

(970)

The State of Alabama, }  
Baldwin County

CIRCUIT COURT OF BALDWIN COUNTY,  
IN EQUITY

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

WE COMMAND YOU, That you summon M. Dyson, M.A. Bowen and E.M. Tuveson

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 John A. Patterson, James A. Prout, Jesse Stimpson and Frank Milifchek, for themselves and for other persons similarly situated,

against said M. Dyson, M.A. Bowen and E.M. Tuveson

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

WITNESS, T. W. Richerson, Register of said Circuit Court, this 2nd day of

July 1931

T. W. Richerson Register.

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

2

ORIGINAL

Serve on \_\_\_\_\_

Circuit Court of Baldwin County  
In Equity.

No. \_\_\_\_\_

SUMMONS

John A. Patterson, James

A. Prout, Jesse Stimpson

and Frank A. Milfchek, for

themselves and for other

persons similarly situa-

ted

vs.

M. Dyson, M. A. Bowen

and E. M. Tuveson

(Grubbs & Co.)

Edward P. Totten

Solicitor for Complainant.

Recorded in Vol. \_\_\_\_\_ Page \_\_\_\_\_

RECORDED

The State of Alabama,  
BALDWIN COUNTY.

Received in office this \_\_\_\_\_

day of \_\_\_\_\_ 1931

Sheriff.

Executed this 11<sup>th</sup> day of

July 1931

by leaving a copy of the within Summons with

Mr. Stimpson, M. A.

Bowen and E. B.

M. Tuveson Defendant.

W. H. Stimpson

Sheriff.

By W. H. Stimpson

Deputy Sheriff.

J. A. PATTERSON, et al

Complainants.

VS.

M. DYSON, et al

Respondents.

IN EQUITY.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

Come the defendants and demur to the bill in this cause upon the ground that said bill, by its terms, shows that the parties named as complainants are not all of the parties complainant in this cause or all parties interested in the subject matter thereof.

*Risley & Cobb*

Solicitors for Respondents.

**RECORDED**

J. A. PATTERSON, et al  
Complainants.

VS.

M. DYSON, et al.  
Respondents.

DENURRERS TO BILL FOR WANT  
OF PARTIES.

*Filed July 24th 1931*

*J. H. Williamson  
Clerk*

RICKABY & COBB  
*Attorneys*

John A. Patterson, Atty.	}	Circuit Court, Boswell County, Alabama.
vs.		
M. Dyson, Atty.		

This cause coming on to be heard is submitted for decree on demurrer to the bill of complaint, and upon consideration & view of the opinion that said demurrer is well taken.

It is therefore ordered, adjudged and decreed that said demurrer be, and same hereby is, sustained.

Complainant is allowed thirty days within which to answer if he is so advised.

This Nov. 25, 1931.

F. W. Hale  
Judge.

RECORDED

RECORDED

RECORDED

Allen Hennessey

Dec 29/34

Wm. H. Hennessey  
Proprietor

Copies  
Received from  
H. H. Hennessey  
Nov 28/34

J. A. PATTERSON, et al

Complainants.

VS.

M. DYSON, et al.

Respondents.

IN EQUITY.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

Come the respondents and demur to the Bill of  
Complaint upon the ground that:

THERE IS NO EQUITY IN THE BILL.

*R. Kirby & Cobb.*

Solicitors for Respondent.

4  
**RECORDED**

J. A. PATTERSON, et al  
Complainants.

vs

M. DYSON, et al  
Respondents.

DEMURRER TO BILL OF  
COMPLAINT.

FOR WANT OF EQUITY.

*Filed May 24<sup>th</sup> 1931*  
*J. A. Patterson*  
*Register*

*Re-Filed December 2<sup>nd</sup> 1931*  
*J. A. Patterson*  
*Register*

RICKAREY & COBB  
Solicitors.

LAW OFFICES  
ELLIOTT G. RICKARBY  
ROBERTSDALE, ALA.

December 28th, 1931

Hon. Francis W. Hare  
Judge Circuit Court  
Monroeville, Alabama

Dear Sir:

J. A. PATTERSON, ET AL VS M. DYSON ET AL: Some days ago and pursuant to the order made when sustaining the original demurrer to this bill, the Complainant filed an amended bill, of which a copy was sent us. We are today requesting Mr. Richerson to refile to this amended bill the demurrer for want of equity and to submit the case to you on this demurrer.

We have carefully checked over the amended bill and find the only change to be that in the last paragraph on page three and the succeeding paragraph up to the prayer for process. This consists in the assertion that we discriminated against complainants by paying several other mortgagees forty per cent of the face value of their notes when Complainants received only seventeen and one half per cent.

