

871

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

Comes Neal Havard and humbly complaining against the P. D.
Beville Supply Company, a corporation, and P. D. Beville, respect-
fully shows unto your Honor as follows:

FIRST:

That your Complainant is over the age of twenty-one years
and a resident of Baldwin County, Alabama; that the P. D. Beville
Supply Company is a corporation organized under the laws of the
State of Alabama, with its principal place of business at Mobile,
Alabama, that P. D. Beville is over the age of twenty-one years
and a resident of Mobile, Alabama.

SECOND:

That a few days prior to December 26th, 1928, your Com-
plainant entered into negotiations with the P. D. Beville Supple
Company for the purchase by this Complainant from the P. D. Beville
Supple Company of a Studebaker sedan for and at the sum of six
Hundred Fifty Dollars, to be paid One Hundred Dollars in cash and
One Hundred Fifty Dollars by the delivery to them of a Ford car at
an agreed valuation of One Hundred Fifty Dollars, the balance to be
paid in two equal installments, one July 5, 1929, and the other
September 15, 1929, the same to be evidenced by promissory notes
secured by a mortgage on Lot No. fourteen, in Havard's Addition to
Perdido, as per map recorded in the office of the Probate Judge of
Baldwin County, Alabama, which said sale was to be consummated when
the said P. D. Beville Supply Company should put the said Studebaker
automobile in good state of repair and particularly when it should
overhaul the motor, fix the speedometer, install a universal joint and
fix the starter; that on December 25th, 1929, pending such negotiation
this Complainant, at the request of the said P. D. Beville Supply Com-

pany, went to the office of J. A. Ertzinger and Son at Bay Minette, Alabama, to sign a purported mortgage, a copy of which is hereto attached, marked exhibit "A" and made a part of this bill of complaint, and did sign the same and leave the same with said J. A. Ertzinger and Son of Bay Minette, Alabama, who was then and there acting for and as the agent of the said P. D. Beville Supply Company, with instructions to them that when the sale was consummated the wife of the complainant, Sallie L. Havard, would sign the same and this Complainant and the said Sallie L. Havard would then give instructions as to the delivery of the same; that on December 26, 1928, this Complainant did receive from the said P. D. Beville Supply Company the aforesaid Studebaker automobile on trial and did deliver to them the said Ford of the value of One Hundred Fifty Dollars and did turn over to them One Hundred Dollars in cash, and that the said P. D. Beville Supply Company did then and there agree that it would put the said car in good mechanical condition by overhauling the motor, putting in a new universal joint, by repairing the speedometer and by repairing the starter, but that the purchase of the said automobile was and should not be consummated until the said P. D. Beville Supply Company should repair the said automobile as aforesaid, where upon this Complainant's said wife should sign the said mortgage and the said notes and should then and not until then be a valid and binding instrument and be delivered to the said P. D. Beville Supply Company; that a few days after December 26, 1928, on to-wit: January 2, 1929, this Complainant did return the car to the said P. D. Beville Supply Company for the aforesaid repairs; that they claim not to have had time to make the said repairs on that day but asked this complainant to keep the car on trial and return it to them a few days later, and that a few days later, on to-wit: January 10, 1929, this Complainant did return the said car to the said P. D. Beville Supply Company for the said repairs, and the said P. D. Beville

Supply Company did then and there refuse to make the said repairs, whereupon this Complainant offered to return the said car to them and demanded the return of his said Ford Car and the said One Hundred Dollars in cash, that the said P. D. Beville Supply Company refused to receive the same and refused to return to this Complainant the said Ford and the said cash paid by this Complainant to them; that this Complainant has ever been able, ready and willing to return the said car to plaintiff, and on to-wit, in June, 1929, did again offer to return the said car to the said P. D. Beville Supply Company and the said P. D. Beville Supply Company did refuse to receive the same and did refuse to return this Complainant's car and the said cash; that this Complainant has always been and is now able and willing to return the same; that the aforesaid purchase of the said automobile was never consummated; that sometime thereafter on to-wit, July 3, 1929, the said J. A. Ertzinger and Son, without authority and contrary to the instructions of this Complainant and to the instructions of the said Sallie L. Havard who had refused to sign the said mortgage, delivered the same to the said P. D. Beville Supply Company, or did place the same of record and that the said P. D. Beville Supply Company is now unlawfully claiming that the said mortgage is a valid mortgage against the said property and it did on December 16, 1929, attempt to foreclose the said paper and hold a sale and offer said property for sale under the terms of the said paper, and at such sale P. D. Beville purchased said property, but that the said P. D. Beville Supply Company is not the owner of the said mortgage, that the said mortgage is void in that there is no consideration for the same and that the said mortgage was never delivered and the same is wholly void and of no effect and the said mortgage and said sale constitute a cloud on Complainant's title to the said property; that this

defendant did at such sale give public notice to all bidders before such sale that said mortgage was never delivered, that there was no debt owing thereunder, that the same was void and that suit would be filed to set aside such sale and the purchase of said property by said P. D. Beville was with knowledge of such facts, that said P. D. Beville is demanding possession of the said property.

