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(20)

STATE OF ALABAMA,

BALDWIN COUNTY.

Before me, W. H. Hawkins, a Notary Public in and for said State and County, personally appeared S. J. Irwin, who being duly sworn deposes and says:-

That on the 9th day of August, 1929, Alice Baggett and Thomas L. Baggett, for and in consideration of the sum of Four Hundred Dollars (\$400.00) cash, and other consideration, executed to him and A. A. Irwin a Lease on the property involved in this cause, and that in September of 1931 the said Alice Baggett and Thomas L. Baggett, for and in consideration of the sum of One Hundred Sixty Dollars (\$160.00), wrote a showing in words and figures as follows:-

"We, Alice Baggett and Thomas L. Baggett, hereby agree to extend the time on lease to S. J. Irwin and A. A. Irwin to begin not later than January, 1932, and ending in 1936";

which was signed by Alice Baggett and Thomas L. Baggett, and that Affiant carried said agreement to Hon. W. H. Hawkins, Attorney at Bay Minette, Alabama, who made a change in the original Lease ~~xxxxxx~~  
~~xx~~  
~~xx~~  
stipulating that the lease was not to begin before January, 1932, and end four years afterwards. That Affiant denies that he has damaged the said timber by fire; that in the business of turpentining it is necessary that the timber be raked around, which he has done, and that on each of these occasions that Mr. Thomas L. Baggett has assisted him in burning off the woods,

(page two)

either by  
/setting fire to part of the woods or raking around it. That  
Affiant has never worked and scraped this timber for turpentine  
purposes for four full years. That he left this agreement here-  
tofore mentioned, which was entered into in September, 1931, with  
Judge W. H. Hawkins. That since that time that he and the said  
W. H. Hawkins have made a diligent search in his office among his  
papers, for said instrument, and that they were unable to find  
the same, and the same has been lost.

S J Irwin

Sworn to and subscribed before  
me, a Notary Public whose seal  
is hereto affixed, this 12th  
day of March, 1934.

R. Howard  
Notary Public, Baldwin County,  
State of Alabama.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 885  
S. J. Irwin, Appellant,  
vs.  
Alice Baggett et. al., Appellee,  
From Baldwin Circuit Court.

The State of Alabama, }  
City and County of Montgomery. }

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to 7 inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the

19th day of December, 1935  
Robert F. Ligon  
Clerk of the Supreme Court of Alabama.

DEC 19 1935

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THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1935-36.

1 Div. 885.

B. J. Irwin

v.

Alice Baggett, et al.,

Appeal from Baldwin Circuit Court.

THOMAS, JUSTICE.

The cause was submitted upon appellees' motion to dissolve an injunction restraining them from interfering with complainant's alleged right to cut and mark certain trees under a turpentine lease of lands; and from the decree of the circuit court dissolving the injunction this appeal was taken.

The lease in question is exhibited as an aid to defendants' pleading. (Grinsley v. First Ave. Coal & Lumber Co., 217 Ala. 159, 115 So. 90) when the whole of the instrument is considered, it was a lease rather than a warranty deed (Burton

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Steverson, 206 Ala. 308, 91 So. 74); such is its effect when interpreted in the light of the circumstances surrounding the parties and the object in view when the lease was executed and delivered; as parties are presumed to intend to make a reasonable and rational contract. - Porter v. Henderson, 203 Ala. 312, 92 So. 688; Russell v. Garrett, 208 Ala. 92, 95, 93 So. 711; King v. Coffey et al., 222 Ala. 245, 131 So. 792.

Many of the rules that are pertinent, and to be applied in the construction of ambiguous clauses in conveyances, leases, and other written contracts, are collected in Lovely v. May, 213 Ala. 65, 104 So. 5. They are aids in ascertaining the expressed intention of the parties; the general rule being to construe the lease according to the parties' intention as gathered from the whole instrument, and, if the language is not clear, the circumstances attending its execution and the subsequent acts of the parties. (Greenwood et al. v. Bennett, 208 Ala. 680, 95 So. 159) If not contrary to law, this intention, when so ascertained, is to be given application; and, if a deed is found to bear on its face evidence that the draftsman was unskilled in drawing such instrument, greater latitude of construction must be indulged than in cases where the instrument appears to have been skillfully drawn by one acquainted with the force and meaning of the technical expressions employed. - Porter v. Henderson, supra; Clark v. Cannon, 216 Ala. 346, 113 So. 270; Lovely v. May, supra; Gamble et al. v. Gamble, 200 Ala. 176, 75 So. 924. In Alluans v. Alluans, 208 Ala. 369 [370], 94 So. 296, it was observed in this connection

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that "It is a well-recognized rule that each word shall be presumed to be used for some purpose, and shall be deemed to have some force and effect. *Chatt. & Gulf R. Co. v. Pilcher*, 163 Ala. 401, 51 South. 11. And in *Head v. Hunnicutt*, 172 Ala. 42, 53 South. 161, it was pointed out that if two clauses of a deed are entirely inconsistent and irreconcilable with each other, the latter must give way to the former, but if the words of the latter clause are of doubtful import, they will not be construed so as to contradict the certain words of a preceding clause."

It should be further noted, that in construing instruments containing contradictory or ambiguous clauses, the first expression of the intention of the parties will govern, unless the intention to thereafter qualify is plainly expressed; and, that where the subsequent clause is of doubtful import, it will not be held to contradict the preceding or more certain clause. - *McCamba v. Stephenson et al.*, 154 Ala. 109, 44 So. 867; *Robertson et al. v. Robertson et al.*, 191 Ala. 298, 68 So. 52; *Cobbe v. Union Naval Stores Co.*, 202 Ala. 333, 80 So. 415; *Turk v. Turk et al.*, 206 Ala. 312, 89 So. 457.

We set out the pertinent clauses of the lease to be as follows:

"That said first party (Thomas L. Baggett and Alice Baggett), for and in consideration of the sum of one (\$1.00) dollar, in hand, paid by the second party (S. J. Irwin and A. A. Irwin), the receipt of which is hereby acknowledged, and for the further consideration of 15 cts. per cup, to be paid as follows, to-wit: \$400.00 cash, the receipt of same being hereby acknowledged, and balance of amount at 15 cts. per cup to be paid in Jan. 1930, has granted, bargained, conveyed, demised, sold and leased,

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to the second party, their heirs, executors and assigns all the growing pine trees for turpentine purposes now upon the following described lands, to-wit: (describing the lands).

\* \* \*

"TO HAVE AND TO HOLD, cup, work, and otherwise use, said timber for turpentine purposes unto the said second party, their heirs, successors, and assigns; it being expressly covenanted and agreed that the said second party (1) may commence cupping, working and otherwise using for turpentine purposes, said timber they may desire, or their business may require, not later than January 1930, and continue to cup, work and otherwise use the same, for the full term of four years, beginning from January 1930, and (2) shall continue to operate until all the timber and each and every part thereof has been cupped, worked and otherwise used, for the full period of four years, from the winter during which the clogs are hung and until all the turpentine, scraps and dip have been gathered from the fourth working." [italics and numbers supplied]

It will be observed, that the lease made on August 9th, 1929, did not require the grantees to commence working all of the timber on the lands on or prior to January 1930; but that they commence cupping, working and otherwise using for turpentine purposes, the timber "they may desire, or their business may require, not later than January 1930; and having commenced to work, to "continue to cup, work and otherwise use the same, for the full term of four years \* \* \* until all the timber and each and every part thereof has been cupped, worked and otherwise used, for the full period of four years." What, then, was the ultimate period for such operation, as expressed in the contract, and under the contemporaneous construction thereof by the parties? It is insisted the contract answers: "from the winter during which the clogs are hung and until all the turpentine, scraps and dip have been gathered from the fourth working." This presupposes, or in fact requires a reasonable prosecution of that work within

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the prescribed time and under the circumstances incident to the prosecution of that business. (Lowery v. Hay, 213 Ala. 66, 104 So. 5). There is no insistence that the work having begun under the lease, was not duly and continuously prosecuted. Does the contract declare the intention of the parties to fix the time or duration of operation thereunder until all of the timber and each and every part thereof has been cupped, worked and otherwise used, for the full period of four years from the winter during which the cubs are hung and until all the turpentine, scraps and dip "have been gathered from the fourth working?" Thus the two clauses we have set out are ambiguous and open to contemporaneous construction by the parties. - [Italics supplied]

Is this expression of intent of the parties, as to the duration of the operation, manifested by the language employed in the contract and changed by the rule of practical construction contemporaneously put upon the two clauses in question by the parties? (Alabama Great Southern Railroad Co. v. Hawk, 72 Ala. 112, 117; Boon v. State, 225 Ala. 428, 143 So. 454; Vol. 2, words & Phrases, 1469). The rule is thus stated in Montgomery Enterprises et al. v. Empire Theater Co., 204 Ala. 566 [572], 86 So. 960:

"If a contract is of doubtful import as to any of its provisions, the practical construction put by the parties on such engagement therein is controlling of its meaning and must 'often prevail over its literal meaning.' \* \* \* In Comer v. Bankhead, 70 Ala. 136, 141, Mr. Justice Stone states Parsons' simple rules for the construction of contracts:

"It is a rule that the whole contract should be considered in determining the meaning of any or all its parts." 2 Parsons on Contr. 13.



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"The contract should be supported, rather than defeated." Page 15.

"All the parts of the contract will be construed in such a way as to give force and validity to all of them, and to all of the language used, where that is possible." Page 15.

"All instruments should be construed contra preferentem; that is, against him who gives, or undertakes, or enters into an obligation." Page 19."

See, also, Schewalter v. Schewalter et al., 221 Ala. 364, 367, 128 So. 455, and Central Lumber Co. et al. Vs. Schilleci et al., 227 Ala. 89, 148 So. 614. In the Schewalter case the authorities are collected to the effect, that "courts exercise caution in considering evidence as to declarations (and actions) of a grantor (parties) as to ambiguous" clauses; but when the contemporaneous interpretation of the parties of an ambiguous word or clause is ascertained, it will be accepted and applied. It is to be observed of this rule, that the acts and declarations of both parties to a common end and understanding, as to the meaning of an ambiguous clause, govern, and not those of only one of the parties to the contract.

The submission on the motion to dissolve complainant's temporary injunction was upon the pleading noted, and affidavits on file, and when they are carefully considered, it is evident, that there was a practical construction of the contract by the parties, respectively, as to the time or duration of the contract and the turpentine rights given and secured thereunder, for and within the four year period; that the construction placed thereon by the parties was for the full term of four years, to begin in January 1920, and not longer. It is shown without question, that the grantess sought an extension of that time and

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failed to be secure; that the grantors in declining the extension advised that at the end of the time the grantees would have to move off the lands. Acting on such notice the grantees moved their camps from the instant lands to other lands of the grantees.

There was no error in the ruling of the trial court dissolving the complainant's injunction. The judgment of the circuit court is therefore affirmed.

Affirmed.

Houldin, Brown and Knight, JJ., concur.

**CHANCERY EXECUTION  
BILL OF COSTS**

No. 20

*S J Dinn*  
*Alice Baggett and Howard Baggett*

Vs.