As we see it, this averment does not strengthen the bill at all, for there are no facts averred showing either fraud or deceit and that we were "black-jacked" into paying several clients of Norborne Stone a few hundred dollars in addition to the seventeen and a half per cent, to which they were entitled to keep them from breaking up our sale does not justify Complainants in asking a like amount. "Two wrongs do not make a right." The amended bill raises no point not already considered and for this reason we stand on our original brief and submit that demurrer to this, as to the original bill, should be sustained.

We are sending a copy of this to Judge Totten.

Respectfully submitted,

*Elliott G. Rickarby*  
*E. G. Rickarby Jr.*  
Solicitors for Respondents.

R:F

Letters - Books

LAW OFFICES OF  
**EDWARD P. TOTTEN**  
OVER BANK OF FAIRHOPE  
FAIRHOPE, ALABAMA

December 19, 1931.

Hon. T. W. Richerson,  
Register of Circuit Court,  
Bay Minette, Alabama.

Dear sir:

In re. PATTERSON vs. DYSON.

Herewith I hand you for filing in  
above cause, amended bill, a copy of which  
I have today forwarded to Hon. E. G. Rickaby,  
Solicitor for defendants, at Robertsedale,

Yours very sincerely,

  
Edward P. Totten.

EPT:MG

Dear Judge  
I enclose  
Amended bill  
Yours truly



LAW OFFICES OF  
**EDWARD P. TOTTEN**  
OVER BANK OF FAIRHOPE  
FAIRHOPE, ALABAMA

December 29, 1931.

Hon. F. W. Hare,  
Judge of Circuit Court,  
Monroeville, Alabama.

Dear sir:

IN RE. PATTERSON vs. DYSON

A copy of his letter to you in above matter has been sent me by Mr. Rickarby, in which he requests refiling of his demurrer to our amended bill and submitting the case on this demurrer.

While the forepart of amended bill reads almost exactly the same as the original bill, our cause of action is completely recast in this: that we have entirely abandoned the contention that defendant Dyson was acting as trustee for complainants in purchasing the mortgaged premises at the foreclosure sale. Our amended bill as you will note sets out the sale of the mortgaged property for certain price and settlement with part of the note holders on one basis and with others on a different and larger percentage, misleading the complainants to accept a settlement by the false and fraudulent statement that they would "pay the amount fixed by the court" and discriminating in making settlement in favor of other note holders who were not so misled.

This presents, as you will note, a wholly different situation from that raised by the original bill and we feel that demurrer should be overruled and defendant should be required to answer.

A copy of this letter is being mailed to Mr. Rickarby, at Robertsdale,

Yours very sincerely,

  
Edward P. Totten.

EPT:MG

Mortgage Book "27" Page 253 - Complete copy of instrument follows:

KNOW ALL MEN BY THESE PRESENTS that The Peoples Cooperative Store, Incorporated of Fairhope, Baldwin County, Alabama, hereinafter called Mortgagor, in consideration of the sum on ninety-eight hundred dollars (\$9800.00) to it in hand paid by;

R. Vandewall	\$2000.00.
M. Dyson	2000.00
C. G. Larssen	1000.00
M. A. Bowen	1000.00
Chas Nelson	500.00
C. L. Coleman	500.00
Alex J. Melville	300.00
J. A. Patterson	200.00.
C. H. Oberg	200.00
Mrs. B. Mathison	200.00
Jos Schneider Sr.	200.00
Wm. Stimpson	100.00
Mrs. E. L. Cross	100.00
A. R. Rockwell	100.00
Miss Margaret Thompson	100.00
E. A. Knapp	100.00
J. H. Deyman	100.00
Wm. Edgerton	100.00
Dr. H. E. Scott	100.00
Fiske Warren	100.00
Ethel O. Darrow	100.00
V.M. Reynolds	100.00
E. A. Ruge	100.00
Axil Johnson	100.00
Blanchard Guthrie	100.00
T. H. Melton	100.00
Jas Prout	100.00
O. Anacker	100.00.

hereinafter called mortgagees, in the various amounts by each here-in-before stated and as evidenced by ninety-eight one-hundred dollar promissory notes, numbered consecutively from one (1) to ninety-eight (98) issued by said corporation on Mortgagor, the receipt of which said total amount and the sums composing same is hereby acknowledged does by these presents grant, bargain, sell and convey unto said mortgagees their heir and assigns forever, all of said corporation right, title, interest and equity in and to that tract or parcel of land 70 feet wide 163 ft. deep Lot One of Block Seven of Division One of the Town of Fairhope, Baldwin County, Alabama, together with the two story brick and block building situated thereon, and all and singular the tenements, rights, privileges and appurtenances to said described premises in any-wise belonging. To have and to hold the same forever.