The said P. D. Beville Supply Company is also claiming that the notes described in the said mortgage are valid outstanding notes evidencing a debt against this Complainant and has filed a suit in the Circuit Court of Baldwin County, Alabama, against this Complainant on the same, that the said notes are without consideration and the same were never delivered, and they are void and of no effect as against this Complainant, and if a judgment should be rendered thereon in favor of the said P. D. Beville Supply Company against this Complainant irreparable injury would be done to him and to his credit and his property would be subject to such judgment.

Wherefore this Complainant prays that this Honorable Court take jurisdiction of the cause made by this bill of complaint and the said P. D. Beville Supply Company, a corporation, be made a party defendant hereto and be required to plead, answer or demur within the time and under the usual penalties prescribed by law and the practice of this Honorable Court.

Complainant further prays that this Court issue a writ of injunction to the said P. D. Beville Supply Company enjoining it from further prosecuting the aforesaid suit on the Law Side of the said Court on the said notes, and enjoining the said P. D. Beville from selling or otherwise disposing of said property, and enjoining him from taking possession of said property, and that upon a final hearing of the cause made by this bill of complaint this Court will make and enter an order adjudging and decreeing that the

said mortgage and the said notes are void and requiring the said P. D. Beville Supply Company to surrender up and cancel the same and requiring the said P. D. Beville Supply Company to return to this Complainant the aforesaid Ford Car delivered by this Complainant to it, or to account to this Complainant for the value thereof, together with interest thereon, and that the said P. D. Beville Supply Company be required to repay to this Complainant the aforesaid sum of One Hundred Dollars delivered by this Complainant to the said Defendant as aforesaid, together with interest thereon, and that the said sale and said deed issued thereunder is void and requiring the said P. D. Beville to reconvey said property to this defendant, or if this Court shall ascertain that the said mortgage and deed are valid then this Court ascertain what this Complainant ought to pay upon redemption thereof and this Complainant be allowed to redeem the said lands from said sale, and that this Complainant have and receive such other, further or different relief as in equity shall to the Court be found to be meet and proper in the premises, and this Complainant does place himself within full and complete jurisdiction of this Court and offer to do and perform whatsoever this Court shall require of him.

Bebe Hall

ATTORNEYS FOR COMPLAINANT.

FOOT-NOTE:

The Defendant is required to answer every allegation of this bill of Complaint in paragraphs first to third, both inclusive, but not under oath. Oath being hereby expressly waived.

Bebe Hall

ATTORNEYS FOR COMPLAINANT.

NEAL HAVARD,
Complainant,

vs

P. D. BEVILLE SUPPLY COMPANY,
A Corporation, and P. D. BEVILLE,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Comes the Complainant in the above styled cause and demurs to the Defendants' cross bill and as grounds of demurrer says:

FIRST:

That there is no equity in the cross-bill.

Becke + Hall
Attorneys for the Complainant.

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 Neal Havard

Baldwin
of _____ 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~~ ^{Bill} of Complaint lately exhibited by
P.D.Beville Supply Company, a corporation, and P.D.Beville,

against said Neal Havard,

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 6th day of
February 1939

T. W. Richerson Register

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

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

Comes Neal Havard and humbly complaining against the P. D.
Beville Supply Company, a corporation, and P. D. Beville, respect-
fully shows unto your Honor as follows:

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That your Complainant is over the age of twenty-one years
and a resident of Baldwin County, Alabama; that the P. D. Beville
Supply Company is a corporation organized under the laws of the
State of Alabama, with its principal place of business at Mobile,
Alabama, that P. D. Beville is over the age of twenty-one years
and a resident of Mobile, Alabama.

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That a few days prior to December 26th, 1928, your Com-
plainant entered into negotiations with the P. D. Beville Supple
Company for the purchase by this Complainant from the P. D. Beville
Supple Company of a Studebaker sedan for and at the sum of six
Hundred Fifty Dollars, to be paid One Hundred Dollars in cash and
One Hundred Fifty Dollars by the delivery to them of a Ford car at
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paid in two equal installments, one July 5, 1929, and the other
September 15, 1929, the same to be evidenced by promissory notes
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Perdido, as per map recorded in the office of the Probate Judge of
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overhaul the motor, fix the speedometer, install a universal joint and
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pany, went to the office of J. A. Ertzinger and Son at Bay Minette, Alabama, to sign a purported mortgage, a copy of which is hereto attached, marked exhibit "A" and made a part of this bill of complaint, and did sign the same and leave the same with said J. A. Ertzinger and Son of Bay Minette, Alabama, who was then and there acting for and as the agent of the said P. D. Beville Supply Company, with instructions to them that when the sale was consummated the wife of the complainant, Sallie L. Havard, would sign the same and this Complainant and the said Sallie L. Havard would then give instructions as to the delivery of the same; that on December 26, 1928, this Complainant did receive from the said P. D. Beville Supply Company the aforesaid Studebaker automobile on trial and did deliver to them the said Ford of the value of One Hundred Fifty Dollars and did turn over to them One Hundred Dollars in cash, and that the said P. D. Beville Supply Company did then and there agree that it would put the said car in good mechanical condition by overhauling the motor, putting in a new universal joint, by repairing the speedometer and by repairing the starter, but that the purchase of the said automobile was and should not be consummated until the said P. D. Beville Supply Company should repair the said automobile as aforesaid, where upon this Complainant's said wife should sign the said mortgage and the said notes and should then and not until then be a valid and binding instrument and be delivered to the said P. D. Beville Supply Company; that a few days after December 26, 1928, on to-wit: January 2, 1929, this Complainant did return the car to the said P. D. Beville Supply Company for the aforesaid repairs; that they claim not to have had time to make the said repairs on that day but asked this complainant to keep the car on trial and return it to them a few days later, and that a few days later, on to-wit: January 10, 1929, this Complainant did return the said car to the said P. D. Beville Supply Company for the said repairs, and the said P. D. Beville

