

No. 863 EQUITY

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

MARY F. DEVINE, et al,
Complainants,

-vs-

W. M. KIDWELL, et al,
Respondents.

APPEARANCE

*Filed Jan 10th 1930
D. R. Coley, Jr.
Register*

D. R. COLEY, JR.,
SOLICITOR FOR RESPONDENTS.

MARY F. DEVINE and C. P.
DEVINE, her husband,
Complainants,

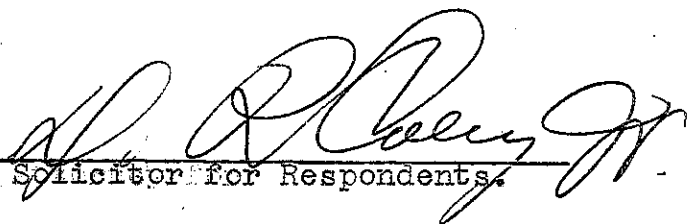
-vs-

W. M. KIDWELL, ELLA V. DEVINE,
H. C. DEVINE, her husband, and
Peoples Fertilizer Company, a
corporation,
Respondents.

IN EQUITY

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Comes D. R. Coley, Jr., and appears for the defend-
ant W. M. Kidwell, Ella V. Devine and H. C. Devine, reserving
the right to plead further.


Solicitor for Respondents.

Mary F.Devine and C.P.Devine,
her husband -COMPLAINANTS -

IN EQUITY -

Versus

Circuit Court,
Baldwin County,
Alabama.

W.M.Kidwell, Ella V.Devine,
H.C.Devine, her husband, and
Peoples Fertilizer Company, a
corporation, RESPONDENTS -

To the Hon.F.W.Hare,
Judge of 21st Judicial Circuit.

Your oratrix, Mary F.Devine, and your orator, C.P.Devine, her husband, each of whom is a resident of Baldwin County, Alabama, and over the age of twenty one years, respectfully exhibit their bill of complaint against W.M.Kidwell, Ella V.Devine and H.C.Devine, her husband, each of whom is a resident of Baldwin County, Alabama, and over the age of twenty one years, and the Peoples Fertilizer Company, an Alabama corporation doing business in said County in said State.

Humbly your Complainants respectfully show unto your Honor the following facts :

1.- That they have been, since to-wit the year 1923, the beneficial owners of the following land in Baldwin County, Alabama

The West Half of the Northwest Quarter
(W2 of NW4) of Section Twenty Four (24)
in Township Five South (5 S0) of Range
Three East (3 E) -

and of the said tract of land they have had since to-wit the year 1923, actual, open, notorious, exclusive, continuous, adverse and uninterrupted possession, and that their said possession has consisted of their having lived on said tract of land, in their farming and cultivating it and in having it farmed and cultivated, in their using and selling the crops therefrom, and in their otherwise holding possession of and using and treating the said land as their home and their own property.

2.- That they acquired the legal title to said tract of land on December 29th, 1924, by deed from Charles F. Dietrich and wife, which deed is recorded in Deed Book 36 NS page 52 in the office of the Probate Judge for Baldwin County, Alabama.

3.- That they desired to obtain a loan of money on said property and that they entrusted the negotiation for said loan to their son H.C.Devine and that he advised them that, because of their age, -your oratrix being 65 years old and your orator 62 years old, at that time, -in order to secure the said loan they should convey the said land to his wife, Ella V.Devine.

4.- That they relied on and trusted their son H.C.Devine and accepted his advice as being given in good faith and, in accordance therewith, on January 19, 1925, they conveyed the said land by deed to Ella V.Devine, the wife of their son.

- 5- That the purpose and intent of their conveyance of said land to Ella V.Devine,as the said Ella V.Devine and H.C.Devine then well knew and agreed to,was that the said Ella V.Devine should hold the title to said land in trust for your complainants and that she should obtain a loan on said land in her name for them;which loan of money was in fact obtained.
- 6.- That the said conveyance from your complainants to Ella V.Devine recites a consideration from her to them,as they were advised that such recital was necessary and proper,but they aver that there was in fact no such consideration paid to them by or for Ella V.Devine and that the only consideration to them for the said conveyance was that a loan might be obtained on said land by Ella V.Devine and that she should hold the title to said land in trust for your complainants.
- 7.- That,in procuring their execution of the said deed to Ella V.Devine,their son H.C.Devine exercised undue influence over them,due to the fact that he was and is their oldest son and to their trust and confidence in him,and that the intent of Ella V.Devine and H.C.Devine in having them execute the said deed was fraudulent and to deprive your complainants of their title and beneficial interest in and to a part of said land,which legal title to a part of said land the said Ella V.Devine and H.C.Devine intended that Ella V.Devine should hold for her own use after the said loan had been secured.
- 8.- That on January 19,1925,contemporaneously with the execution by your complainants of the said deed to Ella V.Devine, and in pursuance of and because of the trust in said land with which Ella V.Devine was charged in behalf of your complainants under their said deed to her,a written agreement was entered into and signed by and between Ella V.Devine and H.C.Devine,her husband,as parties of the first part, and your complainants as parties of the second part,by which Ella V.Devine and H.C.Devine agreed to reconvey the title to said land to your complainants after the expiration of a stated period of time and upon certain conditions set out in the said instrument,and that such written agreement was executed in duplicate by the two sets of parties thereto and at the time of its execution included,as subject thereto, the entire eighty acres of land,which was correctly described therein as the "West Half of the Northwest Quarter" of said section
- 9.- That both copies of said duplicate agreement,after they had been signed by both sets of parties thereto,were retained by the said Ella V.Devine and H.C.Devine and that,some weeks later,one of said duplicate signed copies was delivered to your complainants by Ella V.Devine and H.C.Devine and that the description of the land in said duplicate copy of said instrument had been altered since the signature of said instrument, and without the knowledge,consent and approval of your complainants,in the attempt to make the said instrument apply only to the "West half of the West Half of the Northwest Quarter" of said section.
- 10.- Your complainants aver that the said alteration of the description of the land in said instrument was made fraudulently and to deprive your complainants,eventually and finally,of the title to one half of their said eighty acre tract of land,and that the said named respondents,Ella V.Devine and H.C.Devine,well knew that the said instrument,when it was executed,covered the entire eighty acres of land,and that by claiming under the altered instrument that one half of the eighty acres is exempted therefrom,the said Ella V.Devine and H.C.Devine were guilty of complicity in said fraud and endeavored to reap the fruits thereof.

11.- That the copy, of said duplicate instrument, furnished your complainants, referred to in paragraphs 8, 9 and 10 hereof, has not been admitted to record and that your complainants have not had access to the duplicate copy of said instrument held by Ella V. Devine and H. C. Devine, and had no knowledge that a copy of said duplicate instrument had been admitted to record in the office of the Probate Judge for Baldwin County, Alabama, until after the common law suit in ejectment of W. M. Kidwell vs George Devine et als had been filed.

12.- That a copy of said duplicate instrument was admitted to record in the office of the Probate Judge for said County in Deed Book 44 NS page 223 and that the description of the land in the said deed book record of said instrument is given as "West half of Northwest Quarter, the West Half of Section 24" etc., and the description of said land in the said record is more comprehensive than in the original instrument when signed.

13.- That, in pursuance of their fraudulent intent to deprive your complainants of the title and beneficial ownership of one half of their said eighty acres of land, the said Ella V. Devine and H. C. Devine did, on December 14, 1926, in violation of the trust in favor of your two complainants, hereinbefore set out, execute a deed of conveyance to W. M. Kidwell for the "East half of the West Half of the Northwest Quarter" of said section 24, of which tract of land your complainants were, prior to, at the time of and subsequently to said conveyance to W. M. Kidwell, in such actual possession as is alleged in paragraph 1 hereof and have been ever since/

14.- That your complainants were altogether ignorant of the said deed to W. M. Kidwell until after the said deed had been executed.

15.- That at the time of the delivery of said deed to W. M. Kidwell he had actual notice of the rights and equities of your complainants in said land and took delivery of the said deed entirely subject to the rights and equities of your complainants in said land.

16.- That at the time of the delivery ~~the~~ and acceptance of the said deed from Ella V. Devine and husband, W. M. Kidwell had constructive notice of the rights and equities of your complainants in said land and that such constructive notice was furnished the said Kidwell by the actual possession of the said land by your complainants as set out in detail in paragraph 1 hereof and that he accepted the delivery of said deed subject to the rights and equities of your complainants in said land and was not a bona fide purchaser of said land without notice of your complainants equities therein.

17.- That the intent and purpose of the said deed from Ella V. Devine and husband to W. M. Kidwell, as was well known to the grantors and the grantee therein, was to secure an indebtedness, existing at the time of said conveyance, from the grantors to the said Kidwell, and to secure the payment of any future indebtednesses from the said grantors to the said grantee, which future indebtednesses were in fact incurred subsequently to the delivery of the said deed and that the said deed to W. M. Kidwell was in the actual intent of the grantors and the grantee thereof a mortgage to secure the indebtednesses of the grantors to the grantee and that the said W. M. Kidwell did not accept delivery of the said deed as the purchaser of said land.

18.- That in the acceptance of said deed as a mortgage the said W.M.Kidwell had actual notice of the equities of your complainants in said land and took the said mortgage subject to the equities of your complainants in said land.

19.- That in the acceptance of said deed as a mortgage the said W.M.Kidwell had constructive notice of the rights and equities of your complainants in said land and that such constructive notice of your complainants equities was furnished the said W.M.Kidwell by the actual possession of said land by your complainants as set out in detail in paragraph 1 hereof, and that he accepted delivery of such deed as a mortgage subject to the equities of your complainants in said land.

20.- That on December 18, 1928 W.M.Kidwell executed a mortgage to the Peoples Fertilizer Company on the East half of the West half of the Northwest Quarter of said section 24 and that prior to, at the time of, and subsequently to the execution of said mortgage, until the present time, your complainants have been in actual possession of the said land as is particularly alleged in paragraph 1 hereof and that their such possession constituted constructive notice to the said Peoples Fertilizer Company of the rights and equities of your complainants in said land and that the Peoples Fertilizer Company accepted delivery of the said mortgage from W.M.Kidwell subject to the rights and equities of your complainants in said land.

21.- That at no time have Ella V.Devine and H.C.Devine, or either of them paid to your complainants, or to anyone for them, any money or other consideration, as consideration, or partial consideration, for any right, title, or interest in the said tract of land of your complainants, acquired or to be acquired therein by the said Ella V.Devine and H.C.Devine.

22.- That prior to the acquisition by your complainants of their beneficial ownership of said land and prior to the acquisition by your complainants of the legal title to said land from Charles F.Dietrich on, to-wit December 29, 1924, and until the present time, the said H.C.Devine is and has been indebted to your complainant Mary F.Devine in a large sum of money, to-wit the sum originally of some four thousand dollars, and that any payment of money made by H.C.Devine to your complainants has been on account of the said indebtedness and not on account of the purchase by H.C.Devine and Ella V.Devine, or either of them, of any interest in or part of the said eighty acre tract of land owned by your complainants.

23.- That the said Ella V.Devine and H.C.Devine, or either of them, have no right, title, or interest in and to the land of your complainants, or any part thereof, described in paragraph 1 hereof, either in law or equity, except under the conveyance by your complainants to Ella V.Devine of January 19, 1925; under which conveyance the said Ella V.Devine holds the title to said land in trust for your complainants, as is alleged in paragraphs 5, 6, 7 and 8 hereof; nor had they, or either of them, any other interest in the land of your complainants when the conveyance to W.M.Kidwell was executed by them and when the mortgage was executed by W.M.Kidwell to the Peoples Fertilizer Company.

A- And your complainants aver that the defendants should not be permitted to assert any beneficial interest in them or in any of them, in and to said lands of the complainants by virtue of the duplicate agreement to reconvey, executed January 19, 1925, by and between Ella V. Devine and H.C. Devine, of the first part, and your complainants, of the second part, for the reason that the said agreement as now existing is a fraudulent alteration of the agreement as originally signed, as is averred in paragraph 9 hereof.

B.- And your complainants aver that the defendants, or any of them, should not be permitted to assert and claim any beneficial interest in them, or in any of them, in said lands of your complainants, or any part thereof, by reason of the conveyance by your complainants to Ella V. Devine of January 19, 1925, of the eighty acres of land beneficially belonging to your complainants, for the reason that the said conveyance was and is charged with a trust in behalf of said complainants under which the said Ella V. Devine holds the legal title to said land in trust for your complainants, as is averred in paragraph 5 hereof.

C.- And your complainants aver that the defendants, or any of them, should not be permitted to assert and claim any right, title or interest in your complainants said tract of land, or any part thereof, by virtue of any alleged conveyance by your complainants in December, 1923, of the said land to Ella V. Devine, for the reason that neither of your complainants signed ~~the~~ such conveyance in December, 1923, conveying the said land to Ella V. Devine, or any part thereof.

D.- And your complainants aver that the defendants, or any of them, should not be permitted to claim any right, title or interest, beneficially, in and to the said lands of your complainants, by reason of any payment of money alleged to have been by or for H.C. Devine to your complainants or either of them or to anyone else for them, for the reason that, as alleged in paragraph 22 hereof, the said H.C. Devine has been and still is indebted to your complainant Mary F. Devine in a large sum of money, to-wit the sum originally of some four thousand dollars, and that the payment by H.C. Devine of any sum of money to the complainants, or either of them, or to anyone else for them, was and is on account of the said indebtedness of H.C. Devine to Mary F. Devine and still leaves a balance of a large amount due her on said indebtedness.

And your complainants pray that your Honor may decree that the alleged deed of December, 1923, from your complainants to Ella V. Devine, conveying the said eighty acres of land, is a forgery and was not executed by your complainants, or either of them, and conveys no interest in said land to Ella V. Devine or to anyone else; and that your Honor may further decree that the deed of January 19, 1925, from your complainants to Ella V. Devine, conveying to her the said eighty acres of land of your complainants, is charged with a trust under which Ella V. Devine holds the legal title to said land in trust for your complainants in accordance with the provisions of the contemporarily executed agreement to reconvey from Ella V. Devine and husband to your complainants; and that your Honor will further decree that the said agreement of January 19, 1925, to reconvey, from Ella V. Devine and husband to your complainants, the land of your complainants, originally included the entire 80 ~~acres~~ ^{acres} and that the alteration of the description of the land in said instrument was made without the knowledge, consent and approval of your complainants and that the said Ella V. Devine shall reconvey the entire eighty acres of land to your complainants upon their compliance with the requirements of said instrument;

and that your Honor will further decree that the said deed from Ella V. Devine and husband of December 14, 1926, to W.M. Kidwell conveying the "East half of the west half of the Northwest Quarter" of said section 24 shall be cancelled and also that the mortgage from W.M. Kidwell to Peoples Fertilizer Company, of December 18, 1928, shall be cancelled so far as it concerns the east half of the west half of the northwest quarter of said section 24. And should your complainants not have asked for the proper relief, they pray that your Honor will grant to them such other and further relief in the premises as the nature of their case may require and which to your Honor may seem meet and proper.

And your complainants humbly submit themselves to the jurisdiction of your Honor's Court and offer to do what in equity and good conscience they should do in order that the decrees of the Court may be just and equitable towards the defendants in this cause.

Your complainants pray that they be granted writs of summons of the State of Alabama to W.M. Kidwell, Ella V. Devine, H.C. Devine and the Peoples Fertilizer Company, an Alabama corporation, commanding every one of them personally to appear before your Honor's Court within thirty days from the service thereof, then and there to answer all and singular the premises and to abide such orders and decrees as to your Honor's Court shall seem meet. And your complainants will ever pray.

Mary Devine
C. H. Devine
by J. W. Gilmer
Solicitor for
complainants

FOOTNOTE-

The defendants Ella V. Devine and H.C. Devine are required to answer allegations of the above bill numbered 1 to 23, both inclusive. The defendant W.M. Kidwell is required to answer allegations of the above bill numbered 13 to 20, both inclusive. The defendant the Peoples Fertilizer Company is required to answer allegation of the above bill numbered 20. Answer under oath of each of the above defendants is expressly waived,

J. W. Gilmer
 Solicitor for Complainants

W.M.Kidwell,Plaintiff,

Vs.

George Devine,W.J.Devine,
Mrs.M.F.Devine & C.P.Devine -
Defendants.

At Law

Circuit Court,
Baldwin County,
Alabama.

This cause coming on this day to be heard on the motion of the defendants for the transfer of said cause from the law ~~side~~ to the equity side of said Court,which motion the defendants supported by affidavits and the plaintiff controverted by affidavits,and it satisfactorily appearing to the judge hearing the same that such motion and proof sufficiently assert and show an equitable right or defense,the decision of ~~which~~ should dispose of the cause and which cannot be disposed of in the law side of said Court,it is therefore ordered and adjudged that the said cause be and is hereby transferred from the law side of said Court to the equity ~~side~~ of said Court, and that it shall be docketed and shall proceed on the equity side of said Court.

Done at Bay Minette,Alabama,this 14th day of November 1929.



Judge of 21st Judicial Circuit.

W.M.KIDWELL, PLAINTIFF -
Versus
George Devine et als,
DEFENDANTS -

Circuit Court,
Baldwin County, Alabama,
AT LAW

BRIEF of counsel for defendants in support of
MOTION to transfer to Equity side of said Court.

To the Hon.F.W.Hare,
Judge of 21st Judicial Circuit.

In accordance with permission of the Court, at the oral hearing, granted to counsel for plaintiff to file affidavits and to counsel for defendants to file additional affidavits, your Honor's consideration is asked to affidavits in support of said motion which, for convenience of reference, have been numbered in pencil on outside of wrapper from (1) to (15) inclusive, and which counsel for defendants respectfully submits constitute sufficient verification of the motion to transfer. Affidavits are hereinafter referred to by numbers.

With leave of the Court the dates of the two instruments, referred to in paragraph 2 of said motion, is amended to January 19, 1925, in each instance, the former dates stated in the motion having been in error.

Your Honor's attention is respectfully called to the following statements of fact as set out in said affidavits :

That very shortly prior to her coming to Alabama Mrs.M.F. Devine paid out, on account of his indebtedness and trouble, some \$4000.00 for H.C.Devine; that she had sent from Florida to H.C.Devine, then in Baldwin County, \$1200.00 and, later, \$260.00, which he was to use in paying on land for her; that of said total amount he paid out on the land, he was supposed to buy for her, only \$500.00 but that he had the title to said land made to Ella V.Devine his wife. The foregoing is shown by affidavit (1) of Mrs.M.C.Galloway and Mrs.M.F.Devine.

Counsel for plaintiff offers copy of alleged deed of December 27, 1923, executed by Mrs.M.F.Devine, C.P.Devine and George Devine, purporting to convey to Ella V.Devine the entire eighty acre tract, part of which is involved in this suit. Mrs.M.F.Devine, C.P.Devine and George Devine deny that they signed said deed and L.Glendinning, the notary before whom said deed purports to have been executed, admitted (according to affidavits) that the real Mrs.M.F.Devine had never been in his office and that she was not in fact the Mrs.M.F.Devine purporting to have signed the said deed. See affidavits of C.P.Devine and Mrs.M.F.Devine numbered (4) and affidavits of W.L.Campbell, Cassie Campbell, Katie Rushing and Mrs.M.F.Devine numbered (3). Also George Devine's affidavit (5).

Counsel for plaintiff offers copy of agreement to reconvey by Ella V.Devine and H.C.Devine to M.F.Devine and C.P.Devine, dated January 19, 1925, which, as altered, covers only W2 of W2 of NW4 of said section. Defendants allege that said instrument when executed in office of Henry D.Moorer covered the entire W2 of NW4 of said section and that the description was altered fraudulently after its execution, as to which see affidavit of Mrs.M.F.Devine, numbered (4) and affidavit of Henry D.Moorer numbered (6).

