

GEORGE T. DINU,
Complainant and
Cross Respondent,

vs.

IGNATZ GOTTLER,
Respondent and
Cross Complainant.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

D E C R E E

This cause being submitted on the Complainant's bill and the Respondent's cross bill, the cross-respondent having demurred and said demurrers being overruled, and said Cross-Respondent failing to answer further and having entered into a stipulation whereby the Complainant and Cross-Respondent agrees to consent to a decree in favor of the said IGNATZ GOTTLER, Respondent and Cross-Complainant, for the possession of the land sued for; on the Respondent's payment of the costs in this cause and the Respondent having paid the costs in this cause, it is therefore ORDERED, ADJUDGED and DECREED that Respondent and Cross-Complainant, Ignatz Gottler, is entitled to the possession of the lands, to-wit:

The North-East Quarter of the North-East Quarter of Section Twenty-Two, Township Seven South of Range Five, East, in Baldwin County, Alabama,

And that the questions involved in this proceeding are adjudicated.

Done this the 21st day of June, 1938.

J. W. Harl

JUDGE.

Approved *G. T. Dinu*
" *[Signature]*

GEORGE T. DINU,
Plaintiff,
vs.
IGNATZ GOTTLER,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

STIPULATION

It is hereby stipulated and agreed between the parties to the above entitled cause, by their respective solicitors, as follows:

Plaintiff agrees and hereby does confess judgment in favor of the Defendant for the possession of the land sued for.

Defendant ~~agrees~~, in consideration of such confessed judgment ~~to~~ pay the costs of court.

IN WITNESS WHEREOF: The parties have hereunto set their hands this 13 day of June, 1938.

GEORGE T. DINU, Plaintiff,

By 
His Solicitor

IGNATZ GOTTLER, Defendant.

By 
His Solicitor.

GEORGE T. DINU,

Plaintiff,

vs.

IGNATZ GOTTLER,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

ORDER

This cause coming on to be heard on the Motion of the Defendant for an order transferring the cause to the equity side of the court, said Motion being supported by the affidavit of Lloyd A. Magney, solicitor for the Defendant, was submitted to the Court.

Upon consideration thereof the Court finds that there is an equitable question involved, the decision of which should dispose of the cause and which cannot be disposed of in the Law side of Court.

IT IS, THEREFORE, ORDERED that the Clerk of this Court transfer said cause to the equity side of the Court and docket the same as a Chancery proceeding and that the Plaintiff file in said chancery proceeding his bill of complaint within thirty (30) days from the date hereof as required by law.

Dated this 20th day of February, 1937.

J. W. Hare

Judge

G. T. DINU,
Plaintiff,
-vs-
IGNATZ GOTTLER,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

AFFIDAVIT AND MOTION

STATE OF ALABAMA)
BALDWIN COUNTY)

Lloyd A. Magney, being first duly sworn, on his oath deposes and says:-

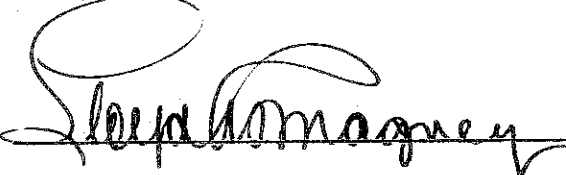
That he is attorney for the defendant in the above entitled cause.

That a prior suit was filed and proceeded to judgment in this Court involving the same land as is involved in this case and the same defendant, said case being entitled Peter Sos vs. Ignatz Gottler; that said case proceeded to judgment and a judgment was entered in favor of the defendant.


That the plaintiff, G. T. Dinu is privy to the said Peter Sos, claiming title to said land by virtue of a deed from said Sos and as such is subject to the provisions of Section 7222 of the Code of Alabama, 1923.

That the costs in said prior suit of Sos vs. Gottler in the amount of \$10.85 have not been paid.

Wherefore defendant moves the Court for an order dismissing this case.



Subscribed in my presence and sworn to before me this 16th day of December, 1935.



Notary Public

GEORGE T. DINU,
Complainant,
vs.
IGNATZ GOTTLER,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

DEMURRERS

Comes the Complainant, GEORGE T. DINU, and offers the separate and several demurrers to the Respondent's Cross Bill.

FIRST: That the same is without equity.

SECOND: Because there affirmatively appears from said Cross Bill that the averment "When one of two innocent persons must suffer for the tortious acts of a third, he who gave the aggressor the means of doing the wrong, must bear the consequences;" does not apply because the wrong or fraud perpetrated in this case was a criminal act.

THIRD: Because the bill does not allege that the party from whom the Complainant claims title was the said Peter Sos.

FOURTH: Because it does not appear that Ludwig Lindoerfer was a person duly licensed and qualified to make examination of titles to real estate in the State of Alabama.

Robert S. Rinsley
R. S. Rinsley Jr.

Solicitor for Complainant and Cross-Respondent.

G. T. DINU,
Plaintiff,

-vs-


IGNATZ GOTTLER,
Defendant.

)
) IN THE CIRCUIT COURT OF
) BALDWIN COUNTY, ALABAMA
) AT LAW

) MOTION FOR SECURITY
) FOR COSTS

Comes now the defendant in the above entitled cause by his attorney of record, and respectfully shows to the Court that the plaintiff is a non-resident of the State of Alabama, and has filed no security for costs as required by law.

Wherefore defendant moves the Court for an order dismissing said cause.


Attorney for Defendant.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon

I G N A T Z G O T T L E R

to appear within thirty days from the service of this writ in the Circuit Court, to be held for said County, at the place of holding the same, then and there to answer the complaint of

G E O R G E T D I N U

Witness my hand, this 21 day of September, 1935

Robert S. Deuch Clerk.

COMPLAINT

GEORGE T. DINU
Plaintiff.

vs

IGNATZ GOTTLER
Defendant.

L A W.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

The Plaintiff sued to recover possession of the following tract of land, viz; The NORTHEAST QUARTER of the NORTHEAST QUARTER of SECTION TWENTY-TWO, TOWNSHIP SEVEN, SOUTH OF RANGE FIVE EAST of the St. Stephens Meridian in Baldwin County of which he has in possession, and upon which, pending such possession, and before the commencement of this suit, the Defendant entered and unlawfully withholds, together with five hundred dollars for the detention thereof.

Clint R. Luby
Attorney for Plaintiff.

G. T. DINU,
Plaintiff
vs
IGNATZ GOTTLER,
Defendant.

L A W
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

The Plaintiff hereby propounds to the Defendant the following interrogatories to be answered by him under oath:

1. Are you now occupying the land sued for in this cause, namely the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 22, Tp. 7 S R 5 E? If so, how long have you been on this land?

2. Is your claim to this land by virtue of Deed purported to be signed by Peter Sos, a single man, on February 1st, 1927 acknowledged before L. Lindoefer as a Notary on the same day and filed for record February 8th, 1927 in the Probate records of Baldwin County? If so, please give the date, book and page of record.

3. At the time you bought this land was it not in the hands of Mr. L. Lindoefer who was listing it for sale as the property of Peter Sos?

4. With whom did you negotiate for the purchase of this land? If you say it was with Mr. Sos, state whether you had any authority for believing that he was the owner other than his own statements.

5. Was not the Peter Sos from whom you bought the land a man apparently between thirty-five and forty years of age, tall, blond, clean-shaven and partly bald?

6. Were not your negotiations for the land with Peter Sos conducted in German? Did he not speak that language fluently?

7. When you bought this land did you do so knowing that it was owned by Peter Sos and is not the title you claim under that which you received from him by the Deed referred to in the second interrogatory?

Elliot & Rinkley
Attorney for Plaintiff.

STATE OF ALABAMA
COUNTY OF BALDWIN

Before me the undersigned notary personally appeared this day
E. G. Rickarby, who being sworn, says that he is attorney for the
Plaintiff in the above styled cause and that the answers to the foregoing
Interrogatories if true will be material evidence for the Plaintiff.