Supply Company did then and there refuse to make the said repairs, whereupon this Complainant offered to return the said car to them and demanded the return of his said Ford Car and the said One Hundred Dollars in cash, that the said P. D. Beville Supply Company refused to receive the same and refused to return to this Complainant the said Ford and the said cash paid by this Complainant to them; that this Complainant has ever been able, ready and willing to return the said car to plaintiff, and on to-wit, in June, 1929, did again offer to return the said car to the said P. D. Beville Supply Company and the said P. D. Beville Supply Company did refuse to receive the same and did refuse to return this Complainant's car and the said cash; that this Complainant has always been and is now able and willing to return the same; that the aforesaid purchase of the said automobile was never consummated; that sometime thereafter on to-wit, July 3, 1929, the said J. A. Ertzinger and Son, without authority and contrary to the instructions of this Complainant and to the instructions of the said Sallie L. Havard who had refused to sign the said mortgage, delivered the same to the said P. D. Beville Supply Company, or did place the same of record and that the said P. D. Beville Supply Company is now unlawfully claiming that the said mortgage is a valid mortgage against the said property and it did on December 16, 1929, attempt to foreclose the said paper and hold a sale and offer said property for sale under the terms of the said paper, and at such sale P. D. Beville purchased said property, but that the said P. D. Beville Supply Company is not the owner of the said mortgage, that the said mortgage is void in that there is no consideration for the same and that the said mortgage was never delivered and the same is wholly void and of no effect and the said mortgage and said sale constitute a cloud on Complainant's title to the said property; that this

defendant did at such sale give public notice to all bidders before such sale that said mortgage was never delivered, that there was no debt owing thereunder, that the same was void and that suit would be filed to set aside such sale and the purchase of said property by said P. D. Beville was with knowledge of such facts, that said P. D. Beville is demanding possession of the said property.

The said P. D. Beville Supply Company is also claiming that the notes described in the said mortgage are valid outstanding notes evidencing a debt against this Complainant and has filed a suit in the Circuit Court of Baldwin County, Alabama, against this Complainant on the same, that the said notes are without consideration and the same were never delivered, and they are void and of no effect as against this Complainant, and if a judgment should be rendered thereon in favor of the said P. D. Beville Supply Company against this Complainant irreparable injury would be done to him and to his credit and his property would be subject to such judgment.

Wherefore this Complainant prays that this Honorable Court take jurisdiction of the cause made by this bill of complaint and the said P. D. Beville Supply Company, a corporation, be made a party defendant hereto and be required to plead, answer or demur within the time and under the usual penalties prescribed by law and the practice of this Honorable Court.

Complainant further prays that this Court issue a writ of injunction to the said P. D. Beville Supply Company enjoining it from further prosecuting the aforesaid suit on the law Side of the said Court on the said notes, and enjoining the said P. D. Beville from selling or otherwise disposing of said property, and enjoining him from taking possession of said property, and that upon a final hearing of the cause made by this bill of complaint this Court will make and enter an order adjudging and decreeing that the

said mortgage and the said notes are void and requiring the said P. D. Beville Supply Company to surrender up and cancel the same and requiring the said P. D. Beville Supply Company to return to this Complainant the aforesaid Ford Car delivered by this Complainant to it, or to account to this Complainant for the value thereof, together with interest thereon, and that the said P. D. Beville Supply Company be required to repay to this Complainant the aforesaid sum of One Hundred Dollars delivered by this Complainant to the said Defendant as aforesaid, together with interest thereon, and that the said sale and said deed issued thereunder is void and requiring the said P. D. Beville to reconvey said property to this defendant, or if this Court shall ascertain that the said mortgage and deed are valid then this Court ascertain what this Complainant ought to pay upon redemption thereof and this Complainant be allowed to redeem the said lands from said sale, and that this Complainant have and receive such other, further or different relief as in equity shall to the Court be found to be meet and proper in the premises, and this Complainant does place himself within full and complete jurisdiction of this Court and offer to do and perform whatsoever this Court shall require of him.


ATTORNEYS FOR COMPLAINANT.

FOOT-NOTE:

The Defendant is required to answer every allegation of this bill of Complaint in paragraphs first to third, both inclusive, but not under oath, oath being hereby expressly waived.


ATTORNEYS FOR COMPLAINANT.

2 Original

SERVE ON _____
Circuit Court of Baldwin County
In Equity

RECORDED
No. _____

SUMMONS

Neal Havard

vs.