Provided always and these presents are upon the express condition that if said mortgagor, or its successors or assigns shall well and truly pay or cause to be paid to the said mortgagees or their heirs, successors or assigns, the several sums due to each according to the tenor of ninety eight (98) promissory notes, of even date herewith, and bearing interest, at the rate of 7% per annum, interest payable semi-annually, on or before ten years from date, and also perform any other duties imposed upon said mortgagor by this mortgage, then these presents shall become void, other-

#2.

wise to remain in full force and effect.

In event of default in the payment at maturity of said mortgage debt, or any amount secured hereby, the mortgagees or any one of them is hereby authorized and empowered to sell said property at auction for cash to the highest bidder after giving notice by advertisement once a week for three consecutive weeks in any newspaper then published in Baldwin County, Alabama, to make proper conveyance to purchaser, and the proceeds of sale to apply first to the payment of the costs of said sale, including a reasonable attorneys fee, second to the payment of said mortgage debt and any sums herein provided for the balance if any, to be paid over to said Mortgagor. Mortgagees or any of them may purchase said property at such sale and in that event the auctioneer conducting the sale is authorized in the name of the mortgagor and as attorney in fact to make deed to mortgagee or mortgagees, mortgagor agrees to pay such collection of said mortgage debt or otherwise by reason of any default on the part of the mortgagor. Mortgagor covenants that it is the legal and equitable owner and holder of said property afore described, that it is free from all incumbrances and that mortgagor will warrant the same o mortgagees and to the purchaser there-of against the lawful claims of all persons.

Mortgagor further agrees to keep said premises insured in a reliable insurance company doing business in Alabama to the amount of not less than 50% of the full value of same and provide for payment of loss if any to the mortgagees by attachment of loss payable clause to insurance policy issued thereon.

In testimony whereof the said corporation has caused these presents to be executed by the proper officers and its official seal attached at Fairhope, Baldwin County, Alabama. This 1st day April year 1922.

H. E. Scott, Pres.

C. A. Darrow,  
Secy & Treas.

V. M. Reynolds, Mgr. (SEAL)

STATE OF ALABAMA )  
COUNTY OF BALDWIN ) ss

On this 22nd day of August, 1922, before me a Notary Public in and for the County of Baldwin and State of Alabama, personally appeared H. E. Scott, C. A. Darrow, and V. M. Reynolds known to me to be the president, Sec'y & Treas. and manager of the Peoples Cooperative Store of Fairhope, a corporation, and then and there acknowledged that the said corporation executed the within and foregoing mortgage deed, by them as the proper officers thereof, and that the corporate seal was there to attached by the authority of the Board of Directors of said Corporation.

George W. Wood, Notary Public. (Seal)

I hereby certify that the mortgage or privilege tax on the within instrument was paid by the lender or creditor (See general acts of the Legislature on page 420)

#3.

R. Vanderwall, et al  
By J. L. Kessler.

STATE OF ALABAMA)

BALDWIN COUNTY)

I, James M. Voltz, Judge of Probate for said county, hereby certify  
that the following privilege tax was paid on within instrument as required by acts  
of 1902 and 1903, viz \$14.70.

James M. Voltz, Judge of Probate,  
By J. L. Kessler, Clerk.

Filed for record Sept. 1, 1922, at 8 AM.M

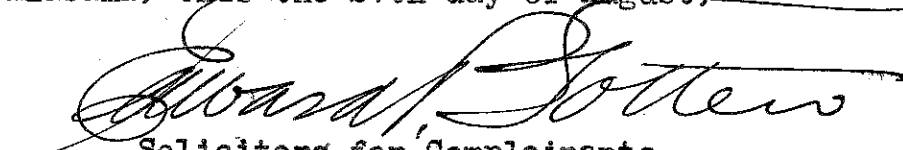
Recorded Sept. 1, 1922.

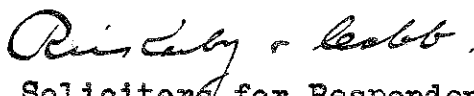
James M. Voltz, Judge of Probate.

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It is agreed between the parties to this cause that the  
foregoing is a correct copy of the original mortgage given by the  
People's Cooperative Store to R. Vanderwall, et al, and that same be  
considered a part of the bill of complaint as filed in accordance with  
an agreement made in open court at time of submission of demurrers  
August 18th, 1931.