Counsel for plaintiff offers copy of deed of January 19, 1925, from M.F.Devine and husband to Ella V.Devine conveying the W2 of NW4 of said section, which was contemporaneously signed with the agreement referred to in paragraph hereof immediately preceding. Mrs.M.F.Devine and C.P.Devine admit signing said deed but Mrs.M.F.Devine's affidavit numbered (4) alleges that said conveyance was that Ella V.Devine should

take the legal title in order that a loan on said land might be gotten and should hold the title for the said grantors, which is corroborated by the agreement to reconvey, of the same date as said deed, which the affidavits, previously herein referred to, aver was altered after its execution.

Counsel for plaintiff offers copy of deed from Ella V. Devine and husband to W.M.Kidwell, conveying to him the land involved in this suit and offers affidavit of said Kidwell that he was the purchaser of said land. Defendants allege that said deed was in fact a mortgage and in support offer affidavit of J.M.Woolley, numbered (7) and affidavit of W.J.Devine, numbered (8), in connection with which latter your Honor is reminded that the said deed to W.M.Kidwell is dated in December, 1926, but that W.M.Kidwell stated to counsel for defendants in the presence of W.J.Devine, according to affidavit of latter, that the indebtedness of Ella V.Devine and H.C.Devine to said Kidwell, at the time of said conversation, was some \$1800. to \$2000., incurred some \$600. in 1926, some \$600. in 1927 and some \$600. in 1928. Both affidavits ~~of~~ (7) and (8) allege Kidwell's statement that he was not interested in the deed or the land but wanted his money. Defendants respectfully submit that said statement by W.M.Kidwell abundantly proves that the said deed to W.M.Kidwell was in fact a mortgage. Your Honor's attention is called to the fact that if the alleged deed from Ella V.Devine to W.M.Kidwell was in fact a deed of bona fide purchase and not a mortgage, that the grantors sold Kidwell the land at \$15.00 per acre (if only \$600. had been paid at the time of the said conveyance, i.e., the 1926 indebtedness of Ella V.Devine and husband to W.M.Kidwell) and that the land lies in some of the best farming district around Loxley, Baldwin County, which ought to be worth five times that amount per acre.

Counsel for defendants submits the affidavit of W.Percy Hall, numbered (2), between the lines of which, as well as directly therefrom your Honor can read that M.F.Devine and her husband, C.P.Devine, and Ella V.Devine and her husband, H.C.Devine, had composed their differences about the said land by a conveyance of the entire eighty acres by Ella V.Devine and husband to M.F.Devine and husband, which deed Percy Hall states was retained by H.C.Devine; that the said deed for the eighty acres was to have been turned over to the bank at Loxley to be delivered to Mrs.M.F.Devine at a later date. That meanwhile Ella V.Devine and H.C.Devine come to W.Percy Hall with the statement that Mrs.M.F.Devine had changed her mind and would accept a deed for half the eighty acres and that they executed before him, as notary, a deed for forty acres of said land; that Mr.Hall was at the bank when Mrs.M.F.Devine asked for the deed to the eighty acre tract, which had been originally executed, and that he then told her of the subsequent execution by Ella V.Devine and husband of the deed to her for only forty acres, and on the deed being produced by the bank it was found to be a deed for only forty acres, but that Mr.Schlich (the cashier) stated that the deed when turned over to the bank had been for the entire eighty acres.

Counsel for defendants submits affidavits of Harry E. Miller (10), Andrew Lennick (11) and H.T.Childress (12) as setting forth admissions of H.C.Devine to said parties of an indebtedness of H.C.Devine to his mother, Mrs.M.F.Devine (10) and of the ownership of said property, and (11) also of ownership and of possession by M.F.Devine and C.P.Devine for nine or ten years, and (12) also of ownership of said property. Also affidavit (9) of George Devine that the \$15.00 paid to Ella V.Devine was on account of amule and not on account of said land. The affidavit of Mrs.M.F.Devine (4) is submitted in general support of the motion to transfer, as well as for purposes previously stated herein.

Counsel for defendants submits affidavits of M.F.Devine, C.P.Devine, W.J.Devine and George Devine in which they deny the truth of the material facts alleged in the affidavit of H.C.Devine, subscribed to by Ella V.Devine;

In which Mrs.M.F.Devine alleges that the \$3000.00 paid to C.F.Dietrich was secured by her \$2000.00 from J.J.Terry under mortgage on said land and \$1000.00 paid to her by H.C.Devine on account of the indebtedness of some four thousand dollars which had been paid out by her in South Carolina to get H.C.Devine out of some trouble and on his debts there.

In which George Devine denies the statement in the affidavit of Pink Dubose that the latter was present at the home of H.C.Devine when George Devine paid \$15.00 to Ella V.Devine, and alleges again that the said \$15.00 was paid to return to H.C.Devine that amount paid on a mule for George Devine and was not a payment on account of any land.

Counsel for defendants submits affidavits of the same four parties, No.14, that no one of them had any knowledge of the alleged deed of December 27, 1923, purporting to have been signed by M.F., C.P. and George Devine, to Ella V.Devine, which is relied on by Ella V. and H.C.Devine, until this suit was filed.

In which they allege that none of them had any knowledge that the agreement to reconvey by Ella V. and H.C.Devine to M.F. and C.P.Devine, of January 19, 1925, which previous affidavits of H.D.Moorer and Mrs.M.F.Devine allege to have been altered after its execution as to the land described, had been admitted to record; that the copy delivered to Mrs.M.F.Devine was not recorded and that they had no knowledge that the copy retained by Ella V.Devine had been admitted to record until after this suit was filed.

Counsel for defendants submits affidavits, No.15, of M.F.Devine, W.J.Devine, C.P.Devine and George Devine;

In which Mrs.M.F.Devine avers that W.M.Kidwell furnished, under sale to her, some of the material that was used in the building of the home on said land which W.M.Kidwell claims under the deed to him from Ella V.Devine.

In which Mrs.M.F.Devine, W.J.Devine and George Devine depose that W.M.Kidwell, prior to and since December, 1926, (when the deed to him was executed by Ella V.Devine and husband) was more or less frequently at the home of C.P. and M.F.Devine, to see about buying Irish potatoes, Cucumbers, sweet potatoes and other crops, which they began growing on said land in 1922.

In which Mrs.M.F.Devine deposes that she had no knowledge of the deed from Ella V.Devine and husband to W.M.Kidwell, of December 14, 1926, until about a couple of months after the said deed had been executed;

And in which W.J.Devine, C.P.Devine and George Devine depose to the same facts as set out in preceding paragraph.

Counsel for defendants submits for your Honor's inspection the copy, delivered to M.F.Devine by Ella V.Devine or H.C.Devine, of the agreement to reconvey from Ella V.Devine and husband to M.F.Devine and husband, which the affidavits of Henry D.Moorer (No.6) and of Mrs.M.F.Devine (NO.4) depose to have been altered after the execution of said instrument and Your Honor's attention is called to the fact that the copy seems to have been made with carbon paper, except the words interlined "The west half of ~~The~~" which seems to have been made with a ribbon, and to the fact that the interlineation was attempted at the beginning of the original description and was erased except the letter f; that the capital T of the original description was not altered and the words "containing 80 acres" was not altered; also to the fact that the word "the" at the end of the interlined sentence was apparently typed over a second time which also indicates that the alteration was made with a ribbon, and which would not have been done had the interlineation been made with a carbon sheet.

Counsel for defendants respectfully submits that the affidavits submitted by him clearly show that H.C.Devine was indebted to his mother, at the time that they all came to Baldwin County, for some \$4000.00; that from Florala she sent him a total of \$1460.00 ~~additional~~ with which to make a payment on some land for her but that he paid only \$500. of said money on the land and took the deed in the name of Ella V.Devine, his wife;

That M.F.Devine, C.P.Devine and George Devine (who was then only 16 years old) did not execute the alleged deed of December, 1923, conveying the eighty acres of land (in question) to Ella V.Devine. George Devine had no interest, legal or equitable in said land and his purporting to have signed the said deed is indicative of the ignorance on the part of the parties who did prepare and sign the said deed .

From the affidavit of W.Percy Hall, that Ella V.Devine and H.C.Devine (as evidence that the four said parties had composed their differences), signed a deed to M.F. and C.P.Devine before Mr.Hall and in the presence of the grantees, conveying all of said eighty acres of land to M.F. and C.P.Devine, but that they subsequently and not in the presence of M.F. and C.P.Devine executed a second deed before said Mr.Hall for only forty acres of said land, and that the latter deed was by some one substituted for the former deed which had been put in escrow with the bank at Loxley.

That the deed of January, 1925, from M.F. and C.P.Devine to Ella V.Devine was for the purpose of securing a loan on said land and was accompanied by an explanatory agreement of same date by which Ella V.Devine and husband were to reconvey the said eighty acres to M.F. and C.P. Devine and that said agreement to reconvey was altered, after its execution and before the delivery of a copy thereof to M.F.Devine, so as to cover only forty acres of said tract.

That the deed from Ella V.Devine and husband to W.M.Kidwell, of December, 1926, was -according to affidavits of W.J.Devine and J.M.Woolley - in fact and in intent of the parties thereto a mortgage. Your Honor's attention is called to the statement in W.J.Devine's affidavit that W.M.Kidwell stated to me, which statement W.J.Devine heard, that Ella V.Devine and H.C.Devine owed him some \$600.00 at the time the deed was executed, and some \$600.00 additional for 1927 and some \$600.00 additional for 1928, and -both W.J.Devine and J.M.Woolley state - that W.M.Kidwell said he was not interested in the land but that all he wanted was his money i.e. the money owing to him by Ella V. and H.C.Devine.

That W.M.Kidwell lived within three miles of said land and furnished some of the material used in the construction of the home in which Mrs.M.F.Devine and family have been living since the home was built, and that W.M.Kidwell had more or less frequently been at said home before and since the date of the deed to him from Ella V.Devine and husband.

That Mrs.M.F.Devine, C.P.Devine, George Devine and W.J. Devine had no knowledge of the deed from Ella V.Devine and husband until this suit was brought; and that neither of them knew that the agreement to reconvey by Ella V.Devine and husband to M.F. and C.P.Devine - the description of the land in which they allege was altered after its execution - had been admitted to record.

That Mrs.M.F.Devine is 69 years old and writes and reads with difficulty and that C.P.Devine is 66 years old and can neither read nor write; that they both trusted their son H.C. Devine.

That at no time has either Ella V.Devine or H.C.Devine paid to them any money on account of said land, except the \$1000.00 paid to Mrs.M.F.Devine by H.C.Devine on account of indebtedness due her by him, and that Mrs.M.F.Devine deposes that H.C.Devine still (now) owes her nearly \$4000.00 because of what she paid out for him in South Carolina and the money sent to him by her from Florida, some \$960.00 of which he did not spend as she had directed him to.

That the "share crop agreement" between Mrs.M.F.Devine and Ella V.Devine was executed by Mrs.M.F.Devine as the beneficial owner of the land and not as tenant or renter of Ella V.Devine.

With reference to the affidavit of W.M.Kidwell he relies, - taking the instruments in the order of their dates, - on a deed of December 27, 1923, from Mrs.M.F.Devine, C.P. Devine and George Devine to Ella V.Devine for the entire eighty acre tract; and this deed has been shown by affidavits of each of the alleged signers and by affidavits as to admission made by the notary before whom the alleged deed purports to have been executed to have been spurious; He relies on the "share crop agreement" between Mrs.M.F.Devine and Ella V.Devine, but Mrs.M.F.Devine avers in her affidavit that she signed said agreement as the real owner of the land and not as tenant of Ella V.Devine and there is nothing in said instrument to controvert that statement and W.M.Kidwell does not allege that he conferred with M.F.Devine or C.P.Devine as to the capacity in which Mrs.M.F.Devine signed said crop agreement and therefore the said Kidwell took the chance that Mrs.M.F.Devine was not the tenant of Ella V.Devine; Said Kidwell next relies on the agreement to reconvey from Ella V.Devine and husband to M.F. and C.P.Devine, dated in January, 1925, as to which the affidavits of Henry D.Moorer (6½ and (16) and affidavit of Mrs.M.F.Devine (4) show to have been altered as to the land described after its execution without the knowledge of M.F. or C.P.Devine, so as to include only one-half of the eighty acres of land, nor does said Kidwell aver that he conferred with M.F. and C.P.Devine as to said instrument before he accepted the deed to him from Ella V.Devine and husband, and, furthermore, said agreement to reconvey bears on its face evidence of interlineation which discredits the instrument with W.M.Kidwell and he should have inquired of M.F. and C.P. Devine relative thereto, furthermore Henry D.Moorer, affidavit (16) states that he told said Kidwell that his recollection of said agreement to reconvey from Ella V.Devine and M.F. and C.P.Devine covered the entire eighty acres, furthermore the affidavit (16) states that said Kidwell stated to Henry D.Moorer that "he took the deed for the purpose to secure his money" and "that all he wanted was his money", which confirms the affidavits of J.M.Woolley and of W.J.Devine as to what said Kidwell stated in person to counsel for defendants. Affidavit 16 of H.D.Moorer seems to show that Kidwell had actual notice of rights of the Devines.

W.M.Kidwell next relies on the deed from Ella V.Devine and husband, of December, 1926, to him and the defendants do not deny the execution of said deed, but do allege that it was and is in fact and intent a mortgage and not a deed of purchase and that said Kidwell had constructive notice of their rights to and in said land from their being in actual possession thereof both before and since the date of said deed and also that none of the defendants had knowledge of said deed until some time after its execution; furthermore affidavit 16 of H.D.Moorer states that/ he told Kidwell "he was under the impression that " the contract" (to reconvey from Ella V.Devine and husband to M.F. and C.P.Devine) "covered the entire eighty acres of land" which, together with the apparent alteration of said instrument on its face certainly put upon said Kidwell, for his self protection, the duty to inquire of M.F. and C.P.Devine as to what said instrument was intended to cover, but the said Kidwell did not inquire of the said M.F. and C.P.Devine as to their rights and equities in said land, nor does W.M.Kidwell aver that he ever conferred with the said defendants as to their right and equities in said land.

Even had there been no agreement to reconvey from Ella V. Devine to M.F. and C.P.Devine, but only a parol trust under which she was to hold the title to said land in trust for said defendants, the Court says in BARRELL VS HARRICK, 42 Ala 60,

" The provisions of the statute (Sec.6917, Code 1923, as now)
" were intended to prevent fraud and in avoidance of a fraud
" a parol trust may be engrafted on an instrument which
" purports to be absolute on its face, notwithstanding the
" prohibition of the statute. In order to constitute a fraud
" and suspend the operation of the statute, there need not be
" deceit, misrepresentation, or evidence of an original fraudulent
" design, and the failure to execute such a trust is a
" constructive fraud against which equity will grant relief."

To the same effect, 206 Ala 546 and 211 Ala 649

But at the time of the deed to Kidwell, and prior thereto, the said defendants had possession of the land and such possession constituted constructive notice to W.M.Kidwell that he should inquire of them as to their equities or rights in said land; as to which the Court has said, in substance, -

Whatever is sufficient to put a party upon inquiry is sufficient to charge him with notice.

See 51 Ala 190, 143 Ala 427, 172 Ala 669

A purchaser of real estate in the possession of a third person is bound to take notice of that third person's title.

See 9 Ala 436, 73 Ala 263, 121 Ala 323, 182 Ala 314 & 221, 185 Ala 561

In Gewin vs Shields, 187 Ala 153, the Court said -

" Possession of land by grantor after execution of deed absolute in form, but in fact a mortgage, is notice to the purchaser from the grantee of any equities in grantor."

With reference to Sec.6918, Code 1923, relied upon by counsel for plaintiff -

In Berney Nat'l Bank vs Pickard, 87 Ala 577 it is held that the word "creditors" in this statute means creditors whose lien was prior in time to the trust; also see 58 Ala 84, 196 Ala 227

As to "purchasers for valuable consideration without notice" the statute does not discriminate between actual notice and constructive notice, but simply says without notice. If constructive notice is not "notice" under this statute, then the decision of the Supreme Court as to notice, just above cited,

were all repealed by this sec.6918, but the section was first enacted in the Code of 1852, and all, practically, of the decisions, above cited, as to constructive notice from possession were rendered since 1852 and are therefore in effect construing Sec.6918 as well as Sec.6917. However, affidavit 16 of H.D. Moorer certainly seems to show that W.M.Kidwell really had in effect actual notice of the rights to said land of the defendant, and was not in reality a purchaser for value without notice, or ~~in~~ more properly was not a mortgagee without notice of the defendants' rights to said land.

W.M.Kidwell does not aver that the defendants were present or knew of his conference with Henry D.Moorer; but as a matter of fact they were not present, did not know of it and did not know that the deed to W.M.Kidwell had been executed by Ella V.Devine and husband for some time afterwards.

Your Honor's attention is called to the fact that the "share crop agreement" does not "recognize the title of Ella V.Devine in the C.M.Proctor place" as is averred in the affidavit of W.M.Kidwell. There is nothing in said agreement about the title to said land at all.

As is shown by the affidavit of H.D.Moorer, 16, that W.M.Kidwell was advised that Mr.Moorer's opinion was that the agreement to reconvey from Ella V.Devine to M.F. and C.P.Devine covered the entire eighty acres it is evident that said Kidwell did not "exercise all reasonable and proper diligence in the investigation of the records and the title to said land" as is averred in his affidavit, - also for the additional reason that the copy of said agreement shown to him bore on its face evidence of the subsequent alteration which was in fact made, which especially in connection with the caution given to him by the Statement of H.D.Moorer as to the land covered by said agreement to reconvey made it his duty to inquire of M.F. and C.P.Devine as to what said agreement really did include; but he made no such inquiry of the said defendants.

If as alleged in his affidavit, W.M.Kidwell was a bona fide purchaser of said land, it is very unfortunate that he should admit to counsel for defendants in the presence of J.M.Woolley and W.J.Devine that he was not interested in the land but that all he wanted was his money; meaning the money owed to him by Ella V.Devine and H.C.Devine; also it is unfortunate that he should virtually have made the same admission to Henry D.Moorer as is stated in affidavit 16.

Respectfully submitted,


Attorney for defendants.

Copy mailed
DR Colay Jr.
Mobile Ala

State of Alabama,
Baldwin County.

This day before me, Robert Weston a notary public in and for said County in said State, personally appeared H.T. Childress, who being by me duly sworn deposes and says as follows:

That his name is H.T. Childress, that he lives in Baldwin County, Alabama, that he knows Mrs. M.F. Devine, H.C. Devine and C.F. Dietrich; that he was at the home of C.F. Dietrich some time about the first of January, 1925, in the town of Loxley, and that Mrs. M.F. Devine and H.C. Devine were both present in said home. The conversation came up as to the money owing to Mr. Dietrich by Mrs. M.F. Devine on the land (eighty acres) on which Mrs. M.F. Devine and her family are now living, and that the said H.C. Devine then and there made the statement to Mr. Dietrich that the said eighty acres of land belonged to his mother Mrs. M.F. Devine.

H. T. Childress

Subscribed and sworn to before me this
24th day of August, 1929.

Robert Weston

Notary Public for Baldwin County, Alabama.

State of Alabama,
Baldwin County.

This day before me, Henry D. Moorer, Notary public in and for said County in said State, personally appeared George Devine, who being by me duly sworn deposes and says as follows

That his name is George Devine, that he is a son of C.P. Devine and Mrs. M.F. Devine and lives with them near Loxley in Baldwin County; that he did pay to Ella V. Devine in July 1926 the sum of \$15.00 but that it was not on account of rent or the purchase price of any land, but to return to H.C. Devine that amount that the latter had paid for him on account of a mule that he had bought.

George Devine

Sworn to and subscribed before me
this 23rd day of August, 1929.