P.D. Beville Supply Co.
a corporation and
P.D. Beville.

*Serve Copy on
Beebe & Hall*

Beebe & Hall
Solicitor for Complainant

Gaillard, Mahoner & Gaillard

Recorded in Vol _____ Page _____

THE STATE OF ALABAMA,
BALDWIN COUNTY

Received in office this *February 6th*
day of *February* 19*13*
C. Drvin
S. Sheriff.

Executed this _____ day of _____
19____
by leaving a copy of the within Summons with

Defendant.

Sheriff.

By _____
Deputy Sheriff.

[Faint vertical text on the right side of the page, possibly bleed-through or a stamp.]

LAW OFFICES OF
MAHORNER & MAHORNER
1101-6 MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA

MATTHIAS MAHORNER
BERNARD T. MAHORNER

April 27, 1931.

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

Dear Sir:

Please submit to the Judge for his ruling, the demurrers of the Cross-Defendant to the Cross-Bill. I am enclosing our brief against the demurrers, and sending a copy of this letter and our brief to Messrs. Beebe & Hall.

I thought the demurrers were submitted some months ago.

Very truly yours,

Matthias Mahorner
per M M

M:G

NEAL HAVARD,

Complainant,

vs.

P. D. BEVILLE SUPPLY
CO., a corporation,
et al.

Defendants.

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

BRIEF OF SOLICITORS FOR CROSS-COMPLAINANTS ON
SUBMISSION OF DEMURRER TO CROSS-BILL

Under Section 6553 a general demurrer tests only defects in substance and all proper amendments are considered to have been made.

Whitman vs. Faber, 203 Ala. 496.

The matters in which the cross-defendant seeks relief clearly grew out of, and are directly connected with, the issues raised by the original bill in this case, and therefore the Cross-Bill is certainly not without equity.

Code, 1923, § 6550

The Cross-Bill properly invokes the well recognized principle of equity to completely ascertain and determine in a single proceeding all the rights and interests of the parties growing out of the same subject matter over which equity has assumed jurisdiction.

Metcalf vs. Griffith, 202, Ala. 629.

King vs. Livingston Mfg. Co. 180 Ala. 118.

Respectfully submitted,

Mahomer & Gaillard
Solicitors for Cross-Complain-
ments, Succeeding Gaillard,
Mahomer & Gaillard.

NEAL HAVARD,

Complainant,

vs.

P. D. BEVILLE SUPPLY
COMPANY, a corporation,
and P. D. BEVILLE,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

BRIEF OF SOLICITORS FOR COMPLAINANT.

This cause is submitted on Demurrer to the Answer and Cross Bill.

Complainant's original bill alleges that the notes sued on in the law court were procured through the fraudulent representation as to the condition of an automobile, and that the mortgage securing the same was never fully executed and neither the mortgage nor notes were ever delivered by this complainant or anyone authorized by him to the defendant. The Cross Bill does not deny the allegations of the fraudulent representation or of the representation as to a total failure of consideration, nor does it allege that the notes and mortgage were ever delivered to the defendant by anyone authorized by this complainant to deliver the same, and both are therefore void and should be surrendered and cancelled. We do not think it necessary to cite to your Honor authorities sustaining this position. that the Cross Bill does not contain equity.

Beebe Hall

Solicitors for Complainant.

Neal Havard,
Complainant
vs
P. D. Beville Supply Company,
a corporation,
and
P. D. Beville,
Defendants

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

TO THE HONORABLE F. W. HARE, JUDGE OF SAID COURT:

Come P. D. Beville Supply Company, a corporation, and P. D. Beville and for answer to the original bill of complaint in the above named cause and as cross-complainants saith:

FIRST:

Defendants and cross-complainants admit the truth of the averments contained in the first paragraph of said original bill of complaint.

SECOND:

In answer to the second paragraph and as cross-allegations for affirmative relief hereinafter prayed for, defendants and cross-complainants allege that on to-wit; the 26th day of December, 1928, the complainant entered into a written contract with the said P. D. Beville Supply Company to purchase from it a second-hand automobile, described as a Studebaker Sedan, Motor No. 1344316, for the sum of \$650.00; that \$100.00 of said consideration was paid in cash at the time of the execution of said contract, and \$150.00 of said consideration was paid by delivery by complainant to the said P. D. Beville Supply Company of a second-hand Ford automobile at the agreed price of \$150.00, the balance of said total consideration, including interest, was represented by two promissory notes of even date with said contract, each for the sum of \$211.97, executed by said complainant and payable to the said P. D. Beville Supply Company, respectively, on July 15, 1929, and September 15, 1929, said contract providing that said notes were to be secured by a first mortgage on real estate, and defendants and cross-complainants

admit that it was understood ~~xxxx~~ at the time of the execution of said contract, that said real estate so to be mortgaged was Lot No. 14 in Havard's Addition to Perdido, as per map recorded in the office of the Probate Judge of Baldwin County, Alabama.

Defendants and cross-complainants attach to this their answer and cross-bill, as a part hereof, a true and correct copy of said contract and said notes, marked Exhibit "A".

