoning the contract, and authorized the defendant to infer that he had abandoned it. But, whether he intended abandonment or not, his inexcusable negligence in the non-performance of the contract would bar his right to a specific execution. In Taylor v. Longworth, 14 Pet. 172, Story, J. says: 'And even when time is not thus expressly made of the essence of the contract, if the party seeking a specific performance has been guilty of gross laches, or has been inexcusably negligent in performing the contract on his part, or if there has, in the intermediate period, been a material change affecting the rights, interests or obligations of the parties; in all such cases, courts of equity will refuse to decree any specific performance, upon the plain ground that it would be inequitable and unjust.' Also, in Gentry v. Rogers, 40 Ala. 442, the purchaser having been notified by the vendor, two years before the day fixed for payment of the purchase money, that he repudiated the contract, and having delayed to file his bill for nine months after that day, and having shown no excuse for the delay, it was held that the

laches, in connection with his failure to show a valid excuse for his omission to tender performance in full on the specified day, was sufficient to deprive him of the right to relief. On these principles, Haggerty himself would not have been entitled to a decree for specific performance at the time of his death; consequently, his gross omission to perform the condition disentitles complainants to the relief, who succeed only to his rights."

The allegations in the bill and the situation of the parties in the instant case are entirely different. Here it appears, from the allegations of the bill, that the decedent had paid the entire purchase money under his executory contract with Louisa Stafford except \$316.40; that on September 26th, 1924, the defendant advanced the money with which to pay this balance in full and by agreement between the decedent and the respondent deed was made to the respondent. (Bill of complaint paragraph 5).

It is also averred that contemporaneously with the execution and delivery of the deed the respondent and decedent entered into a written agreement whereby the respondent, James A. Prout, agreed and bound himself to convey said land to the said Frank Denton when he, the said Frank Denton, had paid in full the money so advanced by the said James A. Prout, together with the interest thereon. (Bill of complaint paragraph 6)

It will be observed that no time is fixed for the payment of the money and consequently either the decedent or his heirs, after his death, had a reasonable time in which to make payment. The decedent died about September 20th, 1925,

(paragraph 2) less than one year after the execution of the deed to Prout and his agreement to reconvey the land to the decedent. It is averred that shortly after decedent's death this contract was exhibited to Prout, the respondent, who admitted its execution and also that he was bound to reconvey the land when the contract was complied with, but retained the contract by force of arms, so to speak, and refused to return it to the interested party by whom it was handed to him (Paragraph 6).

Prout refused to perform his part of the contract, notwithstanding the fact that the interested parties had expressed to him their willingness to comply and to perform all the duties placed upon them or the decedent, Frank Denton, and to pay whatsoever amount might be due or owing to him, Prout, under the terms of this contract. (Paragraph 8).

The bill of complaint in this case was filed April 28th, 1926, about seven months after decedent's death. The bill does not show in this case, as it did in the case cited by opposing counsel, any failure to comply with any condition, whether precedent or subsequent, and does not show any laches. On the contrary it shows that within a reasonable time complainant, or those through whom he claims, offered to perform the contract, and in the bill complainant submits himself to the jurisdiction of the Court and offers to pay

any balance due under the contract and do whatever the Court may require.

There is absolutely nothing in the bill to show that complainant, or those through whom he claims, have done anything to forfeit their rights to specific performance of the contract, but had they been guilty of any act which might have constituted forfeiture, no doctrine is better established than that equity leans against forfeitures, and will grant relief against the same when it can be done without working an injustice to the party claiming the forfeiture. "Whatever may be the rule of the law courts in dealing with such contracts our judgment is that, on the facts averred, appellant is entitled in equity to be relieved of the forfeiture upon his offer to do equity. When the stipulation concerning payment is only a condition subsequent, a court of equity has power to relieve the defaulting vendee from the forfeiture caused by his breach of this condition, upon his paying the amount due, with interest, because the clause of forfeiture may be regarded as simply a security for the payment. It is therefore held, in a great number of cases, that the forfeiture provided for by such a clause, on the failure of the purchaser to fulfill at the proper time, will be disregarded and set aside by a court of equity, unless such failure is intentional or willful." 1 Pom. Sec. 455. There are cases to the contrary, but Mr. Pomeroy observes of them (note to

Hon. Francis W. Hare

#6

section 455) that they seem to ignore the equitable principle of relief from penalties and forfeitures."