Henry D. Moorer

Notary Public for Baldwin County, Alabama.

State of Alabama,
Baldwin County.

This day before me, Henry D. Moore, a notary public in and for said County in said State, personally appeared W.J.Devine, who is known to me, who being by me duly sworn deposes and says as follows;

That his name is W.J.Devine, that he is the son of C.P.Devine and Mrs M.F.Devine and that he lives with his parents near Loxley, Alabama. That he was present in front of the home of W.M.Kidwell in Loxley some day last winter at an interview between said Kidwell and Thomas W.Gilmer in which the said Kidwell said in substance that he was not interested in said land or in a deed to said land, but that all he wanted was the money that H.C.Devine and Ella V.Devine owed him, about \$1800.00 to \$2000.00, of which some \$600.00 was for their 1926 indebtedness to him and some \$600.00 for their 1927 indebtedness to him and some \$600.00 for their 1928 indebtedness to him.

W J Devine

Subscribed to and sworn to
before me this 23rd day of August, 1929.

Henry D. Moore

Notary Public for Baldwin County, Alabama.

State of Alabama,
Baldwin County.

This 6th day of June, 1929, before me, George W. Humphries, Judge of Probate for Baldwin County, Alabama, personally appeared Mrs. Mary F. Devine, who being by me duly sworn deposes and says as follows.

That her name is Mary F. Devine, that she and her husband C. P. Devine are residents of Baldwin County, Alabama, and are defendants in the ejectment suit in which W. M. Kidwell is plaintiff; that she and her husband have filed in the Circuit Court for said County their petition for the removal of said suit from the law side to the equity side of said court; that the testimony of J. M. Woolley, who lives at Bay Minette, Alabama, is necessary to the prosecution of the said motion and of the suit in equity which the said Mary F. Devine and her husband will file when the said Court has granted their motion for transfer; that both Mary F. Devine and her husband C. P. Devine and W. M. Kidwell are above the age of twenty one years; that it is expected to be proved by the said witness that he was present at an interview between the said W. M. Kidwell and Thos. W. Gilmer, at which interview W. J. Devine was also present, in which the said W. M. Kidwell stated in substance that he was not a purchaser from Ella V. Devine and H. C. Devine of the land to which the latter had executed him a deed, but that the only interest he had in said land was to get the money which the said Ella V. Devine and H. C. Devine owed him.

Subscribed and sworn to before
me this 6th day of June, 1929.

Mary F. Devine

George W. Humphries
Judge of Probate for Baldwin County, Alabama.

State of Alabama,
Baldwin County.

This day before me, Henry D. Mowrer, a notary public in and for said County, in said State, personally appeared Mrs. M. F. Devine, W. J. Devine, ^{C. P. Devine} and George Devine, who are made known to me to be the respective parties, who being by me duly sworn severally each of them deposes and says as follows;

Mrs. M. F. Devine deposes that when she built the house in which she and her family are now living and in which they have lived ever since the said house was built, she bought of W. M. Kidwell some of the material used in the construction of the said house and that the house is the only residence or building, except a barn, on the said forty acres of land which the said W. M. Kidwell claims under the deed from Ella V. Devine and husband.

Mrs. M. F. Devine, W. J. Devine and George Devine depose that prior to and since December, 1926, W. M. Kidwell, who claims under a deed from Ella V. Devine dated December 14, 1926, was at the home of Mrs. M. F. Devine and C. P. Devine more or less frequently, coming there to see about buying their Irish potatoes, cucumbers and other crops, sweet potatoes, which they began growing on said land in the year 1922, and that they were living in their home on said land all that time, and until now.

Mrs. M. F. Devine ~~and~~ deposes that she had no knowledge of the deed from Ella V. Devine and husband to W. M. Kidwell, of December 14, 1926, until about a couple of months after the said deed had been executed.

W. J. Devine, C. P. Devine and George Devine each deposes that ~~that~~ he had no knowledge of the deed from Ella V. Devine to W. M. Kidwell of Dec. 14, 1929, until several months after the said deed had been executed.

M. F. Devine
W. J. Devine
C. P. Devine
George Devine

Subscribed and sworn to before me
this 11th day of September by each
of the above named Mrs. M. F. Devine,
W. J. Devine, C. P. Devine and George
Devine.

Henry D. Mowrer

Notary Public for Baldwin County, Alabama.

State of Alabama,
Baldwin County;

This day before me, a notary public for Baldwin County, Alabama, personally appeared Henry D. Moorner, who is known to me, and who being by me duly sworn deposes and says as follows ;

That his name is Henry D. Moorner; that he is a practicing attorney at law; that the written instrument, dated January 19, 1925, between Ella V. Devine and H.C. Devine, her husband, and M.F. Devine and C.P. Devine, her husband, by which Ella V. Devine and husband agreed to reconvey to M.F. Devine and C.P. Devine certain lands in Sec. 24, T. 5s, R. 3e, Baldwin County, on the conditions stated in said instrument, was prepared in his office by him for the said two sets of parties, all of whom were present together in said office when said instrument was executed, and that at the time said instrument was executed the intention of all the parties thereto, as then and there expressed to him, was that the said instrument should provide for the reconveyance by the parties of the first part to the parties of the second part of all of the West Half of the North-West Quarter of Section 24, T. 5s, R. 3e, and it is his recollection and belief that at the time of the execution, in his office, of the said instrument by the said two sets of parties, the said instrument so provided, and that, if the said instrument has been altered so as to include only a part of said eighty acre tract of land, such alteration was made subsequent to the said execution of the said instrument and that he knows nothing of when and by whom such alteration of said instrument was made.

Henry D. Moorner

Sworn to and subscribed before me
this 30th day of August, 1929.

Chas. E. Stinger
Notary Public for Baldwin County, Alabama.

State of Alabama,
Baldwin County.

This day before me, Henry D. Moore a notary public in and for said County in said State, personally appeared Mrs. M. F. Devine, C. P. Devine, W. J. Devine and George Devine, made known to me to be the respective parties, who being by me duly sworn depose and say as follows;

That each of them denies that there is any truth in the statement made in the affidavit of H. C. Devine "that in the fall of the year 1925 the said M. F., C. P., W. J., and George Devine proposed to purchase the said land from Ella V. Devine for a consideration of Fifteen Hundred Dollars" and that no oral agreement was made that "she (Ella V. Devine) would convey the same to them upon the payment by them of the said \$1500.00 on or before July 1st, 1926; that in the event the said purchase was not completed that they would pay to her the sum of \$100.00 for the use and rent of twenty acres of said forty acres of land which they cultivated in said year 1926," all of which they depose is not true.

Mrs. M. F. Devine deposes and says that of the \$3000.00 paid to Charles F. Deitrich, as set out in affidavit of H. C. Devine, \$2000.00 was secured by her and C. P. Devine under a mortgage on said land to J. J. Terry and \$1000.00 was paid her by H. C. Devine on account of the indebtedness of H. C. Devine to her; that of the money paid out by her in South Carolina on account of the trouble into which H. C. Devine had gotten and for his debts he still owes her nearly four thousand dollars; that Ella V. Devine has not at any time, nor in December, 1923, advanced any money to or for Mrs. M. F. Devine, C. P. Devine on account of said land, to Charles F. Dietrich or anyone else.

George Devine deposes and says that PINK DUBOSE was not present "at the home of H. C. Devine" "when George Devine paid to Ella V. Devine by check \$15.00" but that said Pink Dubose did come up as he George Devine was leaving the yard of said H. C. Devine's home and George Devine further deposes that said check for \$15.00 given by him to Ella V. Devine was on account of a mule George Devine had bought and on which H. C. Devine had made a payment of \$15.00 for George Devine; that there was no agreement "that if they paid the balance of \$1500.00, or \$1485.00 within thirty days she would allow it as a credit on the purchase price of the land".

Mrs. M. F. Devine further deposes that she had no knowledge of the proposal to borrow any money from Mr. Pentriell as is alleged in the affidavit of said Pink Dubose. That the only title Ella V. Devine had to said land was under the deed from M. F. and C. P. Devine of January, 1925, and that said deed was executed for the sole purpose to procure a loan on said property and that Ella V. Devine should hold the title to said land for M. F. and C. P. Devine.

M. F. Devine
C. P. Devine
W. J. Devine
George Devine

Sworn to and subscribed before me
this 11th day of September, 1929,
severally by each of the above
named parties, Mrs. M. F. Devine, C. P. Devine,
W. J. Devine and George Devine.

Henry D. Moore
Notary Public for Baldwin County, Alabama.

W.M.Kidwell, Plaintiff,

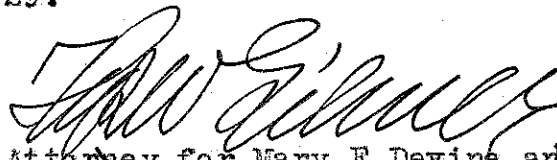
Versus

AT LAW
Circuit Court for
Baldwin County, Alabama.

W.J.Devine, George Devine,
Mrs.M.F.Devine and C.P.Devine,
Defendants.

To W.M.Kidwell, -

Affidavit having been made by Mary F.Devine, one of the petitioners in the motion to transfer the above cause from the law side to the equity side of the said court, specifying the grounds for proceedings to perpetuate the testimony of J.M.Woolley to be used in pursuance of said motion and in the suit in equity to be filed by Mary F.Devine and C.P.Devine against you should the said motion be sustained by the court, you will take notice that the testimony of J.M.Woolley will be taken before the Register of said Court on the 31st day of July, 1929.


Attorney for Mary F.Devine and
C.P.Devine.

Executed this July
12, 1929 By serving
a copy on within
Name Defendant

C. Brown

Sheriff

By M. H. Wilkin
By J. C.

Original

Kidwell

vs

W. J. Devine

Filed July 10/1929
T. M. Keenan

Serve copy on
W. M. Kidwell
for by
after

LAW OFFICES OF
D. R. COLEY, JR.
1012-13 VAN ANTWERP BUILDING
MOBILE, ALABAMA

January 8, 1930.

T. W. Richerson, Esq.,
Bay Minette, Alabama.

Dear Mr. Richerson:

Enclosed herewith is appearance for Kidwell and the Devines in the case which was transferred from the law side to the equity side of the Court, and will thank you to file same for me.

I expect to get a complete answer filed shortly but wanted to forestall any possible default.

Very truly yours,

A handwritten signature in dark ink, appearing to read "D. R. Coley, Jr.", with a stylized flourish at the end.

C:S
Enc.

LAW OFFICES OF
D. R. COLEY, JR.
1012-13 VAN ANTWERP BUILDING
MOBILE, ALABAMA

August 16, 1929.

Hon. F. W. Hare,
Bay Minette, Alabama.

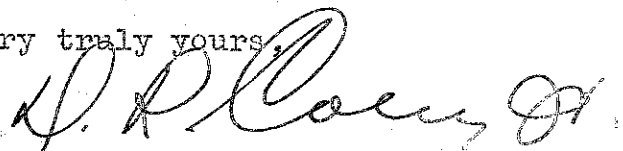
Dear Judge:

I hand you herewith brief, together with copies of deeds and contracts, and the affidavits of H. C. and Ella V. Devine, W. M. Kidwell, Pink Dubose and myself. My affidavit is with reference to the conveyances as shown by the records of Baldwin County and which indicate that the title to the land actually came into M. F. and C. P. Devine by deed dated December 29th, 1924, just a few weeks before the deed was executed to Ella V. Devine, and it is intended to be checked against the affidavit of the Devines.

I am sorry to have had to hold this matter up but have been so engaged that it was impossible for me to get it out sooner. I trust that I have not been too voluminous. The question from my point of view is really important, as suggested in my brief, not because of the merits of the case but because of the fact that when we ultimately win, which I feel that we shall in any event, the respondents will be unable very probably even to pay the costs, to say nothing of the damages for the detention of the property. This explains our reason for opposing the motion.

With kind regards, I am

Very truly yours,



G.S.
Enc.

STATE OF ALABAMA)
)
COUNTY OF MOBILE)

Before me, the undersigned authority, personally appeared Frances E. Stevens, who, being by me first duly sworn deposes and says that she prepared the attached copies of deeds and instruments as follows:

Warranty Deed of M. F. Devine and C. P. Devine, her husband, and George Devine, to Ella V. Devine, dated December 27th, 1923 - not recorded.

Share crop agreement between Ella V. Devine and M. F. Devine dated the day of March, 1924 - not recorded.

Warranty Deed of M. F. Devine, and C. P. Devine, her husband, to Ella V. Devine, dated January 19th, 1925, and recorded February 4th, 1925, in Deed Book 35 N. S. pages 418-19.

Agreement between Ella V. Devine and H. C. Devine, her husband, and M. F. Devine and C. P. Devine, her husband, dated January 19th, 1925, and recorded December 14th, 1927, in Record Book 44 N. S. pages 223-4.

Warranty Deed of Ella V. Devine and H. C. Devine, her husband, to W. M. Kidwell, dated December 14th, 1926, and recorded December 31st, 1926, in Record Book 42 N. S. page 86,

by copying from the original instruments, and that the same are true and correct copies. She further states that she has had 9½ years experience as a stenographer and is familiar with the use of various typewriters; that she has examined carefully the description of the lands in the agreement of January 19th, 1925, between Ella V. Devine and H. C. Devine, her husband, and M. F. Devine and C. P. Devine, her husband, which is referred to hereinabove, in which an interpolation has been made as indicated on the copy and that, in her opinion, the interpolation was made with the same typewriter with which the body of the contract and the rest of the description was drawn, and at the same time.

Frances E. Stevens

Subscribed and sworn to before me
this the 16th day of August, 1929.

H. R. Carey Jr.
Notary Public, Mobile County, Alabama.

COPY

WARRANTY DEED

STATE OF ALABAMA)
BALDWIN COUNTY)

KNOW ALL MEN BY THESE PRESENTS, That for and in consideration of the sum of ONE DOLLAR (\$1.00) AND OTHER VALUABLE CONSIDERATIONS DOLLARS to us in hand paid by ELLA V. DE VINE the receipt whereof is hereby acknowledged M. F. DE VINE and Her Husband C. P. DE VINE and GEORGE DE VINE (A single man) do grant, bargain, sell and convey unto the said ELLA V. DE VINE the following described lands situated in BALDWIN County, Alabama, to-wit:

The WEST HALF ($W\frac{1}{2}$) OF THE NORTH-WEST QUARTER ($NW\frac{1}{4}$) OF SECTION TWENTY FOUR (24) TOWNSHIP FIVE (5) SOUTH RANGE THREE (3) EAST IN BALDWIN COUNTY ALABAMA And CONTAINING EIGHTY ACRES (80) MORE OR LESS.

TO HAVE AND TO HOLD to the said ELLA V. DE VINE, HER heirs and assigns forever.

And we do covenant with the said ELLA V. DE VINE that we seized in fee of the above described premises; that we have the 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 same to the said ELLA V. DE VINE, heirs and assigns, against the lawful claims of all persons whomsoever.

WITNESS our hand and seal this 27th day of December 1923.

(Signed) M. F. Devine

WITNESSES:

C. P. X De Vine
his mark

L. Glendinning.

(Signed) George Devine

of shall be equally divided between the parties of the first and second part after first deducting therefrom the cost of all fertilizer, seed or other advances made by the party of the first part, for which she shall be repaid, and that all payments made for any part of the crop which may be marketed shall be payable to the party of the first part, until she shall have been repaid for all such advances or expenses.

COPY

WARRANTY DEED

STATE OF ALABAMA }
BALDWIN COUNTY)

KNOW ALL MEN BY THESE PRESENTS, That for and in consideration of the sum of ONE DOLLAR (\$1.00) AND OTHER VALUABLE CONSIDERATIONS DOLLARS to us in hand paid by ELLA V. DE VINE the receipt whereof is hereby acknowledged M. F. DE VINE and Her Husband C. P. DE VINE and GEORGE DE VINE (A single man) do grant, bargain, sell and convey unto the said ELLA V. DE VINE the following described lands situated in BALDWIN County, Alabama, to-wit:

The WEST HALF ($W\frac{1}{2}$) OF THE NORTH-WEST QUARTER ($NW\frac{1}{4}$) OF SECTION TWENTY FOUR (24) TOWNSHIP FIVE (5) SOUTH RANGE THREE (3) EAST IN BALDWIN COUNTY ALABAMA And CONTAINING EIGHTY ACRES (80) MORE OR LESS.

TO HAVE AND TO HOLD to the said ELLA V. DE VINE, HER heirs and assigns forever.

And we do covenant with the said ELLA V. DE VINE that we seized in fee of the above described premises; that we have the 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 same to the said ELLA V. DE VINE, heirs and assigns, against the lawful claims of all persons whomsoever.

WITNESS our hand and seal this 27th day of December 1923.

(Signed) M. F. Devine

WITNESSES:

C. P. X De Vine
his mark

L. Glendinning.

(Signed) George Devine

STATE OF ALABAMA)
)
BALDWIN COUNTY)

I, L. Glendinning, a Notary Public in and for said State and County, do hereby certify that M. F. Devine and her Husband C. P. DeVine, and George De Vine (A Single Man) 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 said conveyance they executed the same voluntarily on the day the same bears date.

Given under my hand this 27th day of December, 1923.

(Signed) L. Glendinning, (Seal)
My commission expires February 5th, 1927.

STATE OF ALABAMA)
)
BALDWIN COUNTY)

I, L. Glendinning a Notary Public in and for said State and County, do hereby certify that on the 27th day of December, 1923, came before me the within named M. F. DeVine, known to me to be the wife of the within named C. P. De Vine, who being examined separate and apart from her husband in reference to her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of the husband.

In Witness whereof, I hereunto set my hand, this 27th day of December, 1923.

(Signed) L. Glendinning,
My commission expires February 5th, 1927.

Notary Public in and for said County and State

(Seal)

not recorded -

STATE OF ALABAMA
COUNTY OF MOBILE.

This agreement entered into by and between ELLA V. DEVINE, party of the first part and M. F. DEVINE, party of the second part for the cultivation and farming of that certain eighty acres of land in Baldwin County, Alabama, known as the C. M. Proctor Place, witnesseth:

First: That the party of the first part will buy all planting seed and fertilizer for all crops grown on said lands.

Second: That the party of the second part agrees to prepare the land, plant, cultivate and harvest the crops and to market such crops as are to be marketed: to plant, such crops, fertilize and cultivate, in a manner satisfactory to the party of the first part.

Third; That in the event the party of the second part should fail for any reason to cultivate, fertilize, harvest, or market the crops to be grown, in a manner satisfactory to the party of the first part/^{she} may enter and do said work or have it done and the cost thereof shall be deducted from the share of the crop or proceeds thereof, of the party of the second part as herein-after provided.

Fourth: That one acre of cucumbers, to be grown on the said property by the party of the first part shall be hers absolutely.

Fifth: That all other crops or the proceeds thereof shall be equally divided between the parties of the first and second part after first deducting therefrom the cost of all fertilizer, seed or other advances made by the party of the first part, for which she shall be repaid, and that all payments made for any part of the crop which may be marketed shall be payable to the party of the first part, until she shall have been repaid for all such advances or expenses.

Sixth: That the party of the first part has put four cows and five heifers on said property which are to be taken proper care of by the party of the second part, the increase and income therefrom being equally divided between the parties hereto after first deducting cost of feed and other expenses.

Seventh: That all hogs, raised or fattened on the premises or the proceeds thereof shall be equally divided between the parties hereto.

Eighth: That all stock of whatever kind, placed by the party of the first part upon the premises for breeding purposes, shall remain her absolute property and shall be delivered to her on demand upon or after the termination of this agreement.

Ninth: That the party of the second part shall not sell or dispose of any of the crops or stock without the consent of the party of the first part.