Defendants and cross-complainants respectfully submit that in view of the fact that the contract between complainant and the said P. D. Beville Supply Company involved in this cause is in writing, that any alleged negotiations between said parties, leading up to the execution of said contract, cannot properly be made an issue in this cause, and defendants and cross-complainants decline, unless so ordered by this Honorable Court, to raise an issue as to said preliminary negotiations by either admitting or denying the same.

Defendants and cross-complainants deny that the sale of said automobile to complainant was to be consummated when the said P. D. Beville Supply Company should put the said Studebaker automobile in good state of repair and do other things thereto, as alleged in the second paragraph of said bill of complaint. On the contrary, defendants and cross-complainants allege that the contract for the purchase of said automobile was executed and consummated on the date thereof and was, as it purports to be, a complete agreement and contract between the parties thereto pertaining to the sale and purchase of said Studebaker automobile, and defendants and cross-complainants respectfully submit that the various issues sought to be raised by the original bill of complaint as to the condition of the Studebaker Sedan and promises of the said P. D. Beville Supply Company to do certain things towards the repairing thereof, could only be determined by parol testimony or extraneous evidence to vary the terms of a written contract and defendants and cross-complainants decline to plead to said allegations as ~~xxx~~ matters outside of said

written contract, unless ordered to do so by this Honorable Court, because of their immateriality and irrelevancy to the issues involved in this cause.

Defendants and cross-complainants haven't before them the copy of the mortgage from the complainant, Neal Havard, to P. D. Beville Supply Company used as an Exhibit to the original bill of complaint, and do not know whether said copy is a true and correct copy of said mortgage or not, but they attach hereto as a part hereof, as Exhibit "B", a true and correct copy of said original mortgage and allege that the same was given pursuant to the provisions of the contract hereto attached as Exhibit "A", and that it was prepared at the time of the execution of said contract and left with J. A. Ertzinger & Son for its execution by the said complainant and his wife, Sallie L. Havard, but defendants and cross-complainants allege and admit that they have no contract whereby the said Sallie L. Havard was required to execute said mortgage, but that the said complainant volunteered to have her sign the same for the conveyance of her dower interest, if it was left with the said J. A. Ertzinger & Son for that purpose, and defendants and cross-complainants deny that said mortgage was to be held undelivered, as far as the said Neal Havard was concerned, until the said Sallie L. Havard might execute the same, but that on the contrary, the said complainant agreed in writing, as a part of the consideration of the contract referred to in the second paragraph of this answer and cross-bill, to execute and deliver to the said P. D. Beville Supply Company said mortgage, and defendants and cross-complainants deny that the said mortgage was never delivered,-- on the contrary, they allege that the complainant voluntarily, pursuant to his said agreement, executed and acknowledged said mortgage in due form before Herbert R. Weston, a Notary Public of Baldwin County, Alabama, without any reservations as to delivery. Defendants and cross-complainants admit that the complainant failed to have his wife execute said mortgage as promised, but as far as complainant was concerned, said mortgage was executed and delivered, as agreed, and in any event defendants and cross-complainants respectfully submit that the execution and delivery of said mortgage was a compliance with the

well recognized maxim that "equity considers that as done, which ought to have been done."

THIRD:

Defendants and cross-complainants admit that said mortgagee, P. D. Beville Supply Company, did on the 16th day of December, 1929, pursuant to notice by publication, as required by the terms of said mortgage, foreclose the same by public sale in front of the courthouse in Baldwin County, Alabama; that at said sale the said P. D. Beville became the purchaser of said property; that there was a valid consideration for said mortgage as hereinbefore alleged. Defendants and cross-complainants admit that the said P. D. Beville on the 3rd day of January, 1930, demanded possession in writing from the said Neal Havard of the property described in said mortgage and foreclosure deed made pursuant to the foreclosure thereof and that the said Neal Havard has refused to deliver the possession of said property within the ten days required, pursuant to the requirements of said notice, a copy of which said notice is hereto attached as Exhibit "C" and made a part of this bill of complaint.

FOURTH:

Defendants and cross-complainants admit that there is now pending on the law side of the Circuit Court of Baldwin County, Alabama, a suit by the said P. D. Beville Supply Company vs Neal Havard on the two promissory notes referred to in paragraph second herein. Defendants and cross-complainants deny that said notes are without consideration and void and of no effect as against the complainant. However, defendant and cross-complainant, P. D. Beville Supply Company, submits itself and the said law suit on said notes to the jurisdiction of the equity side of said Honorable Court for the determination of all legal and equitable rights involved in the premises.

PRAYER FOR PROCESS:

Cross-complainants pray that your Honor will take jurisdiction of this their cross-bill against the complainant and cross-defendant, Neal Havard; that the State's subpoena be issued directed to him, requiring him to plead, answer or demur to this cross-bill

within the time required by the rules of practice of this Honorable Court.

