

**CIRCUIT COURT, BALDWIN COUNTY, ALA.,
IN EQUITY.**

Emma S. Dhall

VS.

Thompson S. Armstrong

PLAINTIFF

DEFENDANT

No. 832

Bill of Costs

Fees of Register	Dollars	Cts.	Brought Forward		
Filing each bill and other papers	\$ 10		for receiving, keeping and paying out or distributing money, etc.; 1st \$1,000 1 per ct.; all over \$1,000, and not over \$5,000, 3-4 of 1 per ct.; all over \$5,000, and not exceeding \$10,000, 1-2 of 1 per ct.; all over \$10,000, 1-4 of 1 per ct.		6 70
Issuing each subpoena	50	50	Receiving, keeping and paying into court, etc., 1-2 of 1 per ct. of amount received,		
Issuing each copy thereof	40	40	Each Notice sent by mail to creditors	15	
Entering each return thereof	15	40	Filing, Receipting for and docketing each claim, etc.	25	
For each order of publication	1 00	15	For all entries on subpoena docket, etc.	50	
Issuing writ of injunction	1 50		For all entries on commission docket, etc.	50	
For each copy thereof	50		Making final record, per 100 words	15	37 60
Entering each return thereof	15		Certified copy of decree	1 00	
Issuing writ of attachment	1 00		Report of divorce to State Health office Acts 1915	50	43 70
Entering each return thereof	15				
Docketing each case	1 00	1 20	Total Fees of Register		
Entering each appearance	25	25			
Issuing each decree pro confesso on persl ser	1 00		Fees of Sheriff		
Issuing each decree pro confesso on publication	1 00		Serving and returning subpoena on deft.	\$ 1 50	1 50
Each order appointing guardian	1 00		Serving and returning subpoena for witness	65	
Any other order by Register	50		Levying attachment	1 50	
Issuing commission to take testimony	50	30	Entering and returning same	25	21
Receiving and filing	10	20	Selling property attached		
Endorsing each package	10	30	Impaneling Jury	75	
Entering order submitting cause	50		Executing writ of possession	2 50	
Entering any other order of Court	25		Collecting execution for costs	1 50	1 50
Noting all testimony	50		Serving and returning sci. fa., each	65	
Abstract of cause, etc.	1 00		Serving and returning notice	65	
Entering each decree	75		Serving and returning writ of injunction	1 50	
For every 100 words over 500	15		Serving and returning writ of exeat.	1 50	
Taking account, etc.	3 00		Taking and approving bonds, each	75	
Taking testimony, etc.	15		Collecting money on execution		
Each report, 500 words or less	2 50		Making deed	2 50	
For every 100 words over 500	15		Serving and returning application, etc.	1 00	
Amount claimed less than \$500, etc	2 00		Serving attachment, contempt of court.	1 50	
Issuing each subpoena	25				
Witness certificate, each	25		Total Fees of Sheriff		
Issuing execution, each	75	75			3 71
Entering each return	15	13	Recapitulation		
Taking and approving bond, each	1 00		Register's Fees		43 70
Making copy of bill, etc	15		Sheriff's Fees		3 21
Each notice not otherwise provided for	50		Commissioner's Fees		
Each certificate or affidavit, with Seal	50		Solicitor's Fees <i>July 15 Transacted 750 2950</i>		
Each certificate or affidavit, no seal	25		Witness Fees		
Hearing and passing on application, etc.	3 00		Guardian Ad Litem		
Each settlement with receiver, etc.	3 00		Printer's Fees		
Examining each voucher of receiver, etc	10		Trial Tax	3 00	3 00
Examining each answer, etc.	3 00		Recording Decree in Probate Court		
Recording resignation, etc.	75				
Entering each certificate to Supreme Court	50		TOTAL		
Taking questions and answers, etc.	25				49 95
For all other service relating to such proceedings	1 00				
For services in proceeding to relieve minors, etc., same fees as in similar cases.					
Commission on sales, etc.: 1st \$100, 2 per cent.; all over \$100, and not exceeding 1,000, 1 1-2 per ct.; all over \$1,000, and not exceeding \$20,000, 1 per ct.; all over \$20,000, 1-4 of 1 per ct.					
Sub Total Carried Forward		6 70			

Received payment this _____ day of _____ 193_____ Register.

1000 2/4/32 Still at issue

*Received & Reconciled
by Business Court*

EMMA S. DRATH, COMPLAINANT
VS.
PHILLIP G. ARMSTRONG, RE-
SPONDENT.

AND

EMMA S. DRATH, COMPLAINANT
VS.
JOSEPHINE JOHNSON, ET AL.,
RESPONDENTS.

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

By agreement of parties the two cases above styled are consolidated and submitted for final decree as one cause, on the pleading and proof as noted by the Register. Each suit is to establish a resulting trust in land and for general relief. For convenience I will refer to the first styled cause as the Boutell case and the second cause as the Allen case.

In the Boutell case it is alleged in the Bill of Complaint that Complainant provided Oscar Johnson with the money to purchase a tract of land from a Mrs. Boutell; that Johnson designedly and wickedly ingratiated himself into the confidence of Complainant and persuaded her to instruct Mrs. Boutell to convey the property to Johnson, who was afterwards to convey it to her; that through trickery and evil design, collusion, etc., Johnson and Armstrong so manipulated as to have the conveyance made to Armstrong instead of Johnson. Johnson has since died and cannot explain why the legal title to this Boutell property was taken in Armstrong's name, who was ignorant of the whole transaction until after Johnson's death. Scarcely any of the allegations of the Complaint are sustained by the testimony.

Complainant testified: " I don't know how Mr. Johnson paid it. I did not pay anything. He paid it. I had an understanding with him that he would pay that for me. There was an understanding between Mrs. Boutell and I as to who the land should be conveyed to. I told her that Mr. Johnson had power-of-attorney for me; that he had charge of everything I had, and as I was going away, she should deed the land to him to keep for me." She further says that she does not know why the deed was made to Armstrong instead of Johnson, nor does any one give any explanation. Armstrong disclaims any knowledge of this, or interest in the property. It can only be surmised

that Johnson had this done for convenience, being (possibly) conscious of his own failing health. A memorandum in his handwriting purports to show the true state of the account between the parties as to this deal, and shows the title was taken in Armstrong's name.

From the whole evidence it appears that Armstrong, with respect to this title, was and is the alter ego of Johnson; that he held title for the protection of Johnson; that he has no personal interest; that he is trustee of the legal title for the Johnson estate, of which he is administrator; and if complainant has paid Johnson the purchase price of this land, he, as such naked trustee for Johnson, holds for her. Under the facts of the case Armstrong is a mere dummy, a depository, of the naked legal title primarily for the benefit and protection of Johnson, and secondarily, on proper proof of the payment of the purchase price by Complainant, for her benefit. It thus appears that while Johnson's estate is not formally made a party Defendant to the suit, it is, nevertheless, the real party in interest-not Armstrong. Armstrong stands to lose nothing, having paid nothing, whereas the Johnson estate stands to lose the purchase price, unless Complainant has in fact fully paid this. The burden is on her to prove this, notwithstanding Armstrong's disclaimer of any personal interest. The state of the decedent, Johnson, is interested in the result of the suit, not the nominal Defendant, Armstrong. Equity looks to the substance, not the form, Armstrong, personally and in his representative capacity, and the heirs of Oscar Johnson, might have been, and should have been, made parties Defendant in the first instance, and the trust (if any), established as against both Armstrong and the Johnson estate. In such a situation Complainant cannot rely on her testimony alone, and as to this Bou-Tell property, there is no other.

41 Ala. 700;
123 Ala. 610; 26 So. 648;
124 Ala. 199; 26 So. 934;
195 Ala. 588; 71 So. 114;
196 Ala. 224; 72 So. 74;
206 Ala. 93; 89 So. 196.

It is possible that Complainant contributed something towards the purchase price of these two tracts of land, but this is not sufficient. It must have been contributed at the time title was

taken and not subsequently, and the amount contributed towards the purchase must be an aliquot part of the whole. There is an absence of convincing evidence, either competent or incompetent, to bring the Boutell transaction within these principles.

It is the law that where purchase money is loaned or advanced by one person,--especially a general agent,-- for the benefit of another, and the deed is taken in the name of the person advancing the money for his security, as appears to be the case here, a resulting trust in the nature of a mortgage arises, and the person for whose benefit the money was advanced may redeem upon payment of the purchase price and proper charges.

It is evident that this was the true understanding and agreement between Oscar Johnson and Complainant as to the Allen property. It is also plain that Complainant paid an aliquot (one-fifth) part of the purchase price of this property. It is true that Complainant alleges in her bill of complaint that Johnson by trickery and with evil design, contrary to his express promise in the premises, had the deed to the property made to him instead of to Complainant; and that in one part of her testimony she avers that she was ignorant of this fact until after the death of Johnson. However, later on in her testimony, in response to a leading question from her Solicitor, she states that her understanding with Johnson was that he should hold title as security for whatever balance she might owe him when they should have a settlement. This is all-inclusive, and does not limit the debt to the purchase money debt. That this was the intent of the parties is evident from the testimony of Complainant's witness, Mrs. Allen, who sold the land, to the effect that Complainant expressly instructed that the deed, upon final payment, should be made to Johnson, as was the contract of sale on the day the Complainant bid the land in.