Plaintiff

Defendant

FEES OF REGISTER		Dollars	Cents		
Filing each bill and other papers	10	1	80	Brought Forward	14 30
Issuing each subpoena	50	1	00	For Receiving, keeping and paying out or distributing money, etc.; 1st \$1,000, 1%, all over \$1,000, and not over \$5,000, 3-4 of 1%; all over \$5,000 and not exceeding \$10,000, 1-2 of 1%, all over \$10,000 1-4 of 1%.	
Issuing each copy thereof	40	1	80	Receiving, keeping and paying out money paid into court, etc., 1-2 of 1% of amount received.	
Entering each return thereof	15		55	Each notice sent by mail to creditor	15
For each order of publication	1 00			Filing, receiving for and docketing each claim, etc.	25
Issuing writ of injunction	1 50	1	50	For all entries on subpoena docket, etc.	50
For each copy thereof	50		50	For all entries on commission docket, etc.	50
Entering each return thereof	15		15	Making final record, per 100 words	15
Issuing Writ of Attachment	1 00			Certified copy of decree	1 00
Entering each return thereof	15			Report of divorce to State Health Office	50
Docketing each case	1 00	1	00	<i>Transcript to Supreme Court</i>	150 00
Entering each appearance	25		25	Total Fees of Register	523 00
Issuing each decree pro confesso on per. ser.	1 00			FEES OF SHERIFF	
Issuing each decree pro confesso on publica.	1 00			Serving and returning subpoena on defendant	50
Each order appointing guardian	1 00			Serving and returning subpoena for witness	65
Any other order by Register	50		50	Levying attachment	3 00
Issuing commission to take testimony	50			Entering and returning same	25
Receiving and filing	10			Selling property attached	
Endorsing each package	10			Impaneling Jury	75
Entering order submitting cause	50		60	Executing writ of possession	2 50
Entering any other order of court	25			Collecting execution for costs	1 50
Noting all testimony	50		50	Serving and returning sci. fa., each	65
Abstract of cause, etc.	1 00			Serving and returning notice	65
Entering each decree	75		75	Serving and returning writ of injunction	1 50
For every 100 words over 500	15			Serving and returning writ of attachment	1 50
Taking account, etc.	3 00			Taking and approving bonds, each	75
Taking testimony, etc.	15			Collecting money on execution	
Each report, 500 words or less	2 50			Making deed	2 50
For every 100 words over 500	15			Serving and returning application, etc.	1 00
Amount claimed less than \$500, etc.	2 00			Serving attachment, contempt of court	1 50
Issuing each subpoena	25			Total Fees of Sheriff	9 00
Witness certificate, each	25			REGAPITULATION	
Issuing execution, each	75		75	Register's Fees	523 00
Entering each return	15			Sheriff's Fees	9 00
Taking and approving bond, each	1 00		3 00	Commissioner's Fees	
Making copy of bill, etc.	15			Solicitor's Fees	
Each notice not otherwise provided for	50			Witness Fees	
Each certificate or affidavit, with seal	50		50	Guardian Ad Litem	
Each certificate or affidavit, no seal	25			Printer's Fees	
Hearing and passing on application, etc.	3 00			Trial Tax	3 00
Each settlement with receiver, etc.	3 00			Recording Decree in Probate Court	
Examining each voucher of Receiver, etc.	10			Total	17 25
Examining each answer, etc.	3 00			<i>Supreme Court Costs</i>	81 55
Recording resignation, etc.	75				
Entering each certificate to Supreme Court	50		50		
Taking questions and answers, etc.	25				
For all other ser. relating to such proceedings	1 00				
For services in proceeding to relieve minors, etc. same fee as in similar cases.					
Commission on sales, etc.: 1st \$100, 2 per ct.; all over \$100 and not exceeding \$1,000, 1 1-2 per ct.; all over \$1,000, and not exceeding \$20,000, 1 per ct.; all over \$20,000, 1-4 of 1 per ct.					
Sub Total Carried Forward		14	30		

**The State of Alabama,** No. 50  
**Baldwin County,** Circuit Court, In Equity, Fall Term, 1935  
 To Any Sheriff of the State of Alabama—GREETING:  
 You are hereby commanded, That of the goods and chattels, lands and tenements of S J Dinn & A Dinn wa Johnson et al Defendant  
 you cause to be made the sum of Eighty and no/100 55 00 Dollars,  
 which Alice and Howard Baggett Plaintiff  
 recovered of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 193\_\_\_\_  
 by the judgment of our Circuit Court, held for the county of Baldwin, besides the sum of \_\_\_\_\_ Dollars,  
 costs of suit, and have the same to render to the said \_\_\_\_\_  
 and make return of this Writ and the execution thereof, according to law.  
 Interest from \_\_\_\_\_ 193\_\_\_\_ to date of collection.  
 Witness my hand, this 2 day of January 1935  
Robert Durr, Register.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19<sup>35-6</sup>

To the Register of the Circuit Court,  
Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court  
of said county, in a certain cause lately pending in said Court between  
S. J. Irwin, Appellant,  
and  
Alice Baggett, et al, Appellee,  
wherein by said Court, at the \_\_\_\_\_ Term, 19<sup>35</sup>, it was considered  
adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant  
to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered by our Supreme Court, on  
the 19th day of December, 19<sup>35</sup>, that said  
decree of said Circuit Court be in all things affirmed,  
and that it was further considered that the appellant, and U. A. Irwin,  
W. A. Johnson, J. C. McLeod and  
J. A. Jackson, sureties on the appeal  
bond pay the amount of the judgment of  
the Circuit Court and 10% damages  
thereon and interest and

the costs accruing on said appeal in this Court and in the Court below.  
It is further certified that, it appearing that said parties had waived their right of exemptions  
under the laws of Alabama, it was ordered that execution issue accordingly.

Witness, Robert F. Ligon, Clerk of the Supreme  
Court of Alabama, at the Capitol, this the 20th  
day of December, 19<sup>35</sup>  
Robert F. Ligon  
Clerk of the Supreme Court of Alabama.

S. J. IRWIN,

Complainant,

-vs-

ALICE BAGGETT and  
THOMAS L. BAGGETT,

Respondents.

IN THE CIRCUIT COURT-IN EQUITY

STATE OF ALABAMA

BALDWIN COUNTY.

TO THE HON. F. W. HARE, JUDGE OF THE 21ST JUDICIAL CIRCUIT:-

Comes your Orator humbly complaining of the Respondents in a matter as will hereinafter appear, and shows unto your Honor as follows:-

FIRST:

That both your Complainant and Respondents are over the age of twenty-one and are residents of Baldwin County, Alabama, both residing at Gateswood, Alabama.

SECOND:

Your Orator further shows unto your Honor that he is in possession of the following described lands in Baldwin County, Alabama:-

East half of Southeast quarter and Southwest quarter of Southeast quarter of Section Twenty-eight, and the Northeast quarter of Northeast quarter, Section Thirty-three, Township Four South of Range Six East, under and by virtue of a Turpentine Lease executed to him by Alice Baggett and Thomas L. Baggett on the 9th day of August, 1929, and of record in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 52 N. S., pages 494-5, and which said Lease expired in January, 1932, but was renewed and extended by mutual consent for a period ending January 1st, 1936, which said extension was in writing.

THIRD:

Your Orator further shows unto your Honor that Respondents have been and are now interfering with the possession of your Orator by restraining him from entering upon said lands and turpentineing the same. That unless your Orator can enter upon said lands and work them at this particular season that they will be valueless for turpentine purposes during the year. Your Orator further shows

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unto your Honor that the said Alice Baggett and Thomas L. Baggett are insolvent, and will be unable to respond in damages in a Court of law.

PRAYER FOR PROCESS.

Your Orator prays that your Honor will cause the usual writ of process to issue to the said Alice Baggett and Thomas L. Baggett, requiring them to plead, answer or demur to the foregoing Bill of Complaint within the time as required by law, and that your Honor will also grant to your Orator a temporary Writ of Injunction against the said Alice Baggett and Thomas L. Baggett, under such conditions and requirements as your Honor may fix, restraining them from interfering with the entering upon or the possession of said lands by your Orator.

PRAYER FOR RELIEF.

THE PREMISES CONSIDERED, your Orator prays that upon a final hearing of this cause your Honor will cause said temporary Writ of Injunction to be made perpetual and forever restraining the said Respondents, Alice Baggett and Thomas L. Baggett, from interfering with the entering upon, or the possession, of said lands by your Orator; that your Honor will also order a reference to establish the damage which your Orator has suffered by reason of being restrained from entering upon said lands, as was his right to do under said lease, and that your Honor will ascertain the amount due your Orator as damages, and that upon a final hearing of this cause, your Honor will enter up such a Judgment for damages as the evidence in the case may show. Your Orator prays for such other, further, general or different relief as in equity may seem just and meet.

*Hybert, Herd & Chason*  
Solicitors for Complainant.

FOOT NOTE:-

Respondents are required to answer Paragraphs "First" to "Third", inclusive, but answer under oath is hereby expressly waived.

*Hybert, Herd & Chason*  
Solicitors for Complainant. (page two)

(page three)

STATE OF ALABAMA,  
BALDWIN COUNTY.

Before me, MARY J. GREEN., a Notary Public in and for said State and County, personally appeared R. C. Heard who is known to me and who, after being by me first duly and legally sworn, doth depose and say under oath as follows:-

That he is one of the solicitors of record for the Complainant, and as such is duly authorized to make this Affidavit; that the allegations contained in the foregoing Bill of Complaint are true and correct.

R. C. Heard

Sworn to and subscribed before me, a Notary Public whose seal is hereto affixed, this 15<sup>th</sup> day of January, 1934.

Mary J. Green  
Notary Public, Baldwin County,  
State of Alabama.

TO THE REGISTER OF THE CIRCUIT COURT, BALDWIN COUNTY, ALABAMA:-

Upon the Complainant entering into Bond with good and sufficient sureties in the sum of Three Hundred and no/100 Dollars (\$ 300<sup>00</sup> ) to be approved by you, you will issue the temporary Writ of Injunction as prayed for.

Dated this 19<sup>th</sup> day of January, 1934.

J. W. Hall  
Judge.





THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 1935-6

To the Register of the Circuit Court,  
Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court  
of said county, in a certain cause lately pending in said Court between

S. J. Irwin, Appellant,

and  
Alice Baggett, et al, Appellee,

wherein by said Court, at the \_\_\_\_\_ Term, 1935, it was considered  
adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant  
to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered by our Supreme Court, on  
the 19th day of December, 1935, that said  
decree of said Circuit Court be in all things affirmed,

and that it was further considered that the appellant, and U. A. Irwin,  
W. A. Johnson, J. C. McLeod and  
J. A. Jackson, sureties on the appeal  
bond pay the amount of the judgment of  
the Circuit Court and 10% damages  
thereon and interest and

the costs accruing on said appeal in this Court and in the Court below.

It is further certified that, it appearing that said parties had waived their right of exemptions  
under the laws of Alabama, it was ordered that execution issue accordingly.

Witness, Robert F. Ligon, Clerk of the Supreme  
Court of Alabama, at the Capitol, this the 20th  
day of December, 1935  
Robert F. Ligon  
Clerk of the Supreme Court of Alabama.

S. J. IRWIN,  
Complainant,  
-vs-  
ALICE BAGGETT and  
THOMAS L. BAGGETT,  
Respondents.

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

TO THE HON. F. W. HARE, JUDGE OF THE 21ST JUDICIAL CIRCUIT:-

Comes your Orator humbly complaining of the Respondents in a matter as will hereinafter appear, and shows unto your Honor as follows:-

FIRST:

That both your Complainant and Respondents are over the age of twenty-one and are residents of Baldwin County, Alabama, both residing at Gateswood, Alabama.