PRAYER FOR RELIEF:

Defendants and cross-complainants further pray that the case now pending on the law side of this Honorable Court by the said P. D. Beville Supply Company against the said Neal Havard on the promissory notes referred to in the second paragraph hereof be merged with this cause and the issues therein involved be finally adjudicated and that upon a hearing of this cause your Honor will adjudge and decree that the mortgage of the said Neal Havard to the said P. D. Beville Supply Company, referred to in the second paragraph hereof, was properly executed and delivered to the said P. D. Beville Supply Company and that the foreclosure thereof and sale to the said P. D. Beville was in compliance with the terms and conditions of said mortgage; defendants and cross-complainants further pray that at the hearing of this cause, your Honor will order a reference to determine the amount due the defendant and cross-complainant, P. D. Beville Supply Company, under the aforesaid contract and notes and will render a decree and judgment for the balance due thereunder to the said P.D. Beville Supply Company; and defendants and cross-complainants pray for such other and further relief as in equity and good conscience they may be entitled to in the premises.

And as in duty bound will ever pray etc.

Yusuf M. Mahommed Yusuf
Solicitors for Defendants and Cross-Complainants.

FOOT NOTE:

The cross-defendant, Neal Havard, is required to answer every allegation of the foregoing cross-bill of complaint, but answer under oath is hereby expressly waived.

Yusuf M. Mahommed Yusuf
Solicitors for Defendants and Cross-Complainants.

STATE OF ALABAMA }
 County of Mobile }

Mobile, Ala., Dec. 26, 1928 19

THIS AGREEMENT, made and entered into on this 26th day
 of December, 1928, by and between P. D. BEVILLE SUPPLY COMPANY,
 of Mobile, Ala., hereinafter called the seller, and Neal Havard
 Perdido, Ala. hereinafter called the purchaser, WITNESSETH:

The purchaser has received the following articles from the seller:—

Studebaker Sedan		\$650.00
Serial	By Ford	\$150.00
Motor 1344316	Cash	100.00
		<u>250.00</u>
		400.00
	Int.	23.94
		<u>423.94</u>

The purchaser agrees to pay therefor the amount hereinafter described, and also as a part of the purchase price agrees to carry insurance for the benefit of the seller as hereinafter provided, to-wit: The sum of \$_____ of which \$_____ has been paid in cash the receipt of which is hereby acknowledged, \$_____ allowance on _____ automobile which the purchaser certifies to be free from all incumbrances whatsoever; and the balance of said purchase price, \$_____ the purchaser hereby agrees to pay in installments as follows:

One note of \$211.97 due and payable on the 15th day of July and one note of \$211.97 due and payable on the 15th day of Sept. 1929.

Insurance to be paid Co. by Mr. Havard
 The policy to be payable to P. D. Beville Supply Company.
 Balance to also be secured by 1st mortgage on real estate.
 Balance is \$423.94

each installment evidenced by a promissory note for the amount of said installment bearing date herewith, and due and payable as above set out, and the purchaser, as above stated, further expressly agrees as a part of the purchase price of the said articles to keep said articles insured, loss, if any, payable to the seller, against fire in a solvent insurance company approved by the seller in the sum of \$_____ and carry liability insurance against all kinds of liability, collision and theft, in the sum of \$_____ in a solvent insurance company, for the protection of the seller, loss, if any, payable to the seller, and the purchaser further agrees to pay all premiums on said insurance promptly as the same become due.

The purchaser further agrees not to remove the above described property from _____ Mobile _____ without the written consent of the seller.

The failure to pay any one of said notes, at the option of the seller, shall make all indebtedness herein assumed by the purchaser immediately due and payable. The purchaser also agrees in the event that he, the purchaser, fails or neglects to take out insurance as herein agreed, the seller may do so for the account of the purchaser, and all premiums for said insurance shall be a part of the purchase price of said articles, the same as if included in one of said above set out purchase money notes; or the such failure to provide insurance as herein agreed at the option of the seller, shall be considered a default in the payment of an installment of the purchase price; shall make all of said installments due and payable, and upon failure to promptly pay all of said purchase price, the seller shall have the rights and remedies herein provided.

The purchaser further agrees that in the event that the notes above described, or any one of them, are not paid when due, or any premium for insurance remains unpaid after becoming due, or if he sells, or suffers the property to be attached, or any part thereof, mortgaged, injured, seized, or held for any lien, common law or statutory, or if he removes said property from _____ Mobile _____, without the written consent of the seller, he waives all right he may have to said property, and the said property and all money paid on account of the purchase price may be retained by the seller as rent for said property, and as payment for depreciation of said property, by reason of the use of the said property and the said articles may be immediately retaken by the seller.

It is expressly agreed and understood that the title of the above property shall remain absolutely in the seller until the full amount herein agreed upon shall be paid; that the purchaser agrees to pay in addition to the purchase price, above named all expenses and charges that may accrue or become necessary in the preservation of the title of the seller, and of the property itself, including a reasonable attorney's fees, should the seller employ an attorney in the premises.

As a part of the consideration hereof the purchaser further agrees that in the event he becomes indebted to the seller in any further sum for work and labor done, or supplies and material furnished for use upon said property, or in or incidental to the use or operation thereof; to pay said additional indebtedness promptly as the same becomes due, and in the event of a default in the payment of said indebtedness promptly as the same becomes due, the said default shall be considered as a default in the payment of an installment of the purchase price, and the seller shall have the same rights and remedies as he would have had there been a default in the payment of an installment of the purchase price.