The danger of relying too heavily on the memory of Complainant is further apparent when we observe that in one part of her testimony she swears that she had the money for the second payment on the Allen property due April 25th., 1927, but we find that on April 20th., 1927, she wrote Mr. Johnson asking him to kindly advance this payment (Exhibit R-18), and accordingly, on April 25th., 1927, Mr. Johnson gave Mrs. Allen his check therefor. (Defendant's

Exhibit 5).

It is contended that Mrs. Drath gave Mr. Johnson \$500.00 in bonds in full payment for the Boutell property, but in one place she swears that she gave them to him "for anything, but mainly to pay for this", and in another place she says: "My purpose in giving them (bonds) to him was that he should make my payments or put them in deposit." Conceding that there is sufficient legal testimony to show a delivery of these bonds, it is evident that there was no specific direction given as to the application of the proceeds. Taken as a whole, the proof shows that Johnson was a most indulgent, gratuitous agent for Complainant assisting her for years in practically all of her affairs; that the parties made no distinction between the two land purchases here involved and her other business affairs. That Complainant made no payments which she directed should be applied to any particular debt or obligation; all payments made by Complainant seem to have been general in their nature - "for anything"- as she expresses it. With respect to the Boutell property she says; "It was my understanding with Mr. Johnson that he was to pay for it and I was to pay him." This repels the advanced idea that she paid for this property with bonds.

There are literally dozens of letters in evidence written by Complainant to Johnson in which she admits indebtedness to him and expresses herself ^{as} profoundly grateful for his many kindnesses. In her letter to him dated May 9th., 1928, enclosing check for \$400.00 for which she is given credit, and which is the last payment claimed of which she has legal evidence, she states; "I really feel so guilty as I know I am long past due in my payment. xxx I am enclosing check with so much pleasure and hope with the \$150.00 I sent last September it will pay the biggest half of my debts to you and Bank." It would appear from this that she was not attempting to keep accurate check on the status of her account, nor would she when testifying venture an estimate as to what she claimed to be due her.

Bearing in mind that the burden of proof is on the Complainant, and that in order to engraft a resulting trust on an absolute conveyance of lands the proof must be clear, full, satisfactory and

convincing; and the proof in this case being uncertain, doubtful and unsatisfactory, I am of the opinion that Complaint is not entitled to relief. The Register will therefore enroll the following decree:

DECREE:

These two causes coming on to be heard and being submitted for final decree on the pleading and proof as noted by the Register, and an agreement of parties that said causes be consolidated and decreed on as one cause;

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court;

FIRST: That said two cases be consolidated and decreed upon as one case.

SECOND: That upon consideration of said consolidated cause the Court is of the opinion that relief should be denied; and it is ordered, adjudged and decreed by the Court that said consolidated cause, and each branch thereof, be, and the same hereby is, dismissed out of this Court.

THIRD: The costs of these proceedings are taxed against Complainant for which let execution issue.

This 14th day of March, 1931.

Filed March 16th., 1931.
T.W. Richerson, Register.

F.W. Hare
Judge

STATE OF ALABAMA,
BALDWIN COUNTY.

CIRCUIT COURT IN EQUITY.

I, T.W. Richerson, Register of said Circuit Court of said County, Alabama, do hereby certify that the above is a full, true and correct copy of the decree rendered by said Court on the 14th day of March, 1931 in the cause of Emma S. Drath, Complainant vs. Phillip G. Armstrong, Respondent, and Emma S. Drath, Complainant vs. Josephine Johnson, Et Al., Respondents, as appears of record in said Court.

Witness my hand and the seal of said Court, this the 17th day of April, 1931.

Register

**Circuit Court, Baldwin County, Ala.
In Equity.**

No. _____

vs.

Cost Bill

Paid _____

193 _____

Register.

Moore Printing Co. Bay Minette

CIRCUIT COURT, BALDWIN COUNTY, ALA., IN EQUITY.

No. 8527 855

Emma S. Dratt

VS.

PLAINTIFF

Phillip G. Garrison

DEFENDANT

BILL OF COSTS

Fees of Register	Dollars	Cts.	Brought Forward		
Filing each bill and other papers.....	17	00	For receiving, keeping and paying out or distributing money, etc.; 1st \$1,000 1 per ct.; all over \$1,000 and not over \$5,000, 3-4 of 1 per ct.; all over \$5,000 and not exceeding \$10,000, 1-2 of 1 per ct.; all over \$10,000, 1-4 of 1 per ct.		7 83
Issuing each Subpoena.....	2	00	Receiving, keeping and paying out money paid into court, etc., 1-2 of 1 per cent of amount received.		
Issuing each copy thereof.....	5	40	Each Notice Sent by Mail to creditors.....	15	
Entering each return thereof.....			Filing, Receipting for and Docketing each Claim, etc....	25	
For each Order of Publication.....	1	00	For all entries on Subpoena Docket, etc.....	50	
Issuing Writ of Injunction.....	1	50	For all entries on Commission Docket, etc.....	50	
For each copy thereof.....			Making Final Record, per hundred words.....	15	114 73
Entering each return thereof.....	15		Certified Copy of Decree.....	1 00	2 00
For each Order of Publication.....	1	00	Report of Divorce to State Health Office.....	50	
Issuing Writ of Attachment.....	1	00	Acts 1915		
Entering each return thereof.....	15		Total Fees of Register.....		124 83
Docketing each case.....	2	00			
Entering each Appearance.....	2	50	Fees of Sheriff		
Issuing each Decree Pro Confesso on personal service..	1	00	Serving and Returning Subpoena on Deft.....	\$1 50	7 50
Issuing each Decree Pro Confesso on publication.....	1	00	Serving and Returning Subpoena for Witness.....	65	
Each order Appointing Guardian.....	1	00	Levying Attachment.....	1 50	
Any other order by Register.....	50		Entering and Returning same.....	25	
Issuing Commission to Take Testimony.....	50		Selling Property Attached.....	75	
Receiving and Filing.....	10		Impanelling Jury.....	75	
Endorsing each package.....	10		Executing Writ of Possession.....	2 50	
Entering order Submitting Cause.....	50	50	Collecting Execution for Costs.....	1 50	
Entering any other Order of Court.....	25		Serving and Returning Sci. fa., each.....	65	
Noting all Testimony.....	50	1 00	Serving and Returning Notice.....	65	
Abstract of Cause, etc.....	1	00	Serving and Returning Writ of Injunction.....	1 50	
Entering each Decree.....	75	75	Serving and Returning Writ of Exeat.....	1 50	
For every 100 words over 500.....	15		Taking and Approving Bonds, Each.....	75	
Taking account, etc.....	3	00	Collecting Money on Execution.....		
Taking Testimony, etc.....	15		Making Deed.....	2 50	
Each Report, 500 words or less.....	2	50	Serving and Returning Application.....	1 00	
For every 100 words over 500.....	15		Serving Attachment, Contempt of Court.....	1 50	
Amount claimed less than \$500, etc.....	2	00	Total Fees of Sheriff		
Issuing each Subpoena.....	25				
Witness Certificate, each.....	25		Recapitulation		
Issuing Execution, each.....	75		Register's Fees.....	124 80	
Entering each return.....	15		Sheriff's Fees.....	7 50	
Taking and Approving Bond, each.....	1	00	Commissioner's Fees.....	32 30	
Making copy of bill, etc.....	15		Solicitor's Fees.....		
Each notice not otherwise provided for.....	50		Witness Fees.....		
Each certificate or affidavit, with seal.....	50		Guardian Ad Litem.....		
Each certificate or affidavit, no seal.....	25		Printer's Fees.....		
Hearing and passing on application, etc.....	3	00	Trial Tax.....	3 00	600
Each settlement with receiver, etc.....	3	00	Recording Decree in Probate Court.....		
Examining each voucher of receiver, etc.....	10				
Examining each answer, etc.....	3	00	Total		190 60
Recording resignation, etc.....	75				
Entering each certificate to Supreme Court.....	50				
Taking questions and answers, etc.....	25				
For all other service relating to such proceedings.....	1	00			
For service in proceeding to relieve minors, etc same fee as in similar cases.					
Commission on sales, etc.: 1st \$100 2 per cent, all over \$100, and not exceeding \$1,000, 1 1-2 per ct.; all over \$1,000 and not exceeding \$20,000, 1 per ct.; all over \$20,000, 1-4 of 1 per ct.					
Sub Total Carried Forward					
	7	83			

Received payment this _____ day of _____ 193_____

June 13-1930 This case is closed at court
 entered and returned by Registrar Court

Register.

EMMA S. DRATH,
COMPLAINANT,

VS.

PHILIP G. ARMSTRONG,
RESPONDENT,

A N D

EMMA S. DRATH,
COMPLAINANT,

VS.