Barton vs. W. C. Broyles Stove
& Furniture Company,
212 Ala. 658-659

The case from which we last quoted related to personal property, but identically the same doctrine is stated in *Hawkins vs. Coston*, 214 Ala., 135, 138. In the case last cited the Court calls attention to the rule that the Court will not presume a forfeiture. If the decedent or complainant had done anything that worked a forfeiture or deprived them of the right to specific performance that is a matter which could be availed of by answer, there being nothing in the bill to show any such forfeiture or waiver.

Taking the allegations of the bill as true, and this we must do on demurrer, it is made clear that if the respondent is paid in full the amount he advanced, together with the interest thereon, he will certainly have no cause to complain, and by pursuing this course justice and equity will be done to both parties, the respondent will have his money, both principal and interest, and complainant will have his deed.

We respectfully submit that you were correct in overruling the demurrer and that motion for rehearing should be overruled.

Yours truly,

Andrew Edington Leigh
Robert H. Hare

TOM DENTON,
Complainant,

vs.

JAMES A. PROUT
Defendant

Circuit Court of

Baldwin County, Alabama.

In Equity

Comes the Defendant in the above styled cause and demurs to
Complainant's bill of complaint and, as grounds of demurrer, says:

First.

That there is no equity in the bill.

Second.

That complaint does not allege contract from the Defendant to
Frank Denton is in full force and effect.

Third.

That said contract does not allege that the said Frank Denton
has fully complied with the terms of the contract.

Rickard Beebe Hall
Solicitors for Defendant

2 Original

RECORDED

SERVE ON.....

Circuit Court of Baldwin County
In Equity.

No.....

SUMMONS

Wm Denton,

vs.

James A. Prout,

Stone & Stone,

Solicitor for Complainant

Recorded in Vol. 1 Page 2

THE STATE OF ALABAMA,
BALDWIN COUNTY.

Received in office this 28th

day of April 1920

Sheriff.

Executed this 30 day of

April 1920

by leaving a copy of the within Summons with

James A. Prout

Defendant.

W. R. Stewart

Sheriff.

By Wm. H. ...

Deputy Sheriff.

TOM DENTON,
Complainant,

VS

JAMES A. PROUT,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Comes the Defendant in the above styled cause and answering Complainant's complaint says:

FIRST:

He admits the allegations in paragraph one.

SECOND:

He admits the allegation in paragraph two, that Frank Denton died intestate in Baldwin County, on or about the 20th., day of September, 1925; he states that he does not know whether or not the other allegations of paragraph two are true and demands strict proof thereof.

THIRD:

He admits the allegations contained in paragraph three.

FOURTH:

As to the allegations contained in paragraph four, he says that he does not know whether or not Frank Denton, at the time he entered into the contract with the said Louise Stafford was occupying and residing upon the said land as a tenant of the said Louise Stafford and demands strict proof be made; that at the time of the execution of the contract between the said Frank Denton and the Defendant, James A. Prout, on to-wit September 29, 1924, the said Frank Denton was residing on the said property and continued to reside thereon under the contract between him and this Defendant until July 17, 1925, on which date the said contract was determined as between the said Frank Denton and James A. Prout, and that if the said Frank Denton resided on the said lands after the 17th., day of

July, 1925, his such occupation of the said property was without the knowledge and consent of this Defendant, James A. Prout.