In the event of the theft, loss or destruction of the above described property, from or by any cause whatsoever, the purchaser hereby agrees to be and remain liable for the full amount of herein mentioned indebtedness, evidenced by said notes; and nothin herein contained shall release the purchaser from making payment as herein agreed.

It is expressly agreed that when all stipulations of this contract with reference to the payments of the notes, evidencing the balance due on the purchase price, and premiums of insurance and otherwise, have been strictly complied with, the seller will relinquish any and all the title to the property, and the property shall become the absolute property of the purchaser.

The purchaser expressly agrees as part of the purchase price of said articles, to pay any taxes of any kind or character which may be levied by the United States upon the said articles or upon the sale of said articles or any Federal taxes of whatsoever nature that are required to be paid by the seller or the purchaser. The intent being, and it being expressly agreed, that the seller shall receive the sum of \$_____ net, as the purchase price of said articles. Any tax which the purchaser may be liable for under this agreement shall be payable upon demand of seller, and if not paid upon demand shall make all payments agreed to be made under this contract immediately due and payable, and shall vest in the seller the right to immediately retake said articles the same as if a purchase money note had matured and remained unpaid. In the event the articles are taken, then all previous payments shall be retained by the seller as rent for, and depreciation of said articles.

The purchaser further agrees that he will not transport in the article purchased any prohibited liquors, nor will he permit said article to be used in any manner in violation of the laws, particularly the prohibition laws of the State of Alabama. In the event that the purchaser violates this agreement all rights under this contract shall immediately terminate, and the seller will immediately re-take the said article the same as if a purchase money note had become due and remained unpaid.

Executed in duplicate on the day and year first herein above written.

WITNESSETH:—

P. D. BEVILLE SUPPLY COMPANY
 BY Regina Nolan Sec. Treas.
 Neal Havard

EXHIBIT "B"

KNOW ALL MEN BY THESE PRESENTS, That We, Neal Havard and Sallie L. Havard, his wife, hereinafter called mortgagors, in consideration of the sum of Four Hundred-twenty three 94/100 Dollars, to us in hand paid by P. D. Beville Supply Company hereinafter called mortgagee, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto said mortgagee its heirs and assigns forever, all the following described real estate situated in Baldwin County, Alabama, to-wit:

Lot Number Fourteen (14) in Havard's Addition to Perdido, as per map recorded in office of Probate Judge of Baldwin County, Alabama.

Together with all and singular the tenements, rights, privileges and appurtenances, to said described premises in anywise belonging, TO HAVE AND TO HOLD the same forever. PROVIDED ALWAYS, and these presents are upon the express condition that if the said mortgagors shall well and truly pay to the mortgagee \$423.94, as evidenced by two promissory notes of even date herewith as follows, one note for \$211.97 due July 15, 1929, and one note for \$211.97, due September 15, 1929, with interest from maturity at the rate of 8% per annum until paid. Failure to meet any note as it shall fall due will mature the entire indebtedness, and shall also discharge all the duties imposed upon said mortgagees by this mortgage, then these presents shall become void, otherwise to remain in full force.

In event of default in the payment at maturity of said mortgage debt, or any amount secured hereby, mortgagees are hereby authorized to sell said property, at auction, for cash, after giving notice by advertisement, once a week for three consecutive weeks, in any newspaper then published in Baldwin County, Alabama, to make proper conveyance to purchaser, and the proceeds of sale to apply first, to the payment of the costs of said sale, including a reasonable attorney's fee; second, to the payment of said mortgage debt and any sums herein provided for, the balance, if any, to be paid over to the said mortgage. Mortgagee may purchase said property at such a sale and, in that event the auctioneer conducting the sale is authorized in the name of the mortgagor, and as their attorney in fact, to make deed to mortgagee. Mortgagor agrees to pay such reasonable attorneys fees as may be incurred by the mortgagee, in the collection of said mortgage debt, or otherwise by reason of any default on the part mortgagor they also covenant that they are seized in fee simple of said property, that it is free from all encumbrances, that they will warrant the same to mortgagee, and to the purchaser thereof, against the lawful claims of all persons.

IN WITNESS WHEREOF, the said mortgagors have hereunto set their hand and seal this 28th day of December, 1928.

NEAL HAVARD (SEAL)

STATE OF ALABAMA,
COUNTY OF BALDWIN

I, Herbert R. Weston, a Notary Public in and for said County and State, hereby certify that Neal Havard, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the said conveyance he executed the same voluntarily on the day the same bears date. Given under my hand and official seal this 28th day of December, 1928.

..... Herbert R. Weston,
The State of Alabama . Notary Public, State of Alabama,
Baldwin County . Baldwin County. My commission
Probate Court. . expires July 16, 1931.

Filed in Office this 10th day of .
Sept., 1929, 8 A.M. and duly recorded.
in Mtg. Book No. 45, page 356, and I
certify that .75 license or privilege
tax paid as required by an Act of the
Legislature approved August 22, 1923.

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

EXHIBIT "C"

Mobile, Ala.
January 3, 1930.

Mr. Neal Havard,

Perdido, Ala.