JOSEPHINE JOHNSON, ET AL.,
RESPONDENTS.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.

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Complainant testified: "I dont know how Mr. Johnson paid it. I did not pay anything. He paid it. I had an understanding with him that he would pay that for me. There was an understanding between Mrs. Boutell and I as to who the land should be conveyed

to. I told her that Mr. Johnson had power-of-attorney for me; that he had charge of everything I had, and as I was going away, she should deed the land to him to keep for me." She further says that she does not know why the deed was made to Armstrong instead of Johnson, nor does any one give any explanation. Armstrong disclaims any knowledge of this, or interest in the property. It can only be surmised that Johnson had this done for convenience, being (possibly) conscious of his own failing health. A memorandum in his handwriting purports to show the true state of the account between the parties as to this deal, and shows the title was taken in Armstrong's name.

From the whole evidence it appears that Armstrong, with respect to this legal title, was and is the alter ego of Johnson; that he held title for the protection of Johnson; that he has no personal interest; that he is trustee of the legal title for the Johnson estate, of which he is administrator; and if complainant has paid Johnson the purchase price of this land, he, as such naked trustee for Johnson, holds for her. Under the facts of the case Armstrong is a mere dummy, a depository, of the naked legal title primarily for the benefit and protection of Johnson, and secondarily, on proper proof of the payment of the purchase price by complainant, for her benefit. It thus appears that while Johnson's estate is not formally made a party defendant to the suit, it is, nevertheless, the real party in interest - not Armstrong. Armstrong stands to lose nothing, having paid nothing, whereas the Johnson estate stands to lose the purchase price, unless Complainant has in fact fully paid this. The burden is on her to prove this, notwithstanding Armstrong's disclaimer of any personal interest. The state of the decedent, Johnson, is interested in the result of the suit, not the nominal defendant, Armstrong. Equity looks to the substance, not the form. Armstrong, personally and in his representative capacity, and the heirs of Oscar Johnson, might ~~be~~ have been, and should have been, made parties defendant in the first instance, and the trust (if any), established as against both Armstrong and the

Johnson estate. In such a situation complainant cannot rely on her testimony alone, and as to this Boutell property, there is no other.

41 Ala. 700;
123 Ala. 610; 26 So. 648;
124 Ala. 199; 26 So. 984;
195 Ala. 588; 71 So. 114;
196 Ala. 224; 72 So. 74;
206 Ala. 93; 89 So. 196.

It is possible that complainant contributed something towards the purchase price of these two tracts of land, but this is not sufficient. It must have been contributed at the time title was taken and not subsequently, and the amount contributed towards the purchase must be an aliquot part of the whole. There is an absence of convincing evidence, either competent or incompetent, to bring the Boutell transaction within these principles.

It is the law that where purchase money is loaned or advanced by one person, - especially a general agent, - for the benefit of another, and the deed is taken in the name of the person advancing the money for his security, as appears to be the case here, a resulting trust in the nature of a mortgage arises, and the person for whose benefit the money was advanced may redeem upon payment of the purchase price and proper charges.

It is evident that this was the true understanding and agreement between Oscar Johnson and complainant as to the Allen property. It is also plain that complainant paid an aliquot (one-fifth) part of the purchase price of this property. It is true that complainant alleges in her bill of complaint that Johnson by trickery and with evil design, contrary to his express promise in the premises, had the deed to the property made to him instead of to complainant; and that in one part of her testimony she avers that she was ignorant of this fact until after the death of Johnson. However, later on in her testimony, in response to a leading question from her Solicitor, she states that her understanding with Johnson was that he should hold title as security for whatever balance she might owe him when they should have a settlement. This is all-inclusive, and does not limit the debt to the purchase money debt. That this was the intent of the parties is evident from the testimony of

complainant's witness, Mrs. Allen, who sold the land, to the effect that complainant expressly instructed that the deed, upon final payment, should be made to Johnson, as was the contract of sale on the day the complainant bid the land in.

The danger of relying too heavily on the memory of complainant is further apparent when we observe that in one part of her testimony she swears that she had the money for the second payment on the Allen property due April 25th., 1927, but we find that on April 20th., 1927, she wrote Mr. Johnson asking him to kindly advance this payment (Exhibit R-18), and accordingly, on April 25th., 1927, Mr. Johnson gave Mrs. Allen his check therefor. (Defendant's Exhibit 5).

It is contended that Mrs. Drath gave Mr. Johnson \$500.00 in bonds in full payment for the Boutell property, but in one place she swears that she gave them to him "for anything, but mainly to pay for this", and in another place she says: " My purpose in giving them (bonds) to him was that he should make my payments or put them in deposit." Conceding that there is sufficient legal testimony to show a delivery of these bonds, it is evident that there was no specific direction given as to the application of the proceeds. Taken as a whole, the proof shows that Johnson was a most indulgent, gratuitous agent for complainant assisting her for years in practically all of her affairs; that the parties made no distinction between the two land purchases here involved and her other business affairs. That complainant made no payments which she directed should be applied to any particular debt or obligation; all payments made by complainant seem to have been general in their nature - "for anything" - as she expresses it. With respect to the Boutell property she says: "It was my understanding with Mr. Johnson that he was to pay for it and I was to pay him." This repels the advanced idea that she paid for this property with bonds.

There are literally dozens of letters in evidence written by complainant to Johnson in which she admits indebtedness to him and expresses herself as profoundly grateful for his many kindnesses. In her letter to him dated May 9th., 1928, enclosing check for

\$400.00, for which she is given credit, and which is the last payment claimed of which she has legal evidence, she states: "I really feel so guilty as I know I am long past due on my payment. xxx I am enclosing check with so much pleasure and hope with the \$150,00 I sent last September it will pay the biggest half of my debt to you and Bank." It would appear from this that she was not attempting to keep accurate check on the status of her account, nor would she when testifying venture an estimate as to what she claimed to be due her.

Bearing in mind that the burden of proof is on the complainant, and that in order to engraft a resulting trust on an absolute conveyance of lands the proof must be clear, full, satisfactory and convincing; and the proof in this case being uncertain, doubtful and unsatisfactory, I am of the opinion that complaint is not entitled to relief. The Register will therefore enroll the following decree:

DECREE:

These two causes coming on to be heard and being submitted for final decree on the pleading and proof as noted by the Register, and an agreement of parties that said causes be consolidated and decreed on as one cause,;

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court:

FIRST: That said two cases be consolidated and decreed upon as one case.

SECOND: That upon a consideration of said consolidated cause the Court is of the opinion that relief should be denied; and it is ordered, adjudged and decreed by the Court that said consolidated cause, and each branch thereof, be, and the same hereby is, dismissed out of this Court.

THIRD: The costs of these proceedings are taxed against Complainant for which let execution issue.

This 4th., day of March, 1931.

A. W. Hare

Judge.

EMMA S. DRATH,
Complainant.
versus.
PHILIP G. ARMSTRONG,
Defendant.

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

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Now comes the complainant in the above entitled cause and takes an appeal from the final decree dated March 14th, 1931, and filed in this cause on the 16th day of March, 1931.

Harry Smith & Coffey
SOLICITORS FOR COMPLAINANT.

TO THE HONORABLE CIRCUIT COURT OF BALDWIN COUNTY,

ALABAMA, SITTING IN EQUITY:

Now comes your oratrix, Emma S. Drath, who is over the age of twenty-one years, and who resides in Baldwin County, Alabama, and brings this her bill of complaint against Philip G. Armstrong, who is also over the age of twenty-one years and resides in Baldwin County, Alabama, and shows unto Your Honor:

FIRST: Your oratrix shows unto Your Honor that Mary L. Boutell, being then the owner of:

"Lots Seven (7) and Eight (8) in Block Fifteen (15) and the south half of Lots Four (4) and Five (5) and Lot Six (6) in Block Fourteen (14); also Lot or Block Twenty-one (21) of Magnolia Beach Addition to Fairhope, Baldwin County, Alabama"

contracted to sell and convey the same to your oratrix for the sum of Five Hundred and no/100 (\$500.00) Dollars.

SECOND: Your oratrix further shows unto Your Honor that Oscar Johnson, who was then a resident of Baldwin County, Alabama, but who has since died, so ingratiated himself in your oratrix's confidence as to induce her to give him her general power of attorney and to entrust to him the management of all of her business affairs, and in this way he persuaded her to entrust to him the carrying out of this purchase, and your oratrix shows unto Your Honor that she provided the said Oscar Johnson, deceased, with the money with which to pay the purchase price of said lands for her, and that he did make said payments out of the moneys so provided by her.

THIRD: Your oratrix further shows unto Your Honor that owing to the said confidential relation between herself

and the said Oscar Johnson, deceased, the said Oscar Johnson persuaded your oratrix that as it was necessary to adjust certain tax sales, or other difficulties with the title, that it would be wiser for her to have said property conveyed to him, in order to enable him, as he claimed, to straighten out the title, and explained to her that he would then convey the same to her, and, in this way, the said Oscar Johnson, deceased, persuaded your oratrix to instruct the seller, Mary L. Boutell, to convey said property to the said Oscar Johnson, deceased, with the understanding that he would subsequently convey to her, but instead of carrying out this understanding the said Oscar Johnson, deceased, being unfaithful to his trust, and the said Philip G. Armstrong, who had no other connection with the matter, so maneuvered as to obtain a conveyance from the seller to the said Philip G. Armstrong, and the said seller did accordingly convey said property to the said Philip G. Armstrong, and he recorded his deed and now claims the property thereunder.