Subscribed

E. G. Rickarby

Subscribed and sworn to before me this the 18th day of

September, 1935.

John J. Gann
Notary Public, Baldwin County, Alabama

RECORDED
INDEXED
SEP 20 1935

Bill A. Hodge

Attorney

By

John J. Gann

Notary Public

RECORDED
INDEXED
SEP 20 1935

Bill A. Hodge

Bill A. Hodge

GEORGE T. DINU,
Plaintiff,

-vs-

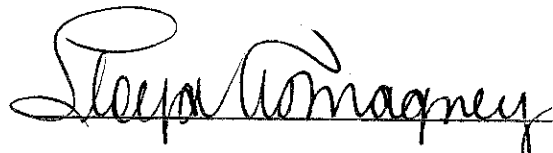
IGNATZ GOTTLER,
Defendant.

)
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

DEMAND FOR NOTICE

Comes now the Defendant and in connection with the application of the Plaintiff for the appointment of a commissioner to take the depositions of sundry witnesses upon interrogatories and demands notice of the time and place of taking such depositions.

Dated this 24th day of April, 1936.



Attorney for Defendant.

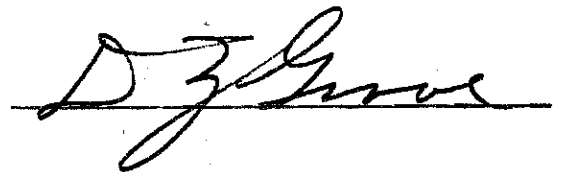
GEORGE T. DINU
Plaintiff

vs

IGNATZ GOTTLER
Defendant

L A W
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

The undersigned hereby agrees that he may be held responsible for the costs in this cause, Plaintiff being a non-resident.



A handwritten signature in cursive script, appearing to read "D. J. Grove", is written over a horizontal line. The signature is located in the lower right quadrant of the page.

GEORGE T. DINU,
Plaintiff,
-vs-
IGNATZ GOTTLER,
Defendant.

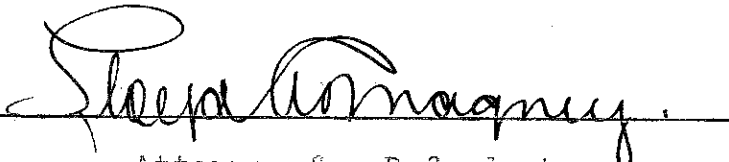
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

OBJECTION TO AND MOTION
TO SUPPRESS DEPOSITIONS

Comes now the Defendant and objects to the taking of the depositions of George T. Dinu, Peter Sos, Oliver Robb, John Nemeuth, John Notac, Nicholas Jenesel and Nicholas Godic, as witnesses for the Plaintiff and moves the Court to suppress said depositions for the following reasons:-

1. The affidavit required by law as a basis for taking depositions upon interrogatories has not been filed.
2. The defendant has not been notified as required by law of the residences of said witnesses.
3. The defendant has not been notified as required by law of the residence of the commissioner suggested by the plaintiff.

Dated this 24th day of April, 1936.


Attorney for Defendant

GEORGE T. DINU,
Plaintiff,
-vs-
IGNATZ GOTTLER,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW

OBJECTION TO INTERROGA-
TORIES

Comes now the defendant and this being his first opportunity so to do, objects to the following questions and interrogatories proposed to be propounded to sundry witnesses for the plaintiff as follows:

INTERROGATORIES TO GEORGE T. DINU

1. Defendant objects to the second question in interrogatory number one, "If so, state when you purchased.....etc.," for reason that it is incompetent, irrelevant and immaterial, is leading and suggestive and assumes as a fact, a fact not in evidence.

2. Defendant objects to the first question in interrogatory number two "Have you a deed for this property" for the reason that it calls for evidence not the best evidence.

Defendant objects to the second question contained in interrogatory number two "If so, where is it now" as incompetent, irrelevant and immaterial and assumes as a fact, a fact not in evidence.

3. Defendant objects to interrogatory number 4 for the reason that it is incompetent, irrelevant and immaterial, leading and suggestive.

4. Defendant objects to interrogatory number six for the reason that it is leading and suggestive.

5. Defendant objects to interrogatory number seven for the reason that it is leading and suggestive.

6. Defendant objects to interrogatory number eight for the reason that it is incompetent, irrelevant and immaterial.

G. T. DINU,
Plaintiff,

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

-vs-

MOTION

IGNATZ GOTTLER,
Defendant.

Comes now the defendant in the above entitled cause and shows to the Court that the Plaintiff in this case is a resident of the State of Michigan and a non-resident of the State of Alabama, and that he has not deposited any security for costs as is required by law.

WHEREFORE, defendant prays that the said cause be dismissed unless the Plaintiff shall deposit such costs or security for costs as may be required by the Clerk in this Honorable Court.

Dated this 21st day of October, 1935.


Attorney for Defendant.

GEORGE T. DINU,
Plaintiff,

-vs-

IGNATZ GOTTLER,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

MOTION AND AFFIDAVIT

Comes now the Defendant and moves the Court to transfer this cause from the Law side of the Court to the Equity side of the Court for the reason that there is an equitable question, the decision of which should dispose of the cause and which equitable question and defense cannot be disposed of in the Law side of the Court the substance of such equitable right and defense being as follows:


The claim of the Plaintiff is for the possession of the Northeast Quarter ($NE\frac{1}{4}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section Twenty two (22), township Seven (7) south of range Five (5) east in Baldwin County, Alabama, and to support his claim to the possession of said land and his claimed right to eject the Defendant therefrom, the Plaintiff will offer evidence and attempt to prove that for some time prior to February 1st, 1927, one Peter Sos was the owner of said land and the holder of fee simple title thereto; that the said Sos was a resident of Detroit, Michigan, and in Detroit, Michigan, delivered to one Peter Muntean his muniments of title to said land, including a number of recorded deeds, one of which was the deed to himself by which he acquired the title to said land and a complete abstract of title to said land; that upon obtaining possession of these documents, the said Muntean came to Baldwin County Alabama, and passed himself off to the Defendant as the said Peter Sos and while posing to the Defendant as the said Sos, sold said land to the Defendant for the sum of SEVEN HUNDRED & 00/100 (\$700.00) DOLLARS, in cash, and executed to the Defendant a warranty deed conveying said land to the Defendant and signed to said deed

to said land by reason of the fact that the deed from Peter Sos to the Defendant which the Plaintiff claims is a forgery was of record on the official records of Baldwin County, Alabama, and upon its face, at least, showed record title in the Defendant and by the further fact that the Defendant then was, and since the 1st day of February, 1927, almost four years, had been and still was, in the actual possession of said land and by reason of said official record and said actual possession of the defendant, Plaintiff was and is, charged with notice of and bound by all of the Defendant's rights in said land among which is the equitable right before mentioned.

That having acquired his deed to said land and his alleged title to and right to possession of said land, as aforesaid, the Plaintiff is estopped to deny the title of the Defendant in and to said lands and the right of the Defendant to the possession of said lands but such estoppel cannot be asserted by the Defendant in the Law side of this Court and he, therefore, moves that the cause be transferred to the Equity side of the Court.

IGNATZ GOTTLER

By


Attorney

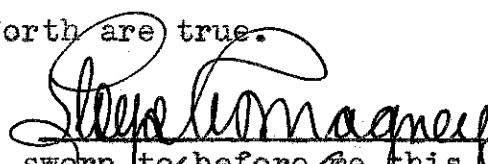
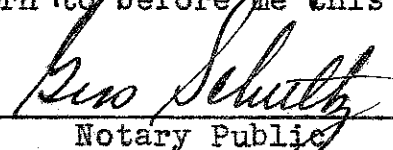
STATE OF ALABAMA)

BALDWIN COUNTY)

Lloyd A. Magney, being first duly sworn, on his oath deposes and says:

That he is attorney of record for the Defendant in the above entitled cause; that he has personal knowledge as such attorney of the facts set forth in the foregoing Motion to transfer said cause and that the facts therein set forth are true.