Tenth: That all rights under this contract shall terminate on December 31, 1924.

whereof
In witness/the parties hereto have set their hands in duplicate on this the day of March, 1924.

Witnesses.

Carl E. Schlich (Signed)

Carl E. Schlich (Signed)

(Signed) Mrs. Ella V. Devine
(Signed) M. F. Devine

DEED WITH WARRANTY

THIS DEED made the 19th., day of January, 1925, between M. F. Devine and C. P. Devine, her husband, of the first part and Ella V. Devine of the second part,

WITNESSETH, That the parties of the first part, in consideration of One $\frac{00}{100}$ (\$1.00) Dollar and other valuable consideration to them in hand paid by the parties of the second part, the receipt of which is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, sell and convey and deliver unto the said party of the second part her heirs and assigns forever, all that real property in BALDWIN County, Alabama, described as follows, to-wit:

The West half of the Northwest quarter,

Section Twenty Four, Township Five South,

Range Three East, containing 80 acres, more or less.

TOGETHER with all appurtenances thereunto belonging, to have and to hold forever and against any person lawfully claiming the same, said parties of the first part shall ever warrant and defend.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seal the day and year first above written.

SIGNED, SEALED AND DELIVERED IN
THE PRESENCE OF

(Signed) M. F. Devine (SEAL)
C. P. X Devine (SEAL)

(Revenue stamps attached here)

STATE OF ALABAMA, BALDWIN COUNTY,

I, Gladys Bush, a Notary Public in and for said County and State, hereby certify that M. F. Devine and C. P. Devine, her husband 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 and seal this 19th., day of January, 1925.

(Seal)

(Signed) Gladys Bush,
Notary Public.

STATE OF ALABAMA, BALDWIN COUNTY.

I, Gladys Bush, a Notary Public in and for said County and State, do hereby certify that on the 19th. day of January, 1925, came before me the within named M. F. Devine, known to me to be the wife of the within named C. P. Devine, who being examined separate and apart from her husband, touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of her husband.

IN WITNESS WHEREOF, I hereunto set my hand and seal this 19 day of January 1925.

(Seal)

(Signed) Gladys Bush,
Notary Public.

Record reference on back -

Recorded February 4, 1925, in
Deed Book 35 N. S. pages 418-19

COPY

STATE OF ALABAMA)
)
BALDWIN COUNTY.)

THIS AGREEMENT amde and entered into this 19th., day of January, 1925, by and between ELLA V. DEVINE and H. C. DEVINE, her husband, hereinafter referred to as parties of the first part and M. F. DEVINE and C. P. DEVINE, her husband, hereinafter referred to as parties of the second part, WITNESSETH:-

That the parties of the first part hereby agree to convey to the parties of the second part the following described property, to-wit:-

The West half of
The West half of Northwest quarter, Section Twenty Four,
Township Five South of Range Three East, containing 80
acres, more or less,

and upon the following condition that the said parties of the second part are to have possession of the said premises and to use the same as their own for a period of five years provided the said parties of the second part keep the interest on debtedness paid and not to default in the interest or principal during the period of five years and upon the further condition that the said parties of the second part pay off the entire indebtedness on or before the expiration of the five years from this date and to keep all taxes paid and any insurance that may be kept on the building shall be taken care of by the said parties of the second part and failing to do so the parties of the first part shall have the right to pay and hold parties of the second part accountable therefor.

For and in consideration of the parties of the second part paying off the indebtedness upon the above mentioned premises therein described said parties of the first part hereby agree at any time on or before the expiration of five years and the said indebtedness having been paid in full to convey to the parties of the second part the above described land by a full and complete warranty deed.

Executed in duplicate this 19th., day of January, 1925.

(Signed) H. C. Devine ((L.S)
(Signed) Ella V. Devine (L.S.)

(Signed) M. F. Devine (L.S.)

his
C. P. X Devine (L.S.)
mark

STATE OF ALABAMA)
BALDWIN COUNTY.)

I, Gladys Bush, a Notary Public in and for said County in said State, hereby certify that Ella V. Devine and H. C. Devine, her husband, and M. F. Devine and C. P. Devine, her husband, 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 and official seal this 19th day of January, 1925.

(Signed) Gladys Bush,
Notary Public, Baldwin Co., Ala.,

STATE OF ALABAMA,)
BALDWIN COUNTY.)

I, Gladys Bush, a Notary Public in and for said County in said State, hereby certify that Ella V. Devine, known to me to be the wife of the within named H. C. Devine, and M. F. Devine known to me to be the wife of the within named C. P. Devine, who being examined separate and apart from the husbands, touching their signatures to the within conveyance, acknowledged before me on this day that they signed the same of their own free will and accord and without fear, constraint or threats on the part of the husbands.

In Witness Whereof, I hereunto set my hand and official seal this 19th., day of January, 1925.

(Signed) Gladys Bush,
Notary Public, Baldwin County, Alabama.

Recorded December 14, 1927, in
Record Book 44 N. S, pages
223-4 of the Probate Court of
Baldwin County, Alabama.

STATE OF ALABAMA)
)
BALDWIN COUNTY.)

THIS DEED made the 14th day of December, 1926, between ELLA V. DEVINE and H. C. DEVINE, her husband of the first part, and W. M. KIDWELL, of the second part, WITNESSETH:-

That the parties of the first part, in consideration of the sum of One Dollar and other valuable considerations to them in hand paid by the party of the second part, the receipt of which is hereby acknowledged, have bargained and sold, and by these presents do GRANT, BARGAIN, SELL and CONVEY and deliver unto the said party of the second part, his heirs and assigns forever, all that real property in Baldwin County, Alabama, described as follows, to-wit:-

East half of the West half of the
Northwest quarter of Section Twenty Four,
Township Five South, Range Three East,
containing 40 acres, more or less,

TOGETHER with all appurtenances thereunto belonging to have and to hold forever and against any person lawfully claiming the same said parties of the first part shall ever warrant and defend except mortgage in the sum of \$1800.00 heretofore given to The First Joint Stock Land Bank of Montgomery, Montgomery, Alabama.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals the day and year first above written

(Signed) Ella V. Devine (SEAL)

(Signed) H. C. Devine (SEAL)

STATE OF ALABAMA,)
)
BALDWIN COUNTY.)

I, Gladys Bush, a Notary Public in and for said County in said State, personally appeared Ella V. Devine and H. C. Devine, her husband, 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 and official seal this 14th day of December, 1926.

(Signed) Gladys Bush (Seal)
Notary Public, Baldwin Co., Ala.

STATE OF ALABAMA,)
BALDWIN COUNTY.)

I, Gladys Bush, a Notary Public in and for said County in said State, do hereby certify that on the 14th day of December, 1926, came before me the within named Ella V. Devine, known to me to be the wife of the within named H. C. Devine, 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, constraint or threats on the part of the husband.

Given under my hand and official seal this 14th day of December, 1926.

(Signed) Gladys Bush, (Seal)
Notary Public, Baldwin County, Alabama.

Record reference on back -

Recorded December 31, 1926, in
Record Book 42 N. S. page 86.

PEOPLES FERTILIZER COMPANY



BAY MINETTE, ALABAMA

1/9/30-
Hon J. W. Pickens Clerk
Bay Minette Ala.

Dear Sir:-
Enclosed you will please find
Orders to Shivers & McDowell. Confront
which you will please file
Yours truly
Wm. Stewart Pres.

LAW OFFICES OF
D. R. COLEY, JR.

1012-13 VAN ANTWERP BUILDING

MOBILE, ALABAMA

February 27, 1929.

Thomas W. Richerson, Esq.,
Bay Minette, Alabama.

Dear Mr. Richerson:

I hand you herewith demurrers to the petition of defendants to transfer from the law side to the equity side the case of Kidwell vs. Devine. I have mailed in this mail a copy of the same to Mr. Gilmer.

Please do the needful. Thanks!

Very truly yours,



C:S
Enc.

LAW OFFICES
RICKARBY & COLEY
903-4-5 VAN ANTWERP BUILDING
MOBILE, ALA.

October 5, 1928.

T. W. Richerson, Esq.,
Clerk, Circuit Court,
Bay Minette, Alabama.

Dear Sir:

I am enclosing herewith an amendment to complaint
filed in the case of Kidwell vs. Devine which I respectfully
ask that you file. Thanks!

Very truly yours,

C:S
Enc.

A handwritten signature in dark ink, appearing to read "J. P. Coley" followed by a stylized flourish or initial.

W. M. KIDWELL,
Plaintiff,

-vs-

GEORGE DEVINE, W. J. DEVINE,
MRS. M. F. DEVINE
and C. P. DEVINE,
Defendants.

AT LAW

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

COMPLAINANT'S BRIEF IN SUPPORT
OF DEMURRERS TO AMENDED MOTION
TO TRANSFER CAUSE TO EQUITY
DOCKET

This cause is submitted on demurrers to defendants' amended motion to transfer same to the Equity side of the Court under the provisions of Section 6490, Code 1923.

Under that section the motion filed by the defendants desiring such transfer must:

- 1: State the substance of the equitable right or defense.
- 2: Be verified by the affidavit of some person having knowledge of the facts.

Frankly, were it not for the fact that the respondents are in possession of the land and will in all probability be unable to respond in damages or otherwise for the detention of the land upon the final determination of the suit, the Complainant would not oppose the transfer to the Equity docket, since, it is respectfully submitted, the averments of respondents' petition cannot be proven.

But with a view to the prompt determination of the litigation, and confident that in fact no equitable right exists, plaintiff must resist the motion.

As a first consideration it is submitted that the petition or motion is not verified by one having knowledge of the facts as contemplated by the Statute.

Briggs vs. Powell, 93 Sou. 590,
Ellis vs. Drake, 83 Sou. 281.

From an examination of the motion it will appear that while W. J. Devine might "of his own knowledge be cognizant of some of the facts alleged", it is unquestionably true that many of the averments, without which the motion must certainly fall, could not lie within the knowledge of W. J. Devine. Your Honor will recall that during the discussion of the case in Court I made this suggestion and asked that Mr. Gilmer have his motion verified by Mrs. M.F. Devine or C. P. Devine, one at least of whom was in the Court room.

In this connection attention is called to the second paragraph wherein it appears,

"they entrusted to him (H.C.Devine) the negotiation of said loan and that they trusted him as their son and relied on him and accepted his advice and acted on his judgment in the matter of securing said loan", and

"the sole intention and purpose of said conveyance to Ella V. Devine, as was known, understood and agreed upon, before the said deed was executed, by and between them and the said Ella V. Devine and the said H. C. Devine, was that the said grantee should hold the legal title to said land in trust for them, the grantors, and that the sole reason and purpose of said conveyance to Ella V. Devine was that a loan of money might be secured on said lands for your two said petitioners";

then beginning at the bottom of the first page:

"your two said petitioners with their son H. C. Devine and Ella V. Devine, his wife, in procuring the execution of the said deed by them did so through and because of the undue influence of their said son H. C. Devine exercised by him over them at that time."

In the latter part of Paragraph Third it is averred that had Kidwell:

"made inquiry of your two said petitioners (M. F. and C. P. Devine) as to their rights to and equities in the land he would have been informed thereof"; and that

"your two said petitioners aver that they were altogether ignorant of the said conveyance from Ella V. Devine and husband to W. M. Kidwell until after said conveyance had been executed."

In the Fourth paragraph is it averred:

"that the intent and purpose of the said deed from Ella V. Devine and H. C. Devine to W. M. Kidwell was to secure an existing indebtedness * * * * and to secure the payment of future indebtedness * * * * and was in fact and intent of the grantors and the grantee therein a mortgage, etc".

In the fifth paragraph it is averred that:

"the facts constituting this their equitable right or defense to said action at law that the conveyance from Ella V. Devine and H. C. Devine to W. M. Kidwell was and is in fact a mortgage and not a deed of purchase, was not ascertained by them until after issue had been joined in said action at law."

These averments if in fact true can only lie within the knowledge of M. F. and/or C. P. Devine. It is absolutely impossible for W. J. Devine to testify as to ^{why} M. F. or C. P. Devine acted nor the intent and purpose which was within their mind at the time they acted, nor could he say what they might have said or what they might have known. It is equally clear that he cannot of his own knowledge state what the intention was of Ella V. and H. C. Devine in executing a deed to Kidwell nor of Kidwell in receiving that deed. As a matter of fact that would lie peculiarly within the knowledge of Ella V. and H. C. Devine, or W. M. Kidwell.

The reason for the requirement that the motion must be verified by the affidavit of some one having a knowledge of the facts is apparent. It must appear by something no less authentic than the affidavit of one having knowledge that the equitable right exists and it is urged that it is ^{al} together probable that

neither M. F. nor C. P. Devine would be willing to swear that the facts averred in the motion actually existed. If they did swear it and later it were proven untrue, they would be guilty of perjury, but as to W. J. Devine the strongest construction which would be placed upon it is that his affidavit was made from what M. F. or C. P. Devine told him, because, as pointed out above, he could not testify of his own knowledge and it cannot reasonably be interpreted that he is testifying from his own knowledge under the circumstances. Then even though the motion/^{as}presented did set up an equitable right, since it is not verified as required by law, it must be denied.

See authorities above; also
Ex parte Holzer, 122 Sou. 421 which is one of the latest cases of our Supreme Court on the subject.

It is urged, however, that the motion as presented does not state or set up an equitable right in the petitioners as would justify the transfer requested. In the case of "Ex parte Holzer" above referred to, Judge Brown in the opinion states:

"While the statute is remedial in character and will be literally construed so as to effectuate its purpose, it clearly contemplates that the motion shall state the equitable right or defense asserted with the same precision and certainty in averment as is required to state such right in a bill in equity. If this was not so the Court in passing upon a demurrer to the motion would be without rule, compass or guide to determine whether or not the averments are sufficient." (Citing Ex parte L & N Railroad Co. 211 Ala. 531 - 100 Sou. 842; Pieme vs. Arata, 202 Ala. 427 - 80 Sou. 811; Nunnally Company vs. Bromberg & Co. 217 Ala. 180 - 115 Sou. 230; Ellis vs. Drake, 203 Ala. 457 - 83 Sou. 281).

The substance of the amended motion is that M. F. and C. P. Devine were the holders of the legal title and the lawful owners of eighty acres of land, including the forty involved in this litigation, and that prior to and since January 1, 1923, they have been in actual, open, notorious possession uninterrupted; that in January, 1923, they (M. F. and C. P. Devine) desired to

secure a loan on that property and that in order to secure it they acted on the advice of H. C. Devine, their son, and conveyed the property to his wife in order that the loan might be secured for them. It is stated that they were old and "more or less decrepid." There is nothing to show that they were old other than that statement, and, as your Honor knows, that is a purely relative proposition and a matter of opinion. It could easily have been shown that they were 75 years of age, or eighty years of age, or what not. Frequently we have heard a man spoken of as old who was fifty years of age and yet we all know that that is not an old man. The statement that they were "more or less" decrepid says nothing and furnishes no basis whatever for the presumption that they were easily influenced, especially in the absence of such statement by themselves or one of them. "More or less" may mean nothing at all. Why it was necessary for them to convey the property to Ella V. Devine, if in fact all they desired was to secure a loan on the property, is hard to understand, and, it is submitted, that having been done, as is admitted in the motion was done, nothing further remained to be done, and why a re-transfer of the title was not asked for or requested is hard to understand. In the latter part of the second paragraph of the motion it appears that immediately upon the execution of the deed or conveyance to Ella V. Devine, that Ella V. Devine executed an instrument agreeing to re-convey the title to M. F. and C. P. Devine "at the expiration of five years upon certain conditions". This statement is inconsistent with the statement that it was conveyed to Ella V. Devine for the sole purpose of securing the loan, because, if the averments of the petition are true, there could have been no condition other than that Ella V. Devine and H. C. Devine should procure a loan upon the prop-

erty for M. F. and C. P. Devine.

In that paragraph it is also averred that this instrument in which Ella V. Devine agreed to reconvey to M. F. and C.P. Devine that she agreed to convey the entire eighty acres and that later the instrument was altered so as to exclude therefrom the land involved in this litigation. Your Honor's attention is called, however, to the fact that the petitioners aver that the copy of the contract with the altered description was delivered to them by Ella V. Devine two weeks after its execution, which they say was in 1923 (as a matter of fact, as will appear from the copy of the contract in question, which is attached hereto, as well as the deed of conveyance from M. F. and C. P. Devine to Ella V. Devine, it occurred in the year 1925) and that, figuring from the correct date of the execution of that contract, more than four years have elapsed and it does not appear that the petitioners made any objection whatever or requested that the error be corrected or raised any question in any way at all until this time, though they knew that the agreement had been made in duplicate and that Ella V. Devine and H. C. Devine had in their possession one copy, and they the other, and also knew that the deed executed by them conveying the property to Ella V. Devine in fee, warranting it free of all encumbrances, had been placed of record in the Probate Court of Baldwin County, and a loan had been secured on the property in the name of Ella V. Devine, carrying notice to the world that the title to the property was vested in Ella V. Devine, and that she was exercising by placing a mortgage on it, the rights or ownership and possession. It is true that before the conveyance to Ella V. Devine the petitioners were in possession of the property and that after the execution of the conveyance

they remained, according to the averments of the petition, in possession of the property. (As appears from the affidavit of Ella V. and H. C. Devine and Mr. Kidwell they were in possession as tenants of H. C. and Ella V. Devine of a part of the land involved in this litigation, and the other part was cultivated by H. C. Devine). But, taking the motion as true, the possession by them is not inconsistent with the ownership or title in Ella V. Devine, for it is well known in law as well as in fact that the ownership and actual possession of land often does not go together. (12 R.C.L. Section 80, page 560). As a matter of fact, I take it that the Court may judicially know that probably a majority of the farms are today actually owned by men who are not in actual possession, but that the farms are being cultivated by tenants, and it is submitted that in this particular instance even should it be construed that actual possession of lands by one puts a third party on ~~of~~ constructive notice of any rights or equities claimed by them, that rule would not apply in the instant case where those in possession remained in possession after the execution of the deed, permitted their grantees to borrow money on the lands, all of which papers were recorded, and had in their possession a contract which on its face purported to reconvey to them only one-half of the eighty acre tract, excluding the land involved in this litigation, knowing that the grantees Ella V. Devine had in her possession the duplicate of that agreement, as well as the deed to the land, both of which were executed with all of the solemnity required by our law and in the office of a reputable lawyer. Certainly the acceptance of that contract and the holding of the contract without question or complaint and permitting their grantee to hold the copy for a period of years under

those circumstances, without more, would estop them from setting up any claim adverse to the rights or title acquired by a third party, Kidwell, who acquired the title and paid a valuable and legal consideration therefor after examination of the deeds containing their signatures, the contract which has been referred to, as well as the share crop contract signed by M. F. Devine long before the deed was executed, and at the time the first deed which I hereafter advert to, was signed, and, in addition to that, inquired of the attorney, Mr. Henry D. Moorer, who had drawn the deed and the contract and handled the entire transaction, as to whether a good title was vested in Ella V. Devine (see affidavit of Kidwell).

In the first place, the averments of the motion ^{do not} show such a trust upon the land as could be enforced either at law or in equity. Section 6917 of the Code of 1923 is as follows:

"No such trusts, whether implied by law, or created or declared by the parties, can defeat the title of creditors, or purchasers for a valuable consideration without notice."