SECOND:

Your Orator further shows unto your Honor that he is in possession of the following described lands in Baldwin County, Alabama:-

East half of Southeast quarter and Southwest quarter of Southeast Quarter of Section Twenty-eight, and the Northeast quarter of Northeast quarter, Section Thirty-three, Township Four South of Range Six East,

under and by virtue of a Turpentine Lease executed to him by Alice Baggett and Thomas L. Baggett on the 9th day of August, 1929, and of record in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 52 N. S., pages 494-5, and which said Lease expired in January, 1932, but was renewed and extended by mutual consent for a period ending January 1st, 1936, which said extension was in writing.

THIRD:

Your Orator further shows unto your Honor that Respondents have been and are now interfering with the possession of your Orator by restraining him from entering upon said lands and turpentineing the same. That unless your Orator can enter upon said lands and work them at this particular season that they will be valueless for turpentine purposes during the year. Your Orator further shows

(page two)

unto your Honor that the said Alice Baggett and Thomas L. Baggett are insolvent, and will be unable to respond in damages in a Court of law.

PRAYER FOR PROCESS.

Your Orator prays that your Honor will cause the usual writ of process to issue to the said Alice Baggett and Thomas L. Baggett, requiring them to plead, answer or demur to the foregoing Bill of Complaint within the time as required by law, and that your Honor will also grant to your Orator a temporary Writ of Injunction against the said Alice Baggett and Thomas L. Baggett, under such conditions and requirements as your Honor may fix, restraining them from interfering with the entering upon or the possession of said lands by your Orator.

PRAYER FOR RELIEF.

THE PREMISES CONSIDERED, your Orator prays that upon a final hearing of this cause your Honor will cause said temporary Writ of Injunction to be made perpetual and forever restraining the said Respondents, Alice Baggett and Thomas L. Baggett, from interfering with the entering upon, or the possession, of said lands by your Orator; that your Honor will also order a reference to establish the damage which your Orator has suffered by reason of being restrained from entering upon said lands, as was his right to do under said lease, and that your Honor will ascertain the amount due your Orator as damages, and that upon a final hearing of this cause, your Honor will enter up such a Judgment for damages as the evidence in the case may show. Your Orators prays for such other, further, general or different relief as in equity may seem just and meet.

*Hybert, Kern & Chason*  
Solicitors for Complainant.

FOOT NOTE:-

Respondents are required to answer Paragraphs "First" to "Third", inclusive, but answer under oath is hereby expressly waived.

*Hybert, Kern & Chason*  
Solicitors for Complainant. (page two)

STATE OF ALABAMA.

BALDWIN COUNTY.

Before me, the undersigned authority in and for said County, in said State, personally appeared ALICE BAGGETT, who is known to me and who, having been by me first duly sworn, deposes and says that she is the wife of Thomas L. Baggett; that she and her husband are the owners of and in possession of the following described lands in Baldwin County, Alabama, to-wit: East half of the Southeast quarter and the Southwest quarter of the Southeast quarter of Section twenty-eight (28) and the Northeast quarter of the Northeast quarter of Section thirty-three (33), in Township four (4) South of Range six (6) East of St. Stephens Meridian in Alabama, containing 159.40 acres; that on August 9, 1929, she and her husband executed and delivered to S. J. Irwin and A. A. Irwin a lease giving and granting to the said S. J. Irwin and A. A. Irwin the right to work and use for turpentine purposes all the growing pine trees over eight inches on the above described land; that in and by said lease the said S. J. Irwin and A. A. Irwin had the right to work said timber for turpentine purposes and that the said parties were to commence cupping, working and otherwise using for turpentine purposes said timber at any time they desired their business might require, not later than January, 1930, and to continue to cup, work and otherwise use the same for the full term of four years beginning from January, 1930; that the said S. J. Irwin and A. A. Irwin were given the right and allowed to work said timber during the full period covered by said lease; that in December, 1933, the said S. J. Irwin and A. A. Irwin moved all the cups on said timber on said land and carried them off the said land to a place near S. J. Irwin's home.

That the said S. J. Irwin requested the affiant and her husband to grant a continuance on said lease, but that the affiant and the said Thomas L. Baggett, her husband, absolutely refused to grant any continuance; that she did not authorize the said S. J.

Irwin, A. A. Irwin, W. H. Hawkins or any other person, either orally or in writing, to extend said lease; that if there has been any change made in the said lease since it was executed, such act was a forgery and done without the consent and without the approval on the part of the affiant.

That all rights given and granted unto the said S. J. Irwin and A. A. Irwin under and by the terms of said lease expired on January 1st, 1934; that neither of the said parties has any right whatever to enter upon the said lands, or in anywise attempt to enter thereupon, or to use or to attempt to use the timber located on said land in any way or for any purpose.

That since the said S. J. Irwin and A. A. Irwin's rights expired under said lease, on January 1st, 1934, they have continued to trespass upon said lands, and that just recently they set fire to or caused fire to be set to the above described lands, thereby doing serious and irreparable damages to the said lands and the timber located thereon, all to the injury of the said Alice Baggett and Thomas L. Baggett.

Alice Baggett.

Sworn to and subscribed before  
me this the 12 day of Febru-  
ary, 1934.

W. H. Mustace  
Notary Public, Baldwin County,  
Alabama.

S. J. IRWIN,

Complainant,

-vs-

ALICE BAGGETT and THOMAS  
L. BAGGETT,

Respondents.

IN THE CIRCUIT COURT-IN EQUITY

STATE OF ALABAMA

BALDWIN COUNTY.

STATE OF ALABAMA,

BALDWIN COUNTY.

TO ANY SHERIFF OF SAID STATE - GREETINGS:-

We command you that without delay you execute this Writ and due return thereof to make to us instanter, at a term of our Circuit Court-In Equity, to be held at Bay Minette, Alabama, on the 18<sup>th</sup> day of January, 1934.

TO ALICE BAGGETT AND THOMAS L. BAGGETT - GREETINGS:-

WHEREAS, S. J. Irwin has exhibited his Bill of Complaint in the Circuit Court of Baldwin County-In Equity, and has obtained from the Hon. F. W. Hare, Judge of said Court, an order for the issuance of an Injunction to restrain and enjoin you as hereinafter mentioned;

AND WHEREAS, the said S. J. Irwin, in accordance with said order, entered into bond with security in the sum of Three hundred - Dollars, payable to and approved by the Register of said Circuit Court and conditioned according to law.

NOW, THEREFORE, you, the said Alice Baggett and Thomas L. Baggett, are hereby commanded and strictly enjoined from interfering with the entering upon, or the possession of, by the said S. J. Irwin, or his agents or employees, upon the following described lands situated in Baldwin County, Alabama, to-wit:-

East half of Southeast Quarter and Southwest Quarter of Southeast Quarter of Section Twenty-eight and the Northeast Quarter of Northeast Quarter, Section Thirty-three, Township Four South of Range Six East;

until further orders of this Court.

Witness the hand of the Register and the seal of said Circuit Court-In Equity, this 18<sup>th</sup> day of January, 1934.

M. A. Stone  
6 Register.

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12  
12

WRIT OF INJUNCTION.

S. J. TRWIN,

Complainant,

-VS-

ALICE BAGGETT and THOMAS  
L. BAGGETT,

Respondents.

IN THE CIRCUIT COURT- IN EQUITY

STATE OF ALABAMA

BALDWIN COUNTY.

Issued January 18, 1934

W. O. Stone  
Register.

LAW OFFICES  
HYBART, HEARD  
& CHASON  
BAY MINETTE, ALABAMA

RECORDED  
INDEXED

1934

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Printed on with & function

Alice Baggett & Thomas L. Baggett

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APPEAL BOND.

S. J. IRWIN,

Complainant,

-VS-

ALICE BAGGETT and THOMAS L.  
BAGGETT,

Respondents.

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

Filed APRIL *14*, 1934  
*S. J. Irwin*  
Register.

LAW OFFICES  
HYBART, HEARD  
& CHASON  
BAY MINETTE, ALABAMA



STATE OF ALABAMA.

BALDWIN COUNTY.

Before me, the undersigned authority in and for said County, in said State, personally appeared ALICE BAGGETT, who is known to me and who having been by me first duly sworn, deposes and says: That she has seen and heard read the affidavit of S. J. Irwin relative to the lease given by her and her husband, Thomas L. Baggett, to S. J. Irwin and A. A. Irwin on the 9th day of August, 1929, in which the said S. J. Irwin says that she and her husband gave to him a written showing in words and figures as follows:

"We, Alice Baggett and Thomas L. Baggett, hereby agree to extend the time on lease to S. J. Irwin and A. A. Irwin to begin not later than January, 1932, and ending in 1936";

that she did not execute such an instrument, nor did she authorize anyone for her to execute such an instrument, and that if the said S. J. Irwin had such an instrument, it was a forgery and done without her consent or approval.

Alice Baggett.

Sworn to and subscribed before me this the 1st day of March, 1932.

J. Maclean Davis  
Notary Public, Baldwin County,  
Alabama.

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

To Any Sheriff of the State of Alabama--GREETING:

WE COMMAND YOU, That you summon ALICE BAGGETT AND THOMAS L. BAGGETT

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 Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by

S. J. IRWIN

against said ALICE BAGGETT AND THOMAS L. BAGGETT?

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, M. A. Stone, Register of said Circuit Court, this 18th day of January 1934

M. A. Stone Register  
A.S.H.

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

STATE OF ALABAMA,  
BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS:- That we, S. J. IRWIN,  
as principal, and W. A. Irwin and  
W. A. Johnson, as Sureties, are held and firmly  
bound unto Alice Baggett and Thomas L. Baggett in the principal  
sum of Six Hundred Dollars (\$600.00), for the payment of which,  
well and truly to be made, we jointly and severally bind our-  
selves, our heirs, executors and administrators, firmly by these  
presents.

Sealed with our seals and dated this 11<sup>th</sup> day of  
April, 1934.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH: That  
Whereas, the above bounden S. J. Irwin has this day applied for  
and obtained an appeal returnable to the Supreme Court of the  
State of Alabama to supersede and reverse a Decree recovered by  
the said Alice Baggett and Thomas L. Baggett against the said S.  
J. Irwin on the 4th day of April, 1934, in the Circuit Court of  
Baldwin County, Alabama, Sitting in Equity;

NOW, if the said S. J. Irwin shall fail in the appeal  
and pay such judgment as the Supreme Court may render in the pre-  
mises, and all such costs and damages as any party aggrieved may  
sustain by reason of the wrongful appeal and the suspension of  
the execution of said Decree, then the foregoing obligation to  
be null and void, otherwise to remain in full force and effect.

We further acknowledge ourselves security for all costs  
of appeal to the Supreme Court of the State of Alabama in the  
above entitled cause, and hereby bind ourselves to pay all such  
costs.

And as against the payment of this Bond all right to  
claim any exemption under the Constitution and laws of the State

(page two)

of Alabama is hereby expressly and separately waived by each signer of this instrument.

J. J. Irwin SEAL

M. A. Irwin SEAL

W. A. Johnson SEAL

J. M. Good Seal

J. A. Good Seal

Taken and approved this the  
11<sup>th</sup> day of April, 1934.