Subscribed in my presence and sworn to before me this
17 day of August, 1936.



Notary Public

1977
~~1977~~
~~1977~~
IN THE CIRCUIT COURT OF 7-378
BALDWIN COUNTY, ALABAMA
AT LAW

G. T. DINU,

Plaintiff,

-VS-

IGNATZ GOTTLER,

Defendant.

MOTION FOR SECURITY FOR
COSTS

Filed Dec 19 1980
Richard D. Dyer
Dyer

LLOYD A. MAGNEY
Attorney
Foley, Alabama.

RECORDED
INDEXED
9-566

GEORGE T. DINU,

Complainant,

vs.

IGNATZ GOTTLER,

Respondent

DE MURRERS

199 1/2

Filed August 14 1937
De Murrers
Respondent

Elliott C. Rickaby, Jr.
Solicitor for Complainant

RECORDED

7-377

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

G. F. DIMB,

Plaintiff,

-VS-

IGNATZ GOTTLER,

Defendant.

AFFIDAVIT AND MOTION

Filed June 17 1935
Robert H. Foley

LLOYD A. MAGNEY
Attorney
Foley, Alabama.

RECORDED
INDEXED
2-265

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

GEORGE T. DINU,

Plaintiff,

vs.

IGNATZ GOTTLER,

Defendant.

ORDER

2008 Jan 22, 1937

Richard J. Foley

LLOYD A. MAGNEY
Attorney
Foley, Alabama.

RECORDED *Dunn*
7-4-65
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

GEORGE F. DINU,

Complainant,

vs.

IGNATZ GOTTLER,

Respondent.

STIPULATION

Filed June 20 1935
Geo. F. Dinu,
Ignatz Gottler

LLOYD A. MAGNEY
Attorney,
Foley, Alabama.

RECORDED *Done*
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

GEORGE T. DINU,
Complainant,

vs.

IGNATZ GOTTLER,
Respondent.

D E C R E E

*Final June 22, 1935.
R. S. Duck, Register*

RECORDED
Stueck
7-328

No. 192

Received in office 21 day of Sept 1935

W. H. W. Johnson

Sheriff of Baldwin County, Ala.

Executed by serving gop

of the within Summons and Complaint on

Ignatz Gottler

Defendant

This the 1 day of Oct. 1935

W. H. W. Johnson

Sheriff of Baldwin County, Ala.

By *E. N. Anderson*

Deputy Sheriff.

GEORGE T. DINU

VS.

IGNATZ GOTTLER

IN CIRCUIT COURT OF BALDWIN COUNTY

Term 19

SUMMONS AND COMPLAINT

Filed in office this 21 day of

George T. Dinu A. D. 1935
Clerk.

Ernest G. Rickardby.

Plaintiff's Attorney.

Moore Printing Co. ::: Bay Minette, Ala.

197
RECORDED

Duck
7-527

Executed 1935
by serving copy of within ~~Summons and~~
~~Complaint~~ *on writ on*

1935 Oct 1935
Ignatz Gottler

GEORGE T. DINU,

Plaintiff.

VS

IGNATZ GOTTLER,

Defendant.

INTERROGATORIES PROPOUNDED BY
PLAINTIFF TO DEFENDANT.

Filed this 31 day of *Sept* 1935

Robert Duck

Clerk-Registries

M. H. Wilkins Sheriff

By *C. K. Anderson* Deputy Sheriff

RECORDED
INDEXED
7-453
1979

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

GEORGE T. DINU,

Plaintiff,

-VS-

IGNATZ GOTTLER,

Defendant.

OBJECTION TO AND MOTION TO
SUPPRESS DEPOSITIONS

Filed April 25-19 84
John S. Duce

LLOYD A. MAGNEY,
Attorney,
Foley, Alabama.

RECORDED
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW
1997
7-453

GEORGE T. DINU,

Plaintiff,

-vs-

IGNATZ GOTTLER,

Defendant.

DEMAND FOR NOTICE

Filed April 25 1936
Robert H. ...
and

LLOYD A. MAGNEY
Attorney
Foley, Alabama.

RECORDED

Duch

7-378

GEORGE T. DINU,

Plaintiff

vs

IGNATZ GOTTLER,

Defendant.

SECURITY FOR COSTS

July 8 1935

Richard Duch

Duch

192
RECORDED
7-3-29

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

G. F. DINU,

Plaintiff,

-VS-

IGNATZ GOTTLER,

Defendant.

MOTION

FILED 7-3-29
Robert A. Foley
CLERK-REGISTRAR

LLOYD A. MAGNEY
Attorney
Foley, Alabama.

RECORDED
INDEXED
7-452
1999

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

GEORGE T. DINU,

Plaintiff,

-VS-

IGNATZ GOTTLER,

Defendant.

OBJECTIONS TO INTERROGATORIES

*Filed 3/19/38
Benton R. Moore
DWM*

LLOYD A. MAGNEY
Attorney, Foley, Ala.

GEORGE T. DINU,
Plaintiff

vs

IGNATZ GOTTLER,
Defendant.

L A W
CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

Plaintiff interposes the following objections to Cross Interrogatories propounded by Defendant to George T. Dinu:

To the second question of Cross Interrogatory No. One; and to Cross Interrogatories Nos. Two to Seventeen inclusive and separate because same call for evidence irrelevant and immaterial.

To Cross Interrogatory No. Ten because calling for the mental conclusion of the witness.

To Cross Interrogatory No. Fourteen because calling for the legal opinion of the witness.

To Cross Interrogatory No. Sixteen because calling for the mental conclusion of the witness.

Blaine S. O'Leary
Attorney for Plaintiff

GEORGE T. DINU,
Complainant,
vs.
IGNATZ GOTTLER,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

Comes now the above named Respondent and files this, his answer to the bill of complaint.

FIRST: Respondent admits the allegations of the paragraph of the bill of complaint numbered First.

SECOND: Respondent denies the allegations of the paragraphs of the bill of complaint numbered Second and Third.

THIRD: Respondent admits that Peter Sos, on or about January 31st, 1912, received a warranty deed from Lorenz von der Leck to the Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Twenty-two (22), Township Seven (7) South of Range Five (5) East in Baldwin County, Alabama, which said deed conveyed fee simple title in and to said lands to the said Peter Sos but Respondent denies the other allegations of said paragraph of the bill of complaint numbered Fourth.

FOURTH: Respondent denies the allegations of the paragraph of the bill of complaint numbered Fifth, except that he admits that suit in ejectment was filed by the Complainant against this Respondent and that the Respondent has obtained an order of the Court, transferring said cause from the Law to the Equity side of the Court.

CROSS-BILL

For further answer and by way of Cross-bill, the respondent alleges and shows to the Court:-

ONE: That for many years prior to January 1st, 1927, the record title to the Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Twenty-two (22), township Seven (7) south

of Range Five (5) East in Baldwin County, Alabama, stood in the name of one Peter Sos and that Respondent owned and occupied a farm adjoining said land which was wild, cut-over land, unfenced and in the actual possession of no one.

TWO: That during the month of January, 1927, an individual who represented himself to be the said Peter Sos, called upon the Respondent and began negotiations to sell to the Respondent the said lands and it was agreed between the said Sos and this Respondent that Sos would sell and Respondent would buy the said lands at the then agreed price of SEVEN HUNDRED & 00/100 (\$700.00) DOLLARS.