FOURTH: Your oratrix does not know and can not, therefore, state how the said Oscar Johnson and the said Philip G. Armstrong so imposed upon the seller, Mary L. Boutell, as to obtain a conveyance from her to this property, further than the fact that the said Oscar Johnson had induced the complainant to instruct the seller, Mary L. Boutell, to deed the property to Oscar Johnson, under the understanding already alleged, and the said Oscar Johnson and Philip G. Armstrong obtained said conveyance from the said Mary L. Boutell by some misrepresentation or trick, which the complainant can not explain further than the fact that this conveyance was obtained from the said Mary L. Boutell by leading her to believe that she was thereby performing her contract with the complainant, and that in executing said conveyance she was dealing with the complainant's representatives and acting in accordance with the complainant's wishes, all of which was entirely false. However, this conveyance was obtained; it was

FOOT NOTE:-

The defendant, Philip G. Armstrong, is required to answer each and every allegation of the above and foregoing bill of complaint, from paragraph First to paragraph Fourth, both inclusive, but not under oath, oath as to such answer being hereby expressly waived.

HARRY T. SMITH & CAFFEY
SOLICITORS FOR COMPLAINANT.

"EXHIBIT A"

QUIT CLAIM DEED.

THIS DEED made the 25th day of April, 1927, between Mrs. Mary L. Boutell, widow of Harry S. Boutell, deceased, Miss E. Linnie Boutell (single) and Mrs. Sadie Boutell Tubbs, her two daughters, and Mr. W. G. Tubbs, her husband, of the first part, P. G. Armstrong, of the second part, WITNESSETH, That the party of the first part, in consideration of Five Hundred Dollars, to us in hand paid by the party of the second part, the receipt of which is hereby acknowledged, has remised, released and quit-claimed and by these presents do remise, release and forever quit-claim unto the said party of the second part his heirs and assigns forever, all the real property in Baldwin County, Alabama, described as follows, to-wit:

Lots Seven and Eight (7 & 8) Block Fifteen (15), and south-half of Lots Four and Five (4 & 5) and Lot Six (6) Block Fourteen (14); also Lot or Block Twenty-one (21) of Magnolia Beach Addition to Fairhope, Baldwin County, Alabama.

To have and to hold the said released premises unto the said party of the second part, his heirs and assigns forever: So that neither the said party of the first part heirs or assigns, nor any other person in trust for them or in their name shall or will, can or may, by any ways or means whatsoever, hereafter have or claim any right or title thereto; But That the said party of the first part his heirs and assigns, each and every one of them from all estate, right, title, interest or claim, and demand whatsoever, in or to the said premises, or any part thereof, are, is, and shall be, by these presents, forever Excluded and Debarred.

In Witness Whereof, the party of the first part has hereunto set their hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of
Chas. C. Shaffer,
G. H. Marks.

Mary L. Boutell (seal)
E. Linnie Boutell (seal)
Sadie Boutell Tubbs (seal)
W. G. Tubbs (seal)

State of Florida,)
Brevard County. }

I, Chas. G. Shaffer, a notary public in and for said county and State, hereby certify that Mrs. Mary L. Boutell, widow of Harry S. Boutell, deceased, Miss E. Linnie Boutell (single) and Mrs. Sadie Boutell Tubbs and W. G. Tubbs, her husband, whose names signed to the foregoing conveyance, and who known to me, acknowledged before me on this day that being informed of the contents of the conveyance they executed the same voluntarily on the day the same bears date.

Given under my hand this 25th day of April, 1927.

(Seal)

Chas. G. Shaffer, Notary Public.
My Commission expires Dec. 5, 1923.

State of Alabama,)
Baldwin County. }

I, G. W. Humphries, Judge of Probate, for said county, hereby certify that the following privilege tax has been paid on the within instrument as required by Acts 1926 § cts 50.

G.W. Humphries, Judge of Probate,
By J. L. Kessler, Clerk.

Filed for record May 3, 1927 at 1:00 P. M.

Recorded May 3, 1927.

G. W. Humphries, Judge of Probate.

executed by Mary L. Boutell solely for the purpose of performing her contract to sell and convey the same to the complainant, and Philip G. Armstrong took the title in trust for the complainant under a deed a copy of which is hereto attached marked "EXHIBIT A", made a part hereof and now referred to.

PRAYER FOR PROCESS.

To the end, therefore, that equity may be done in the premises, your oratrix prays that the said Philip G. Armstrong may be made a party respondent to this your oratrix's bill of complaint, and that due process of subpoena be issued to and served upon him in accordance with the course and practice of this Honorable Court.

PRAYER FOR RELIEF.

Your oratrix further prays that upon the hearing of this cause this Honorable Court will ascertain and determine that your oratrix did provide the moneys with which the said Oscar Johnson, deceased, paid such purchase price; that he acted in said transaction entirely as her representative, and that the said Philip G. Armstrong may be decreed to hold said title as trustee for the complainant, and that he, the said Philip G. Armstrong, may be ordered and decreed to convey said property to your oratrix, or that the legal title thereto may be otherwise vested in your oratrix by the decree of this Honorable Court, and the said Philip G. Armstrong enjoined from further claiming any title or right to said lands, and that your oratrix may have such other and further relief as she may be entitled to receive, the premises considered, as in duty bound she will ever pray.

HARRY T. SMITH & CAFFEY
SOLICITORS FOR COMPLAINANT.

EMMA S. DRATH,

Complainant.

versus.

JOSEPHINE JOHNSON, ELVERA
C. ARMSTRONG, AGNES E.
UTTER, and PHILIP G. ARM-
STRONG, as the Executor of
the Estate of Oscar Johnson,
deceased,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Now comes the complainant in the above entitled cause
and takes an appeal from the final decree dated March 14th,
1931, ^{and} filed in this cause on the 16th day of March, 1931.

Harry Smith & Co.
SOLICITORS FOR COMPLAINANT.

EMMA S. DRATH,	:	
	:	
Complainant.	:	
	:	
versus	:	IN THE CIRCUIT COURT OF BALDWIN
	:	
	:	COUNTY, ALABAMA.
	:	
JOSEPHINE JOHNSON, ET ALS.,	:	IN EQUITY.
	:	
Defendants.	:	NO. 854.

NOTE OF EVIDENCE.

At the hearing of this cause the following note of evidence was taken, to-wit:

FOR COMPLAINANT:

1. Original bill of complaint and all exhibits attached thereto.
2. Deposition of Mrs. Viola Carman.
3. Deposition of Mrs. Emma S. Drath and all exhibits attached thereto.
4. Deposition of Mrs. Marie Schaaf.
5. Deposition of Mrs. Lawrence Allen and all exhibits attached thereto.
6. Agreement between counsel as to consolidation of case of Emma S. Drath versus Josephine Johnson, et als., with case of Emma S. Drath versus Philip G. Armstrong.
7. Agreement between counsel as to submission.

ATTEST:

J. W. Richmond

REGISTER OF THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.

EMMA S. DRATH,
COMPLAINANT,

vs.

JOSEPHINE JOHNSON, et als.
RESPONDENTS.

and

EMMA S. DRATH,
COMPLAINANT,

vs.

PHILIP G. ARMSTRONG,
RESPONDENT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

It is admitted that Philip G. Armstrong will testify that he made for the Estate of Oscar Johnson, the following payments for taxes on the Boutell and Allen property:-

December 31st, 1929 -- Boutell Property - - - - -	\$2174
December 31st, 1929 -- Allen Property - - - - -	\$ 378
December 29th, 1930 -- Boutell Property - - - - -	\$2174
December 29th, 1930 -- Allen Property - - - - -	\$ 378

and that this may be considered as an addition to his deposition in these cases.

Harry Smith & Co.
ATTORNEYS FOR COMPLAINANT.

Webb & Shepard
ATTORNEYS FOR RESPONDENTS.

The State of Alabama, } Circuit Court of Baldwin County, In Equity,
Baldwin County.

To any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon Josephine Johnson,
Elvera C. Armstrong, Agnes E. Utter, Phillip G. Armstrong as
the executor of the estate of Oscar Johnson, deceased,

of Baldwin County, to be and appear before the Judge of the Circuit Court
of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Sum-
mons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by
Emma S. Drath

against said Josephine Johnson, Elvera C. Armstrong, Agnes E. Utter,
and Phillip G. Armstrong as ^{the} executor of the estate of Oscar Johnson,
deceased,

and further to do and perform what said Judge shall order and direct in that behalf. And this the
said Defendant shall in no wise omit, under penalty, etc. And we further command that you return
this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T. W. Richerson, Register of said Circuit Court, this 19th day of
November 1922.