W. A. Stone  
Register Chancery Court,  
Baldwin County, Alabama.

*Handwritten scribble*

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BILL OF COMPLAINT.

S. J. IRWIN,

Complainant,

-VS-

ALICE BAGGETT and THOMAS  
L. BAGGETT,

Respondents.

IN THE CIRCUIT COURT-IN EQUITY

STATE OF ALABAMA

BALDWIN COUNTY.

Filed January 18, 1934

*W. O. ...*  
Register.

LAW OFFICES

HYBART, HEARD  
& CHASON

BAY MINETTE, ALABAMA

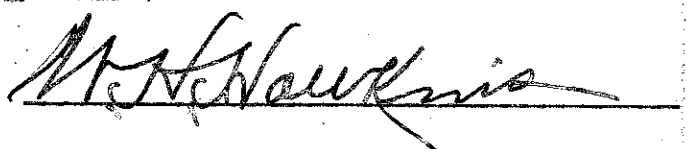
STATE OF ALABAMA,

BALDWIN COUNTY.


Before me, the undersigned authority in and for said County and State, personally appeared W. H. Hawkins, who is known to me and who, after being by me first duly and legally sworn doth depose and say under oath as follows:-

That his name is W. H. Hawkins; that he is over the age of twenty-one years and is a resident of Baldwin County, Alabama, residing at Bay Minette, Alabama; that sometime in September of 1931 S. J. Irwin called upon him with a note or letter from Alice Baggett and Thomas L. Baggett authorizing the said S. J. Irwin to make certain changes in that certain Lease from Thomas L. Baggett and Alice L. Baggett to S. J. Irwin of date August 9th, 1929, said changes in said Lease to be in the nature of an extension. That he distinctly remembers seeing said letter or note, and that he made the changes in said Lease in accordance with the terms of said note or letter; that he does not remember what became of the note or letter; that the names of Alice Baggett and Thomas L. Baggett were signed to said note.

That all the matters and facts herein alleged are based upon the personal knowledge of Affiant.



Sworn to and subscribed before me, a Notary Public whose seal is hereto affixed, this 1st day of March, 1934.

  
Notary Public, Baldwin County,  
Alabama.

purpose not later than January, 1930 such timber as he might desire, or that his business might require.

As we have heretofore stated, the terms of the contract is that he was to commence operating on such portions of this timber as he saw fit on or before January, 1930, and under the terms of the contract that he had a right to use said timber for said purposes in an orderly way and to complete the operation of the same within a reasonable time and the statute where no time is fixed has fixed this as ten years. However, there is no contention on the part of Respondent that the operation of Complainant has not been continuous; there is no contention on the part of the Respondents that the Complainant did not commence operation on a portion of this timber on or before January 1930. So, according to our contention, it appears from the showing made on the sworn answer on which he must rise or fall, that the Complainant has a valid contract; that he has bought and paid for the use of this timber and is now engaged in legally asserting his rights to the use thereof. *& that*

*and they should not have been disallowed*

Respectfully submitted,

*Hybert Head & Chasman*  
Solicitors for Complainant.

S. J. IRWIN,

Complainant,

-VS-

ALICE BAGGETT AND THOMAS J. BAGGETT.

Respondents.

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

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BRIEF AND ARGUMENT OF COMPLAINANT ON MOTION TO DISSOLVE  
INJUNCTION.

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BY:

HYBART, HEARD & CHASON  
SOLICITORS FOR COMPLAINANT.



This matter comes up on the motion of Respondents to dissolve the injunction heretofore issued by this Court restraining the Respondents from interfering with the operation of the Complainant in and about the turpentine of certain pine trees situated on lands belonging to the Respondents.

The respondents submit in support of their motion, sworn answer and certain affidavits noted by the Register, and makes as an exhibit to their said answer a certain conveyance executed by Respondents to Complainant on the 9th day of August, 1929.

We deem that it is only necessary for an understanding of the propositions involved to here set out and call the attention of the Court to the granting clause in said instrument, which is as follows:

"\$400.00 cash, the receipt of same being hereby acknowledged and balance of amount at 16 cts. per out to be paid in Jan. 1930, has granted, bargained, conveyed, demised, sold and leased, and by these presents does grant, bargain, convey, demise, sell and lease to the second party their heirs, executors and assigns, all the growing pine trees for turpentine purposes now upon the following described lands, to-wit: All growing pine trees over eight inches on

"East Half of the Southeast Quarter and the Southwest Quarter of the Southeast quarter of Section 28 and the Northeast Quarter of the Northeast quarter of Section 33 in Township Four South of Range Six East of St. Stephens Meridian in Alabama, containing one hundred and fifty-nine acres and forty hundredths of an acre".

*over*

"Together with all necessary rights, privileges, uses and purposes appertaining to the turpentine business, including the construction of all roads over or through said lands that may be necessary, or convenient; the right of ways over said lands may be exercised at any and all times continuously. Etc, Ect."

*copy*

It will appear from the foregoing granting clause that a conveyance was made to the Complainant as to all of said pine timber eight inches and up for turpentine purposes on said lands. This instrument appears to be a deed rather than a lease, and where there is a conflict between the granting clause and the habendum clause, or any other clause in a conveyance, the granting clause prevails. And if the granting clause is to the effect that a conveyance was made of said timber for said purposes and no time limit was fixed for the uses mentioned therein, then, of course, the statute as set forth in the code of 1923 would prevail, and of course, the Complainant would have the privilege to exercise his right egress and ingress for the full period of ten years in and about the operation of said timber for turpentine purposes.

It has been argued by Respondents that where certain clauses appear in a conveyance as being inconsistent, that the first clause should prevail, and the same rule would apply as to words. If <sup>The Court</sup> your honor will take the exhibit to the sworn answer, which attempts to set out the contract between the parties, <sup>it</sup> you will very readily see that it has

all of the ear-marks of a statutory warranty deed; using the words of conveyance, "Do grant, bargain, sell and convey" and winds up with the words lease, so construing the instrument according to the authorities cited by Respondent, that the first clauses or words should prevail, the construction is inevitable that the instrument is a statutory warranty deed and conveys the timber on the lands mentioned therein for certain limited purposes; that is, the right to turpentine them, and also grants unlimited rights to use the lands for those purposes.---The granting clause controls.

For the further consideration of your Honor, we set forth the habendum clause in said conveyance as set forth in the exhibit to the sworn answer:

"TO HAVE AND TO HOLD, cup, work and otherwise use, said timber for turpentine purposes unto the said second party their heirs, successors and assigns; it being expressly convenated and agreed that the said second party may commence cupping, working and otherwise using for turpentine purposes, said timber they may desire, or their business may acquire, not later than Jan. 1930, and continue to cup, work and otherwise use the same for the full term of four years, beginning from January, 1930, and shall continue to operate until all the timber and each and every part thereof has been cupped, worked and otherwise used, for the full period of four years, from the winter during which the cups are hung and until all the turpentine, scrape and dip has been gathered from the fourth working."

And in connection with the construction of said habendum clause contained in said conveyance, we desire to cite the following excerpts of the law, which are, ~~we might say, elementary:~~

"A deed (and the same rule applies to leases) must be construed most strongly against the grantor, and most favorably to the grantee."

McCombs vs. Stephenson,  
154 Ala. 109.

Dickson vs. Van Hoose,  
157 Alabama, 459.

As we stated above, the same rule applies to leases.

"There is a canon of construction, that all contracts involving leases of every description shall be most strongly construed against the lessor, and if there be any doubt and uncertainty as to the meaning of any such lease, it shall be construed most strongly in favor of the lessee."

Peoples' Bank & Trust Co. v. Tissue  
Hard Ware Company,  
154 Alabama, 106.

"Where a deed is fairly doubtful, it will be construed most strongly against the grantor and ~~more~~ in favor of the grantee."

Vandegrift v. Shortridge,  
181 Alabama, 275.

"That the several provisions of a conveyance will be so construed as to avoid a conflict if the language will permit."

Lowrey vs. May,  
213 Alabama, 70.

Betha vs. McCullough,  
195 Alabama, 480.

"Where language in a contract or conveyance is ambiguous or contradictory, then the construction must be most strongly against the grantor."

213 Alabama, 66  
Lowrey vs. May and Authorities  
there cited.

"In construing a deed, each word is presumed to have been used for some purpose, and deemed to have some force and effect. "

Allumas v. Allumas,  
94 So. 296.  
208 Ala, 369.

And authorities there cited.

"If the language of a deed is plain and certain, acts and declarations of the parties can not be resorted to aid a construction. "

Hale vs. Long,  
199 Ala. 97.

Waiving our contention that the instrument relied on by the respondents was ~~not~~ <sup>deed</sup> a conveyance, but nothing more than a lease, we contend that the limitations and restitution and uses set out in the habendum clause of the contract, and on which the Respondents ~~are~~ <sup>rely</sup> relying to have the injunction dissolved, we respectfully contend and represent unto your Honor that the matters set out in said habendum clause are plain and clear as to the intention and as to the contract that was entered into by the Respondents with the Complainant. It stipulates therein that Complainant was to ~~cup~~ <sup>cut</sup> and work and otherwise use said timber for turpentine

purposes; that it was covenanted and agreed that the said Complainant may commence cupping and working said timber for said purposes, such timber that complainant might desire, or that his business may require. That he was to commence his operations not later than January, 1930, and he was to continue and cup and work and use the same for full four years from January 1930; Not beginning as to all of the timber, but such timber as he might desire, or that his business might require prior to the month of January, 1930. This, beyond a per-adventure, was the intention of the parties, for the said habendum clause goes on further and makes this clear by stating that he shall continue to operate until all of the timber and each and every part thereof has been cupped, worked and otherwise used for the full period of four years from the winter during which the cups are hung, and until all of the turpentine, scrape and dip has been gathered from the fourth working. And we contend that the contract is as plain as a man's nose on his face, and the fact that it was written in the contract, "not later than January, 1930, and also in words "Beginning from January, 1930", none of said words being inconsistent with the authority granted---That the Complainant would have the right to use the timber for the full period of four years from the winter

during which the cups are hung until all of the turpentine scrape and dip has been gathered from the fourth working. If it had been the intention of the parties that the contract was to be terminated within four years from January 1930, it would have been written therein.

Following the rule laid down in Allumns vs. Allumns, that each word is presumed to have been used for some purpose, and deemed to have some force and effect, we respectfully ask the Respondents what is to be done with the following words contained in said contract:

"And shall continue to operate until all of the timber, and each and every part thereof has been cut, worked and otherwise used for the full period of four years from the winter during which the cups are hung, and until all of the turpentine, scrape and dip has been gathered from the fourth working."

There is nothing in the contract that required the Complainant to commence working all of the timber on said lands on or prior to January 1930. But the contract expressly stipulates that he might use for turpentine purposes such timber as he might desire, or his business might require. That is, he might commence cupping, working and otherwise using the same for that

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S. J. Irwin, )  
Complainant, )  
Vs. ) In the Circuit Court, Baldwin  
Alice Baggett, et al.) County, Alabama.  
Respondents.) In Equity.  
)

This cause is submitted on motion of Respondents to dissolve temporary injunction heretofore issued, and upon a consideration of the pleading and proof as noted by the Register, I am of the opinion that said temporary injunction should be dissolved.

It is, therefore, ordered, adjudged and decreed by the Court that the temporary writ of injunction issued in this cause on the 18th. day of January, 1934, be, and same hereby is, dissolved.