FIFTH:

Answering the allegations of paragraphs five, six, seven, eight, nine and ten, of the said bill of complaint, the Defendant says the matters therein alleged are untrue and to the contrary Defendant alleges that the following matters are true, namely, that while the said Frank Denton was purchasing the said property from the said Louise Stafford and Robert Stafford under the contract aforesaid, original of which is hereto attached, marked exhibit "A" and made a part of Complainant's answer, the said Frank Denton was unable to meet the payments thereon, which said payments were in the sum of Twenty Dollars per month, with interest thereon, and that from time to time this Defendant advanced money to the said Frank Denton for the purpose of meeting the said payments, and prior to September 26, 1924, this Defendant had advanced to the said Frank Denton to meet his payments under the aforesaid Louise and Robert Stafford contract the sum of Three Hundred Sixteen and 60/100 Dollars, and that on said date the said Frank Denton was indebted to this Defendant in the sum of Three Hundred Thirteen and 60/100 Dollars for money advanced to him to meet his payments under the aforesaid contract, and that on the said date the said Frank Denton was in default under the aforesaid contract and that he procured this Defendant to buy the aforesaid property from the said Louise Stafford and Robert Stafford, and he did, by endorsement on a copy of the said Louise Stafford contract, transfer to this Defendant all his interest under the aforesaid contract, which said transfer was dated October 22, 1924, and which said endorsement was in conformity with his agreement with this Defendant that this Defendant should purchase the aforesaid property from the said Louise Stafford

and Robert Stafford, and that the said Frank Denton would assign his interest in the said property to this Defendant, and that the aforesaid contract with the said Louise Stafford should be cancelled and annulled and a new contract should be entered into by and between this Defendant and the said Frank Denton by which the said Defendant would convey to the said Frank Denton the aforesaid property upon his paying to this Defendant the monies which this Defendant had previously advanced to him, namely, the sum of three hundred thirteen and 60/100 dollars; and the sum which this Defendant should pay to the said Louise Stafford and Robert Stafford, namely, Three Hundred Sixteen and 40/100 Dollars, and that in pursuance of the said agreement this Defendant did purchase the said property from the said Louise Stafford and Robert Stafford, by that certain deed attached to and made a part of Complainant's bill of complaint, and when the said contract between the said Louise Stafford and Robert Stafford and the said Frank Denton and Tillie Denton, his wife, was delivered to him the said Frank Denton, in pursuance of the said contract did transfer the same as aforesaid to the Defendant, and in pursuance of the aforesaid agreement this Defendant did enter into a contract with the said Frank Denton agreeing to convey to the said Frank Denton the aforesaid property under the terms and conditions and by that certain contract, original of which is hereto attached and marked exhibit "B" and made a part of this answer.

X SIXTH:

Defendant further says that in and by the aforesaid agreement and the said transfer of the said Louise Stafford contract to this Defendant by the said Frank Denton, and in and by the aforesaid contract between the said Defendant and the said Frank Denton, dated September 29, 1924, attached hereto as exhibit "B",

the aforesaid contract with the said Louise Stafford and the said Frank Denton was wholly terminated, and the said contract attached as exhibit "B" was executed in lieu thereof; that the said contract was executed in duplicate and a copy thereof retained by this Defendant, and a copy given to the said Frank Denton, that the said Frank Denton under the said contract made payments thereon of Twenty-five Dollars each on September 29th., December 8th., December 29th., 1924, January 29th., February 28th., and March 30th., 1925, that thereafter he paid nothing, and on July 17, 1925 was in default in his payments under the said contract for those certain payments due April, May and June the 29th., 1925; that he was in default for more than ninety days in the payment of that certain installment due March 29, 1925, and had remained continuously in default for more than ninety days prior to July 17, 1925; that he was also in default and had remained in default for more than ninety days in his agreement contained in said contract to pay the taxes on the said property and that under and by virtue of the terms of the aforesaid contract the said contract was on to-wit, the 29th., day of June, 1925, forfeited and determined by the terms thereof, and that on July 17, 1925 this Defendant did, by written notice to the said Frank Denton, declare the said contract forfeited, a copy of which said written notice is hereto attached and marked exhibit "C" and made a part of this answer; that at the time of the death of the said Frank Denton he did not own or have any interest whatever in the aforesaid property, but that all the right, title and interest of the said Frank Denton in and to the aforesaid property had determined and that at the time of the death of the said Frank Denton this Defendant was the Owner of the said property, free and clear of any claim, right or title or equity of Frank Denton in and to the aforesaid property.