The said Sos thereupon left to go back to his home in Detroit to secure his deeds, abstract and other muniments of title for the inspection and examination of the Respondent and some days later returned again to the home of Respondent bringing with him a complete abstract of title to the said lands and various and sundry recorded deeds and other papers and muniments of title, showing good and merchantable title in fee simple to said lands in the said Peter Sos. Respondent procured these papers to be examined by one Ludewig Lindoerfer, known to him to be skilled in the examination of titles to real estate, and upon the opinion of the said Lindoerfer that good and merchantable title was vested in the said Peter Sos, had a warranty deed conveying the said lands from the said Peter Sos to himself prepared and signed by the said Peter Sos and acknowledged by him before the said Lindoerfer who was also a duly appointed, qualified and acting Notary Public in and for Baldwin County, Alabama, and upon the delivery to him of this warranty deed so executed by the said Sos, and the abstract, deeds and other muniments of title of the said Sos, the Respondent paid to the said Sos the agreed purchase price of SEVEN HUNDRED & 00/00 (\$700.00) DOLLARS, on the 1st day of February, 1927.

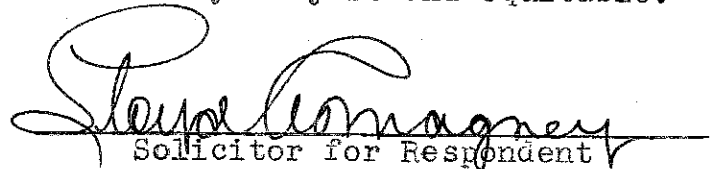
Respondent believed then, and believes now, that the individual with whom he dealt as aforesaid was the said Peter Sos,

notice of all of the rights of the Respondent in and to said land. That Complainant has never had any possession of said land nor made any attempt to take any possession of said land under the purported deed to him hereinbefore mentioned.

FIVE: Respondent further avers that from the year 1912, to and including the year 1926, the said land was regularly assessed for taxes by the said Peter Sos and taxes thereon annually were paid by him but that since February 1st, 1927, when Respondent acquired said land, neither the said Sos nor this Complainant have ever assessed said land for taxation or have ever paid any taxes thereon.

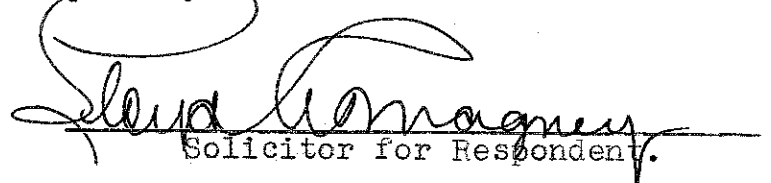
PRAYER FOR RELIEF

WHEREFORE, Respondent prays that this answer may be taken as a cross-bill; that upon final hearing of this cause, your Honor will adjudge and decree that the Complainant, George T. Dinu, has no right, title or interest in and to the lands described in the bill of complaint; that the title of the Respondent in and to said lands may be quieted and confirmed in him and that the Complainant be perpetually enjoined from having, claiming or asserting any right, title or interest in and to said lands or any part thereof and that Respondent may have such other, further and different relief in the matter as may be just and equitable.


Solicitor for Respondent

FOOT NOTE

The Complainant, George T. Dinu, is required to answer the allegations of the Cross-bill from Paragraph numbered One to paragraph numbered Five, both inclusive, but not under oath, oath to such answer being hereby expressly waived.


Solicitor for Respondent.

TO

THE HONORABLE F. W. HARE, JUDGE OF THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Comes GEORGE T. DINU and by this his bill of Complaint presented against IGNATZ GOTTLER shows:

FIRST: That he is a resident of the State of Michigan and over the age of twenty one years; that Ignatz Gottler is a resident of the State of Alabama living near Elberta in Baldwin County and also over the age of twenty-one years;

SECOND: That on or before suit was filed or on or before the first day of October, 1935 Complainant was seized and possessed of the Northeast Quarter of the Northeast Quarter of Section Twenty-two, Township Seven South of Range Five East in Baldwin County having obtained same by deed from one Peter Sos who for many years had owned and been in possession of said land;

THIRD: That on or about the 17th day of January, 1931 Complainant purchased said land by a warranty deed from said Peter Sos whose wife Eva Sos joined with him in the deed and a copy of said deed is hereto attached as Exhibit "A" and made a part of this instrument;

FOURTH: That said Peter Sos acquired said land on the 31st day of January, 1912 by warranty deed from Lorenz von der Leek, and Louise von der Leek, his wife, and immediately thereupon went into possession of same;

FIFTH: That on or about February 1st, 1927 the Defendant without the knowledge of either Sos or Complainant went into occupancy of the land above described and as Complainant is informed did this by virtue of deed dated February 1st, 1927 purported to be signed by Peter Sos but which said deed said Sos did not execute nor authorize anyone else to execute for him and his signature thereto was a forgery and the occupancy of Defendant is a trespass upon the rights of Complainant in whom the legal title to said land vests;

Complainant further shows that suit in ejectment was filed by him against said Ignatz Gottler, that said Gottler has obtained from this Court an order transferring the cause from the law to the

-Page Two-

equity side of this Court and that this bill is now filed pursuant to the Court's order in the premises.

THE PREMISES CONSIDERED, Complainant prays that said Ignatz Gottler be required to answer this bill within the time required by law and that upon the hearing of this cause a decree be rendered forever quieting and setting aside whatever claim said Gottler may have by virtue of the forged deed forever quieting any title or claim ~~he~~ may have to said lands and decreeing the title to said land and the right of possession and ownership therein to be in Complainant together with other, further or different relief as to equity may seem meet.

Elliott S. Rinsbury
Solicitor for Complainant.

NOTE: The Defendant is required to answer each paragraph of the foregoing bill but not under oath.

Elliott S. Rinsbury
Solicitor for Complainant.

GEORGE T. DINU,
Plaintiff,
-vs-
IGNATZ GOTTLER,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

CROSS INTERROGATORIES TO GEORGE T. DINU

INTERROGATORY NUMBER ONE: What is your age, and your occupation? Are you a native born or naturalized citizen of the United States, or are you an alien?

INTERROGATORY NUMBER TWO: How long have you been in the United States?

INTERROGATORY NUMBER THREE: Were you ever in Baldwin County, Alabama? If so, when?

INTERROGATORY NUMBER FOUR: Did you ever see the land involved in this lawsuit?

INTERROGATORY NUMBER FIVE: Did you ever see or talk to the defendant in this suit, Mr. Gottler?

INTERROGATORY NUMBER SIX: Did you get, or see an abstract of title to this land at the time you say the same was deeded to you or at any time before or since?

INTERROGATORY NUMBER SEVEN: Did you have the official land records of Baldwin County, Alabama, checked or examined to ascertain who had title to this land before you say you received a deed for it?

INTERROGATORY NUMBER EIGHT: Did you know that the defendant was occupying this land, living upon it and farming it at the time you say you received the deed to it?

INTERROGATORY NUMBER NINE: Did you pay anything for this deed you say you received to this land which you had never seen, the title to which you knew nothing about and the possession and occupancy of which you were ignorant of? If so, how much?

INTERROGATORY NUMBER TEN: Why were you willing to pay anything for a deed to land you knew nothing about?

G. T. DINU,
Plaintiff,

-vs-

IGNATZ GOTTLER,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

ANSWER OF DEFENDANT TO IN-
TERROGATORIES

Comes now the defendant and answering the interrogatories propounded by the Plaintiff to the Defendant in the above entitled cause, states as follows:

1. To the first interrogatory he says: Yes; I have occupied this land since February 1st, 1927.
2. To the second interrogatory he says: I am claiming this land at the present time and my claim is under the deed described in the interrogatory, said deed having been recorded on February 8th, 1927, in Book 42 NS of Deeds on Page 188, in the Office of the Judge of Probate, of Baldwin County, Alabama.
3. To the third interrogatory he says: I do not know whether or not this land was in the hands of Mr. L. Lindoerfer for sale when I bought it. I knew, and I think I learned this from Mr. Lindoerfer, that the land belonged to a man named Peter Sos.
4. To the fourth interrogatory he says: I negotiated for the purchase of this land with Mr. Sos. The first time I talked with him I had no authority for believing that he was Peter Sos, and the owner of the land, except his own statements but before I bought he went back to Detroit and returned and at this time he had with him the abstract of title to the land, showing title in Peter Sos, and had a number of old recorded deeds in the chain of title. I paid him for the land by a check drawn to the order of Peter Sos, which he endorsed and cashed and he also went before Mr. Lindoerfer, a Notary Public, and acknowledged his signature to the deed which he gave me.
5. To the fifth interrogatory he says: He was a man apparently between 35 and 40 years of age, rather tall, blond, clean shaven and partly bald.
6. To the sixth interrogatory he says: My negotiations for the land with Peter Sos were conducted in the German language. He spoke this language fluently.
7. To the seventh interrogatory he says: Yes.