The motion attempts to say that the conveyance from Ella V. Devine and H. C. Devine to Kidwell was in fact a mortgage. This, it is submitted, could only be established, if in fact it were true, by Ella V. Devine, H. C. Devine or Kidwell. On the face, as is admitted by the motion, it is an absolute conveyance. It is difficult to conceive how one not a party to the transaction could say that it was intended to be something which on the face of it, it ^{did} not, and especially when the instrument is clear and unambiguous. However that may be, and again treating the averments of the motion as true, that question could not affect the right or interest of Kidwell in the property in this cause. Before the question as to

whether it is a deed or a mortgage can be raised, there must be some appropriate action brought to declare the deed a mortgage, and unquestionably no such action has been taken. Further than that, it is the settled law of Alabama that a mortgagee may be a bona fide purchaser for value. As a matter of fact the statute goes further and protects creditors or purchasers for a valuable consideration, so before the title of Kidwell can be affected in any way it must appear that he had notice that a fraud had been practiced upon M. F. and C. P. Devine; that the land was really owned by them and that Ella V. Devine was the holder of the naked legal title. In connection with the thought urged above the Court's attention is invited to the following cases:

Brown vs. International Harvester Co. 179 Ala. 563;
60 Sou. 841.

Griffin vs. Hall, 129 Ala. 289 - 29 Sou. 783.

Winston vs. Hodges, 102 Ala. 304 - 15 Sou. 528.

Harris vs. Hanchey, 192 Ala. 179 - 68 Sou. 276.

The rule of law that the actual and open possession of land is sufficient to put others on inquiry and constitutes notice of claim of title in holder, cannot apply in a case of this character. Had Kidwell derived title from any other than the grantee of M. F. and C. P. Devine, he would undoubtedly have been charged with notice of any claim which they might have had to property of which they were in possession, but when M. F. and C. P. Devine executed a deed in fee with warranties to Ella V. Devine and suffered it to be put of record, Kidwell had a right to take their action to mean what it said. In other words, they conveyed the absolute title to the property in clear and unambiguous terms with all legal formalities. They permitted that to be placed of record and Ella V. Devine to borrow money on the property, and that act spoke as clearly as anything could possibly speak to the world that Ella V. Devine was an absolute

owner of that property, and when they suffered Ella V. Devine to keep in her possession a duplicate of the contract by which she agreed to convey to them a part of the land, excluding the land in question, there can be no other proper conclusion but that Kidwell had a right to act as he did upon the record, especially when he had seen the deeds bearing their own signatures and when he had consulted their attorney who drew the papers in question.

When and if the contract to reconvey the property was handed to petitioners by Ella V. Devine and it was discovered that a change had been made the duty devolved upon them to make a complaint, as hereinabove suggested, and it is doubtful now whether they could come into Court and assert any rights contrary to the contract as it is. They should have called upon Ella V. and H.C. Devine for a correction or they should make a proper excuse for their failure to have done so. The motion does not show any complaint or request for correction or change, or any excuse for the failure to make the same.

Black vs. Stone & Co. 33 Ala. 327,
Long vs. Brown, 4 Ala. 622,
Pierce vs. Brassfield, 9 Ala. 573
Evans vs. Bolling, 3 Ala. 550.

It is urged that the motion to transfer the cause to the Equity docket should be denied.

Respectfully submitted,

[Signature]
Attorney for Complainant.

C.S.

Copy handed to Mr. Gilmer.

W. M. KIDWELL,)
Plaintiff,)

-vs-

AT LAW

GEORGE DEVINE, W. J. DEVINE,)
MRS. M. F. DEVINE and C. P.)
DEVINE,)
Defendants.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

STATE OF ALABAMA)
COUNTY OF BALDWIN)

Before me, *Robert L. Austin* Notary Public of said County and State
personally appeared H. D. MOORE, who, being by me first duly sworn, deposes
and says that;

He is personally acquainted with Ella V. Devine, also acquainted
with Mary F. Devine who is also M. F. Devine, and C. P. Devine her husband,
and that he is also acquainted with George Devine, and W. M. Kidwell.

That H. C. Devine requested that I make his mother Mary F. Devine
and C. P. Devine her husband a loan on the West half ($W\frac{1}{2}$) of the Northwest
quarter ($NW\frac{1}{4}$) of Section 24 Township 5 South, Range 3 East, Baldwin County, Ala.
Stating at the time that the title to the property, or a portion of it was in the
name of C. F. Deitrich, that they had executed to another party a deed and that
the third party had reconveyed the property to C. F. Deitrich to secure the pay-
ment of a sum of money, but that C. F. Deitrich would reconvey to his mother
Mary F. Devine upon the repayment of the sum now due. That a portion of the land
was held under mortgage by a man named Terry, who then lived at Foley, and it was
also redeemed by money obtained through the loan. After talking to H. C. Devine
and taking the matter up with his mother and father H. C. Devine was informed by
me that his mother and father were too old for me to recommend a loan for them.
I then told H. C. Devine that if they would convey the property to H. C. Devine
that possibly I might get a loan for him. He then asked if it would be satis-
factory for his mother and father, to convey their property to his wife Ella V.
Devine, and that she make application for a loan.

H. C. Devine took the matter up with his mother and father, and
they agreed to execute to Ella V. Devine a Deed to the property with the under-
standing that she was to obtain a loan and reconvey to them the property upon the

payment of the amount of the mortgage. H. C. Devine acted for his mother and father entirely, and his mother and father at no time questioned his motive but stated all they wanted was their property back after the mortgage was payed up. This was the entire understanding between the mother and father and son, and his wife, Ella V. Devine. The mother and father did everything requested by H. C. Devine evidently placing absolute confidence in him. Upon the closing of the loan I drew a contract for Ella V. Devine and H. C. Devine to Mary F. Devine in which Ella V. Devine and H. C. Devine her husband, agreed to reconvey the entire 80 acres of land to Mary F. Devine upon the payment by her for the amount due.

This contract together with the duplicate was delivered to H. C. Devine as Agent and representative of his mother and father. I saw nothing of this contract for several weeks or months afterwards.

Sometime after the execution and delivery of the contract together with the duplicate to H. C. Devine, and before I had again seen the original or duplicate H. C. Devine came to my office and asked if they could sell forty acres of the property to W. M. Kidwell.

He requested this information on account of the Mortgage they executed to the First Joint Stock Land Bank, Montgomery Alabama, through whom I obtained the loan for the Devine's. H. C. Devine came to me by himself and asked for this information, and at no time did he disclose the fact that his mother objected to the conveyance. He also requested information as to how Mr. Kidwell could assume part payment of the mortgage. As stated before H. C. Devine had acted for his mother, and that she did as requested by her son H. C. Devine. The entire transaction on my part was had with H. C. Devine as representative for his mother. I told him they could convey the property subject to the mortgage, and that Mr. Kidwell could assume part of the entire mortgage, but that the bank from whom I obtained the loan would not release any portion of the property until the entire amount was paid.

A few days later H. C. Devine came to my office with W. M. Kidwell, and Mr. Kidwell asked me about H. C. Devine and Ella V. Devine making a deed to him with relation as to Mortgage executed by First Joint Stock Land Bank. I told Mr. Kidwell that at the time of closing the loan the title stood in the name of Ella V. Devine, and that she and her husband had given the contract back to M. F. Devine and C. P. Devine her husband for redemption of the property. H. C. Devine stated that the 40 acres of land he was buying was not included in the contract to

M. F. Devine and C. P. Devine. The contract was not offered to me at that time and I did not remember exactly what the contract stated. I told Mr. Kidwell and H. C. Devine that I was under the impression that the contract covered the entire 80 acres of land. H. C. Devine then told me that it did not cover the 80 acres of land and Mr. W. M. Kidwell also stated that he had seen the contract and that it did not cover the 80 acres of land. I told Mr. Kidwell that if that was the agreement that a deed from Ella V. Devine and her husband would convey title to the property. At this time I did not know that M. F. Devine and C. P. Devine made any objections to the conveyance, in fact I did not know but that H. C. Devine was carrying out their wishes, and at no time did H. C. Devine or W. M. Kidwell intimate to me that it was not satisfactory to Mrs. M. F. Devine and C. P. Devine. H. C. Devine had in the entire transaction spoken for his mother and father, and they relied absolutely on whatever he said or did, in obtaining the loan it was a case of them either getting the money or losing their property. Ella V. Devine was a party to, and agreed to everything that was said and done by her husband H. C. Devine.

As heretofore stated I drew the contract which was signed by Ella V. Devine and H. C. Devine to M. F. Devine drawn to reconvey to M. F. Devine the entire 80 acres described in the mortgage, this being in compliance with the understanding between M. F. Devine and her husband C. P. Devine and Ella V. Devine to whom they conveyed. H. C. Devine handled the entire transaction for his mother and father and his wife Ella V. Devine.

As stated at time contract was drawn it was drawn for the entire 80 acres, and I know nothing of the contract being altered. I did not alter the contract myself and I do not remember any alternation being made in my office nor were there any alternation which was authorized by me or by Mrs. M. F. Devine or C. P. Devine.

It is to my best judgement that the contract was altered after it was signed and acknowledged, for there was a distinct understanding that the property was to be reconveyed at the payment of the amount due. There was no deed contract or crop contract shown to me by H. C. Devine or by W. M. Kidwell at the time they were in my office in fact the only question they asked me was whether or not Ella V. Devine and H. C. Devine could convey the property in the mortgage due the First Joint Stock Land Bank, and they were advised that the bank had no objection to them conveying the property, and all that was necessary that they execute deed conveying same, and this was done, under the impression that H. C. Devine was acting for his

mother as had been done through the entire transaction.

A short time after this I learned that H. C. Devine was acting on his own behalf, and that his father and mother did not know or approve of what he had done. They came to see me about the transaction, and I explained to them what had been done. Upon coming to see me they told me of Mr. Kidwell and H. C. Devine's action, that Mr. Kidwell had been notified of the claim before he purchased the property. After they had been to see me proceedings were instituted against the Devine's in Justice of Peace Court at Robertsdale for Trespassing, and I went to Robertsdale at the time of the trial, and talked with Mr. Kidwell there. He told me that he knew of the claim of M. F. Devine and C. P. Devine to the property at the time he accepted the deed but that H. C. Devine owed him some money, and he wanted to collect it and all he wanted was his money, and at that time he told me that he had paid to H. C. Devine about \$900.00. I asked him in what way had the money been paid. He told me that a portion of the money was due him for fertilizer and advances made to H. C. Devine the previous year, and that a portion of it was for fertilizer and advances made that year, meaning the year of the trial at Robertsdale. He also stated that he let them have a small amount of cash. He told me that he took the deed for the purpose to secure the money, and that all he wanted was his money returned with interest. I requested him not to make further advances to H. C. Devine or Ella V. Devine until the matter could be straightened out. I understood that he had agreed to this and that he would come up and talk the matter over with me so that proper arrangements could be made. The next time I saw Mr. Kidwell he told me that he had decided that if he could hold the property he was going to do so. At the trial in Robertsdale he told me that he also held a mortgage or lien against the crop of H. C. Devine to secure the payment of amount due him which was given to secure this money or the sum indebtedness of H. C. Devine.

Subscribed and sworn to before me
this 20th day of September, 1929

Ernest Weston
Notary Public

Henry Devine

(16)

Kedwell

vs

Drones

affidavit
of Henry Drones

Henry Drones

W. M. KIDWELL,
Plaintiff,

-vs-

GEORGE DEVINE, W. J. DEVINE,
MRS. M. F. DEVINE and C. P.
DEVINE,
Defendants.

AT LAW

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

STATE OF ALABAMA)
COUNTY OF BALDWIN)

Before me, the undersigned authority, personally appeared this day H. C. DEVINE, who, being by me first duly sworn, deposes and says that he is the husband of Ella V. Devine and is the same H. C. Devine who joined the said Ella V. Devine in the execution of the deed conveying the property involved in this litigation to W. M. Kidwell; that he has personal knowledge of all of the details of the transaction between Ella V. Devine and M. F. and C. P. Devine; that in, to-wit, the month of December, 1923, an agreement was entered into between Ella V. Devine and M. F. and C. P. Devine whereby M. F. Devine and C. P. Devine agreed to convey and did convey to Ella V. Devine by warranty deed that property known as the W. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ of Section 24, Township 5 South, Range 3 East in Baldwin County, Alabama, containing 80 acres more or less; that at that time the said M. F. and C. P. Devine held only a contract of purchase to said property under which there was a great amount due; that thereafter on, to-wit, the 29th day of December, 1924, through the efforts of and with the assistance of the said Ella V. Devine they procured a deed from Charles F. Dietrich to Mary F. and C. P. Devine, and that on, to-wit, the 19th day of January, 1925, in the office of and on the advice of the Hon. Henry D. Moorner, Attorney at Law, Bay Minette, Alabama, the said M. F. and C. P. Devine, in order to effectuate the said agreement, as they were advised by the said Moorner it would be necessary to do, did execute another warranty deed conveying the same property to Ella V. De-

vine, and that on the same date Ella V. Devine executed a contract with M. F. and C. F. Devine whereby she agreed to convey to them the West Half of the property which had been by them conveyed to her for certain considerations more fully set out in said contract; that the remainder of the property was held by Ella V. Devine in her own right absolutely and free from any trust or obligation whatever to the said M. F. and C. F. Devine, or George Devine or J. W. Devine; that shortly after the execution of the first deed in December, 1923, the said M. F. Devine entered into a written contract with Ella V. Devine for the cultivation of the said tract of land, and that for the years 1924 and 1925 they continued to farm the forty acres of said land owned absolutely by Ella V. Devine under the terms of said written contract, the execution of which had been witnessed by Carl L. Schlich, Cashier of the Loxley State Bank at Loxley, Alabama; that in the fall of the year 1925 the said M. F., C. F., W. J. and George Devine proposed to purchase said land from Ella V. Devine for a consideration of Fifteen Hundred Dollars; that no written agreement was entered into but it was orally agreed that she would convey the same to them upon the payment by them of the said \$1500.00 on or before July 1st, 1926; that in the event the said purchase was not completed that they would pay to her the sum of One Hundred Dollars for the use and rent of twenty acres of said forty acres of land which they cultivated in said year 1926; that in, to-wit, the month of July, 1926, having failed to complete the said purchase price, George Devine paid on account of the rent due the sum of Fifteen Dollars; that no other payments of any kind or nature whatsoever were ever made; that thereafter Ella V. Devine conveyed said property by warranty deed to W. M. Kidwell, the Plaintiff in this cause; that the deed of conveyance to Kidwell was an absolute deed, was not given to secure the payment of any indebtedness

or held or considered a mortgage in any respect, but vested in the said Kidwell the absolute title to said forty acres of land. That M. F. Devine conveyed the West Half of the Northwest Quarter of Section 24, Township 5 South, Range 3 East, to Ella V. Devine, because in the year 1921 she had conveyed said lands, together with an additional 40 acres of land, to secure an indebtedness of \$500.00 which she was unable to pay at maturity. Her grantee conveyed to one Dietrich upon his promise to re-convey to her. Dietrich refused to convey to her forty acres but agreed to convey to her the eighty acre tract, above described, on payment of something over \$2500.00, to which was added cost of improvements, making a total of over \$3000.00. When her payment became due she was unable to make it and she proposed to Ella V. Devine that if she would assist her she would convey the land to her on condition that she re-convey forty acres of it to her on a time contract. In December, 1923, Ella V. Devine advanced money to make payment to Dietrich, and M. F., C. P., and George Devine executed deed above referred to, to Ella V. Devine, which was not recorded because Dietrich refused to convey to anyone except M. F. Devine. From time to time she advanced further sums and finally, in January, 1925, borrowed \$2000.00, to which was added \$1100.00 by me to pay Dietrich off. It was understood that the title to the property vested in Ella V. Devine under the warranty in the deed of December, 1923, and was agreed that Ella V. Devine should apply for Federal loan to retire the mortgage for \$2000.00, which was to be assumed by M. F. Devine, as set out in contract to convey to her the West Half of the West Half of Section 24, Township 5 South, Range 3 East. Application for the loan was made through Mr. H. D. Moorer, who advised that Ella V. Devine not depend for her title upon the force of the warranty in deed of 1923, but that M. F. and C. P. Devine execute a new deed to her. As aforesaid, this was done, and the contract to convey to her the West Half of the West Half of Section 24, Township 5 South, Range 3 East was immediately executed. In drawing

the description of the land to be conveyed in the contract it was inadvertantly made to cover the entire eighty acres, but this was discovered by Ella V. Devine and was changed before it was executed, in the presence of M. F. and C. P. Devine, and H. D. Moorer, and myself, by Mr. Moorer's stenographer.

H. C. Devine

Subscribed and sworn to before me
this the 6th day of August, 1929.

T. W. Reimer

~~Notary Public~~, Baldwin County, Alabama.

Clark Circuit Court

STATE OF ALABAMA }
COUNTY OF BALDWIN }

Before me, the undersigned authority, personally appeared this day ELLA V. DEVINE, who, being by me first duly sworn, deposes and says that she has read the foregoing affidavit of H. C. Devine; that she knows of her own personal knowledge the matters and things therein stated, and that they are true.

Ella V. Devine.

Subscribed and sworn to before me
this the 6th day of August, 1929.

T. W. Reimer

~~Notary Public~~, Baldwin County, Alabama.

Clark Circuit Court

W. M. KIDWELL,
Plaintiff,

-vs-

GEORGE DEVINE, W. J. DEVINE,
MRS. M. F. DEVINE and C. P.
DEVINE,
Defendants.

AT LAW

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

STATE OF ALABAMA)

COUNTY OF BALDWIN)

Before me, the undersigned authority, personally appeared this day W. M. KIDWELL, who, being by me first duly sworn, deposes and says that he is the absolute owner of the East Half of the West Half of the Northwest Quarter of Section Twenty-four, Township Five South of Range Three East, Baldwin County, Alabama; that he acquired the same by purchase from Ella V. Devine and H. C. Devine, her husband, by warranty deed dated December 14th, 1926, and recorded in Deed Book 42 N. S. page 86 of the Probate Records of Baldwin County, Alabama, on December 31, 1926; that before purchasing the same he was informed by the Hon. H. D. Moorer, Attorney at Law, of Bay Minette, Alabama, that the said grantors were the absolute owners of said property and had a perfect right to sell and convey the same free of any encumbrance except the lien of the mortgage in favor of the First Joint Stock Land Bank of Montgomery, Alabama; that before making said purchase there was exhibited to him a warranty deed of M.F., C. P. and George Devine conveying the W. $\frac{1}{2}$ of the N.W. $\frac{1}{4}$ of Section 24, Township 5 South, Range 3 East in Baldwin County, Alabama, and containing 80 acres more or less, to Ella V. Devine dated December 27th, 1923; that there was also exhibited to him another warranty deed conveying the same property to the said Ella V. Devine by M. F. Devine and C. P. Devine, her husband, dated January 19th, 1925, recorded in Deed Book 35 N.S. pages 418-19 of the Probate Records of Baldwin County, Alabama, on February 4th, 1925; and a contract of sale whereby Ella V. Devine and H. C. Devine, her husband, agreed to convey to M.F.

Devine and C. P. Devine, her husband, the West Half of the West Half of the Northwest Quarter of Section 24, Township 5 South, Range 3 East of Baldwin County, Alabama, executed on the same date as the last named deed, which contract and deed had been prepared by and in the office of the Hon. H. D. Moorer; and that there was also exhibited to him a share crop contract entered into by and between Ella V. Devine and M. F. Devine in March, 1924, for the cultivation of said property wherein and whereby M. F. Devine recognized the title of Ella V. Devine in the "C. M. Proctor Place", by which name the property involved in this litigation is known; that if in fact any rights or equities whatever were retained by the said M. F. and C. P. Devine or the said George Devine or W. J. Devine, he had absolutely no notice either actual or constructive thereof; that he exercised all reasonable and proper diligence in the investigation of the records and title to said land; that prior to the execution of the deed to Ella V. Devine and the contracts hereinabove referred to, M. F. Devine, C. P. Devine and W. J. Devine had been cultivating the lands involved in this litigation; that he knew, as a matter of fact, that they had cultivated it under the share crop contract during the years 1924 and 1925; that subsequent to the execution of the deed and contract referred to they continued to cultivate and farm the said land with the exception of a tract of something more than ten acres which was cultivated by H. C. Devine and Ella V. Devine in the year 1926, and that it was commonly known in the community that M. F. and C. P. Devine were endeavoring or had endeavored to raise money with which to purchase the land involved in this litigation, from Ella V. Devine; that he paid a real and valuable consideration for the said lands and owns the same absolutely; that the averment in the petition of the defendant to transfer this cause to the equity docket that the deed from H. C. and Ella V. Devine to him was in fact and intent a mortgage, is untrue; that by the conveyance from Ella

W. M. KIDWELL,
Plaintiff,

-vs-

GEORGE DEVINE, W. J. DEVINE,
MRS. M. F. DEVINE and C. P.
DEVINE,
Defendants.