SEVENTH:

Defendant further says that the allegations in paragraph six of Complainant's complaint that one Philmore Denton called upon this Defendant and showed to him the said agreement between the said Frank Denton and this Defendant, and that the said Defendant admitted that the same had been executed by him and the said Frank Denton and that he was bound and obliged to convey the said lands to the said Frank Denton upon the said Frank Denton's complying with the terms and conditions set forth in the said contract are untrue; that Philmore Denton did come to this Defendant and show to him the said Frank Denton's copy of the said contract and this Defendant did then and there tell the said Philmore Denton that the said Frank Denton's interest in and to the said property under the aforesaid contract had lapsed and had been forfeited and determined prior to the death of the said Frank Denton and that the said Frank Denton had no interest or claim in and to the said land at the time of his death, whereupon the said Philmore Denton surrendered the said contract to this Defendant.

EIGHTH:

Defendant further says that he did not admit to Frank S. Stone, a member of the firm of Stone and Stone, the existence of the aforesaid contract, but stated to him that the said contract had been forfeited and determined prior to the death of the said Frank Denton, and that at the time of the death of the said Frank Denton the said Frank Denton had no interest in, claim or title to the said property; Defendant did state to the said Frank S. Stone that he claimed the property through a conveyance from Louise and Robert Stafford and through a transfer from Frank Denton of his contract with Louise and Robert Stafford, and that the contract between this Defendant and the

said Frank Denton had been forfeited and determined and the interest of the said Frank Denton had ceased prior to the death of the said Frank Denton.

NINTH:

Defendant further says that he has not at any time cut any timbers from the above described lands, but that on the contrary he has made improvements on the said property since the lapse of the interest of the said Frank Denton in and to the said property, and that it would be inequitable to now permit the Complainant to claim any interest in the said property under the said Frank Denton.

TENTH:

Defendant further says that the said Frank Denton was further indebted to this Defendant at the time of his death in the sum of Three Hundred Dollars, with interest thereon from May 7, 1924, under that certain mortgage, and under those certain notes, originals of which are hereto attached and marked Exhibit "D", and made a part of this answer; that the said obligation was incurred by the said Frank Denton to this Defendant for the purchase of one ford sedan, Motor No. 3850321, and which said sum was further secured by a lien on the property described in the bill of complaint, and that the said money is still owing to this defendant.

ELEVENTH:

Defendant further says that at the time of the death of Frank Denton the said Frank Denton was indebted to this Defendant in the further sum of Two Hundred Seven Dollars, together with interest thereon from May 3, 1925, under that certain contract between the said Frank Denton and the Gaston Motor Company for the purchase of one ford touring car, Motor No. 8879072, original of which said contract is hereto attached, marked exhibit "E" and made a part of

this answer, and which said contract at the request of Frank Denton, this Defendant took over from Gaston Motor Company on April 4, 1925, and that at the time this Defendant took over the said contract the said Frank Denton entered into a written agreement with the Defendant that the amount owing under the said contract should be further secured by the aforesaid lands, the original of which said contract is hereto attached, marked exhibit "F" and made a part of this answer; that under and by virtue of the said contract the said Frank Denton agreed that in case of default in the payments due under the said Gaston Motor Company contract or of damages to the said car, he would surrender and forfeit the aforesaid contract between the said Frank Denton and this Defendant for the purchase of the lands described in the bill of complaint, said contract being dated September 29, 1924; that the said Frank Denton was in default under the said Gaston Motor Company contract for the payments due thereon on May 3, June 3, and July 3, and that under and by virtue of the said agreement and default under the said contract the interest of the said Frank Denton in and to the lands described in the bill of complaint had ceased and determined and forfeited prior to the death of the said Frank Denton.

TWELFTH:

Defendant further says that at the death of the said Frank Denton the said Frank Denton had no Estate and that this Defendant paid the cost of burying the said Frank Denton, to-wit, the sum of Fifty Dollars to Walter H. Mask for casket, and the sum of ten dollars for other burial expenses, and also paid to Dr. C. Goddard, doctor's bill for the said Frank Denton in the sum of seven and 50/100 dollars, and that the said sums with interest thereon are still owing to this Defendant.

This Defendant having fully answered, prays that he may
go hence with the reasonable cost in the premises.

Deane Hall