The Complainant having signified his purpose to appeal to the Supreme Court from this decree of dissolution, and requesting that bond be fixed for the reinstatement of said writ of injunction pending appeal, it is further ordered by the Court that upon the filing by the Complainant of a good and sufficient bond for reinstatement in the sum of Six Hundred Dollars (\$600.00), to be approved by the Register of this Court, as provided by Section 8312 of the Code, said temporary write of injunction be reinstated pending appeal to the Supreme Court.

This April 4th., 1934.

  
\_\_\_\_\_  
Judge.



S. J. IRWIN,

Complainant,

vs.

ALICE BAGGETT and  
THOMAS J. BAGGETT,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

BRIEF AND ARGUMENT OF RESPONDENTS  
ON MOTION TO DISSOLVE INJUNCTION.

BEHRE & HALL,

Solicitors for Respondents.

S. J. ERWIN,  
Complainant,  
vs.  
ALICE BAGGETT and  
THOMAS L. BAGGETT,  
Respondents.

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

BRIEF AND ARGUMENT OF RESPONDENTS  
OF MOTION TO DISSOLVE INJUNCTION

This cause was submitted upon the respondents' motion to dissolve the injunction granted the complainant. The respondents in support of their motion offered the sworn answer and cross bill and also affidavits of Alice Baggett and Thomas L. Baggett. The sworn answer and affidavits of the respondents set up that on August 9, 1929, they executed a turpentine lease to the complainant and A. A. Irwin, which was to be in effect until January, 1934. They specifically deny that they at any time granted an extension of said lease, or authorized any one for them to grant the extension. They further set up that any act in the changing of the lease or the execution of any instrument authorizing the extension of the lease was a forgery and without their consent or approval.

The complainant, in support of his contention, has offered his own affidavit and also the affidavit of W. H. Hawkins to the

effect that the extension was made in accordance with a writing signed by Alice Baggett and Thomas L. Baggett. However, for some unknown reason this writing has mysteriously disappeared or been lost and is unaccounted for.

To rebut the affidavits of S. J. Irwin and W. H. Hawkins, the respondents offer the affidavits of Thomas L. Baggett and Alice Baggett that if any such instrument was in existence as set out in the affidavit of S. J. Irwin, purporting to be signed by them, that the same was a forgery and done without their consent or approval; that in addition to these affidavits specifically rebutting the testimony of S. J. Irwin and W. H. Hawkins as to the written instrument, there is offered on behalf of the respondents affidavits of Thomas L. Baggett and Hubert M. Hall relative to a statement made by the said W. H. Hawkins to the effect that S. J. Irwin called on him to amend the original lease so as to extend the term for a period of two years, but that the said S. J. Irwin at the time only told him that he had a showing from Mr. and Mrs. Baggett and that he did not see such showing and did not know whether or not Mr. Irwin had such a writing or showing.

The original lease, as admitted by the respondents, was duly drawn up, signed and acknowledged by the respondents.

We think that there is no question but that a turpentine lease is a transmission of an interest in the land supporting the timber.

"The extension being for a term of two years was required to be in writing."

Elliott vs. Bankston, 49 So., 76.

The complainant in support of his contention has necessarily, the supposed written instrument having been lost, had to rely on parol evidence.

"It is a well recognized proposition of law that parol evidence is not admissible to change the terms of an instrument conveying an interest in land."

Cryar vs. Ogle, 99 So., 157.

"It is the law that a lease must be construed most strongly against lessor and liberally in favor of lessee only in case of ambiguity and uncertainty; the general rule being to construe it according to the party's intention as gathered from the whole instrument rather than from a single clause or clauses thereof, and, if the language is not clear, the circumstances attending its execution and the subsequent acts of the parties may be considered in ascertaining the intention of the contracting parties."

Greenwood et al. vs. Bennett, 95 So., 158.

An examination of the original lease clearly shows that it was drafted by a person unskilled in such work.

Unskillfulness in draftsmanship disclosing a lack of knowledge of the meaning of legal phrases is to be considered in connection with the language of the entire instrument to determine the intent."

Clark vs. Cammack, 113 So., 270.

"A greater latitude of construction is to be indulged in the case of a deed drawn by an unskilled draftsman than in the case of the product of a skilled scrivener."

Gamble et al. vs. Gamble, 75 So., 924.

If an instrument is found to bear on its face evidence that the draftsman was not skilled in drawing such instruments, ~~the~~ greater latitude of construction must be indulged than in cases where the instrument appears to

have been skilfully drawn by one acquainted with the force and meaning of the technical expressions employed.

Porter vs. Henderson, 82 So., 668.

A careful reading of the lease in question shows that in the habendum clause different clauses are inconsistent. This being the case, it is the duty of the court to look to and ascertain the true intent of the parties in the execution of the lease.

"In construing an instrument the duty devolves upon the court to ascertain as far as possible the grantor's intention and in the performance of this duty to look at the whole conveyance."

Cobb vs. Union Naval Stores Company, 80 So., 415.

"In the construction of written instruments several cardinal rules have been given application in this jurisdiction. A controlling inquiry is the intention of the parties, which must be ascertained from a consideration of the whole instrument, from the nature of the subject matter, and from the surrounding circumstances; that is to say, by having regard for the situation of the parties and the objects they had in view in making the contract conveyance."

Porter vs. Henderson, 82 So., 668.

Where an instrument contains a clause showing the intention of the parties, ambiguities and inconsistencies in other clauses will not defeat the intention."

McCombs vs. Stephenson et al., 44 So., 867.

Arbitrary rules will not be applied in construing a deed where real intention of the parties can be gathered from the language of the instrument."

Dickson et al. vs. Van Hoose et al., 47 So., 718.

"An instrument must be so interpreted as to give effect to the intention of the parties as manifested by its language when the whole instrument is taken together in connection with the subject matter and surrounding circumstances."

King vs. Coffee et al., 131 So., 792.

An examination of the lease, habendum clause, shows the following language:

"It being expressly covenanted and agreed that the said second party may commence cupping, working and otherwise using for turpentine purposes, said timber they may desire or their business may require, not later than January, 1930, and continue to cup, work and otherwise use the same for the full term of four years beginning from January, 1930, and shall continue to operate until all the timber and each and every part thereof has been cupped, worked and otherwise used for the full period of four years from the winter during which the cups are hung and until all the turpentine, scrape and dip has been gathered from the fourth working."

It will appear that the habendum clause contains two clauses, the one specifying four years from January, 1930, and the other four years from the winter during which the cups are hung. In this event the first clause governs.

"In construing an instrument containing contradictory clauses the first clause governs, unless the intention to qualify it is very plain, and where the subsequent clause is of doubtful import, it will not contradict the preceding certain one."

McCombs vs. Stephenson et al., 44 So., 867.

The clause setting out the time as four years from January, 1930, we think clearly expresses the intention of the parties.

"Where two clauses in an instrument are inconsistent and irreconcilable, the latter must give way to the former; but if the words of the latter clause are of doubtful import, they will not be so construed as to contradict the certain words of a preceding clause."

Head vs. Hunicutt, 55 So., 161.

"It is the rule, grounded upon the presumption that conflicting expressions of intent are not purposely made in deeds, that the judicial duty is, if possible, to recon-

16  
CITATION IN APPEAL

STATE OF ALABAMA  
COUNTY OF BALDWIN

Circuit Court.

TO THE SHERIFF OF BALDWIN COUNTY.....GREETING:-

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 4th day of April, 1934, in a certain cause in said Court wherein S. J. IRWIN was Plaintiff and ALICE BAGGETT AND THOMAS L. BAGGETT, was defendant, WRIT OF INJUNCTION was dissolved, to reverse which Judgment the said Plaintiff, S.J.IRWIN has on this day applied for and obtained from this office an Appeal, returnable to the Presnet Term of our Supreme Court of the State of Alabama, and the necessary bond having been given by the said Plaintiff, S.J.IRWIN, with U. A. Irwin and W. A. Johnson, as sureties:

NOW, you are hereby commanded, without delay to cite the said ALICE BAGGETT AND THOMAS L. BAGGETT, or MESSRS. BEEBE & HALL, their Attorneys, to appear at the present Term of our said Supreme Court, to defend against the said Appeal, if they think proper.

WITNESS, Robert S. Duck, Clerk of the Circuit Court and Register in Chancery of said County, this the 19 day of April, 1935.

ATTEST:

Robert S. Duck

(SEAL)

S. J. IRWIN,  
Complainant,

vs.

THOMAS L. BAGGETT and  
ALICE BAGGETT,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

Come the respondents in the above styled cause and move the court to dissolve the injunction heretofore issued in the aforesaid cause on the 18th day of January, 1934, enjoining the respondents from interfering with the entering upon or the possession of by the said S. J. Irwin or his agents or employes upon the following described land situated in Baldwin County, Alabama, to-wit:

East half of the Southeast quarter and the Southwest quarter of the Southeast quarter of Section twenty-eight (28) and the Northeast quarter of the Northeast quarter of Section thirty-three (33) in Township four (4) South of Range six (6) East;

and for grounds of such dissolution the said respondents submit:

- (1) The sworn answer of the respondents filed in this cause on February 9, 1934;
- (2) affidavit of Thomas L. Baggett;
- (3) affidavit of Alice Baggett.

Alice Baggett.  
Thomas L. Baggett  
Bebe Hall  
 Att for Respondents

*We hereby accept service  
 of the foregoing papers  
 this 13th day of Dec  
 Hyatt, Head & Chasman*



STATE OF ALABAMA.

BALDWIN COUNTY.

Before me, the undersigned authority in and for said County, in said State, personally appeared THOMAS L. BAGGETT, who is known to me and who having been by me first duly sworn, deposes and says: That he is personally acquainted with W. H. Hawkins of Bay Minette, Baldwin County, Alabama; that some time in December, in the hall of the Court House at Bay Minette, Alabama, he discussed with the said W. H. Hawkins the matter of the changes made in the lease given by him and his wife, Alice Baggett, to S. J. Irwin and A. A. Irwin; that at that time he said to Mr. Hawkins, "What authority did you have to change the date in that lease", and he says, "Mr. Irwin told me that he had a note from you that it was all right." I says, "What right did you have to change the dates on that"? He says, "Mr. Irwin told me he had a note from you that it was all right, and I said, "Did you see the note", and he says, "No, I never saw it."

That he has seen and heard read the affidavit of S. J. Irwin relative to the extension of the said lease, in which Irwin stated that he had a showing signed by Alice Baggett and Thomas L. Baggett in words and figures as follows:

"We, Alice Baggett and Thomas L. Baggett, hereby agree to extend the time on lease to S. J. Irwin and A. A. Irwin to begin not later than January, 1932, and ending in 1936";

that he did not give Irwin such a showing, nor did he authorize anyone else for him to execute such a showing, and that such a showing, if it did exist, was a forgery, and that if his name was signed there-to, it was forged, and without his consent or approval.

Sworn to and subscribed before me this the 1st day of March, 1934.

J. MacSumpster  
Notary Public, Baldwin County,  
Alabama.

Thomas Le Baggett

STATE OF ALABAMA.

BALDWIN COUNTY.