Ignatz Gottler

STATE OF ALABAMA }
BALDWIN COUNTY }

Ignatz Gottler, being first duly sworn, on his oath deposes and says, that he is the above named defendant and that the foregoing answers to the interrogatories propounded to him by the plaintiff are true.

x Ignatz Gottler

Subscribed in my presence and sworn to before me this 15
day of October, 1935.

Lawson
Notary Public

GEORGE T. DINU,

Plaintiff.

vs

IGNATZ GOTTLER,

Defendant.

L A W

CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

INTERROGATORIES PROPOUNDED TO GEORGE T. DINU, PETER SOS, OLIVER
ROBB, JOHN NEMENTH, JOHN MOTIC, NICHOLAS JENESEL AND
NICHOLAS GODRI, WITNESSES FOR PLAINTIFF:

TO GEORGE T. DINU

1. Are you the Plaintiff in this case? If so, state when you purchased the Northeast Quarter of the Northeast Quarter of Section Twenty-two, Township Seven South of Range Five East of the St. Stephens Meridian in Baldwin County, Alabama and from whom.
2. Have you a deed for this property and if so where is it now?
3. When did you discover that the Defendant was claiming the land? What steps did you take toward getting him off and on what did he base his claim for possession?
4. If you say you know Peter Sos, how long have you known him?
5. How far do you live from Mr. Sos?
6. Has your acquaintance with Mr. Sos been such that you could state of your own knowledge that he has not been away from Dearborn for more than two days at a time at any time in the last nine years, particularly in January and February of 1927?
7. In the months of January and February 1927 could he have been away from Dearborn long enough to make a trip to Alabama and back without your knowledge?
8. What is Mr. Sos's nationality? Does he speak German?
9. Is he a married man? If so, was he married in January 1927?
10. Please describe Mr. Sos's personal appearance.
11. Is the Defendant upon the land in suit with your permission or under any authority given by you?

TO PETER SOS

1. In January 1927 were you the owner of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 22, T 7 S of R 5 E in Baldwin County, Alabama and if so from whom did you purchase this land?
2. When did you go into possession and what acts of possession did you take?
3. How soon after you purchased this land in 1909 did you enter into occupancy and what did you do about having it cleared?
4. After you first purchased it and went into possession when did you go on it again?
5. What further acts of possession have you asserted to the land? Have you paid the taxes on it?
6. Were you still in possession of the land in the month of January 1927?
7. Where were you and what were you doing on February 1st, 1927? How long prior to that time had it been since you were in Alabama?
8. When did you discover that the Defendant was claiming the land? What steps did you take toward getting him off?
9. Did you at any time execute a deed for this land to one Ignatz Gottler? If Gottler has a deed for this land dated February 1st, 1927 purported to be signed by you at Elberta, Alabama is the signature on said deed signed by you or was it executed with your knowledge and consent?
10. When did you first learn that Gottler was claiming under such a deed?
11. Did you later deed this land to George T. Dinu and did your wife join in the deed with you? Was not this deed dated January 17th, 1931 and recorded in Deed Book 50 N.S., page 369 of the Probate Records of Baldwin County?
12. Did Mr. Gottler or anyone in his behalf pay you any money for this land?
13. Did you ever endorse a check in your favor executed by the State Bank of Elberta to you on February 22nd, 1927 for \$593.00, check Number 1690? If your name appears on the back of such a Cashier's check is it your genuine endorsement or a forgery?
14. Where were you employed between January 3rd, 1927 and March 5 of that year? If you say you were working for the W. E. Wood Company

2. How far do you live from Mr. Sos and are you on intimate and friendly terms with him?

3. Has Sos been out of Dearborn, Michigan as much as five days at a time at any time in the last five years except when he was off at work for the company by whom he was employed?

4. Was Sos in Dearborn, Michigan on February 1st, 1927?

5. Is your acquaintance with him such that he could have been absent for five days in January 1927 without your knowledge?

6. Please state why you are able to give positive answers to the foregoing questions.

Elliott G. Rickarby
Attorney for Plaintiff.

STATE OF ALABAMA
COUNTY OF BALDWIN

Before me the undersigned Notary personally appeared this day Elliott G. Rickarby, who, being sworn, says that he is the attorney for George T. Dinu, Plaintiff in this cause and that the witnesses to whom the foregoing interrogatories are addressed are non-residents of the State of Alabama, residing in Dearborn, Michigan and more than one hundred miles from the place of trial of this cause, for which reason it is necessary that their testimony be taken by deposition.

Elliott G. Rickarby

Subscribed and sworn to before me this the _____ day of April, 1936.

John J. Gamm
Notary Public, Baldwin County, Alabama.

Plaintiff suggests the name of Miss Dorothy Magee of Detroit, Michigan as commissioner to take the testimony called for in the foregoing.

Elliott G. Rickarby
Attorney for Plaintiff.

George T. Dinu,)
Complainant,)
Vs.)
Ignatz Gottler,)
Respondent.)

In the Circuit Court, Baldwin
County, Alabama.


In Equity.

This cause is submitted for decree on demurrer to Respondent's Cross Bill, and upon consideration I am of the opinion that said demurrer is not well taken.

It is, therefore, ordered, adjudged and decreed by the Court that said demurrer to said Cross Bill be, and same hereby is, overruled.

Complainant is allowed thirty days to file answer.

This August 30th, 1937.



Judge.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

1997

GEORGE T. DINU,

Plaintiff,

--VS--

IGNATZ GOTTLER,

Defendant.

CROSS INTERROGATORIES TO
GEORGE T. DINU

*Filed Office 257936
Robert D. Dyer
Clerk*

LLOYD A. MAGNEY,
Attorney, Foley, Ala.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

G. T. DINU,

Plaintiff,

-VS-

IGNATZ GOTTLER,

Defendant.

ANSWER OF DEFENDANT TO IN-
TERROGATORIES

FILED MAR 30 1930
W. A. Foley
Clerk-Register

LLOYD A. MAGNEY
Attorney
Foley, Alabama.

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Lloyd a Magin*

4/22/38

GEORGE T. DINU,

Plaintiff

VS

IGNATZ GOTTLER,

Defendant.

Entered 4-22-1938

by *of* *of* *of*
of *of* *of*

*M. H. Miller
C. H. Anderson*

INTERROGATORIES PROPOUNDED
TO PLAINTIFF'S WITNESSES

Clerk-Register

Filed this 16 day of April 1938
Robert S. Dean
Clerk-Register

RECORDED

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to

Carroll Bill -

Index Aug 31 1937

Carroll
Dupont

IN THE CIRCUIT COURT OF BALDWIN COUNTY ALABAMA

IN CHANCERY

GEORGE T. DINU,

Complainant,

vs.

IGNATZ GOTTLER,

Respondent.

BRIEF OF RESPONDENT ON DEMURRERS TO CROSS BILL

LLOYD A. MAGNEY
Attorney

TO THE HONORABLE F. W. HARE,
CHANCELLOR

While the demurrers to the cross bill are four in number, the Third and Fourth grounds are not argued by the Complainant and apparently have been abandoned, as they should be, because on the face of them there is no merit in these grounds of demurrer.