AT LAW

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

STATE OF ALABAMA)

COUNTY OF BALDWIN)

Before me, the undersigned authority, personally appeared this day PINK DUBOSE, who, being by me first duly sworn, deposes and says that he is a resident of Baldwin County, Alabama, and is a cousin of H. C. Devine, W. J. Devine, George Devine, and a nephew of M. F. Devine; that he has absolutely no interest in the outcome of this litigation; that in the month of July, 1926, he happened to be present at the home of H. C. Devine when George Devine came to the house and paid to Ella V. Devine by check \$15.00, understood at the time to be paid on account of rent for land George, W. J., M. F. and C. P. Devine were cultivating. It was agreed then that if they paid the balance of \$1500.00, or \$1485.00 within thirty days she would allow it as a credit on the purchase price of the land.

He further states that shortly thereafter M. F. Devine procured him and his wife to go with George Devine to his wife's father, Mr. Pentriell, to see if they could borrow \$1500.00 to pay Elle V. Devine for the land, and that finally Mr. Pentriell agreed to lend the \$1500.00, but that the Devines decided that they only wanted \$1300.00; that Ella V. and Henry refused to take \$1300.00 and so nothing else was done. That he never heard either M. F. Devine, C. P. Devine, W. J. Devine or George Devine question the

STATE OF ALABAMA)

COUNTY OF MOBILE)

Before me, the undersigned authority, personally
appeared this day D. R. Coley, Jr., who being by me first
duly sworn deposes and saith that:

On page 52, Deed Book 36 N. S. of the Probate Records of Baldwin County, Alabama, is recorded a warranty deed from Charles F. Dietrich and wife to Mary F. and C. P. Devine dated December 29th, 1924, and recorded January 21, 1925, conveying the West Half of the Northwest Quarter of Section 24, Township 5 South, Range 3 East of Baldwin County;

That on pages 541-2, Mortgage Book 31 of the Probate Records of Baldwin County is recorded a mortgage for \$2100.00 of Mary F. and C. P. Devine to J. J. Terry dated January 10th, 1925, and recorded January 21st, 1925, conveying the same property described in above deed. On December 8th, 1925, the same was marked cancelled.

That deed of M. F. and C. P. Devine conveying the same property to Ella V. Devine, dated January 19, 1925, is recorded in Deed Book 35 N. S. pages 418-19 of the Probate Records of Baldwin County.

That in mortgage Book 34 pages 184-6 is recorded mortgage of Ella V. and H. C. Devine to First Joint Stock Land Bank of Montgomery for \$1800.00, dated September 1, 1925.

D. R. Coley Jr.

Subscribed and sworn to before me
this the sixteenth day of August,
Nineteen Hundred and Twenty-nine.

Frances C. Stevens

Notary Public, Mobile County, Alabama.

*consideration
of \$3000.00
Placed in escrow
in bank and
taken up when
loan from Terry procured.*

\$2,100.00

*Please check against title
affidavit.*

V. and H. C. Devine he acquired the absolute title to the property.

RAF Keshville

Subscribed and sworn to before me
this the 6th day of August, 1929.

J. W. Williams

Notary Public, Baldwin County, Alabama.

Revised

title of Ella V. Devine until after the land had been sold to Mr. Kidwell. That when M. F. Devine, his Aunt Mary, came to his home to procure him and his wife to help them borrow the money to pay Ella V. Devine for the property she stated that Ella and Henry had a good title to the land, and on the afternoon of the same day George Devine and May Belle Devine a daughter of M. F. Devine came to his home and that he and his wife went to his fatherinlaw's home to ask for the loan; that in his ~~and~~ presence George Devine stated to his wife who in turn spoke in Italian to her father that Ella had a good title to the land, and it was clearly understood that the money, \$1300.00, was to be used in paying Ella V. and Henry Devine for the property. That the land or property referred to is the east half of what is known as the "Proctor Place" which consists of forty acres and which is the same land about which this suit is brought.

Witness:

Mrs. J. Boone

P. R. DuRose

Subscribed and sworn to before me

this the 20th day of April, 1929.

D. R. Cooney
Notary Public, Mobile County, Alabama.

STATE OF ALABAMA)

COUNTY OF MOBILE)

Before me, the undersigned authority, personally
appeared this day D. R. Coley, Jr., who being by me first
duly sworn deposes and saith that:

On page 52, Deed Book 36 N. S. of the Probate Records of Baldwin County, Alabama, is recorded a warranty deed from Charles F. Dietrich and wife to Mary F. and C. P. Devine dated December 29th, 1924, and recorded January 21, 1925, conveying the West Half of the Northwest Quarter of Section 24, Township 5 South, Range 3 East of Baldwin County;

That on pages 541-2, Mortgage Book 31 of the Probate Records of Baldwin County is recorded a mortgage for \$2100.00 of Mary F. and C. P. Devine to J. J. Terry dated January 10th, 1925, and recorded January 21st, 1925, conveying the same property described in above deed. On December 8th, 1925, the same was marked cancelled.

That deed of M. F. and C. P. Devine conveying the same property to Ella V. Devine, dated January 19, 1925, is recorded in Deed Book 35 N. S. pages 418-19 of the Probate Records of Baldwin County.

That in mortgage Book 34 pages 184-6 is recorded mortgage of Ella V. and H. C. Devine to First Joint Stock Land Bank of Montgomery for \$1800.00, dated September 1, 1925.

D. R. Coley Jr.

Subscribed and sworn to before me
this the sixteenth day of August,
Nineteen Hundred and Twenty-nine.

Frances C. Stevens

Notary Public, Mobile County, Alabama.

*consideration
upward of \$3000.00
Placed in escrow
in bank and
taken up when
loan from Terry poured.*

\$2,000.00

*Please check against title
affidavit.*

State of Alabama,
Baldwin County.

This day before me, Hubert Weston a notary
public in and for said County in said State, personally appeared
Harry E. Miller, who is made known to me, and who being by me duly
sworn deposes and says as follows :

That his name is Harry E. Miller, that he lives in
Baldwin County, Alabama, that he had bought two forty acre
tracts in Sec. 24, T. 5s, R. 3e, of H. C. Devine ^{and his wife} under contract
some time about the year 1923 and that when the last pay-
ment on said land was to be made he came to Bay Minette in
the same automobile with Ella V. Devine and H. C. Devine to
close the deal and that when he, the said Miller, was about to
execute the check for the final payment H. C. Devine urged that
the check be made payable to his mother, Mrs. M. F. Devine, for the
reason given that he owed her \$1000.00 and he wanted her to
have it. When they got ^{to} the gate of the place where Mrs. M. F.
Devine and her husband were then and are now living, H. C. Devine
said that the \$1000.00 would fix the old people up in nice
shape and that he wanted them to keep the eighty acres and
never to sell it and that they would have a home as long as
they lived; but that he, the said Miller did not make the check
payable to Mrs. M. F. Devine but told H. C. Devine and Ella V. Devine
that they could endorse the check to her if they wanted.

Harry E. Miller

Sworn to and subscribed before me
this 24th day of August, 1929.

Hubert Weston

Notary public for Baldwin County, Alabama.

State of Alabama,
Baldwin County.

This day before me, Leda Carr a notary public in and for said county in said State, personally appeared Andrew Lennickx, who being made known to me, being by me duly sworn, deposes and says as follows.

That this name is Andrew Lennickx, that he lives in Baldwin County near Loxley; that he first met H.C. Devine about 1920 and that when he first met H.C. Devine the latter told him that the eighty acres of land, which adjoins the land owned by said Lennickx, belonged to H.C. Devine's ~~at~~ father and mother, C.P. and Mrs. M.F. Devine; that C.P. Devine and Mrs. M.F. Devine have lived on and farmed said eighty acres of land continuously ever since they first moved on to it, some nine or ten years ago..

Andrew Lennickx

Sworn to and subscribed before
me this 27th day of August, 1929.

Leda Carr

Notary Public for Baldwin County, Alabama.

State of Alabama,
Baldwin County.

This day before me, Herbert Ravston a notary
public in and for said County, in said State, personally
appeared J.M. Woolley, who is known to me, who being by me
duly sworn deposes and says as follows ;

That his name is J.M. Woolley; that he lives in
Baldwin County; that he knows W.M. Kidwell by sight; that
some time last winter he went to Loxley with Thomas W. Gilmer
and that they met at Griffin's Garage a young man who was
introduced to him as W.J. Devine, and that the three of them
then went to the residence in Loxley of W.M. Kidwell; that
Mr. Kidwell came to his front gate and talked with said Thomas
W. Gilmer and that the said J.M. Woolley and W.J. Devine remain-
ed at the automobile, in which all three of them had driven to
said Kidwell's home and that they were near enough to the
said Kidwell and Gilmer to hear the conversation and that the
said Woolley did hear the entire conversation between said
Kidwell and Gilmer; that the sum and substance of what said
Kidwell said to said Gilmer was that he - W.M. Kidwell - was
not interested in a deed to some land nor in the land, but
that what he wanted was his money and it seemed from the con-
versation that they were talking about some land that had
been deed^{-ed} to said Kidwell by one H.C. Devine and his wife.

J.M. Woolley
Sworn to and subscribed before me
this 28th day of August, 1929.

Herbert Ravston
Notary Public for Baldwin County, Alabama.

State of Alabama,
Baldwin County.

This day before me, Henry D. Moore a notary public for Baldwin County, Alabama, personally appeared W.L.Campbell, made known to me, who being by me duly sworn deposes and says as follows ;

That his name is W.L.Campbell; that he lives near Rosinton in Baldwin County; that he was present some time in the year 1925 or 1926, ~~was~~ together with his daughter Cassie Campbell, Mrs. M.F. Devine and Mrs. Devine's daughter Katie Rushing, at a conversation between Mrs. M.F. Devine and Louis Glendinning at the door of Glendinning's office in Robertsdale, Alabama, and that he ~~hard~~ the said Glendinning make the statement that the deed purporting to be from Mrs. M.F. Devine and C.P. Devine to Ella V. Devine, which had been acknowledged before him, was not signed by Mrs. M.F. Devine and her husband and that he did not at the time the said deed was signed personally know the parties purporting to execute said deed but that they stated to him they were Mrs. M.F. Devine and husband; and that Mrs. M.F. Devine had never been in his office.

W.L. Campbell

Sworn to and subscribed before me
this 23rd day of August, 1929.

[Signature]

Notary Public for Baldwin County, Alabama

State of Alabama,
Baldwin County

This day before me, Henry D. Moore a notary public in and for said County and State, personally appeared Cassie Campbell, Mrs. M.F. Devine and Katie Rushing, each of whom being separately sworn by me deposes and says as follows;

That they were each present at the interview with Louis Glendinning set out in the foregoing affidavit, that each of them heard the said conversation, as set out in substance, between Mrs. M.F. Devine and said Louis Glendinning and that they have each read the foregoing affidavit made by W.L. Campbell and that each of them makes affidavit to the correctness of the statement made by W.L. Campbell in the foregoing affidavit as to what was said in substance by Louis Glendinning to Mrs. M.F. Devine on that occasion.

M. F. Devine

Cassie Campbell

Katie Rushing

Subscribed and sworn to before me
this 23rd day of August, 1929, by each
of the above signed Cassie Campbell,
Mrs. M.F. Devine and Katie Rushing

[Signature]

Notary Public for Baldwin County, Alabama.

State of Alabama,
Baldwin County.

Leola Cain

This day before me, _____ a notary public
in and for said County in said State, personally appeared
W.Percy Hall, who is known to me, and who being by me duly sworn
deposes and says as follows :

That his name is W.Percy Hall; that he lived near Loxley
prior to the year 1923; that about the year 1922 H.C.Devine and
Ella V.Devine, his wife, and Mrs.M.F.Devine and C.P.Devine, her
husband, came to his office at Loxley, Alabama, to have him prepare
a deed, which he did prepare and which was signed in his presence
by H.C.Devine and Ella V.Devine, conveying to Mrs.M.F.Devine the
eighty acre tract of land on which Mrs.M.F.Devine was then living
and on which she is now living, to which deed he took the
acknowledgements of H.C.Devine and Ella V.Devine; that the said
deed was by him delivered to H.C.Devine and by him was taken
away, and the said deed was not delivered to Mrs.M.F.Devine
in his presence; that some several weeks later H.C.Devine and
Ella V.Devine came to his office in Loxley and H.C.Devine stated
to him that his mother, Mrs.M.F.Devine, had changed her mind about
the deed to the land and wanted a deed only to forty acres of
the said eighty acres and that he prepared a deed for them to
sign and that H.C.Devine and Ella V.Devine signed the deed in
his presence and he took their acknowledgements to said deed,
which conveyed to Mrs.M.F.Devine only forty acres of the said
eighty acre tract; and that H.C.Devine at that time ~~intended~~
that the first deed was executed ^{to be} that that deed for the eighty
acres was to be placed in escrow in the Bank at Loxley and that
Mrs.M.F.Devine was to pay the balance due on said eighty acre
tract and get the deed from the Bank; that later he, W.Percy
Hall, was in the bank at Loxley and that Mrs.M.F.Devine was
there and asked about the deed for the eighty acre tract and
that he told Mrs.Devine that H.C.Devine had been back to his
office (Hall's office) and had executed a deed to her for half
of the eighty acre tract and that the cashier of the bank of
Loxley then looked at the deed from H.C.Devine and wife to
Mrs.M.F.Devine and that he, W.Percy Hall, also looked at the
deed and that it was for forty acres only and not for the
entire eighty acres and that Mr.Selich stated that the deed
originally placed in the bank in escrow had been for the
entire eighty acres.

W Percy Hall

Subscribed and sworn to before me
thus 27th day of August, 1929.

Leola Cain

Notary Public for Baldwin County, Alabama.

State of Alabama,
Baldwin County.

This day before me, *Henry D. Moor* a notary public for Baldwin County, Alabama, personally appeared C.P. Devine, who is known to me, who being by me duly sworn deposes and says as follows :

That his name is C.P. Devine, that he is the husband of Mrs. M.F. Devine, that he and his wife have been living on said land for the past eight or nine years, that he has signed no deed to the West Half of the Northwest quarter of Sec. 24, T. 5s, R. 3e, Baldwin County, Alabama, conveying said land to Ella V. Devine, except the deed which was signed by him and Mrs. M.F. Devine in the office of Henry D. Moor at Bay Minette, Alabama, at the time that the loan on said land was made. ~~ing~~ That he has executed or signed only the one deed for said land to Ella V. Devine.

Witness
W. L. Campbell *C. P. Devine*

Sworn to and subscribed before me this 23rd day of August, 1929

Henry D. Moor
Notary public, Baldwin Co. Ala.

State of Alabama,
Baldwin County.

This day before me, *Henry D. Moor* a notary public in and for said County and State, personally appeared Mrs. M.F. Devine who is known to me, who being by me duly sworn deposes and says as follows :

That her name is Mrs. M.F. Devine, the wife of C.P. Devine, that she lives in Baldwin County and that she has lived on the West Half of the Northwest Quarter of Sec. 24, T. 5s, R. 3e, Baldwin County, Alabama, since the year 1920, and that she and her husband have ever since claimed to own said land as the true owners thereof.

That she has signed only one deed to Ella V. Devine for said land, which deed was dated in January 1925 and was executed in the office of Henry D. Moor at Bay Minette, Alabama; that she did not sign a deed purporting to have been executed by her and her husband, for said land, to Ella V. Devine, which was acknowledged before Louis Glendinning at Robertsdale, Alabama. that at the time the deed of January, 1925, was executed, it was done in order that a loan might be secured on said land, and that there was an agreement between the signers of said deed ~~that same~~ and Ella V. Devine, that same was solely for the purpose of securing said loan and that Ella V. Devine should hold the title to said land for the said grantors; and that a written agreement was entered into between Ella V. Devine and husband and Mrs. M.F. Devine and husband to reconvey, by Ella V. Devine, the entire eighty acres, on certain conditions set forth in said instrument, but that Ella V. Devine retained possession of both copies of said instrument, which had been executed in duplicate, and several weeks later delivered a copy thereof to Mrs. M.F. Devine and that said copy so delivered had been altered so as to cover only the west half of the west half of the northwest quarter of said section 24, T. 5s, R. 3e, Baldwin County, Alabama; That she is informed that Ella V. Devine and husband, in December, 1926, executed a deed for one-half of said ~~land~~ land to W.M. Kidwell and that she had no knowledge of said deed to said Kidwell until after the same had been executed and delivered to the grantee therein; that she is informed and ~~th~~ believes that the said deed to Kidwell is in fact a mortgage and was executed to secure indebtednesses of Ella V. Devine

Affidavit of Mrs.M.F.Devine,
Continued.

and H.C.Devine to said Kidwell; that in executing the share crop ~~xxx~~ agreement with Ella V.Devine on said land, she did so as the equitable owner thereof and not as the tenant or renter of said land from Ella V.Devine; that neither Ella V.Devine nor her husband H.C.Devine have at any time ever paid to Mrs.M.F.Devine or her husband C.P.Devine any money on account of any alleged purchase of said land, although the deed of January, 1925, recites a consideration from Ella V. Devine to the grantors therein; that neither she nor her husband knew that the deed from Ella V.Devine and husband to W.M.Kidwell was in fact a mortgage until after issue had been joined in the ejectment suit of Kidwell vs George Devine et als, and that W.M.Kidwell lives within two to three miles of the land on which ~~xxx~~ Mrs.M.F.Devine and her husband live; that she is 69 years old and that she can neither read or write without difficulty; that her husband C.P.Devine is 66 years old, that he can neither read nor write; that they both trusted their son H.C.Devine to negotiate the aforesaid loan for them and followed his advice.

M F Devine

Sworn to and subscribed before
me this 23rd day of August, 1929.

H. S. Moore
Notary Public for Baldwin County, Alabama.

State of Alabama,
Baldwin County.

Before me this day, *Henry D. Moore*, a notary public in and for said County in said State, personally appeared C.P.Devine, who is known to me, and who being by me duly sworn deposes and says as follows.

That he has ^{read} ~~xxx~~ over to him the foregoing affidavit made by Mrs.M.F.Devine, his wife, and that he knows of his own knowledge that the statements of fact contained therein are true.

Witness
W. L. Campbell *CP* ^{his} ~~mark~~ *Devine*

Sworn to and subscribed before me
this 23rd day of August, 1929.

H. S. Moore
Notary Public for Baldwin County, Alabama.

State of Alabama,
Baldwin County -

This day before me, Henry D Moore a notary public in and for said County in said State, personally appeared Mrs. M.F. Devine, C.P. Devine, W.J. Devine and George Devine, who are each made known to me, and who being by me duly sworn severally, each deposes and says as follows -

That no one of them had any knowledge of the alleged deed from M.F. Devine C.P. Devine and George Devine, purporting to have been executed by them on December 27, 1923, by which they are purported to convey to Ella V. Devine the W2 of NW4 of Sec. 24, T. 5s, R. 3e, being the land involved in this suit, the acknowledgements to which deed of their purporting signatures were taken before L. Glendinning; until this suit was filed.