Before me, the undersigned authority in and for said County, in said State, personally appeared THOMAS L. BAGGETT, who is known to me and who, having been by me first duly sworn, deposes and says that he is the husband of Alice Baggett; that he and his wife are the owners of and in possession of the following described lands in Baldwin County, Alabama, to-wit: East half of the Southeast quarter and the Southwest quarter of the Southeast quarter of Section twenty-eight (28) and the Northeast quarter of the Northeast quarter of Section thirty-three (33), in Township four (4) South of Range six (6) East of St. Stephens Meridian in Alabama, containing 159.40 acres; that on August 9, 1929, he and his wife executed and delivered to S. J. Irwin and A. A. Irwin a lease giving and granting to the said S. J. Irwin and A. A. Irwin the right to work and use for turpentine purposes all the growing pine trees over eight inches on the above described land; that in and by said lease the said S. J. Irwin and A. A. Irwin had the right to work said timber for turpentine purposes and that the said parties were to commence cupping, working and otherwise using for turpentine purposes said timber at any time they decided their business might require, not later than January, 1930, and to continue to cup, work and otherwise use the same for the full term of four years beginning from January, 1930; that the said S. J. Irwin and A. A. Irwin were given the right and allowed to work said timber during the full period covered by said lease; that in December, 1933, the said S. J. Irwin and A. A. Irwin moved all the cups on said timber on said land and carried them off the said land to a place near S. J. Irwin's home.

That the said S. J. Irwin requested the affiant and his wife to grant a continuance on said lease, but that the affiant and the said Alice Baggett, his wife, absolutely refused to grant

any continuance; that he did not authorize the said S. J. Irwin, A. A. Irwin, W. H. Hawkins or any other person, either orally or in writing, to extend said lease; that if there has been any change made in the said lease since it was executed, such act was a forgery and done without the consent and without the approval on the part of the affiant.

That all rights given and granted unto the said S. J. Irwin and A. A. Irwin under and by the terms of said lease expired on January 1st, 1934; that neither of the said parties has any right whatever to enter upon the said lands, or in anywise attempt to enter thereupon, or to use or to attempt to use the timber located on said land in any way or for any purpose.

That since the said S. J. Irwin and A. A. Irwin's rights expired under said lease, on January 1st, 1934, they have continued to trespass upon said lands, and that just recently they set fire to or caused fire to be set to the above described lands, thereby doing serious and irreparable damages to the said lands and the timber located thereon, all to the injury of the said Thomas L. Baggett and Alice Baggett.

That sometime in December, 1933, the affiant went to and advised the said S. J. Irwin that all rights granted under said lease would expire on January 1st, 1934, and warned him against any entry upon the said lands or doing any act toward the working of said timber for turpentine purposes after that time; that a true and correct copy of the said lease given by the said Thomas L. Baggett and Alice Baggett to the said S. J. Irwin and A. A. Irwin, made at the time of the execution of the lease, delivered to the said S. J. Irwin and A. A. Irwin, is hereto attached, marked Exhibit "A" and asked to be taken as a part of this affidavit as though herein fully set out.

Sworn to and subscribed  
before me this the 12  
day of February, 1934.

Thomas L. Baggett

Hudson

Notary Public, Baldwin County,  
Alabama.

State of Alabama

County of Baldwin

THIS INDENTURE made this 9th day of August 1927 between Thomas L. Baggett and Alice Baggett of the county of Baldwin State of Alabama the first party, and S. J. Davis and A. A. Davis of the County of Baldwin, second party.

WITNESSETH. THAT said first party, for and in consideration of the sum of One (\$1.00) Dollar, in hand, paid by the second party, the receipt of which is hereby acknowledged, and for the further consideration of

16cts per cu ft Dollars, to be paid as follows, to-wit:

\$400.00 cash, the receipt of same being hereby acknowledged and balance of amount at 16cts per cu ft to be paid in Jan. 1930.

has granted, bargained, conveyed, demised, sold and leased, and by these presents does grant, bargain, convey, demise, sell and lease to the second party their heirs, executors and assigns, all the grow-

ing pine trees for turpentine purposes now upon the following described lands, to-wit: all growing pine trees over eight inches on

East half of the South East quarter and the South West quarter of the Southeast quarter of Sec. 28 and the North East quarter of the North East quarter of Sec. 33 in Township Four South of Range six East of St. Stephens Meridian in Alabama containing one hundred and fifty nine acres and forty hundredths of an acre

Together with all necessary rights, privileges, uses and purposes appertaining to the turpentine business, including the construction of all roads, ~~trails or railroads~~, over or through said lands that may be necessary, or convenient; the right of ways over said lands may be exercised at any and all times, continuously or not continuously, now or at any time hereafter, as long as the second party or assigns may require to reach any other lands that he, or they, may have, or hereafter lease, in the neighborhood.

IT IS FURTHER AGREED, that said second party may assign this lease in whole, or in part, and that any assignee of this lease shall have the same right of assignment, and that all the rights and privileges of the second party shall vest in whomsoever may succeed to the interest hereby conveyed to the said second party, by virtue of such assignment, or otherwise.

TO HAVE AND TO HOLD, ~~for~~ work and otherwise use, said timber for turpentine purposes unto the said second party their heirs, successors and assigns; it being expressly covenanted and agreed that the said second party may commence ~~working~~ cutting working and otherwise using for turpentine purposes, said timber or any portion thereof, ~~at any time~~ whenever they may desire, or their business may acquire, and con-

tinue to ~~box~~ cut work and otherwise use the same or any portion thereof, for the full term of four years, beginning with reference to each portion thereof, from the winter that the ~~boxing and working~~ cutting of each portion is commenced, and shall continue to operate until all the timber and each and every part thereof has been ~~boxed~~ cut

worked and otherwise used, for the full period of four years, from the winter during which the ~~boxes~~ logs are ~~loaded~~ cut and until all the turpentine, scrape and dip has been gathered from the ~~land~~ logs working:

AND THE SAID first party, their heirs, executors and administrators, covenants that they have good titles to, and legal rights to convey the same; that the same is free from all liens and incumbrances of any kind; and that all taxes on the same have been paid; and will be paid, by them during the continuance of this lease.

Should the lessee, or sub lessee, hereunder, find that any taxes remain unpaid after becoming due and payable, or that any lien exists upon any of the said lands, then they may pay the same and deduct the amount so paid from the next payment falling due the lessor hereunder.

AND THE FIRST PARTY, their heirs, executors and administrators, the free and uninterrupted use and enjoyment of the said timber, rights and privileges for the time aforesaid and for the purposes aforesaid unto said second party, their heirs, executors, administrators and all and every other person or persons whatever, shall and will warrant and defend by virtue of these presents:

IN WITNESS WHEREOF, the said first party have hereunto set their hands and affixed their seal, the day and year first above written.

Signed, sealed and delivered in presence of: Alice Baggett (SEAL) Thomas L. Baggett (SEAL) Yuck R. Sawyer (SEAL) Mrs Oscar Williams (SEAL)

S. J. IRWIN,  
Complainant,

vs.

ALICE BAGGETT and  
THOMAS J. BAGGETT,  
Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

BRIEF AND ARGUMENT OF RESPONDENTS  
ON MOTION TO DISSOLVE INJUNCTION.

BEMBE & HALL,  
Solicitors for Respondents.

S. J. IRWIN,  
Complainant,  
vs.  
ALICE BAGGETT and  
THOMAS L. BAGGETT,  
Respondents.

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

BRIEF AND ARGUMENT OF RESPONDENTS  
ON MOTION TO DISSOLVE INJUNCTION

This cause was submitted upon the respondents' motion to dissolve the injunction granted the complainant. The respondents in support of their motion offered the sworn answer and cross bill and also affidavits of Alice Baggett and Thomas L. Baggett. The sworn answer and affidavits of the respondents set up that on August 8, 1929, they executed a turpentine lease to the complainant and S. J. Irwin, which was to be in effect until January, 1934. They specifically deny that they at any time granted an extension of said lease, or authorized any one for them to grant the extension. They further set up that any act in the changing of the lease or the execution of any instrument authorizing the extension of the lease was a forgery and without their consent or approval.

The complainant, in support of his contention, has offered his own affidavit and also the affidavit of W. H. Hawkins to the

effect that the extension was made in accordance with a writing signed by Alice Baggett and Thomas L. Baggett. However, for some unknown reason this writing has mysteriously disappeared or been lost and is unaccounted for.

To rebut the affidavits of S. J. Irwin and W. H. Hawkins, the respondents offer the affidavits of Thomas L. Baggett and Alice Baggett that if any such instrument was in existence as set out in the affidavit of S. J. Irwin, purporting to be signed by them, that the same was a forgery and done without their consent or approval; that in addition to these affidavits specifically rebutting the testimony of S. J. Irwin and W. H. Hawkins as to the written instrument, there is offered on behalf of the respondents affidavits of Thomas L. Baggett and Hubert E. Hall relative to a statement made by the said W. H. Hawkins to the effect that S. J. Irwin called on him to amend the original lease so as to extend the term for a period of two years, but that the said S. J. Irwin at the time only told him that he had a showing from Mr. and Mrs. Baggett and that he did not see such showing and did not know whether or not Mr. Irwin had such a writing or showing.

The original lease, as admitted by the respondents, was duly drawn up, signed and acknowledged by the respondents.

We think that there is no question but that a turpentine lease is a transmission of an interest in the land supporting the timber.

"The extension being for a term of two years was required to be in writing."

Elliott vs. Bankston, 49 So., 76.

The complainant in support of his contention has necessarily, the supposed written instrument having been lost, had to rely on parol evidence.

"It is a well recognized proposition of law that parol evidence is not admissible to change the terms of an instrument conveying an interest in land."

Cryar vs. Ogle, 99 So., 157.

"It is the law that a lease must be construed most strongly against lessor and liberally in favor of lessee only in case of ambiguity and uncertainty; the general rule being to construe it according to the party's intention as gathered from the whole instrument rather than from a single clause or clauses thereof, and, if the language is not clear, the circumstances attending its execution and the subsequent acts of the parties may be considered in ascertaining the intention of the contracting parties."

Greenwood et al. vs. Bennett, 95 So., 159.

An examination of the original lease clearly shows that it was drafted by a person unskilled in such work.

Unskillfulness in draftsmanship disclosing a lack of knowledge of the meaning of legal phrases is to be considered in connection with the language of the entire instrument to determine the intent."

Clark vs. Cammack, 113 So., 270.

"A greater latitude of construction is to be indulged in the case of a deed drawn by an unskilled draftsman than in the case of the product of a skilled scrivener."

Gamble et al. vs. Gamble, 75 So., 924.

If an instrument is found to bear on its face evidence that the draftsman was not skilled in drawing such instruments, ~~the~~ greater latitude of construction must be indulged than in cases where the instrument appears to



have been skilfully drawn by one acquainted with the force and meaning of the technical expressions employed.

Porter vs. Henderson, 82 So., 668.

A careful reading of the lease in question shows that in the habendum clause different clauses are inconsistent. This being the case, it is the duty of the court to look to and ascertain the true intent of the parties in the execution of the lease.

"In construing an instrument the duty devolves upon the court to ascertain as far as possible the grantor's intention and in the performance of this duty to look at the whole conveyance."

Cobb vs. Union Naval Stores Company, 80 So., 415.

"In the construction of written instruments several cardinal rules have been given application in this jurisdiction. A controlling inquiry is the intention of the parties, which must be ascertained from a consideration of the whole instrument, from the nature of the subject matter, and from the surrounding circumstances; that is to say, by having regard for the situation of the parties and the objects they had in view in making the contract conveyance."