The first ground "That the same is without equity" apparently is directed to the proposition that there was no sufficient notice to the complainant of the right of the Respondent to enforce an estoppel against Complainant's grantor. The argument in support of this ground is a bare statement, "We feel that they fail to allege any facts which make out notice of their claim, either actual or constructive and that it will not be so regarded within the meaning of the law on estoppel." The law has long been settled in this state that possession and occupation of lands, by itself, is notice. The rule is stated by the Supreme Court as follows:

"In Oliver vs. Robinson, 58 Ala. 46, 50, Judge Stone says: 'Possession and occupation of lands, in the absence of all other proof, is prima facie evidence of ownership, and is constructive notice to all persons acquiring an adversary interest, of every right, legal or equitable, which such possessor owns.....' " Morris vs. Card, 135 So. 340.

From the averments of the cross bill, it appears that the Respondent took possession of this land on February 1st, 1927, and has continuously possessed and occupied the land ever since and that on the 8th day of February, 1927, his deed to the

property was placed of record. The Complainant's deed to this property was executed some four years later and any further notice to him than he had from Respondent's possession and recorded deed would have been impossible. Hence, ^{if} Respondent could enforce an estoppel against the Complainant's grantor, Sos, Complainant took his deed with notice of Respondent's right so to do and is in his grantor's shoes.

The real point of Complainant's demurrers and his argument in support is, that there can be no estoppel because the fraud in this case was not only a civil fraud but a criminal act and this point is based upon two general text statements found in Corpus Juris which he quotes. However, the immediately following text in Corpus Juris is ample authority for the estoppel in this case:

"CLOTHING ANOTHER WITH APPARENT TITLE OR AUTHORITY-
(a) IN GENERAL. Where the true owner of property holds out another, or allows him to appear as the owner of or as having full power of disposition over the property, and innocent third persons are thus led into dealing with such apparent owner or person having such apparent power of disposition, they will be protected. However indisputable were the intentions of the owner not to surrender his ownership, when he has surrendered the possession and exhibited the person who has that possession to the world as one having the power to dispose of the property, he will not be heard against an honest buyer who had acted upon the confidence imprudently reposed by the owner. In such cases the rights of such third persons do not depend upon the actual title or authority of the party with whom they deal directly, but are derived from the act of the real owner, which precludes him from disputing as against them the existence of the title or power which, through negligence or mistaken confidence, he caused or allowed to appear to be vested in the party making the conveyance. The rule is especially applicable where the owner has encouraged the parties to deal with each other.

Nevertheless, the rule, although general in its terms, operates only to protect those who, in dealing with others, exercise ordinary caution and prudence, and as against those who have voluntarily conferred upon others the usual evidences or indicia of ownership of property, so that they have apparent authority to dispose of it. And in accordance with the general rules no estoppel arises in favor of one whose acts were not influenced by such conduct, or who has suffered no injury therefrom. It is of course essential that the conduct of the party against whom the estoppel is claimed should clearly amount to the clothing of another with title to or authority over the property in question." 21 C. J. 1172-1173.

The proposition that where the fraud of the third person is also a crime, no estoppel can arise, seems to be of limited application as the text statement is supported by citations from but few jurisdictions. Alabama is not among them and the Supreme Court of Alabama has applied the doctrine in several cases in which the fraud was also a crime. For instance, the case of Bank of Oakman vs. Thompson, 163 So. 615, was a case in which a mortgagor had given to the Bank, already holder of a first mortgage, another mortgage which included the first but was for a larger sum representing additional cash advanced. The Bank carelessly stamped the first note and mortgage "paid" and turned it over to the mortgagor. Armed with this evidence of payment, he went to the holder of a second mortgage and procured an extension by representing he had paid the first mortgage and exhibiting the note and mortgage stamped "paid" by the bank.

Believing his mortgage to be first, the holder of the second sold it to Plaintiff who sued the Bank to establish its priority and prevailed.

Of course, the mortgagor's representation that he had paid the first mortgage was false and was not only a civil fraud but was within the statutory definition of obtaining money or property by false pretenses, which is a crime. However, the Supreme Court found no difficulty in enforcing the estoppel for that reason, and said:-

"Whether to be considered as a mere extension or as a payment of the old mortgage is a matter of intention of the parties (Bank of Oakman v. Thompson, 224 Ala. 87, 139 So. 238), and from the proof here offered a question not free from difficulty (New England Mortgage Security Co. v. Hirsch, 96 Ala. 232, 11 So. 63). We pass it by without further consideration, and conceding the new mortgage was intended as an extension of the old, yet we are persuaded priority of the Bank's mortgage was correctly denied upon the theory of estoppel, as stated by the chancellor and as well supported by the two authorities (Turner v. Flinn, 72 Ala. 532; Wilkinson v. Solomon, 83 Ala. 438, 3 So. 705, 706), found cited in his helpful opinion which accompanies the decree.

"It is clear beyond question that Kropp was moved to grant an extension and accept a renewal note because of the fact the mortgagor had in his possession and exhibited the note and mortgage of the bank marked 'Paid,' and that Alice Thompson purchased for cash the Kropp renewal note and his mortgage upon the strength of the statement that the bank mortgage had been satisfied, the original of which, marked 'Paid,' was delivered to her at the time of the purchase. True the record was not marked 'Satisfied,' but these parties had a right to rely upon the possession of the mortgagor of the note and mortgage marked 'Paid.' As said in Wilkinson vs. Solomon, supra: 'The mortgagor's possession of the note and mortgage was prima facie evidence of its payment and discharge, though no entry of satisfaction was made on the margin of the record thereof. On the presumption of payment arising from the possession of the mortgage, a purchaser from the mortgagor may rely. The mortgagee and purchaser may both be innocent parties, but in such case the mortgagee, who furnished the mortgagor with the means and power to do the wrong, must bear the consequences.' Like thought is expressed in Turner v. Flinn, supra: 'The law simply utters the suggestion of common sense and justice, in declaring that, 'when one of two innocent persons must suffer from the tortious act of a third, he who gave the aggressor the means of doing the wrong must bear the consequences of the act.' " Bank of Oakman vs. Thompson et al, 163 So. 615, Ala.

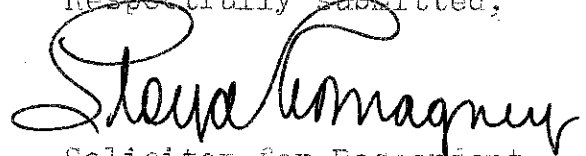
The two cases cited in this opinion, Turner vs. Flinn, supra and Wilkinson vs. Solomon, Supra, were also cases in which the fraud might have been made the basis of a criminal prosecution.

Of course, if the criminal act of the third person, rather than the negligence of the person against whom the estoppel is asserted, is the proximate cause of the loss, no estoppel should be enforced. For instance, if I lend my revolver to a third person who uses it to commit a robbery, I should not be held responsible, notwithstanding, that I furnished him the means of committing the wrong. But this is an entirely different situation than the one here, where Sos furnished the imposter (Assuming that he was an imposter) with all of the evidence necessary to enable him to deceive the respondent into believing that he was the owner and entitled to convey the property and collect the money.

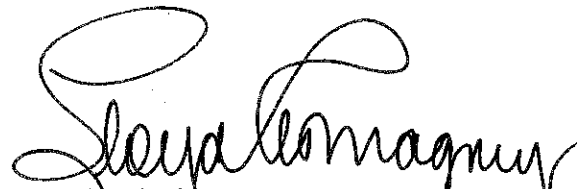
If Complainant's averments are the facts, I have no doubt that Sos had no intention of actually authorizing the imposter to sell his property and collect the money and keep it. Almost certainly, he expected his agent to negotiate a sale and send a deed to Detroit for him to execute and collect the money for. But when his agent took advantage of Sos' misplaced confidence and used the evidence Sos had furnished him to deceive the Respondent and collect the money from him, certainly, in such case the estoppel will be enforced as it would be difficult to imagine a more perfect case for the application of the equitable principle of estoppel.

It is respectfully submitted, therefore, that the demurrers should be over-ruled.

Respectfully submitted,


Solicitor for Respondent.