T. W. Richerson Register

N. B.—Any party defendant is entitled to a copy of the bill upon application to the Register.

EMMA S. DRATH,

Complainant.

versus.

JOSEPHINE JOHNSON, ELVERA C.
ARMSTRONG, AGNES E. UTTER, and
PHILIP G. ARMSTRONG, as the
Executor of the Estate of Oscar
Johnson, deceased,

Defendants.

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

EMMA S. DRATH,

Complainant.

versus.

PHILIP G. ARMSTRONG,

Defendants.

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

IT IS HEREBY AGREED by and between the solicitors of record in the above entitled causes that the testimony which has been taken in these causes may be published without prejudice and the causes submitted to the Chancellor for final decree upon the pleading and the evidence, on the ~~20th~~^{6th} day of February, ~~1921~~¹⁹²¹, and that each party may have ten days thereafter within which to file a brief.

Harry T. Smith & Caffey
HARRY T. SMITH & CAFFEY,
Solicitors for Complainant.

Webb & Shepard
WEBB & SHEPARD,
Solicitors for Defendants.

EMMA S. DRATH,
 COMPLAINANT,
 vs.
 JOSEPHINE JOHNSON, et als.,
 RESPONDENTS.
 and
 EMMA S. DRATH,
 COMPLAINANT,
 vs.
 PHILIP G. ARMSTRONG,
 RESPONDENT.

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

NOTE OF EVIDENCE FOR DEFENDANTS

1. Answers to Bills.
2. Agreements of counsel as to consolidation of the two cases, exceptions to evidence, submission, and any other matters.
3. Exhibits to the testimony of Complainant, except G. I. and W.
4. Testimony of Mrs. Marie F. Scharf and Mrs. Lawrence Allen, taken on behalf of Complainant, and exhibits to the testimony of Mrs. Allen.
5. Deposition of Elvera C. Armstrong and exhibits thereto.
6. Deposition of Philip G. Armstrong and exhibits thereto.
7. Taxes.

Webb & Shepard
 ATTORNEYS FOR RESPONDENTS.

It is hereby agreed by and between the solicitors of record in the above entitled cause that the above and foregoing note of evidence may be treated as having been signed by the Register of the Circuit Court of Baldwin County, Alabama.

Dated this the 3rd day of February, 1931

Harry Whitlaffer
 Solicitors for Complainant.
Webb & Shepard
 Solicitors for Respondents.

EMMA S. DRATH,
Complainant.

versus.

JOSEPHINE JOHNSON, ELVERA
C. ARMSTRONG, AGNES E. UTTER,
and PHILIP G. ARMSTRONG, as
the Executor of the Estate
of Oscar Johnson, deceased,
Defendants.

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

EMMA S. DRATH,
Complainant.

versus.

PHILIP G. ARMSTRONG,
Defendant.

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

I hereby acknowledge myself as security for costs on appeal to the Supreme Court of Alabama by the complainant, Emma S. Drath, in each of the above entitled causes, from the final decree, dated the 14th day of March, 1931, and filed in these causes on the 16th day of March, 1931, and this security shall apply whether the two causes are dealt with by the Supreme Court of Alabama as having been consolidated, or merely as having been tried together for convenience, without technical consolidation.

James H. Johnson
May 7th 1931
D. P. Johnson
Regulator

G. Hardy Smith
G. HARDY SMITH.

EMMA S. DRATH,
Complainant

versus.

JOSEPHINE JOHNSON, ELVERA
C. ARMSTRONG, AGNES E.
UTTER, and PHILIP G. ARMSTRONG,
as the Executor of the Estate
of Oscar Johnson, deceased,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

EMMA S. DRATH,
Complainant.

versus.

PHILIP G. ARMSTRONG,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Now comes the complainant in the above entitled cause
and takes an appeal from the final decree dated March 14th, 1931, and
filed in these causes on the 16th day of March, 1931.

Harry Smith Hopper
SOLICITORS FOR COMPLAINANT.

his life-time, and that he not only assisted her in this instance, but also in the purchase of the Boutell property, and from time to time made loans to her, and though she did make some remittances to him, there was no direction as to whether same should be applied to the payment of said loans, or the balance due on said properties, and there is still a large amount due to the Estate of Oscar Johnson in this connection, and upon the payment of same, respondents stand willing to make complainant proper conveyance.

FOR ANSWER TO THE FIFTH PARAGRAPH, respondents say that it is covered by answers to the preceding paragraphs.


SOLICITORS FOR RESPONDENTS.

As there is no dispute that Complainant is entitled to the property described in the bills, upon the payment to the Estate of Oscar Johnson of amount justly due, we will consider the testimony in this connection. As I have not seen brief of counsel for Complainant, I do not know what contentions are therein made, and therefore will base what I have to say on tentative statement submitted by counsel for Complainant, as a basis for adjustment early in this litigation, hereto attached.

I think, with exceptions hereinafter noted, it is substantially correct, except interest should be calculated on advancements by Mr. Johnson, and taxes paid by his Estate. The exceptions mentioned are: Credit of Five Hundred Dollars Liberty Bonds, and mythical check of September 28th, for Two Hundred Dollars.

In regard to the bonds, there is more than one curious feature. According to the testimony of Mrs. Garman and Mrs. Drath, such bonds were delivered to Mr. Johnson, either in December, 1925, or January, 1926. At one time Mrs. Drath testified it was for the purpose of paying for the Boutell property, and in another place she says to pay portions of the purchase money and other payments that might become due, but it is worthy of note that the Boutell property was not purchased until more than a year thereafter, and the auction sale at which the Allen property was purchased was not held until the following October, about nine months later. Mrs. Drath says that she got these bonds and others from her mother in 1919, and had clipped no coupons therefrom up to the time they

were delivered to Mr. Johnson, seven years thereafter, although in the meantime she sold some of the bonds, indicating that she needed to do so, and to say the least of it, it is quite singular that she did not at the sametime also cash these coupons. Again both Mrs. Drath and Mrs. Carman speak of their being merely casual acquaintances at that time, and yet she not only prepared a chicken dinner, but displays these bonds which she seems happily to have removed from a safety deposit box in the First National Bank, and had ready for delivery to Mr. Johnson when he came in, though he was not expected. It also appears that no words were passed in the presence of Mrs. Carman as to why such bonds were delivered to Mr. Johnson, nor was he invited to partake of the chicken dinner, but put the bonds in his pocket for deposit, without even a remark about the weather. Being a transaction with the deceased, whose Estate is interested, she is not competent to testify either as to the delivery of the bonds or the purpose, but, as has been observed, she gave conflicting accounts as to the purpose, and there was no basis for the existence of same at the time of alleged delivery.

One object in offering the mass of correspondence between Mrs. Drath and Mr. Johnson, and memoranda made by him, found in his papers after his death, containing statements as to standing of his account with Mrs. Drath, was to show that there was never mention made by either of them of these bonds, or the mythical Two Hundred Dollar check. There is mention in her letters of the other remittances, and acknowledgments in his, but never a word concerning the bonds, or said check, and of course another reason was to refute

the insinuations as to ingratiating, crookedness, and unauthorized actions, as such letters are full of expressions of gratitude on her part for the kindness of this good man, and the trouble she put him to, but also instruct him to sign checks and notes, and in one after his death she told Mr. Armstrong that, as executor of Oscar Johnson, she thought he had the same power to sign her name as he did, and instructed him, if necessary, to sign for her a note and mortgage to secure some money of which she seemed to be in need. Some significance might also be attached to the fact that any letter of recommendation signed by Mr. Johnson, or acknowledgment of remittances from her, were produced, but other letters most likely containing statements of her account in other matters of interest, were in a trunk left somewhere, somehow.

It also appears from the testimony of Mr. and Mrs. Armstrong, that there was nothing in the bank records to show where any such bonds were handled through the same, no memoranda amongst any of his papers, and though his daughter, Mrs. Armstrong, was his amanuensis for quite a while before his death, there was never any mention made concerning such bonds, and when on his deathbed she asked him regarding Mrs. Drath's account, he told her that she would find statement as to everything in his papers.

It is submitted that no credit should be allowed for the bonds, or the check mentioned. She undoubtedly signed the checks she denies, and was not truthful in many other respects.

Respectfully,


ATTORNEYS FOR RESPONDENTS.

EMMA S. DRATH,)	
)	
Complainant.)	
)	CIRCUIT COURT OF BALDWIN
versus)	
)	COUNTY.
PHILIP G. ARMSTRONG, Et als.,)	
)	
Defendants.)	

S T A T E M E N T .