That no one of them had any knowledge, until after this suit had been filed, that the agreement to reconvey by Ella V. Devine and Husband to M.F. and C.P. Devine, which is dated January 19, 1925, had been admitted to record. That the copy of said agreement which was delivered to Mrs. M.F. Devine was not admitted to record. Said parties again affirm that the said agreement to reconvey from Ella V. Devine and husband to ~~MR~~ M.F. and C.P. Devine was altered after its execution, without their knowledge or consent, to include only the half of said eighty acres of land instead of the whole eighty acres. That they had no knowledge that the copy of said agreement held by Ella V. Devine had been admitted to record until after the filing of this suit.

M F Devine
C P Devine
W J Devine
George Devine

Sworn to and subscribed before me
by each of the said parties, M.F. Devine,
C.P. Devine, W.J. Devine and George Devine,
this 11th day of September, 1929.

Henry D Moore
Notary Public for Baldwin County, Alabama.

State of Alabama,
Baldwin County.

This day before me, Leola Cain a notary public in and for said County, in said State, personally appeared Mrs. M. C. Galloway, who is made known to me, who being by me duly sworn deposes and says as follows :

That her name is Mrs. M. C. Galloway, that she is a sister of Mrs. M. F. Devine and that in the year 1916, and prior thereto, she and Mrs. M. F. Devine lived in South Carolina, and that she was visiting her sister, Mrs. M. F. Devine at the latter's home near Lamar, S. C., some two months, and that H. C. Devine and his wife Ella V. Devine lived some fifteen miles from Mrs. M. F. Devine; that, as H. C. Devine then admitted to her and as also Ella V. Devine then admitted to her, H. C. Devine had gotten heavily in debt and was threatened with prosecution for something that he had done, and that Mrs. M. F. Devine sold her farm near Lamar and paid out, on account of the said indebtedness of H. C. Devine and in order to get him out of his trouble, some four thousand dollars, all of which the said H. C. Devine and Ella V. Devine admitted to her the said Mrs. M. C. Galloway at the time that said incidents happened.

That in the year 1919 she and her sister, Mrs. M. F. Devine, were living at and near Florala, Alabama, near which place Mrs. M. F. Devine had bought a farm and had sold the farm, and that she, the said Mrs. M. C. Galloway heard Mrs. M. F. Devine instruct the cashier of the bank at Florala to send, of money in bank to the credit of Mrs. M. F. Devine, the sum of \$1200.00 to H. C. Devine in Baldwin County, Alabama, with which as Mrs. M. F. Devine then stated, he was to buy some land in Baldwin County for Mrs. M. F. Devine.

Mrs. M. C. Galloway

Subscribed and sworn to before me
this 27th day of August, 1929.

Leola Cain

Notary Public for Baldwin County, Alabama.

State of Alabama,
Baldwin County

This day before me, Leola Cain a notary public in and for said County in said State, personally appeared Mrs. M. F. Devine, who being by me duly sworn deposes and says as follows:

That the foregoing statement of Mrs. M. C. Galloway was made in her presence and has been read to her and that the facts recited therein are true and correct; that she did send her son H. C. Devine by the cashier of the bank at Florala \$1200.00 to buy land in Baldwin County Alabama, for her, Mrs. M. F. Devine, and that later she sent him \$200.00 additional by check by her husband C. P. Devine, to be paid by H. C. Devine on account of the same land; that of said \$1400.00, so sent him by her for said purpose, H. C. Devine paid only \$500.00 of said money on said land and that he had the deed thereto made to his wife Ella V. Devine and not to the said Mrs. M. F. Devine; that the said land was bargained for and bought by the said H. C. Devine through J. C. Griffin of Loxley, Alabama,

Sworn to and subscribed before me
this 27th day of August, 1929.

Leola Cain

Notary public for Baldwin County, Alabama.

STATE OF ALABAMA,
BALDWIN COUNTY.

THIS AGREEMENT made and entered into this 19th., day of January, 1925, by and between ELLA V. DEVINE and H. C. DEVINE; her husband, hereinafter referred to as parties of the first part and M. F. DEVINE and C. P. DEVINE, her husband, hereinafter referred to as parties of the second part, WITNESSETH:-

That the parties of the first part hereby agree to convey to the parties of the second part the following described property, to-wit:-

The West half of
The West half of Northwest quarter, Section Twenty Four,
Township Five South of Range Three East, containing 80
acres, more or less,

and upon the following condition that the said parties of the second part are to have possession of the said premises and to use the same as their own for a period of five years provided the said parties of the second part keep the interest on indebtedness paid and not to default in the interest or principal during the period of five years and upon the further condition that the said parties of the second part pay off the entire indebtedness on or before the expiration of the five years from this date and to keep all taxes paid and any insurance that may be kept on the building shall be taken care of by the said parties of the second part and failing to do so the parties of the first part shall have the right to pay and hold parties of the second part accountable therefor.

For and in consideration of the parties of the second part paying off the indebtedness upon the above mentioned premises therein described said parties of the first part hereby agree at any time on or before the expiration of five years and the said indebtedness having been paid in full to convey to the parties of the second part the above described land by a full and complete warranty deed.

Executed in duplicate this 19th., day of January, 1925.

H. C. Devine (L.S.)
Ella V. Devine (L.S.)

M. F. Devine (L. S.)
C. P. Devine (L. S.)
Mark

STATE OF ALABAMA,
BALDWIN COUNTY.

I, *Gladys Bush* a Notary Public in
and for said County in said State, hereby certify that Ella V. Devine and
H. C. Devine, her husband, and M. F. Devine and C. P. Devine, her husband,
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 and official seal this 19th day of
January, 1925.

Gladys Bush
Notary Public, Baldwin Co., Ala.,

STATE OF ALABAMA,
BALDWIN COUNTY.

I, *Gladys Bush* a Notary Public in
and for said County in said State, hereby certify that Ella V. Devine, known
to me to be the wife of the within named H. C. Devine, and M. F. Devine known
to me to be the wife of the within named C. P. Devine, who being examined
separate and apart from the husbands, touching their signatures to the within
conveyance, acknowledged before me on this day that they signed the same of
their own free will and accord and without fear, constraint or threats on the
part of the husbands.

In Witness Whereof, I hereunto set my hand and official
seal this 19th., day of January, 1925.

Gladys Bush
Notary Public, Baldwin County, Alabama.

ORAL EXAMINATION.

I, T. W. Richerson, as Register and Commissioner hereby certify that the foregoing deposition was taken down in writing by me in the words of the witness and read over to him and he signed the same in the presence of myself T. W. Gilmer Atty for Deft and D. H. Coley, Jr., Atty for Plff, at the time and place herein mentioned; that I have personal knowledge of personal identity of said witness or had proof made before me of the identity of said witness; that I am not of counsel or of kin to any of the parties to said cause, or any manner interested in the result thereof

~~I enclose the said Oral Examination in an envelope to the Register of said Court.~~

Given under my hand and seal, this 31st day of July, 1929.
T. W. Richerson (L. S.)

NO. _____ PAGE _____

THE STATE OF ALABAMA
BALDWIN COUNTY

IN CIRCUIT COURT, IN EQUITY.

William Kidwell

vs. Complainant

Geo Devine.

Respondent.

Oral Deposition

Filed July 31st, 1929.

T. W. Richerson, Register.

Recorded in

Record

Vol. _____ Page _____

Register

The State of Alabama,

Baldwin County.

Circuit Court of Baldwin County, Alabama

(In Equity)

Law Side

W. M. Kidwell

Complainant.

VS.

George Devine et als

Respondent.

T. W. Richerson

I, _____
as ~~Registered~~ Commissioner

have called and caused to come before me

James M Woolley

witness named in the Requirement for Oral Examination, on the 31 day of July

1929, at the office of

Residence of said Jm Woolley,
Bay Minette, Alabama, and having first sworn said witness to speak the

truth, the whole truth, and nothing but the truth, the said

James M. Woolley

doth depose and say as follows:

My name is J. M. Woolley. Sometime last winter I went with E. M. Gilmer in his automobile from Bay Minette to Loxley. When we got to Loxley and Griffin's Filling Station a young man ~~xxxxxx~~ who was introduced to me as W. J. Devine joined us and the three of us and went to the home of Mr. W. M. Kidwell. Mr. Kidwell came to his yard gate. I heard the conversation which then and there took place between Mr. Kidwell and Mr. Gilmer, which seemed to be about some land which had been deeded to Mr. W. M. Kidwell by Henry Devine. The sum and substance of the statement made by Mr. Kidwell was that he had a deed to the land, but that he would rather have his money than either the deed or the land, that he had money in the land and wanted it out of it.

Cross-examination by D. R. Coley, Jr., attorney for Wm. Kidwell.

~~Q. Did Mr. Gilmer ask Mr. Kidwell in your presence if he did~~~~xx~~

I do not remember whether the statement made by Mr. Kidwell that what he wanted was his money out of the land was a voluntary statement by him, or was in answer to a question by Mr. Gilmer. Mr. W. J. Devine, Mr. Gilmer, Mr. Kidwell and I were present when this conversation took place, and they were the only ones present.

I heard all that was said ~~and~~ in that conversation, which was.....
between Mr. Gilmer and Mr. Kidwell, I do not remember whether.....
Mr. W. J. Devine said anything at all, and what I have stated.....
above was the substance of the entire conversation.

J. M. Hosley

Mary F. Devine et al.,
Complainants

Vs.

Wm. Kidwell et al.,
Respondents

EQUITY
IN THE CIRCUIT COURT
of
BALDWIN COUNTY, ALA.

Comes the respondents Ella V. Devine and H. C. Devine and demurs to the bill of complaint filed in this cause, and each and every paragraph thereof, and for grounds of demurrer says:

- 1- There is no equity in the bill.
- 2- Because said bill does not sufficiently set out the contract by Ella V. and H. C. Devine to reconvey the lands involved to the Complainants.
- 3- Because said bill fails to allege that complainants have complied with the conditions of said contract to reconvey.
- 4- Because said bill fails to allege that complainants are able, ready and willing to comply with the terms of said contract.
- 5- Because said bill fail to allege that respondents Ella V. And H. C. Devine have failed or refused to comply with the terms of said contract.
- 6- Because it affirmatively appears from said bill that the complainants have been guilty of laches and that respondent Kidwell has suffered thereby.
- 7- Because the allegation that the contract to reconvey referred to in paragraph 9 of the bill was fraudulently altered is a conclusion of the pleader.
- 8- Because it does not appear that respondent Kidwell was a party to any fraud practised upon complainants.
- 9- Because it does not appear that any of the parties respondent committed fraud against the complainants.
- 10- Because it does not appear that respondent Kidwell had any notice actual or constructive of any equity in the complainants at the time of Ella V. and H. C. Devine to him.
- 11- Because the bill fails to show such possession on the part of complainants as would put respondent Kidwell on notice of any equities claimed by them.
- 12- Because it does not appear that the trust alleged to have been reserved in deed of complainants to Ella V. Devine was in writing.

13- Because the allegation that respondent Kidwell is not a bona fide purchaser for value is a conclusion of the pleader.

14- Because said bill fails to show that upon discovery^{by complainants} of the alteration of the contract to reconvey referred to in paragraph 9, that they called upon Ella V. and H. C. Devine to correct said contract nor does it set out any reason or excuse for their failure to do so.


Atty for respondents Ella V. and H. C. Devine

State of Alabama,
Baldwin County.

This day beforeme, Leah R. Roston a notary public
in and for said County in Said State personally appeared
George Devine, who was made known to me, who being by me duly
sworn deposes and says as follows :

That his name is George Devine, that he is twenty
two years old, that he lives with his father and Mother, C.P.
Devine and Mrs. M.F. Devine and has practically always lived
with them. That he did not sign any deed at all, at any time,
to the land on which his father and mother live and that in
particular he did not sign the deed dated December 27, 1923,
to ~~the~~ said land which purports to have been signed by him and
acknowledged before L. Glendinning, being the same deed which
purports to have been signed by his mother Mrs. M.F. Devine and
his father C.P. Devine whose acknowledgements to said deed
are purported to have been taken thereto by the said L.
Glendinning.

George Devine
Subscribed and sworn to before
me this 24th day of August, 1929.

Leah R. Roston
Notary public for Baldwin County, Alabama.

ROBT. E. GORDON
DAVID H. EDINGTON
NORVELLE R. LEIGH, JR.
SANTOS S. RUBIRA, JR.

GORDON, EDINGTON & LEIGH
ATTORNEYS AT LAW
407-411 MEAHER BUILDING
MOBILE, ALABAMA

October 18, 1928

Hon. T. W. Richerson,
Bay Minette, Ala.

Dear Sir:

W. M. Kidwell vs. Devine, et al.

Notice has been served on us of amendment of complaint in this cause, and we herewith enclose plea to each count of the complaint as amended, which please file.

We have furnished opposing counsel with copy of the plea.

Yours truly,

GORDON, EDINGTON & LEIGH

BY *Norville R. Leigh, Jr.*

NRL/D
Encl.

W.M.KIDWELL, Plaintiff -

AT LAW -

VERSUS

GEORGE DEVINE, W.J. DEVINE,
MRS. M.F. DEVINE and C.P.
DEVINE, Defendants -

Circuit Court for Baldwin
County, Alabama.

To the Hon. F.W. Hare,
Judge of the 21st Judicial Circuit.

Your petitioners George Devine, W.J. Devine, Mrs. M.F. Devine and C.P. Devine, the defendants in the above entitled cause, by leave of the court file this their amended motion for the transfer of the said cause from the Law side to the Equity side of the said Court, and respectfully show unto your Honor that there is an equitable question, the decision of which should dispose of the cause and which cannot be disposed of in the Law side of the said Court, and that it depends upon the assertion of an equitable right or defense by your petitioners Mrs. M.F. Devine and C.P. Devine, who is her husband, and they respectfully move your Honor to have the said cause transferred from the Law side to the Equity side of the said Court, and they allege the following facts as constituting their said Equitable right or defense to the said entitled action.

1. That the said Mrs. M.F. Devine and C.P. Devine were the holders of the legal title and the lawful owners of the West Half of the North-West Quarter of Section Twenty Four (24) in Township Five South of Range Three East, in Baldwin County, Alabama, and that of said tract of land, prior to and since January 1, 1923, they have had actual, open, notorious, exclusive and continual possession, uninterruptedly, and that their said possession consisted of their living on the said tract of land, in their farming and cultivating it and in having it farmed and cultivated, and in their using and selling the crops therefrom, and in their otherwise holding possession of and using and treating the said tract of land as their home and as their own property. And they aver that the land involved in the above entitled action is a part of the said described tract.

2. That the said Mrs. M.F. Devine and C.P. Devine, her husband,

desired to obtain a loan of money on the said tract of land; that they were both old at that time and more or less decrepid; that Mrs. M.F. Devine has very little education and that C.P. Devine can not read or write; that H.C. Devine, who was then and now the husband of Ella V. Devine, is their son; that they entrusted to him the negotiation of the said loan and that they trusted him as their son and relied on him and accepted his advice and acted on his judgment in the matter of securing the said loan; that he advised them they should convey the title to said land to his wife, Ella V. Devine, in order to secure the said loan and that from their confidence in him they did, to-wit, on January 19, 1925, execute a deed for the said land to Ella V. Devine, of which land they had the actual possession at that time. They allege that the sole intention and purpose of said conveyance to Ella V. Devine, as was known, understood and agreed upon, before the said deed was executed, by and between them and the said Ella V. Devine and H.C. Devine, was that the said grantee should hold the legal title to said land in trust for them, the grantors, and that the sole reason and purpose of said conveyance to Ella V. Devine was that a loan of money might be secured on said land for your two said petitioners; that the said loan of money was in ~~fact~~ fact secured for them on the said land by and in the name of Ella V. Devine, because of the age and decrepitude of your two said petitioners. And your two said petitioners aver that the said deed to Ella V. Devine recites a consideration from her to them, which they were advised would be necessary, but they allege that there was in fact no such consideration paid to them by the said Ella V. Devine and that the only consideration in fact for the said conveyance was that a loan might be secured for your two said petitioners. And your two said petitioners aver that their son, H.C. Devine and Ella V. Devine, his wife, in procuring the ~~the~~ execution of the said deed

by them did so through and because of the undue influence of their said son, H.C. Devine, exercised by him over them at that time, and that the intent and purpose of the said Ella V. Devine and H.C. Devine, in having them execute the said conveyance, was fraudulent and to deprive them, your two said petitioners, of the legal title to said land which legal title the said Ella V. Devine and H.C. Devine intended to hold for their own use, after the said loan had been secured, ~~as their subsequent conduct herein after set forth shows.~~ And your two said petitioners aver that on, to-wit, January 19, 1923, in pursuance and because of the trust in said land held by the said Ella V. Devine for your two said petitioners under the conveyance by them to her, a written agreement was entered into and signed by and between the said Ella V. Devine and H.C. Devine, her husband, and your two said petitioners, by which Ella V. Devine and H.C. Devine agreed to reconvey the title to said land, upon certain conditions set out in said instrument, within five years to your two said petitioners, and that when said agreement was executed, in duplicate, the said land was correctly described therein as the West Half of the North-West Quarter of the section. And your two petitioners aver that H.C. Devine, & Ella V. Devine immediately after the execution of said instrument retained both copies, and that several weeks later a signed copy of said instrument was by them delivered to your two said petitioners, but that the description of the said land in said copy so delivered to your two said petitioners had been changed by interlineation and by erasure, so that the description of the said land in the said copy delivered to your two said petitioners reads and then read as "The west half of the West Half of Northwest quarter" of said section, but that the words "containing 80 acres, more or less" in the said instrument had not been altered. And your two said petitioners aver that the said alteration of said instrument was without their knowledge and consent and that the purpose was fraudulent and to deprive unlawfully your said two petitioners of their land.

3. And further your said two petitioners aver that in pursuance of said fraudulent intent of said Ella V. Devine and H.C. Devine the two latter did on, to-wit, December 14, 1926, in violation of the trust in favor of your two said petitioners, as above set out, execute a deed to W.M. Kidwell, the plaintiff in this suit, for the East Half of the West half of the Northwest quarter of said section, of which land your two said petitioners were in actual possession, as is alleged in paragraph 1 hereof, at the time of said conveyance to W.M. Kidwell. And your two said petitioners aver that the said W.M. Kidwell knew or should have known of their said actual possession and they aver that the said W.M. Kidwell lived within three or four miles of the said land, and that their actual possession of the said land, prior to and at the time of such conveyance to W.M. Kidwell and subsequent thereto, operated as constructive notice to the said W.M. Kidwell and put him upon inquiry as to the rights to and equities in said tract of land of your two said petitioners, and that the said Kidwell would have been informed thereof had he made inquiry of your two said petitioners as to their rights to and equities in said land. And they aver that the said W.M. Kidwell was not a bona fide purchaser of said land without notice of their rights and equities. Your two said petitioners aver that they ^{were} altogether ignorant of the said conveyance from Ella V. Devine and husband to W.M. Kidwell until after said conveyance had been executed.