I hereby certify that a copy of the foregoing brief was served upon Honorable E. G. Rickarby, Jr., Solicitor for Complainant by mailing the same to him postage prepaid this 27th day of August, 1937.


Solicitor for Respondent.

E. G. RICKARBY, JR.
ATTORNEY AT LAW
POPPE BUILDING
FOLEY, ALABAMA

Robert S. Duck, Esq.,

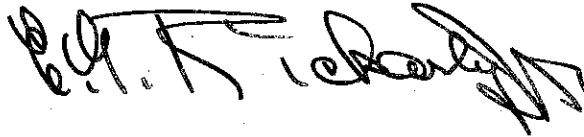
August 28, 1937.

Robert S. Duck, Esq.,
Register in Chancery,
Bay Minette, Alabama.

Dear Mr. Duck:- In re: Dinu v. Gottler.

With this I hand you my reply brief in the above mentioned matter. Yesterday I received Mr. Magney's brief and suppose you did the same. Therefore I ask that you send the pleadings together with my brief, his reply or rather brief and my reply up to the Judge.

Yours very truly,



Cc. L. A. Magney, Esq.,
Foley, Alabama.

E. G. RICKARBY, JR.
ATTORNEY AT LAW
POPPE BUILDING
FOLEY, ALABAMA

August 28, 1937.

Honorable F. W. Hare,
Judge of the Circuit Court,
Monreville, Alabama.

Dear Judge Hare:- In re. Dinu V. Gottler,
Reply brief on demurrers to corssbill.

In reply to the Respondent's brief it seems that he takes the position that as in Bank of Oakman v. Thompson 163 So. 615 (previously cited by him) fraud was practiced, and fraud is obtaining money under false pretences and is a crime Alabama does not follow the line of authorities which hold that "the rule has no application in cases where the wrong was accomplished through the instrumentality of a criminal act."

I can see a clear distinction between the case he cited and the case of Hollis v. Harris 96 Ala. 288 25 So 200. (previously cited by us) and the case at bar. In his case the Bank gave a party their mortgage marked "paid". It was natural and probable for the bank to suppose the man might use that as evidence that the mortgage was paid and their giving it to him without the intervention of a criminal act was the instrumentality used to defraud, if there was fraud in that case.

In the Hollis case the deed was left in the parties hands, and the intervention of a criminal act, the changing of the name of the grantee over the signature of the grantor, was held to be the cause of the fraud, and the grantor though he

let the party have the unrecorded deed was not held responsible for the loss incurred through the fraud.

In the case at bar it is not alleged that we left our recorded deeds and abstracts, or muniments of title as he puts it, in the hands of the third party but only that he had them and it is clear that he used them but the criminal act, forgery, was the instrumentality through which the ~~act~~^{fraud} was accomplished.

We therefore maintain that ^{an} the bill failes to show where we have breached any duty owed, and second ~~an~~ the facts which he charges us with are not the cause of his loss, his bill is without equity.

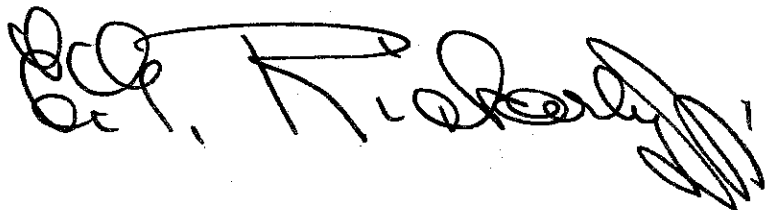
Respectfully submitted,

Elliott G. Rickarby

and


As solicitors for Complainant and cross
respondent.

A copy of this brief has this the 28th day of August, 1937
been mailed to Lloyd A. Magney, Esq., postage prepaid.



H

E. G. RICKARBY, JR.
ATTORNEY AT LAW
POPPE BUILDING
FOLEY, ALABAMA

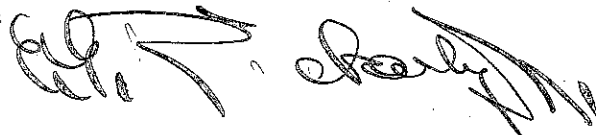
August 25, 1937.

Robert S. Duck, Esq.,
Register in Chancery,
Bay Minette, Alabama.

Dear Mr. Duck. In re; Dinu V. Gottler.

With this I hand you my brief in the above matter
and ask that you send them up the court together with the
pleadings, Mr. Magney's brief, which is due to be filed in a few days
and my reply to his.

Yours very truly,



E/r.
Cc.
L. A. Magney Esq.,
Foley, Alabama.

E. G. RICKARBY, JR.
ATTORNEY AT LAW
POPPE BUILDING
FOLEY, ALABAMA

August 25, 1937.

Honorable F. W. Hare,
Circuit Judge,
Monroeville, Alabama.

Dear Judge Hare:- IN RE: DINU V. GOTTLER.
BRIEF ON DEMURRERS TO CROSS BILL.

This case comes up on demurrers to the Respondents cross-bill. The complainant in the case originally filed suit in ejectment and the matter was transferred to equity on the respondent's affidavit that he had an equitable defense. Now he raises this equitable defense by cross-bill, the equity of which we are testing by demurrer. His cross bill asks for a decree quieting title against this complainant.

The facts in the case are briefly: that one Peter Sos, our predecessor in title bought this land in about 1912 and on the 17th day of January, 1931 sold to this complainant. This complainant found that the land was being occupied by the respondent who sets out that he holds title to the property under a deed made by a man that he believes to be Peter Sos and that he took a deed from the said Sos on the first day of February, 1927.

The equitable defense sought to be raised is that someone representing himself to be Sos had in his possession the muniments of title and evidences of ownership which is alleged could have only come from the true owner of the property and that by them he misled the respondent into believing that he was the

owner of the property and so respondent bought from him. Respondent instead of being willing to suffer from his negligence says that it was our fault that he trusted the impositor to be Sos and to strengthen his case alleges that we are chargeable with notice that they took a deed from this impositor and have been in possession of the land since 1927. We feel that they fail to allege any facts which make out notice of their claim either actual or constructive and that it will not be so regarded within the meaning of the law on estoppel.

We feel that the Court is familiar with the general law on estoppel generally and are only quoting where this phase of the matter is treated by Corpus Juris:

21 C.J. Page 1170 Section 176 ACTS CAUSING INJURY TO ONE OF TWO INNOCENT PARTIES -- GENERAL RULE AND ITS LIMITATIONS: Wherever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it. Equity will not postpone the interest of one who has omitted no duty devolving on him to the interest of another whose negligence made it possible for the loss to occur. (This seems to be in their favor but the rule is limited)

LIMITATIONS OF RULE. While this rule is one of quite general application and where properly understood and limited is one of manifest equity, it has, however, many limitations and qualifications. The rule is said, is mainly confined to cases where the third person whose act or default has occasioned the loss has been in some sense or to some extent the agent of the party who is made to sustain the loss, or where the latter by his acts or negligence has authorized the other party to consider him as such. Furthermore, in accordance with well settled general principles governing equitable estoppals, no estoppel can arise where all parties interested have equal knowledge of the facts, where the party setting up the estoppel is chargeable with notice of the facts, where no fault

or negligence is imputable to either party, or where the party claiming the estoppel has not altered his position to his detriment, or sustained loss by reason of the conduct of the party against whom the estoppel is claimed. And the rule does not apply in cases where the wrong was accomplished through the instrumentality of a criminal act, it being held that in such case the crime, and not the negligent act, is the proximate cause of the injury.