Cashiers Check #1072 to Mrs. Mary L. Boutell dated April 18, 1927, - This check was issued by the State Bank of Silverhill, but the slip indicates that the Bank received a Cashier's Check.		\$450.00
April 25, 1927 - check to Lawrence Allen drawn by Oscar Johnson on his own account	\$197.92	
Oct. 27, 1927 - check to Lawrence Allen drawn by Oscar Johnson on his own account.	\$205.52	
Apr. 24, 1928 - check to Lawrence Allen drawn by Oscar Johnson on his own account.	\$213.12	
Oct. 23, 1928 - check to Lawrence Allen drawn by Oscar Johnson on his own account.	<u>\$220.72</u>	\$837.28
June 30, 1927 - Check to State Bank of Silverhill to cover overdraft of E. S. Drath drawn by Oscar Johnson on his own account.		2.00
July 8, 1927 - Check to L. S. Pomroy drawn by Oscar Johnson on his own account reciting "A/c of Mrs. E. Drath"		75.00
Aug. 6, 1927 - Check to State Bank of Silverhill for \$15.00 signed "Oscar Johnson, P. G. A." reciting "Emma S. Drath check".		15.00
Oct. 3, 1927 - check dated Oct. 3, 1927, to Mr. Wm. Ruffles for \$10.33 signed Oscar Johnson		10.33
Oct. 6, 1927 - Check to State Bank of Silverhill signed by Oscar Johnson and reciting "Account Emma S. Drath."		10.00
Oct. 22, 1927 - Check to M. Dyson drawn by Oscar Johnson on his own account for		17.81.
Nov. 19, 1927 - Check to Mrs. Emma S. Drath drawn by Oscar Johnson, P. G. A. and reciting "Phoenix Hotel, Lexington, Ky."		50.00
Sept. 20, 1926 - Check to State Bank of Silverhill drawn by Oscar Johnson on his own account reciting "A/c Mrs. Drath Fire Ins."		31.05
Nov. 30, 1927 - Check to Mrs. Emma Drath drawn by Oscar Johnson, P. G. A. reciting "Phoenix Hotel, Lexington, Ky."		22.00

Dec. 17, 1927 - Check to Cash and drawn by Oscar Johnson on his own account reciting "Emma S. Drath, Phoenix Hotel, Lexington, Ky."	\$25.00
Mar. 1, 1928 - Check to Lawrence Allen drawn by Oscar Johnson reciting "Taxes Fairhope".	6.00
June 11, 1928 - Check to State Bank of Silverhill drawn by Oscar Johnson, P. G. A. and reciting "For E. S. Drath,"	20.00
June 21, 1928 - Check to E. S. Drath drawn by Oscar Johnson, P. G. A.	30.00
June 29, 1928 - Check to E. S. Drath signed Oscar Johnson, P. G. A.	5.00
July 10, 1928 - Check to E. S. Drath signed Oscar Johnson, P. G. A.	5.00
Sept. 20, 1928 - Check to Groom and Tonsmeire signed by Oscar Johnson.	47.60
Nov. 7, 1928 - Check to Cash signed by Oscar Johnson and reciting "Emma S. Drath check 10/31/28".	5.00

\$1664.07

Liberty Bonds delivered to Oscar Johnson by Mrs. Drath.	\$500.00
May 10, 1928, check given by Mrs. E. S. Drath on The Dime Savings Bank, Detroit, Michigan, payable to Mr. Oscar Johnson for the sum of	400.00
Check given by Mrs. Drath to Oscar Johnson, the receipt of which he acknowledged in his letter to her dated Nov. 7, 1927.	150.00
September, 1928, check for	200.00

\$1250.00

1664.07
1250.00
<hr/>
414.07

CHANCERY EXECUTION

BILL OF COSTS

No. 952

Emma L. Smith

Philip H. Armstrong

Plaintiff

Defendant

FEES OF REGISTER	Dollars	Cents	Brought Forward	\$
Filing each bill and other papers	1	70	For Receiving, Keeping and paying out or distributing money, etc.; 1st \$1,000, 1%, all over \$1,000, and not over \$5,000, 3-4 of 1%; all over \$5,000 and not exceeding \$10,000, 1-2 of 1%, all over \$10,000 1-4 of 1%.	790
Issuing each subpoena	50	00	Receiving, keeping and paying out money paid into court, etc., 1-2 of 1% of amount received.	
Issuing each copy thereof	40	00	Each notice sent by mail to creditor ..	15
Entering each return thereof	15	00	Filing, receipting for and docketing each claim, etc.	25
For each order of publication	1	00	For all entries on subpoena docket, etc.	50
Issuing writ of injunction	1	50	For all entries on commission docket, etc.	50
For each copy thereof	50	00	Making final record, per 100 words	15
Entering each return thereof	15	00	Certified copy of decree	1 00
Issuing Writ of Attachment	1	00	Report of divorce to State Health Office (Acts 1915)	50
Entering each return thereof	15	00	Total Fees of Register	2870
Docketing each case	1	00		
Entering each appearance	25	00	FEES OF SHERIFF	
Issuing each decree pro confesso on per. ser.	1	00	Serving and returning subpoena on deft.	\$1 50
Issuing each decree pro confesso on publica.	1	00	Serving and returning subpoena for witness	65
Each order appointing guardian	1	00	Levying attachment	3 00
Any other order by Register	50	00	Entering and returning same	25
Issuing commission to take testimony	50	00	Selling property attached	75
Receiving and filing	10	00	Impaneling Jury	75
Endorsing each package	10	00	Executing writ of possession	2 50
Entering order submitting cause	50	50	Collecting execution for costs	1 50
Entering any other order of court	25	00	Serving and returning sci. fa., each	65
Noting all testimony	50	00	Serving and returning notice	65
Abstract of cause, etc.	1	00	Serving and returning writ of injunction	1 50
Entering each decree	75	75	Serving and returning writ of exeat.	1 50
For every 100 words over 500	3	00	Taking and approving bonds, each	75
Taking account, etc.	15	00	Collecting money on execution	2 50
Taking testimony, etc.	15	00	Making deed	2 50
Each report, 500 words or less	2	50	Serving and returning application, etc.	1 00
For every 100 words over 500	15	00	Serving attachment, contempt of court	1 50
Amount claimed less than \$500, etc.	2	00	Total Fees of Sheriff	920
Issuing each subpoena	25	00	RECAPITULATION	
Witness certificate, each	25	00	Register's Fees	2870
Issuing execution, each	75	00	Sheriff's Fees	900
Entering each return	15	00	Commissioner's Fees	5230
Taking and approving bond, each	1	00	Witness Fees	
Making copy of bill, etc.	15	00	Guardian Ad Litem	
Each notice not otherwise provided for	50	00	Printer's Fees	
Each certificate or affidavit, with seal	50	00	Recording Decree in Probate Court	3 00
Each certificate or affidavit, no seal	25	00	Total	9200
Hearing and passing on application, etc.	3	00		
Each settlement with receiver, etc.	3	00		
Examining each voucher of Receiver, etc.	10	00		
Examining each answer, etc.	3	00		
Recording resignation, etc.	75	00		
Entering each certificate to Supreme Court	50	00		
Taking questions and answers, etc.	25	00		
For all other ser relating to such proceedings	1	00		
For services in proceeding to relieve minors, etc. same fee as in similar cases.				
Commission on sales, etc: 1st \$100, 2 per ct.; all over \$100 and not exceeding \$1,000, 1 1-2 per ct; all over \$1,000, and not exceeding \$20,000, 1 per ct.; all over \$20,000, 1-4 of 1 per ct.				
Sub Total Carried Forward	7	70		

The State of Alabama,

No. 952

Baldwin County.

Circuit Court, In Equity

Feb

Term, 1936

To Any Sheriff of the State of Alabama—GREETING:

You are hereby commanded, That of the goods and chattels, lands and tenements of

Emma L. Smith

Philip H. Armstrong

Defendant

you cause to be made the sum of _____ Dollars,

which _____ Plaintiff

recovered of _____ on the 5 day of Feb 1936

by the judgment of our Circuit Court, held for the county of Baldwin, besides the sum of _____ Dollars,

costs of suit, and have the same to render to the said _____ and make return of this Writ and the execution thereof, according to law.

Interest from _____ 193 to date of collection.

Witness my hand, this 11 day of Feb 1936

Richard D. Dineen

Register.

TO THE HONORABLE CIRCUIT COURT OF BALDWIN COUNTY,

ALABAMA, SITTING IN EQUITY:

Now comes your oratrix, Emma S. Drath, who is over the age of twenty-one years and resides in Baldwin County, Alabama, and brings this her bill of complaint against:

Josephine Johnson,

Elvera C. Armstrong,

Agnes E. Utter, and

Philip G. Armstrong, as the executor of the Estate of Oscar Johnson, deceased,

all of whom are over the age of twenty-one years and reside in Baldwin County, Alabama, and shows unto Your Honor:

FIRST: Your oratrix shows unto Your Honor that Oscar Johnson, who was formerly a resident and citizen of Baldwin County, Alabama, died in Baldwin County, Alabama, on September 13th, 1929, leaving a last will and testament, which has been duly admitted to probate in the Probate Court of Baldwin County, Alabama, and letters executorial have issued to Philip G. Armstrong, who was his son-in-law, and that the heirs at law and next of kin of the said Oscar Johnson, deceased, are:

His widow, the defendant Josephine Johnson, and his two daughters, the defendants Elvera C. Armstrong, and Agnes E. Utter.