Porter vs. Henderson, 82 So., 668.

Where an instrument contains a clause showing the intention of the parties, ambiguities and inconsistencies in other clauses will not defeat the intention."

McCombs vs. Stephenson et al., 44 So., 867.

Arbitrary rules will not be applied in construing a deed where real intention of the parties can be gathered from the language of the instrument."

Dickson et al. vs. Van Hoose et al., 47 So., 718.

"An instrument must be so interpreted as to give effect to the intention of the parties as manifested by its language when the whole instrument is taken together in connection with the subject matter and surrounding circumstances."

King vs. Coffee et al., 131 So., 792.

An examination of the lease, habendum clause, shows the following language:

"It being expressly covenanted and agreed that the said second party may commence cupping, working and otherwise using for turpentine purposes, said timber they may desire or their business may require, not later than January, 1930, and continue to cup, work and otherwise use the same for the full term of four years beginning from January, 1930, and shall continue to operate until all the timber and each and every part thereof has been cupped, worked and otherwise used for the full period of four years from the winter during which the cups are hung and until all the turpentine, scrape and dip has been gathered from the fourth working."

It will appear that the habendum clause contains two clauses, the one specifying four years from January, 1930, and the other four years from the winter during which the cups are hung. In this event the first clause governs.

"In construing an instrument containing contradictory clauses the first clause governs, unless the intention to qualify it is very plain, and where the subsequent clause is of doubtful import, it will not contradict the preceding certain one."

*McCombs vs. Stephenson et al.*, 44 So., 867.

The clause setting out the time as four years from January, 1930, we think clearly expresses the intention of the parties.

"Where two clauses in an instrument are inconsistent and irreconcilable, the latter must give way to the former; but if the words of the latter clause are of doubtful import, they will not be so construed as to contradict the certain words of a preceding clause."

*Head vs. Hunnicutt*, 55 So., 161.

"It is the rule, grounded upon the presumption that conflicting expressions of intent are not purposely made in deeds, that the judicial duty is, if possible, to recon-

oil; any repugnancy that appears; and, if that cannot be done, the former clause must control to the exclusion of the latter clause instituting the repugnancy."

Robertson et al. vs. Robertson et al., 68 So., 52.

"If a contract is of doubtful import as to any of its provisions, the practical construction put by the parties on such engagement therein is controlling of its meaning and must often prevail over its literal meaning'."

Montgomery Enterprises vs. Empire Theater Co.,  
86 So., 880.

"A trade custom as to the subject and objects of the contract known to the parties as prevailing in the community where the contract is executed and where to be performed is by implication incorporated therein, between the parties as respecting the subject-matter of such custom."

Montgomery Enterprises vs. Empire Theater Co.,  
86 So., 880.

It will be noted from the lease in question that it was a printed form commonly used by turpentine operators. However, the person drafting the lease in question, no doubt at the suggestion of the parties, struck out a great part thereof and added others. It was inserted in ink that the complainant could commence cupping and working the timber not later than January, 1930, and continue for the full term of four years beginning from January, 1930. This conclusively shows that it was the intention of the parties to the lease that it was to expire four years from January, 1930.

Where a part of an instrument is in writing and the other printed, as in this particular case, that part written prevails over that part printed.

"It is a sound and well-settled rule of construction

of contracts that, in arriving at a proper interpretation, the court should examine the whole instrument with a view of ascertaining and carrying into effect the purpose and object the parties had in view, and thus give some effect to each clause, and reconcile apparent discrepancies if practicable. Courts will never presume that parties intended to insert in their contracts provisions wholly incompatible and irreconcilable one with another. It is likewise a well-settled rule of construction that as to instruments which are partly printed and partly written, that which is written shall have the greater weight because of the presumption that greater attention has been bestowed upon the written parts of the contract."

John Deere Plow Co. vs. City Hardware Co., 57 So.,  
821.

"Where parts of an instrument are written and others printed, the written portion has been given greater weight than the printed; but the instrument must be examined in its entirety, apparent discrepancies reconciled, and some operation given each clause, if possible; and if not, to ascertain and give effect to the intention of the parties; that the court should examine the whole instrument with a view of ascertaining and carrying into effect the purpose and object the parties had in view and thus give some effect to each clause and reconcile apparent discrepancies if practicable, giving to the written parts precedence over those which are printed."

Porter vs. Henderson, 82 So., 668.

It must necessarily be borne in mind in arriving at a proper conclusion in this cause that there was some purpose in the complainant Irwin going to and attempting to get an extension of the lease. If he had considered the lease as running for four years from the winter in which the timber was cupped, then why would he have wanted an extension?

"The dealings of the parties subsequent to a written contract between them are important as going to show the construction put on the contract by the parties themselves while friendly, it being presumed they knew best what was meant by its terms."

McGowan Lumber & Import Co. vs. Camp Lumber Co.,  
77 So., 433.

Doesn't the action of the complainant in attempting to get an extension clearly show that it was the intention of all parties concerned that the lease should expire four years from January, 1930, as inserted therein?

"Contracts not clear on their face must be interpreted in the light of the circumstances surrounding the parties when it was made in arriving at their intention."

Russell vs. Garrett, 93 So., 711.

We wish to call the court's attention especially to the case of Burton vs. Steverson, cited in 91 So., page 74. It will be noted from a reading of this case that there is set out a lease complete, which is similar to the one in question before a part thereof was stricken and others added in ink. The habendum clause in this particular decision is identical with that of the lease in question in its original form.

A reading of the printed form of lease in question, not considering that part stricken, is as follows:

"TO HAVE AND TO HOLD, cup, work and otherwise use, said timber for turpentine purposes unto the said second party, their heirs, successors and assigns; it being expressly covenanted and agreed that the ~~said~~ second party may commence cupping, working and otherwise using for turpentine purposes, said timber, or any portion thereof, at any time they may desire or their business may require, and continue to work and to otherwise use the same, or any portion thereof, for the full term of four years beginning, with reference to each portion thereof, from the winter that the boxing and working of each portion is commenced, and shall continue to operate until all the timber and each and every part thereof has been boxed, worked and otherwise used, for the full period of four years from the winter during, that the boxes are cut and until all the turpentine, scrape and dip has been gathered from the fourth years working.

Beginning cutting in the fall 1911."

the winter in which the timber was cupped, as to each individual tract, taking into consideration what might be a reasonable time, as it could not be presumed that the parties intended to have any unusual length of time in which to carry on the operation. When we read the original lease as entered into between the parties in this case, it will be found that those parts which controlled the original printed form have been omitted, that is, "or any portion thereof, with reference to each portion thereof from the winter that the boxing and working of each portion is commenced." The lease in question is very definite, that is the first clause,

by instruments which were never executed, or if executed, have been lost, change the whole meaning of a properly written and executed contract. The affidavits of the respondents are positive, in that if any such authority or purported authority was presented by the complainant, that it was a forgery. Leases for a period of more than one year are required to be in writing and signed by the lessors. The same requirements apply to the purported extension in this case.

The complainant, S. J. Irwin, has seen fit to retain and record the original lease. However, he has lost, misplaced or destroyed the extension. How can he explain his being so careful with the original and so careless with the extension?

The law requires certain formalities concerning real property. Those formalities have not been complied with in this particular case.

We submit to the court that upon a full consideration of all the facts in this case, together with the law supporting our contention, that the injunction heretofore granted in this cause should be dissolved.

Respectfully Submitted,

BEEBE & HALL,

By

*Arnold*  
Solicitors for Respondents.

We hereby certify that a copy of this opinion has this day been mailed by United States mail, postage prepaid, to Messrs.

S. J. IRWIN,  
Complainant,

vs.

THOMAS L. BAGGETT and  
ALICE BAGGETT,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

TO HON. S. J. IRWIN, Complainant; and

MESSRS. HYBART, HEARD & CHASON,  
Solicitors for Complainant in the  
above styled cause.

NOTICE IS HEREBY GIVEN that motion will be made before  
the Hon. F. W. Hare, Judge of the Circuit Court of Baldwin County,  
Alabama, on the 23<sup>d</sup> day of July, 1934, to dissolve the  
injunction issued in the above styled cause against Alice Baggett  
and Thomas L. Baggett, commanding and strictly enjoining them  
from interfering with entering upon, or the possession of by the  
said complainant, S. J. Irwin, or his agents or employes, upon  
the following described land situated in Baldwin County, Alabama,  
to-wit:

East half of the Southeast quarter and the Southwest  
quarter of the Southeast quarter of Section twenty-  
eight (28) and the Northeast quarter of the North-  
east quarter of Section thirty-three (33) in Town-  
ship four (4) South of Range six (6) East;

and specifically described in the original bill of complaint  
filed on January 18, 1934, duly sworn to; and in support of such  
motion submit: (1) The sworn answer of the respondents filed in  
this cause on February 9, 1934; (2) affidavit of Thomas L. Baggett;  
(3) affidavit of Alice Baggett.

Alice Baggett.

Thomas L. Baggett

Bebe Hall

*we hereby accept service  
of the foregoing notice  
this 13 day of July. Hybart, Heard & Chason*

STATE OF ALABAMA,  
BALDWIN COUNTY.

Before me, a Notary Public in and for said State and  
County, personally appeared N. D. MOORER.

Thos. W. Gilmer, S. C. Jenkins, L. D. Owens, J. H. Stacey, J. C.  
McLeod, J. B. Blackburn,

who being duly sworn, each deposes and says:-

That they are acquainted with W. H. Hawkins of Bay  
Minette, Alabama; that they have known him for ten years or more,  
and that they know his general reputation in the community in  
which he lives for truth and veracity, and that that reputation  
is good, and knowing said reputation as they do, they would be-  
lieve him on oath.

Thos. W. Gilmer

S. C. Jenkins

L. D. Owens

J. H. Stacey

J. C. McLeod

J. B. Blackburn

Henry Darrow

Sworn to and subscribed before  
me, a Notary Public whose seal  
is hereto affixed, this 10<sup>th</sup>  
day of March, 1934.

R. C. Heard  
Notary Public, Baldwin County,  
State of Alabama.



STATE OF ALABAMA,  
BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS: That we, S. J. Irwin, as Principal, and the undersigned, as Sureties, are held and firmly bound unto the Register of the Circuit Court, in Equity, for said County, in the sum of Three Hundred Dollars (\$ 300<sup>00</sup> ), for the payment of which to the said Register, or to his successors, we bind ourselves, our executors and administrators, jointly and severally.

Sealed with our seals and dated this 12<sup>th</sup> day of January, 1934.

WHEREAS, the said S. J. Irwin, has filed his Bill of Complaint in the said Circuit Court, in Equity, and has obtained thereon an Order for the issuance of an Injunction from the Hon. F. W. Hare, Judge, to restrain and enjoin Alice Baggett and Thomas L. Baggett, from interfering with the entering upon, or the possession of, the following described real estate situated in Baldwin County, Alabama, viz:-

East half of Southeast quarter and Southwest Quarter of Southeast Quarter of Section Twenty-eight and the Northeast Quarter of Northeast Quarter, Section Thirty-three, Township Four South of Range Six East,

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said S. J. Irwin, his heirs or assigns, or any of them, shall well and truly pay or cause to be paid all damages which any person may sustain by the suing out of said Injunction if the same is dissolved by the Circuit Court, in Equity, on the Bill filed by the said S. J. Irwin, as aforesaid, then the above obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seals on the day and year first above written.