21 CJ 1173 Section 178: Real Property-- aa In General. The owner of real PROPERTY, by clothing another with an apparent title thereto or with an apparent authority in it, estops himself to deny such title or authority in the matter of dealing with the property, as against one who acted in good faith relying on the owner's acts without notice of knowledge of his rights; and this principle is especially applicable where he actively advises the party setting up the estoppel to deal with the person whom he has clothed with apparent title to or authority over the property. However, in order to create the estoppel there should be either knowledge of his rights in the property on the part of the party estopped, or else something which fairly puts him on inquiry to learn the true facts, and also knowledge of the dealings in which the title to or authority over the property is involved, and existence of circumstances which impose on him the duty to make known his rights to the party claiming the estoppel. Furthermore it is essential that the party claiming the estoppel should have been ignorant of the rights of the party against whom the estoppel is claimed, and that he should have acted in reliance on his conduct or representations to his prejudice. There can be no estoppel in favor of persons who did not act in reliance on the acts or representations of the party whom it is sought to estop, either against the party, or his privities. And the rule has no application in cases where the wrong was accomplished through the instrumentality of a criminal act.

By looking over the pleading and construing it most strongly against the pleader as both law and common sense require us to do, all that is charged against us is that someone got hold of our deeds and abstract, they might have stolen them for all that is shown and by this means was able to get by with this forgery. And that this deed not bearing the signature of this complainant or his predecessor in title, but a forgery, is recorded in a court house a thousand or so miles from the home of the true owner of the land and that they went into possession

of our land. There is no allegation of any act on our part which could lead anyone to believe we held out the forger to be Sos, the then owner of the land, or that we did anything other than a reasonable and prudent man would do in the management of his land when he lived several hundred or a thousand miles away from it. There is no allegation that we had actual notice of his possession and the only notice that is alleged against us is what the Complainant alleges is constructive notice, and the facts that he alleges to make constructive notice do not amount to constructive notice.

Gross

Therefore we maintain that the/Complainant's bill does not meet the requirements of the law for an allegation of estoppel, for the impositor's criminal act of forgery, signing Sos's name to the deed that he gave the Respondent, and not his possession of our papers is the proximate cause of the Cross-complainant being defrauded. The leading Alabama case that deals with this question is that of Hollis v. Harris 96 Ala. 288, 25 So 200.

In this case it was held that the grantors in an undelivered deed, in which A. was named as the grantee, by leaving it in the possession of another person, do not confer upon such person apparent authority to give ~~consent of the grantors~~, effect to the deed by delivering it to a third person ~~of~~ whose name, without the consent of the grantors, was substituted as grantee in place of A's and in such case, there is no grounds of estoppel against the grantors in favor of the substituted grantee.

Although this case seems to be stronger than the case at bar the Red cow case seems to be the case of Nash v. Moore 165 App Div. 67, 151 NYS 96. Cited under this head in 21 CJ page 1172 sub-head 76 Note B.

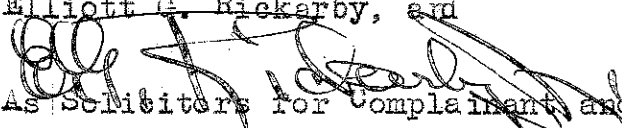
Forged instruments.-- The reposing of confidence in an attorney who defrauded by forgery of assignments of mortgages was not the natural and probable cause of loss to the assignees, as the crime, and not the negligence in reposing confidence in him, was the proximate cause of the loss; and the rule that, where one of two innocent persons must suffer from the act of a third person, the loss must fall on the one enabling the third party to do the injury did not apply.

The Court in the argument of this case seemed to think that as the forgery took place ten years ago the statute of limitations should bar this complainant. We wish to call the Court's attention to the fact that this complainant was a non-resident and did not have any means of knowing what was happening to this land thousands of miles away and further that the record shows that this case was started well in time not to be barred by the statute of limitations but has been pending on the docket of this court for some time.

We submit and insist that the cross complainant has not set out the facts which would estop us from showing his deed to be forgery and our deed to be the true one, and ask the Court to give our client's case its careful consideration.

Respectfully submitted,

Elliott G. Rickarby, and


As Solicitors for Complainant and Demurrant.

Friday August 17 1907
A carbon copy of this brief was this day delivered to the office of Lloyd A. Magney, Esq., Solicitor for Cross Complainant.

E. G. Rickarby

G. T. DINU,

Plaintiff

vs

IGNATZ GOTTLER,

Defendant.

L A W

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

The Plaintiff hereby propounds to the Defendant the following interrogatories to be answered by him under oath:

1. Are you now occupying the land sued for in this cause, namely the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 23, Tp. 7 S R 5 E? If so, how long have you been on this land?

2. Is your claim to this land by virtue of Deed purported to be signed by Peter Sos, a single man, on February 1st, 1927 acknowledged before L. Lindoefer as a Notary on the same day and filed for record February 8th, 1927 in the Probate records of Baldwin County? If so, please give the date, book and page of record.

3. At the time you bought this land was it not in the hands of Mr. L. Lindoefer who was listing it for sale as the property of Peter Sos?

4. With whom did you negotiate for the purchase of this land? If you say it was with Mr. Sos, state whether you had any authority for believing that he was the owner other than his own statements.

5. Was not the Peter Sos from whom you bought the land a man apparently between thirty-five and forty years of age, tall, blond, clean-shaven and partly bald?

6. Were not your negotiations for the land with Peter Sos conducted in German? Did he not speak that language fluently?

7. When you bought this land did you do so knowing that it was owned by Peter Sos and is not the title you claim under that which you received from him by the Deed referred to in the second interrogatory?

William H. Rinkley
Attorney for Plaintiff.

GEORGE T. DINU,
Plaintiff,
-vs-
IGNATZ GOTTLER,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW

OBJECTION TO INTERROGA-
TORIES

Comes now the defendant and this being his first opportunity so to do, objects to the following questions and interrogatories proposed to be propounded to sundry witnesses for the plaintiff as follows:

INTERROGATORIES TO GEORGE T. DINU

1. Defendant objects to the second question in interrogatory number one, "If so, state when you purchased.....etc.," for reason that it is incompetent, irrelevant and immaterial, is leading and suggestive and assumes as a fact, a fact not in evidence.

2. Defendant objects to the first question in interrogatory number two "Have you a deed for this property" for the reason that it calls for evidence not the best evidence.

Defendant objects to the second question contained in interrogatory number two "If so, where is it now" as incompetent, irrelevant and immaterial and assumes as a fact, a fact not in evidence.

3. Defendant objects to interrogatory number 4 for the reason that it is incompetent, irrelevant and immaterial, leading and suggestive.

4. Defendant objects to interrogatory number six for the reason that it is leading and suggestive.

5. Defendant objects to interrogatory number seven for the reason that it is leading and suggestive.

6. Defendant objects to interrogatory number eight for the reason that it is incompetent, irrelevant and immaterial.

INTERROGATORIES TO PETER SOS

1. Defendant objects to the first question in interrogatory number one for the reason that it is incompetent, irrelevant and material and calls for evidence that is not the best evidence.

Defendant objects to the second question in interrogatory number one for the reason that it assumes as a fact, a fact not in evidence.

2. Defendant objects to interrogatory number two for the reason that it is leading and suggestive and assumes as a fact, a fact not in evidence.

3. Defendant objects to the third interrogatory for the reason that it assumes as a fact, a fact not in evidence, it calls for the conclusion of the witness and not the statement of any fact and is leading and suggestive.

4. Defendant objects to interrogatory number four for the reason that it assumes as a fact, a fact not in evidence.

5. Defendant objects to interrogatory number six for the reason that it assumes as a fact, a fact not in evidence, calls for the conclusion of the witness and not the statement of any fact and is leading and suggestive.

6. Defendant objects to the second and third questions contained in interrogatory number fourteen as leading and suggestive.

7. Defendant objects to interrogatory number nineteen as incompetent, irrelevant and immaterial.

8. Defendant objects to interrogatory number twenty for the reason that it calls for conclusion of the witness and not for the statement of any fact.

9. Defendant objects to interrogatory number twenty-two as incompetent, irrelevant and immaterial and as calling for hearsay testimony, a conversation between the witness and the third party not shown to have been in the presence of the defendant.

10. Defendant objects to interrogatory number twenty-three as incompetent, irrelevant and immaterial.