A copy of the said will of Oscar Johnson, deceased, is hereto attached marked "EXHIBIT A", made a part hereof and now referred to.

SECOND: Your oratrix further shows unto Your Honor that Mrs. Lawrence Allen, being then the owner of:

"Lots One (1), Two (2), Three (3) and Four (4) in Block One (1) in Central Park Addition to Fairhope, Alabama, according to a map made by R. J. Greenwood, County Surveyor of Baldwin County, Alabama, and submitted to The Town Council of The Town of Fairhope, and approved by the Mayor on October 18th, 1926",

offered said property for sale, at public outcry, and your ora-

trix, Emma S. Drath, purchased the same at said sale, made the initial payment thereon, of Two Hundred Fifty-three and 75/100 (\$253.75) Dollars, and contracted to pay four (4) additional payments of about One Hundred and Ninety and 33/100 (\$190.33) Dollars each, payable every six months thereafter.

THIRD: Your oratrix further shows unto Your Honor, however, that she, being a nurse by profession and both unfamiliar with commercial transactions of any magnitude and greatly occupied with her professional duties, Oscar Johnson, who was then residing in Baldwin County, Alabama, but who has since died, ingratiated himself into your oratrix's confidence to such an extent that she entrusted the said Oscar Johnson, deceased, with her general power of attorney, under which he was authorized to draw checks upon her bank account in the State Bank of Silverhill, and to pay off the deferred payments on account of her said purchase out of her bank account and other monies and securities belonging to her which she, from time to time, turned over to him, and to obtain a deed to her from Mrs. Lawrence Allen and her husband, Charles J. Allen, when the purchase price was fully paid.

FOURTH: Your oratrix further shows unto Your Honor that not only did she, from time to time, make deposits in said bank account, which was subject to checks drawn by the said Oscar Johnson in her name, but she also, from time to time, turned over to him other monies and assets to be held by him as her representative, and out of these monies and her bank account the said Oscar Johnson, deceased, paid off the deferred payments on said lands, but instead of obtaining a deed to her, as he had promised to do, he took advantage of his position, as the complainant's representative, by instructing the seller to execute the deed to him, and took possession of said property under said deed, and his heirs, who are defendants to this bill, now claim said lands by inheritance from him. A copy, of the said deed is hereto attached marked "EXHIBIT

B", made a part hereof and now referred to.

FIFTH: Your oratrix further shows unto Your Honor that if she is mistaken in the foregoing allegations as to all of the payments which the said Oscar Johnson, deceased, made, on account of the purchase price for said lands having been made out of monies belonging to the complainant, and if it be true that in making any part of these payments he used his own funds, such payments, to this extent, represented mere advancements by him to the complainant, which she is ready, willing and able, and now offers to return to the executor of his said estate.

PRAYER FOR PROCESS.

To the end, therefore, that equity may be done in the premises your oratrix prays that Josephine Johnson, Elvera C. Armstrong, Agnes E. Utter and Philip G. Armstrong, as the executor of the Estate of Oscar Johnson, deceased, may be each made a party defendant to this your oratrix's bill of complaint, and that due process of subpoena be issued to and served upon each of them in accordance with the course and practice of this Honorable Court.

PRAYER FOR RELIEF.

Your oratrix further prays that upon the hearing of this cause this Honorable Court will ascertain and decree that the said Oscar Johnson, deceased, took the title to said real estate in trust for the benefit of your oratrix; that this Honorable Court will render such decree as may be necessary in order to divest the title to said property out of the heirs of the said Oscar Johnson, deceased, and into your oratrix, and enjoin the defendants from further claiming said property, and if it should appear that any part of the said purchase price was paid by the said Oscar Johnson, deceased, otherwise than out of the monies belonging to the complainant, of which he had control, then that your oratrix may be permitted to repay the said advancements, and that the

said title may be then vested in her when said advancements are repaid, and your oratrix further prays that this Honorable Court will cause an accounting to be had between the complainant and the Estate of the said Oscar Johnson, deceased, and that the true balance may be ascertained, and that the complainant may be allowed to pay off any balance that may be due by her to said estate, and that a decree may be rendered against said estate for any balance due to her, and that your oratrix may have such other and further relief as she may be entitled to receive, the premises considered, as in duty bound she will ever pray.

Harry Smith Claffey

SOLICITORS FOR COMPLAINANT.

FOOT NOTE:-

Each of the defendants, namely,- Josephine Johnson, Elvera C. Armstrong, Agnes E. Utter and Philip G. Armstrong, as the executor of the Estate of Oscar Johnson, deceased, is required to answer each and every allegation of the above and foregoing bill of complaint, from paragraph First to paragraph Fifth, both inclusive, but not under oath, oath as to each of such answers being hereby expressly waived.

Harry Smith Claffey

SOLICITORS FOR COMPLAINANT.

Last Will and Testament.

State of Alabama :
 :
Baldwin County. ;

Know all men by these presents, that I, Oscar Johnson, of Silverhill, Baldwin Co., in the State of Alabama, being in failing health, but of sound mind, do make and publish this my last will and testament, hereby revoking all former wills by me at any time heretofore made.

As to my worldly estate, and all the real, personal or mixed property of which I shall die seized and possessed or to which I shall be entitled at the time of my decease, I devise, bequeath and dispose thereof in the manner following, to-wit:

First:- My will is that all my just debts and funeral expenses shall, by my executors, hereinafter named, be paid out of my estate, as soon after my decease as convenient.

2nd.- I give, devise and bequeath to my beloved wife, Josephina Johnson, all my household furniture, including china, glass and plateware and an allowance of \$50.00 per month, during her natural life, to be paid out to her monthly by my executor and also to give to her to have and to hold during the term of her natural life my dwelling house and lots in the Town of Silverhill, Alabama.

Third.- I give and bequeath to my daughter Elvera C. Armstrong, one-half of the income derived from selling of my real estate and personal property.

Fourth:- I give and bequeath to my second daughter, Agnes E. Utter, one-half of the income derived from selling of my real estate and personal property to be paid out by my executor as soon after sale as convenient.

Fifth:- I do nominate and appoint Mr. Philip G. Armstrong as my administrator and herewith empower said Philip G. Armstrong to sell at any time in any manner which he shall deem

proper, to make sale of and execute deed to convey all my property both real and personal, shall not be required to give bond, or to file a schedule of property, or required to file a report to the Court.

In Testimony whereof, I, the said Oscar Johnson, have to this my last will and testament, subscribed my name and affixed my seal this 10th day of May, 1929.

Oscar Johnson (Seal).

Signed, sealed and declared by the said Oscar Johnson, as his last will, in the presence of us, who at his request and in his presence of each other have subscribed our names as witnesses thereto.

Paul Anderson

A. I. Rundquist.

WARRANTY DEED.

KNOW ALL MEN BY THESE PRESENTS, That for and in consideration of the sum of Ten hundred fifteen and x/100 dollars (\$1015.00) to in hand paid by Oscar Johnson the receipt whereof is hereby acknowledged Lawrence Allen and husband Charles J. Allen, grant, bargain, sell and convey unto the said Oscar Johnson all that real property situate in Baldwin County, Alabama, described as follows, to-wit:

Lots 1-2-3-4 in Block 1 in Central Park Addition to Fairhope, Ala., a redivision of Ettel Subdivision; being part of SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sect. 17, Twp. 6 S., R. 2 East, according to the plat as recorded in the office of Judge of Probate of Baldwin County, Alabama.

Together with, all and singular, the tenements, hereditaments and improvements thereupon situate, and the rights, members, privileges and appurtenances thereunto appertaining or belonging.

TO HAVE AND TO HOLD to the said Oscar Johnson, his heirs and assigns forever. And we do covenant with the said Oscar Johnson that we are seized in fee of the above described premises, and in the quiet and peaceable possession of the same; that have a perfect right to sell and convey the same, that the said premises are free from all encumbrances; and that we will and our heirs, executors and administrators shall forever warrant and defend the title to said premises unto the said Oscar Johnson and his heirs and assigns, against the lawful claims of all persons whomsoever.

Witness our hands and seals this 19th day of February, 1929.

Witnesses:	Lawrence Allen	(LS)
Gladys Lowell	Charles J. Allen	(LS)

I, Gladys Lowell, a Notary Public in and for said State and County, do hereby certify that Lawrence Allen & Charles

J. Allen, whose names are signed to the foregoing conveyance and who are known to me, acknowledged before me, on this day, that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand this 19th day of February, 1929.

(SEAL). Gladys Lowell,
Notary Public, Baldwin Co., Ala.

The State of Alabama :
:
Baldwin County :

I, Gladys Lowell, a notary public in and for said State and County, do hereby certify that on the 19th day of February, 1929, came before me the within named Lawrence Allen, known to me to be the wife of the within named Charles J. Allen, who, being examined separate and apart from the husband touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, and without fear, constraints or threats on the part of the husband.

In witness whereof, I hereto set my hand, this 19th day of February, 1929.

(SEAL). Gladys Lowell, Notary Public,
Baldwin Co., Ala.

The State of Alabama :
:
Baldwin County. : Probate Court.