Dear Sir:-

This is to notify you that I was the purchaser at the foreclosure sale by P. D. Beville Supply Company held on the 9th day of December, 1929, in front of the courthouse of Baldwin County, Alabama, of that certain property known at Lot No. 14 in Havard's Addition to Perdido, as per map recorded in the office of the Probate Judge of Baldwin County, Alabama, and you are hereby authorized to surrender the possession of said land to me within ten days from the receipt of this note, as required by Section 10,143 of the Code of Alabama, 1923.

P. D. BEVILLE,
BY-GAILLARD, MAHORN & GAILLARD,
HIS ATTORNEYS.

TWENTY-FIRST JUDICIAL CIRCUIT
OF ALABAMA
F. W. HARE, JUDGE
M. R. FARISH, COURT REPORTER
MONROEVILLE, ALABAMA

May 8th., 1931.

Mr. T. W. Richerson;-

Bay Minette, Ala.

Dear Mr. Richerson:- Neal Havard Vs. P. D. Beville, et als.

The submission in the above case seems to be on demurrer to cross bill, but no cross bill appears in the file. Neither is there any brief for cross-respondents.

There does not seem to be any regular submission in which cross-respondents join, but I presume same is by agreement, or that submission was regularly had at the last session of the Chancery Court and a delay made in forwarding me the papers.

Please call the attention of the respective solicitors to this situation.

Regards and best wishes,

Your friend,

F. W. Hare
order on Gaildox
2/4-80 Cud's not at same
9/24-30 Cud's

NEAL HAVARD,
Plaintiff,

vs.

P. D. BEVILLE SUPPLY COMPANY,
A Corporation, and P. D. Beville,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

NOTICE OF PENDING SUIT.

Notice is hereby given that the Complainant in the above styled cause has this day filed a suit in the Circuit Court of Baldwin County, Alabama, in Equity, alleging that that certain mortgage purporting to be executed by the Plaintiff to the Defendant, dated December 25, 1928, and recorded in the office of the Probate Judge of Baldwin County, Alabama, in Mortgage Book 45, page 356, is void, in that the said mortgage is not supported by any debt owing to the said Defendant by the said Plaintiff, and alleging that the attempted sale thereunder and purchase by P. D. Beville of the property therein described is void and of no effect, and praying that the said mortgage be surrendered and cancelled and that any deed executed thereunder be cancelled, and the said P. D. Beville be required to reconvey the said property, described as follows:

Lot No. fourteen, in Havard's Addition to Perdido, as per map recorded in the office of the Probate Judge of Baldwin County, Alabama.

WITNESS this the 7 day of January 1930.

Bebe Hall

ATTORNEY'S FOR NEAL HAVARD.

NEAL HAYARD,
Complainant,

vs

P. D. BEVILLE SUPPLY COMPANY,
A Corporation, and P. D. BEVILLE,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Comes the Complainant in the above styled cause and
demurs to the Defendants' cross bill and as grounds of demurrer
says:

FIRST:

That there is no equity in the cross-bill.

Beche & Hall
Attorneys for the Complainant.

FIRST NATIONAL BANK
MOBILE ALABAMA

No. 28677

Mobile, Ala., December 26, 1928 19

On Sept. 15, 1929

AFTER DATE, WITHOUT GRACE I PROMISE TO PAY TO THE ORDER OF

P. D. Beville Supply Company

\$ 211.97

Two Hundred Eleven and 97/100-----

DOLLARS

For Value Received, PAYABLE at the **FIRST NATIONAL BANK**
MOBILE ALABAMA

The Parties to this Instrument, whether Maker, Endorser, Surety, or Guarantor, each for himself, hereby severally agrees to pay this Note and waives as to this debt all right of exemption, under the Constitution and Laws of Alabama, or any other State, and they each severally agree to pay all costs of collecting, or securing, or attempting to collect or secure this Note, including a reasonable Attorney's fee, whether the same be collected or secured by suit or otherwise, and the Maker, Endorser, Surety or Guarantor of this Note severally waives Demand, Presentment, Protest, Notice of Protest, Suit and all other requirements necessary to hold them.

Neal Havard

Due

Address Perdido, Ala.

Form No. 7

FIRST NATIONAL BANK
MOBILE ALABAMA

No. 28676

Mobile, Ala., Dec. 26, 1928 19

On July 15, 1929

AFTER DATE, WITHOUT GRACE I PROMISE TO PAY TO THE ORDER OF

P. D. BEVILLE SUPPLY COMPANY

\$ 211.97

Two Hundred and Eleven and 97/100-----

DOLLARS

For Value Received, PAYABLE at the **FIRST NATIONAL BANK**
MOBILE ALABAMA

The Parties to this Instrument, whether Maker, Endorser, Surety, or Guarantor, each for himself, hereby severally agrees to pay this Note and waives as to this debt all right of exemption, under the Constitution and Laws of Alabama, or any other State, and they each severally agree to pay all costs of collecting, or securing, or attempting to collect or secure this Note, including a reasonable Attorney's fee, whether the same be collected or secured by suit or otherwise, and the Maker, Endorser, Surety or Guarantor of this Note severally waives Demand, Presentment, Protest, Notice of Protest, Suit and all other requirements necessary to hold them.

Neal Havard

Due

Address Perdido, Ala.

Form No. 7