4. And your two said petitioners aver that the intent and purpose of the said deed from Ella V. Devine and H.C. Devine to W.M. Kidwell, set out in paragraph 3 hereof, was to secure a then existing indebtedness from the grantors to the grantee in said deed and also to secure the payment of future indebtednesses from Ella V. Devine and H.C. Devine to the said Kidwell, which future indebtednesses, they aver, were in fact incurred by the said Ella V. Devine and H.C. Devine to W.M. Kidwell subsequently to the execution of the said deed to W.M. Kidwell. And your said two petitioners aver that the intent and purpose with which the said deed was executed, above alleged and from the facts above set out, were known to the said W.M. Kidwell when the deed to him was executed and that the said deed from Ella V.

by them did so through and because of the undue influence of their said son, H.C. Devine, exercised by him over them at that time, and that the intent and purpose of the said Ella V. Devine and H.C. Devine, in having them execute the said conveyance, was fraudulent and to deprive them, your two said petitioners, of the legal title to said land which legal title the said Ella V. Devine and H.C. Devine intended to hold for their own use, after the said loan had been secured, ~~as their subsequent conduct herein after set forth shows.~~ And your two said petitioners aver that on, to-wit, January 19, 1925, in pursuance and because of the trust in said land held by the said Ella V. Devine for your two said petitioners under the conveyance by them to her, a written agreement was entered into and signed by and between the said Ella V. Devine and H.C. Devine, her husband, and your two said petitioners, by which Ella V. Devine and H.C. Devine agreed to reconvey the title to said land, upon certain conditions set out in said instrument, within five years to your two said petitioners, and that when said agreement was executed, in duplicate, the said land was correctly described therein as the West Half of the North-West Quarter of the section. And your two petitioners aver that H.C. Devine, & Ella V. Devine immediately after the execution of said instrument retained both copies, and that several weeks later a signed copy of said instrument was by them delivered to your two said petitioners, but that the description of the said land in said copy so delivered to your two said petitioners had been changed by interlineation and by erasure, so that the description of the said land in the said copy delivered to your two said petitioners reads and then read as "The west half of the West Half of Northwest quarter" of said section, but that the words "containing 80 acres, more or less" in the said instrument had not been altered. And your two said petitioners aver that the said alteration of said instrument was without their knowledge and consent and that the purpose was fraudulent and to deprive unlawfully your said two petitioners of their land.

3. And further your said two petitioners aver that in pursuance of said fraudulent intent of said Ella V. Devine and H.C. Devine the two latter did on, to-wit, December 14, 1926, in violation of the trust in favor of your two said petitioners, as above set out, execute a deed to W.M. Kidwell, the plaintiff in this suit, for the East Half of the West half of the Northwest quarter of said section, of which land your two said petitioners were in actual possession, as is alleged in paragraph 1 hereof, at the time of said conveyance to W.M. Kidwell. And your two said petitioners aver that the said W.M. Kidwell knew or should have known of their said actual possession and they aver that the said W.M. Kidwell lived within three or four miles of the said land, and that their actual possession of the said land, prior to and at the time of such conveyance to W.M. Kidwell and subsequent thereto, operated as constructive notice to the said W.M. Kidwell and put him upon inquiry as to the rights to and equities in said tract of land of your two said petitioners, and that the said Kidwell would have been informed thereof had he made inquiry of your two said petitioners as to their rights to and equities in said land. And they aver that the said W.M. Kidwell was not a bona fide purchaser of said land without notice of their rights and equities. Your two said petitioners aver that they ^{were} altogether ignorant of the said conveyance from Ella V. Devine and husband to W.M. Kidwell until after said conveyance had been executed.

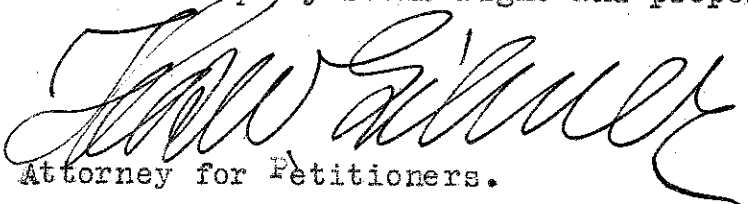
4. And your two said petitioners aver that the intent and purpose of the said deed from Ella V. Devine and H.C. Devine to W.M. Kidwell, set out in paragraph 3 hereof, was to secure a then existing indebtedness from the grantors to the grantee in said deed and also to secure the payment of future indebtednesses from Ella V. Devine and H.C. Devine to the said Kidwell, which future indebtednesses, they aver, were in fact incurred by the said Ella V. Devine and H.C. Devine to W.M. Kidwell subsequently to the execution of the said deed to W.M. Kidwell. And your said two petitioners aver that the intent and purpose with which the said deed was executed, above alleged and from the facts above set out, were known to the said W.M. Kidwell when the deed to him was executed and that the said deed from Ella V.

Devine and husband was in fact and intent of the grantors and the grantee therein a mortgage to secure the said indebtednesses of Ella V. Devine and H.C. Devine to W.M. Kidwell, and that the said W.M. Kidwell was not in fact and intent a purchaser of the said land conveyed by the said deed, and that he did not accept the said deed as a purchaser of said land, but only to secure the payment of the said indebtednesses to him, and that he is and was in fact a mortgagee under the said deed. And your two said petitioners aver that under said deed as mortgagee the said W.M. Kidwell had, and was, and is chargeable with, constructive notice of the rights to and equities in said land, conveyed to him by Ella V. Devine and husband, of your two said petitioners, of which land your two said petitioners were in actual possession as is alleged in paragraph 1 hereof, and that thereby the said W.M. Kidwell had notice and was put upon inquiry as to the rights and equities of your two said petitioners in and to said land, and that ~~he~~ made inquiry of your said two petitioners as to their said rights and equities in said land they would have informed him thereof. And your two said petitioners aver that the said W.M. Kidwell knew or should have known of their actual possession of the said land and they aver that he was living within three or four miles thereof.

5. Your petitioners aver that they have not been negligent or chargeable with delay in the presenting of this their motion and that the facts constituting this their equitable right or defense to said action at law that the conveyance from Ella V. Devine and H.C. Devine to W.M. Kidwell was and is in fact a mortgage and not a deed of purchase, were not ascertained by them until after issue had been joined in said action at law.

6. Your two said petitioners, Mrs. M.F. Devine and C.P. Devine, aver that in equity and good conscience the said W.M. Kidwell holds the legal title to the land conveyed to him by Ella V. Devine and H.C. Devine as trustee thereof for your said two petitioners, for the reasons of facts hereinbefore recited, the said W.M. Kidwell not being a bona fide purchaser of said land without notice of the equities therein of your said two petitioners, as your said two petitioners have averred, but being a mortgagee of the said land chargeable at the time the said deed was executed to him with constructive notice of your said two petitioners equities in and rights to said land, as also your petitioners have averred and now again aver, and they aver that he should be required by your Honor's court of equity to convey the said land, conveyed to him, as above recited, to your said two petitioners, free of any lien and encumbrance and of any and all claims to said land by the said W.M. Kidwell by reason of the said conveyance to him by the said Ella V. Devine and H.C. Devine, who held the said land, at the time of their conveyance to the said Kidwell, in trust for your said two petitioners, as your petitioners again aver.

7. Your said two petitioners offer to do such equity in the matter as to your Honor's Court of equity seems right and proper. And they will ever pray.


Attorney for Petitioners.

Mary F. Devine et al.,
Complainants
Vs.

Wm. Kidwell et al.
Defendants

EQUITY

IN THE CIRCUIT COURT
of
Baldwin Co., Ala.

DEMURRERS TO COMP.

BY Ella V. and
H. C. Devine

Filed 2/4/1930
J. C. Kieffer
Register

W. M. KIDWELL,
Plaintiff,

-vs-

GEORGE DEVINE, W. J. DEVINE,
MRS. M. F. DEVINE and C. P.
DEVINE,
Defendants.

AT LAW

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Comes W. M. Kidwell, Plaintiff in the above entitled cause, and demurs to the petition of Defendants George Devine, W. J. Devine, Mrs. M. F. Devine and C. P. Devine to transfer the cause to the equity side of the Court:

FIRST: Because there is no equity in the grounds alleged in the motion for transfer of said cause.

SECOND: Because it affirmatively appears from said petition that Mrs. M. F. Devine and C. P. Devine were holders of the legal title and the lawful owners of the said land and conveyed all of the said land involved in the litigation to Ella V. Devine and H. C. Devine by deed, and that Ella V. Devine and H. C. Devine conveyed the said land by deed to W. M. Kidwell, the Plaintiff herein, and it does not appear that the said Kidwell is in any wise charged with notice of any of the rights asserted by them in said petition.

THIRD: Because it does not appear from said petition that W. M. Kidwell had any notice of the trust under which the said H. C. and Ella V. Devine are alleged to have held the said property.

FOURTH: Because it does not appear that the said Defendants have tendered to the said Kidwell the amount for which it is alleged he holds a mortgage on said property.

FIFTH: Because said Defendants do not offer to do equity in the matter.

SIXTH: Because the Defendants George Devine and W. J. Devine are not shown to have or claim any right, title or interest or any equity in said property.

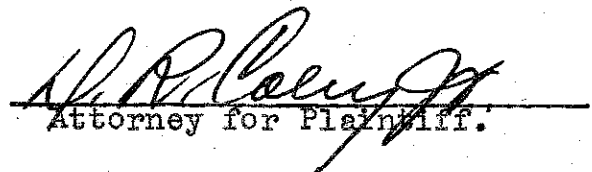
SEVENTH: Because it affirmatively appears from the petition of the said Defendants that the Plaintiff W. M. Kid-

well is the absolute owner of said property.

EIGHTH: Because the averment that the deed by H. C. and Ella V. Devine to the said Kidwell was in fact and intent a mortgage, and that the said Kidwell was not in reality or in interest a purchaser of said land, is the mere conclusion of the pleader.

NINTH: Because said motion is not verified by the affidavit of some person having knowledge of the facts as required by law.

TENTH: Because said petition does not set up or assert matter which would constitute an equitable defense to the action.


Attorney for Plaintiff.

3 **RECORDED**
AT LAW

IN THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA.

W. M. KIDWELL,
Plaintiff,

-vs-

GEORGE DEVINE, W. J. DE-
VINE, MRS. M. F. DEVINE
and C. P. DEVINE,
Defendants.

DEMURRERS

Filed Feb 28/1929
T. W. Peckham
Deok

D. R. COLEY, JR.
ATTORNEY FOR PLAINTIFF.

W. M. KIDWELL,
Plaintiff,

vs.

GEORGE DEVINE, W. J.
DEVINE, MRS. M. F. DEVINE
and C. P. DEVINE,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

No. _____

AT LAW

Come the defendants in the above styled cause
and demur to the complaint, and to each count thereof severally
and separately upon the following several and separate grounds:

1.

It does not appear that this Court has any jurisdiction
over the lands sued for.

2.

It does not appear whether the lands sued for are
situate in Baldwin County or some other County.

3.

It does not appear from the facts alleged whether
the lands sued for are situate in the State of Alabama or some
other State.

Gordon G. Livingston & Son
ATTORNEYS FOR DEFENDANTS

W. M. KIDWELL,
Plaintiff,

vs.

GEORGE DEVINE, W. J. DEVINE,
MRS. M. F. DEVINE and C. P.
DEVINE,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

Come the defendants in the above styled cause
and for plea to the complaint as amended, and each count
thereof, severally and separately, says:

NOT GUILTY.

Gordon Edmondson Leuz
ATTORNEYS FOR DEFENDANTS.

W. M. KIDWELL,
Plaintiff,

vs-

GEORGE DEVINE, W. J. DEVINE,
MRS. M. F. DEVINE and C. P.
DEVINE,
Defendants.

AT LAW

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Comes the Complainant and by leave of the Court
first had and obtained, amends the first and second paragraphs
of his bill of complaint to read as follows:

1: The plaintiff sues to recover possession of
the following tract of land:

The East Half of the West Half of the Northwest
Quarter of Section Twenty-four, Township Five South
of Range Three East, Baldwin County, Alabama,

of which he was in possession and upon which, pending such pos-
session and before the commencement of this suit, Defendants en-
tered and unlawfully withheld, together with, to-wit, One Thous-
and Dollars for the detention thereof.

2: Plaintiff sues to recover possession of the fol-
lowing tract of land:

The East Half of the West Half of the Northwest
Quarter of Section Twenty-four, Township Five South
of Range Three East, Baldwin County, Alabama,

to which Plaintiff has the legal title and Defendants entered
thereon and unlawfully withheld, together with, to-wit, One
Thousand Dollars damages for the detention.

Richards and Coe
Attorneys for Plaintiff.

We hereby acknowledge receipt of a copy of the foregoing
amendment this 17th day of October, 1928.

Go. M. Edinger & Sons
Attorneys for Defendants.

W. M. KIDWELL,
Plaintiff,

-VS-

GEORGE DEVINE, W. J. DEVINE,
MRS. M. F. DEVINE and C. P.
DEVINE,
Defendants.

AT LAW

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

1: The Plaintiff sues to recover possession of the following tract of land:

The East Half of the West Half of the Northwest Quarter of Section Twenty-four, Township Five South of Range Three East,

of which he was in possession and upon which, pending such possession and before the commencement of this suit, Defendants entered and unlawfully withhold, together with, to-wit, One Thousand Dollars for the detention thereof.

2: Plaintiff sues to recover possession of the following tract of land:

The East Half of the West Half of the Northwest Quarter of Section Twenty-four, Township Five South of Range Three East,

to which Plaintiff has the legal title and Defendants entered thereon and unlawfully withhold, together with, to-wit, One Thousand Dollars damages for the detention.

Richard & Coley
M. L. Luman
Attorneys for Plaintiff.

The State of Alabama,
Baldwin County

No. _____ CIRCUIT COURT.
Bay Minette Ala. Jan. 27th 1928

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon **George Devine, W.J. Devine,**
Mrs. M.F. Devine and C.P. Devine,

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

W.M. Kidwell,

Witness my hand this 27th day of January 1928

T.W. Richardson Clerk.

Complaint

vs.

Plaintiff.

Defendant.

The plaintiff claims of the defendant the sum of

Dollars.

Plaintiff's Attorney

Original 1st

No. **RECORDED**

The State of Alabama,

Baldwin County

CIRCUIT COURT

W.M. Kidwell,

Plaintiffs.

VS.

George Devine, W.J. Devine,

Mrs. M.F. Devine and G.P. Devine.

Defendants,

SUMMONS AND COMPLAINT

Filed January 26th

1928

Clerk.

Defendant lives at

Near Robertsdale.

Rickarby, ~~Esda~~ & Coley.

, Plaintiff's Attorney,

, Defendant's Attorney.

Received in Office

January 26th

1928

Sheriff.

I have executed this Writ

This 27th of February, 1928
by leaving a copy of the within summons and
complaint with

George Devine
Dr. J. Devine
Mrs. M.F. Devine
C. P. Devine

Sheriff.

Deputy Sheriff.

Moore Printing Co. Bay Minette, Ala.

Filed Jan 27/428.
T. H. Biegmore
Dist

1 1/2 **RECORDED**
AT LAW

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

W. M. KIDWELL,
Plaintiff,

-VS-

GEORGE DEVINE, et al,
Defendants.

*Filed Oct 18th/1928,
T. W. Richardson
Clerk*

*Amendment to
Complaint*

RICKARBY & COLEY,
ATTORNEYS FOR PLAINTIFF.

RECORDED

2

J. M. Kidwell

George Devine
A-2

Pled

Filed Oct 19th 1928
J. W. Pimm
clerk

RECORDED

2/2

W. M. Stedwell
my

George De Vries
et

Stemmer &
Comptant

Filed Mar 1st
1928.

T. W. Nicolson
Clerk

Gordon, Edington Lantz
Attys for defendant

MARY F. DEVINE, et al,
Complainants.

VS.

W. M. KIDWELL, et al,
Respondents.

)
) IN THE CIRCUIT COURT
) EQUITY SIDE
) STATE OF ALABAMA
) BALDWIN COUNTY
)

DEMURRER TO ORIGINAL BILL OF COMPLAINT.

Comes the Respondent, Peoples Fertilizer Company, and demurs to the Original Bill of Complaint in this cause filed and to each paragraph thereof, separately and severally, and for grounds of demurrer, assigns the following:

1. That there is no equity in said bill.

PEOPLES FERTILIZER COMPANY

By

W. M. Kidwell
As Its President.

As Respondent.

³
Remuner of Pro.
Herd. Co

Kevin, et. al
vs
Kidwell, et. al.

RECORDED

Filed 1/9/30

T. W. Rice
Register

The State of Alabama,
Baldwin County.

Circuit Court of Baldwin County, In Equity.

To any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon W.M.Kidwell, Ella V. Devine,
H.C.Devine and Peoples Fertilizer Company, a corporation

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
Mary F. Devine, and C.P. Devine

against said

W.M.Kidwell, Ella V. Devine, H.C.Devine and Peoples Fertilizer
Company, a corporation,

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 12th day of

Dec 192 9

T.W. Richerson Register.

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

Mary F. Devine et al.,
Complainants

Vs.

Wm. Kidwell et al.,
Respondents

EQUITY
IN THE CIRCUIT COURT
of
BALDWIN COUNTY, AAA.

Comes the respondent Wm. Kidwell

and demurs to the bill of complaint filed in this cause, and each and every paragraph thereof, and for grounds of demurrer says:

1- There is no equity in the bill.

2- Because said bill does not sufficiently set out the contract by Ella V. and H. C. Devine to reconvey the lands involved to the Complainants.

3- Because said bill fails to allege that complainants have complied with the conditions of said contract to reconvey.

4- Because said bill fails to allege that complainants are able, ready and willing to comply with the terms of said contract.

5- Because said bill fail to allege that respondents Ella V. And H. C. Devine have failed or refused to comply with the terms of said contract.

6- Because it affirmatively appears from said bill that the complainants have been guilty of laches and that respondent Kidwell has suffered thereby.

7- Because the allegation that the contract to reconvey referred to in paragraph 9 of the bill was fraudulently altered is a conclusion of the pleader.

8- Because it does not appear that respondent Kidwell was a party to any fraud practised upon complainants.

9- Because it does not appear that any of the parties respondent committed fraud against the complainants.

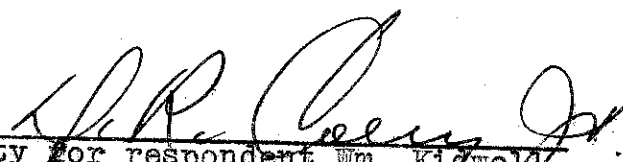
10- Because it does not appear that respondent Kidwell had any notice actual or constructive of any equity in the complainants at the time of Ella V. and H. C. Devine to him.

11- Because the bill fails to show such possession on the part of complainants as would put respondent Kidwell on notice of any equities claimed by them.

12- Because it does not appear that the trust alleged to have been reserved in deed of complainants to Ella V. Devine was in writing.

13- Because the allegation that respondent Kidwell is not a bona fide purchaser for value is a conclusion of the pleader.

14- Because said bill fails to show that upon discovery^{by complainants} of the alteration of the contract to reconvey referred to in paragraph 9, that they called upon Ella V. and H. C. Devine to correct said contract nor does it set out any reason or excuse for their failure to do so.


Atty for respondent Wm. Kidwell

4
~~SECRET~~
EQUITY

IN THE CIRCUIT COURT

OF

BALDWIN CO., ALA.

RECORDED

Mary F. Devine et al.,

Vs.

Wm. Kidwell et al.

Demurrers to comp.

by Wm. Kidwell.

*Filed 2/4-1932
T. C. McNamee
Register*

2 Original

RECORDED

THE STATE OF ALABAMA,
BALDWIN COUNTY.

SERVE ON _____
Circuit Court of Baldwin County
In Equity.

No. _____

SUMMONS

Mary F. Devine, C.P. Devine

vs.

W.M. Kidwell, Ella V. Devine,

H.C. Devine and Peoples Fertilizer

Company.

Thos W. Gilmer

Solicitor for Complainant

Received in office this 12

day of Dec 1929

C. Devine
Sheriff.

Executed this 16 day of

Dec 1929

by leaving a copy of the within Summons with

W.M. Kidwell, H.C. Devine, Ella V. Devine
and J.M. Steward, President of of
The Peoples Fertilizer Co.
Defendant.

Sheriff.

By W.H. McMillen
Deputy Sheriff.

served on Kidwell
12/16

Recorded in Vol. _____ Page _____