Filed in office this 19 day of Mar. 1929---12:50 P.M. and duly recorded in Deed Book No. 46 N. S., pages 360; and I certify that \$1 cts. 50, license or privilege tax paid as required by an Act of the Legislature, approved September 14, 1923.

G. W. Humphries, Judge of Probate,
By J. L. Kessler, Clerk.

EMMA S. DRATH,
Complainant.

versus.

JOSEPHINE JOHNSON, ELVERA
C. ARMSTRONG, AGNES E.
UTTER, and PHILIP G. ARM-
STRONG, as the Executor
of the Estate of Osear John-
son, deceased,

Defendants.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.

IN EQUITY.

EMMA S. DRATH,
Complainant.

versus.

PHILIP G. ARMSTRONG,

Defendant.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.

IN EQUITY.

WHEREAS under an agreement between the solicitors of record in the above entitled causes, the Court in these cases decreed that said causes should be consolidated, and some question has arisen as to whether, in order to review the rulings of the Circuit Court in dismissing each bill of complaint, there should be one appeal from the two cases as consolidated, or a separate appeal in each case; and,

WHEREAS the submission of these two cases together was a mere matter of convenience:

IT IS HEREBY AGREED by and between the solicitors of record in the above entitled causes that any appeal attempted to be taken by the complainant from the decree rendered, in whatsoever form, provided only security for costs is given, shall be regarded as sufficient to bring the correctness of this decree, as applied to each of the two cases covered by the decree, before the Supreme Court of Alabama for review, and that no point whatever shall be made as to the sufficiency of the appeal for this purpose.

Made and entered into this the 2 day of *May*, 1931.

Harry Smith Hopper
SOLICITORS FOR COMPLAINANT

Webb T Shepard
SOLICITORS FOR DEFENDANTS.

PETITION TO REMOVE DISABILITIES OF NON AGE.

In the matter of the
petition of A. N. Schrock
to have Abraham A. Schrock
relieved of the disabilities
of non-age.

In Circuit Court of Baldwin County,
Alabama, in Equity.

To the Hon. F. W. Hare, Judge.:

Your petitioner, A. N. Schrock, respectfully represents unto your Honor, that he is a resident of this County and State, and over twenty one years of age.

That he is the father of Abraham A. Schrock a minor over twenty years of age, who resides with your petitioner. That said Abraham A. Schrock has no general guardian, and that he is entitled to certain property in his own right, and that he has negotiated a loan on said property, and it is necessary that his disabilities of non-age be removed that he may execute said mortgage, and it would be to the best interests of said Abraham A. Schrock to have his disabilities on non-age removed. That the said Abraham A. Schrock is sober and industrious, and possessed of sound judgment for his years, wherefore,

Your petitioner prays that the said Abraham A. Schrock may be relieved of his disabilities of non-age and that he be vested with power to sue and be sued, contract and be contracted with and to take possession of and convey real and personal property as if he was twenty -one years of age.

A. N. Schrock

Petitioner.

Affirmed
~~Sworn to~~ and subscribed before me this the 29th., day of January 1931.

W. N. Hawkins

Notary Public Baldwin County, Ala.

Excerpted

Jan 29 1931

by sewing copy
of within petition
Abraham A
Schrock

W R Smart
Sheriff
Asst. Clerk
J. S.

Original
Petition of A. N.
Schrock for re-
moval of disabili-
ties of non-age
of Abraham A
Schrock -

Filed Jan 29th 1931
D. W. Rice
Register

BAY MINETTE, ALA.,

Jan 21

1931

How J. Richardson

IN ACCOUNT WITH
G. W. HUMPHRIES
JUDGE OF PROBATE
BALDWIN COUNTY

Case Return Bill With Remittance

Privilege Tax

Rec. Fee

Total

Deed
Rec. Mort. from

*Richardson to
Richardson*

to

50

*Paid
1/21/31
G. W. Humphries
Bay Minette*

State of Alabama,

Baldwin County.

Personally appeared before me, W. H. Hawkins, a
Notary Public in and for said County in said State *O. W. Fitzgerald*
and *J. K. Page*, who being by me first duly
sworn doth depose and say as follows:-

We know Abraham A. Schrock and know him to be a sober and indus-
trious young man, and that in order to make mortgage for a certain
loan it is necessary that the disabilities of non-age of the said
Abraham A. Schrock be removed that he may make and execute this
mortgage, so as to secure this loan.

We think that it will be for the best interest of the said Abraham
A. Schrock that his disabilities of non-age be removed, and that he
be allowed to sue and be sued, contract and be contracted with and to
take possession of and convey real and personal property.

J. K. Page

O. W. Fitzgerald

Sworn to and subscribed before me this the 29th. day of January 1931.

W. H. Hawkins

Notary Public, Baldwin County, Ala.

Affidavits of
H. K. Page

O. N. Ertzinger
as to removal of
disabilities of
non-age of
Abraham W.
Sawrock.

Filed Jan 29th 1931
T. W. Peimmon
Register

HARRY T. SMITH & CAFFEY
ATTORNEYS AT LAW
716-722 FIRST NATIONAL BANK BUILDING
MOBILE, ALA.

HARRY T. SMITH.
WILLIAM G. CAFFEY.

May 8th, 1930.

Hon. T. W. Richerson,
Register in Chancery,
Bay Minette, Alabama.

Dear Sir:-

Enclosed we hand you copy of an agreement
of counsel in the case of Emma S. Drath vs. Phillip
G. Armstrong, et als., which you will please file.

Yours very truly,

Harry Smith & Caffey

HARRY T. SMITH & CAFFEY.

Enc.
HTS:OD

8550 REQUEST FOR DECREE IN VACATION.

MOORE PTO CO.

STATE OF ALABAMA,
Baldwin County.

CIRCUIT COURT, IN EQUITY.

No. 852. Vacation Term, 1930

Ex parte Abraham A. Schrock, Complainant

vs.

Defendant

To T. W. Richerson, Register :

In the above stated cause a Decree Pro Confesso having been taken against the Defendant, and evidence having been taken, and the cause being ready for submission for final decree, and no defense having been interposed, the Complainant, by W.H.Hawkins Atty for Petitioner

Solicitors of record, now files with the Register of this Court this written request to deliver the papers in this cause to the Judge for final decree in vacation.

W.H.Hawkins,
Solicitor for Complainant.

STATE OF ALABAMA,
BALDWIN COUNTY.

}

Circuit Court, In Equity.

No. 952.

Vacation *Jan. 7* Term, 19*51*.

In the Matter of the Petition of Abraham A. Schrock,

To be Relieved from the Disabilities of Non-Age.

This cause coming on to be heard in Vacation,

having been submitted for Decree on Petition and ex-parte affidavits of

G. K. Page and Ort H. Ertzinger,

thereupon, upon consideration thereof, it is ordered, adjudged and decreed by the Court

that Abraham A. Schrock, a minor who is over the age of eighteen years, be and is relieved from the Disabilities of Non-Age, and is vested with the right to sue and be sued, contract and be contracted with, to buy, sell and convey Real Estate, and generally to do and perform all acts which such minor could lawfully do if he were twenty-one years of age, except

It is further decreed that the said Abraham A. Schrock, pay the cost of this proceeding, for which execution may issue.

J. W. Hare Judge.

8581 NOTE OF TESTIMONY

. Ex. parte Abraham A. Schrock,

.....

.....

vs.

.....

.....

.....

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN EQUITY,
CIRCUIT COURT OF BALDWIN COUNTY.

This cause is submitted in behalf of Complainant upon the original ~~Complaint~~ Petition,
Service by Sheriff showing copy of Petition served on Abraham A. Schrock,
and affidavits of G.K. Paige and Ort H. Ertzinger,

and in behalf of Defendant upon



Register.

No. 852

THE STATE OF ALABAMA
BALDWIN COUNTY

IN EQUITY,
CIRCUIT COURT OF BALDWIN COUNTY.

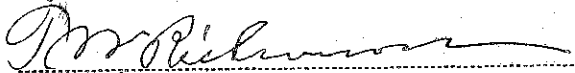
Ex parte Abraham A. Schrock.

VS

NOTE OF TESTIMONY

Filed in Open Court this 29th

day of January, 1931.



Register

No. 852. Page

THE STATE OF ALABAMA,
Baldwin County

Circuit Court, In Equity.

Petition of
Ex parte Abraham A. Schrock.

Decree Relieving Minors from
Disabilities of Non-Age.

The State of Alabama,
Baldwin County.

I hereby certify that the within De-
cree was received in this office for re-
cord 192 ..
at o'clock M, and re-
corded in Record
Vol. Page

..... 192 ..
and examined.

.....
Judge of Probate.

Register Fee, \$

THE STATE OF ALABAMA
BALDWIN COUNTY
CIRCUIT COURT, IN EQUITY

Ex parte Abraham A. Schrock,

vs.

REQUEST FOR DECREE IN
VACATION

FILED Jan 29th, 1931 192

D. M. [Signature]

Register

RECORDED IN RECORD

VOL. PAGE.....

Register