Taken and approved this  
12 day of Jan. 1934.

M. A. Stone  
Register.

S. J. Irwin SEAL

M. A. Irwin SEAL

SEAL

S. J. IRWIN,  
Complainant,  
vs.  
ALICE BAGGETT and  
THOMAS L. BAGGETT,  
Respondents.

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

Come the respondents and for answer to the Complainant's bill of complaint heretofore filed in this cause, and to each Count thereof, separately and severally, say:

FIRST:

They admit the allegations contained in Paragraph FIRST that the complainant and respondents are over the age of twenty-one years and residents of Baldwin County, Alabama.

SECOND:

They deny the allegations contained in Paragraph SECOND that the complainant is in the possession of the following described lands in Baldwin County, Alabama, to-wit:

The East half ( $E\frac{1}{2}$ ) of the Southeast quarter ( $SE\frac{1}{4}$ ) and Southwest quarter ( $SW\frac{1}{4}$ ) of Southeast quarter ( $SE\frac{1}{4}$ ) of Section twenty-eight (28), and the Northeast quarter ( $NE\frac{1}{4}$ ) of Northeast quarter ( $NE\frac{1}{4}$ ) of Section thirty-three (33), Township four (4) South of Range six (6) East.

They admit that on August 9th, 1929, they executed a lease to the complainant which was to be in effect until January 1st, 1934, but specifically deny that they, or either of them, renewed or extended said lease, or authorized anyone for them to extend said lease; that all the rights of the complainant under said lease expired on January 1st, 1934.

THIRD:

For answer to Paragraph THIRD they say that the complainant has no right to enter upon the said described lands, or to use the timber located thereon for turpentine purposes; that all rights granted to him by and under the terms of the lease herein set out expired on January 1st, 1934, and that any act upon his part in

entering upon the said land, or attempting to use the timber for turpentine purposes, would constitute him a trespasser. They deny the allegation that they are insolvent and would not be able to respond in damages in a court of law.

Further answering the allegations contained in the Complainant's bill of complaint, the respondents say:

1. That on August 9, 1929, they executed and delivered to the complainant a lease, giving and granting to the complainant the right to use all the growing pine timber for turpentine purposes upon *which were, have been, and are now the property of respondents, and now in their possession* the lands hereinabove described; that a copy of said lease is hereto attached, marked Exhibit "A" and asked to be taken as a part of this answer and referred to as often as may be necessary;
2. That in accordance with the terms and conditions set out in said lease all the rights granted to the complainant thereunder expired on January 1st, 1934;
3. That sometime prior to January 1st, 1934, the respondent, Thomas L. Baggett, notified the complainant that all of his right under said lease would expire on January 1st, 1934; that soon thereafter the complainant moved all his turpentine cups from said land and carried them over near his home;
4. That while the lease was in force and effect the complainant applied to the respondents for an extension thereof, but the respondents refused to grant an extension; that they neither extended the said lease nor authorized anyone for them to extend it, either orally or in writing;
5. That the complainant's rights having expired under the terms of the said lease any acts on his part in going upon said land to use the timber located thereon for turpentine purposes, or any other purposes, would constitute him a trespasser; that if he is allowed to use said timber it will cause an irreparable loss to the respondents;
6. That the complainant is heavily involved and would not be able to respond in damages in a court of law if he was permitted

to go ahead and trespass upon said land and use the said timber for turpentine purposes.

7. That the complainant and cross-respondent, S. J. Irwin, has, since the expiration of said lease, and since all of his rights thereunder and the right to enter upon said land have expired, continued to trespass upon said land; that he has set out or caused to be set out fire on said land, thereby doing irreparable injury to said lands and the timber thereon.

WHEREFORE, the premises considered, the respondents pray that your Honor will take this as their answer and cross-complaint against the said S. J. Irwin, the complainant, and that your Honor will cause the usual writ of process to issue to the said S. J. Irwin, requiring him to plead, answer or demur to the respondents' cross bill within the time and under the penalties prescribed by law and the practice of this Honorable Court; that your Honor will also grant to your respondents and cross-complainants a temporary writ of injunction against said S. J. Irwin under such conditions and requirements as your Honor will fix, restraining the said S. J. Irwin, either in person or by agent, from entering upon the lands herein described, or in anywise attempting to use, or to use, the timber located upon said lands for turpentine purposes, or any other purposes.

The respondents and cross-complainants further pray that upon a final hearing of this cause your Honor will cause said temporary writ of injunction to be made final and perpetual, forever restraining the said S. J. Irwin, either in person or by agent, from entering upon said lands, or attempting to use, or to use, or in any manner exercising control or right of possession to the timber located on said land.

Respondents and cross-complainants further pray that your Honor will enter an order and decree that all rights of the complainant and cross-respondent under said lease have expired and that the said complainant and cross-respondent has no right to enter upon said

land and attempt to work the timber located thereon for turpentine or any other purpose.

Respondents and cross-complainants further pray that your Honor will enter an order and decree against the complainant and cross-respondent for the sum of Five Hundred Dollars (\$500.00), payable to the respondents and cross-complainants, as damages for illegally entering upon and exercising control over the said lands hereinabove described and the timber thereon, and setting or causing to be set the fire to said lands, thereby damaging the said lands and the timber thereon.

Respondents and cross-complainants pray for such other, further, different or general relief as in equity and good conscience may seem just and proper. And as in duty bound they will ever pray.

*Beebe & Staal*

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Solicitors for Respondents-Cross Complainants.

FOOT NOTE:

The complainant and cross-respondent is required to answer each and every allegation contained in Paragraphs 1 to 7 inclusive, but not under oath, oath being hereby expressly waived.

*Beebe & Staal*

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Solicitors for Respondents-Cross Complainants.

STATE OF ALABAMA.

BALDWIN COUNTY.

Before me, the undersigned authority in and for said County, in said State, personally appeared ALICE BAGGETT and THOMAS L. BAGGETT, who are known to me and who, being by me first duly sworn, depose and say: That they are the respondents and cross-complainants in the foregoing bill of complaint; that the allegations contained in the respondents and cross-complainants' answer and in the respondents and cross-complainants' cross bill are true and correct.

✓ Alice Baggett.  
✓ Thomas L. Baggett

Sworn to and subscribed before me, this the 8th day of January, 1934.

H. H. ...  
Notary Public, Baldwin County, Alabama.

TO THE REGISTER OF THE CIRCUIT COURT, BALDWIN COUNTY, ALABAMA:

Upon the respondents and cross-complainants entering into bond with good and sufficient sureties in the sum of \_\_\_\_\_ Dollars, to be approved by you, you will issue a temporary writ of injunction as prayed for.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 1934.

\_\_\_\_\_  
Judge.

Exhibit "A"

STATE OF ALABAMA        )  
COUNTY OF BALDWIN     )

THIS INDENTURE, made this 9th day of August 1929, between Thomas L. Baggett and Alice Baggett of the county of Baldwin, State of Alabama, the first party, and S. J. Irwin and A. A. Irwin of the County of Baldwin, second party, WITNESSETH.

THAT said first party, for and in consideration of the sum of One (\$1.00) Dollar, in hand, paid by the second party, the receipt of which is hereby acknowledged, and for the further consideration of 16 cts. per cup, to be paid as follows, to-wit:

\$400.00 cash, the receipt of same being hereby acknowledged and balance of amount at 16 cts. per cup to be paid in Jan. 1930, has granted, bargained, conveyed, demised, sold and leased, and by these presents does grant, bargain, convey, demise, sell and lease to the second party their heirs, executors and assigns, all the growing pine trees for turpentine purposes now upon the following described lands, to-wit: all growing pine trees over eight inches on

East half of the South East quarter and the South West quarter of the South east quarter of Sec. 28 and the North East quarter of the North East quarter of Sec. 33 in Township four South of Range six East of St. Stephens Meridian in Alabama, containing one hundred and fifty-nine acres and forty hundredths of an acre.

Together with all necessary rights, privileges, uses and purposes appertaining to the turpentine business, including the construction of all roads over or through said lands that may be necessary, or convenient; the right of ways over said lands may be exercised at any and all times, continuously or not continuously, now or at any time hereafter, as long as the second party or assigns may require to reach any other lands that he, or they, may have, or hereafter lease, in the neighborhood.

IT IS FURTHER AGREED, that said second party may assign this lease in whole, or in part, and that any assignee of this lease shall have the same right of assignment, and that all the rights and privileges of the second party shall vest in whomsoever may succeed to the interest hereby conveyed to the said second party, by virtue of such assignment, or otherwise.

TO HAVE AND TO HOLD, cup, work and otherwise use, said timber for turpentine purposes unto the said second party their heirs, successors and assigns; it being expressly convenated and agreed that the said second party may commence cupping, working and otherwise using for turpentine purposes, said timber they may desire, or their business may acquire, not later than Jan. 1930, and continue to cup, work and otherwise use the same for the full term of four ✓ years, beginning from Jan. 1930, and shall continue to operate until all the timber and each and every part thereof has been cupped, worked and otherwise used, for the full period of four years, from the winter during which the cups are hung and until all the turpentine, scrape and dip has been gathered from the fourth working:

AND THE SAID first party, their heirs, executors and administrators, covenants that they have good titles to, and legal rights to convey the same; that the same is free from all liens and incumbrances of any kind; and that all taxes on the same have been paid; and will be paid, by them during the continuance of this lease.

Should the lessee, or sub lessee, find that any taxes remain unpaid after becoming due and payable, or that any lien exists

upon any of the said lands, then they may pay the same and deduct the amount so paid from the next payment falling due the lessor hereunder:

AND THE FIRST PARTY, their heirs, executors and administrators, the free and uninterrupted use and enjoyment of the said timber, rights and privileges for the time aforesaid and for the purposes aforesaid unto said second party, their heirs, executors, administrators and all and every other person or persons whatever, shall and will warrant and defend by virtue of these presents:

IN WITNESS WHEREOF, the said first party have hereunto set their hands and affixed their seal, the day and year first above written.

Signed, sealed and delivered in presence of:
(Signed) Alice Baggett (SEAL)
" Thomas L. Baggett (SEAL)
Jack R. Downer
Mrs. Oscar Williams

STATE OF ALABAMA }
COUNTY OF BALDWIN }

Personally before the undersigned came Thomas L. Baggett and Alice Baggett known to me to be the individuals described, and who signed the foregoing instrument, and acknowledged the same to be a free and voluntary act and deed.

And the said Alice Baggett, wife of the said Thomas L. Baggett being by me privately examined, separately and apart from her husband, acknowledged that she joined her said husband in the execution of the foregoing instrument freely and voluntarily, and without any compulsion, constraint, apprehension, or fear of or from her said husband, for the purpose of conveying, relinquishing, and renouncing all of her interest of said whatsoever kind and description in and to the above described, for the uses and purposes in the said instrument expressed.

In witness whereof I have hereunto set my hand and affixed my official seal this 9th day of August, 1929.

(Seal) (Signed) Mrs. Oscar Williams
Notary Public,
My commission expires May 25, 1933.



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**WATSON**  
DENTAL

Attendant of  
Thomas L. Bygott  
for medical

Filed Apr 9<sup>th</sup> 1994  
Clyde W. Black

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BEEBE & HALL  
LAWYERS  
BAY MINETTE, ALA.