Dated at Fairhope, Alabama, this the 27th day of August,  
1931.

  
Solicitors for Complainants.

  
Solicitors for Respondents.

2

**RECORDED**

JOHN A. PATTERSON, et al

VS

M. DYSON, et al

COPY OF MORTGAGE TO BE  
CONSIDERED AS PART OF  
ORIGINAL BILL.

*Filed Nov 3rd/1931  
J. H. H. & Co. v. M. Dyson  
Rogers*

July 17th 1931

Dear Tom,

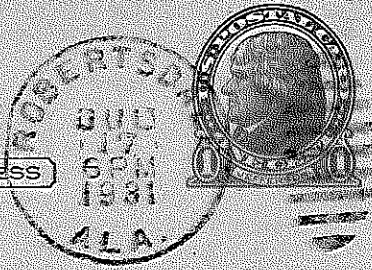
Please send me the copy of the bill recently filed by Judge Tottan in the case of Patterson et al vs M.A. Bowen et al, and oblige.

Sincerely yours,

ELLIOTT G. RICKABY.

*Solicitor for Bowen et al.*

THIS SIDE OF CARD IS FOR ADDRESS



Thomas W. Richerson -Esq.

Bay Minette,

Alabama.

JOHN A. PATTERSON, JAMES A. PROUT,  
JESSE STIMPSON and FRANK A. MILIFCHEK,  
for themselves and for other persons  
similarly situated, -Complainants.

IN CIRCUIT COURT  
BALDWIN COUNTY, ALABAMA,  
IN EQUITY

vs.

M. DYSON, M. A. BOWEN, and E. M. TUVESON  
TUVESON, ----- Defendants.

AMENDED BILL

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

Humbly complaining, your orators  
bring this bill of complaint against the defendants above named  
and respectfully represent and show unto Your Honor and to this  
Court as follows:

That your orators are all bona fide residents of the county  
of Baldwin, Alabama, and are each over the age of twenty-one years;  
that the defendants above named are all residents of said county  
and state and are each over the age of twenty-one years;

That your orators, with the defendants, M. Dyson and M. A.  
Bowen, and other persons, were the owners and holders of a certain  
real estate mortgage, given by the Peoples Cooperative Store, of  
Fairhope, Alabama, a corporation existing under the laws of this  
state, upon the following described property: "all of the right,  
title, interest and equity of the mortgagor in and to that parcel  
of land seventy feet wide and one hundred sixty three feet deep,  
being Lot One of Block Seven of Division One of the Town of Fair-  
hope, Alabama, as per plat of said town recorded in the Probate  
Court, together with the two story brick and block building situa-  
ted thereon," which said mortgage was dated on April 1st, 1922,  
and recorded in Mortgage Book No. 27 at page 253 of the Probate  
Records of Baldwin County, Alabama;

That a default was made in the payment of certain of the in-  
debtedness secured by the said mortgage, in which you orators and  
the defendants were interested as holders and owners of individual  
notes secured thereby, and that the defendants, M. Dyson and M. A.  
Bowen, acting on their own motion, commenced and instituted proceed-  
ings of foreclosure, by publication of a certain notice to that

named of the notes secured by such mortgage;

making a total sum of \$1600.00 held by your orators and the persons

\$100.00 - held by James A. Prout,  
 \$100.00 - held by Jesse Simpson  
 \$500.00 - held by Frank A. Millichek  
 \$100.00 - held by Susana Guindon  
 \$100.00 - held by Mrs. James A. Prout  
 \$200.00 - held by Mrs. Bertha Mathusson,  
 \$100.00 - held by Mrs. Ruth Watrous,  
 \$100.00 - held by T. H. Molton  
 \$100.00 - held by T. C. Aylesworth

\$200.00 - held by John A. Patterson.

persons similarly situated, are as follows;

persons named, for whom they are acting in bringing this suit as

secured by such mortgage held by your orators and by the other

foreclosing such mortgage and that the several amounts of the notes

such mortgage" for whom the defendants Dyson and Bowen acted in

secured by such mortgage, were among "the Mortgagees named in

T. H. Molton, and T. C. Aylesworth, as owners and holders of notes

Mrs. James A. Prout, Mrs. Bertha Mathusson, Mrs. Ruth Watrous,

That your orators and the following persons, viz.- Susana Guindon,

Nine Hundred and Fifty Dollars:

purchased and bought such premises for the sum of One Thousand

notice of foreclosure, and that the defendant, M. Dyson

at such place, the premises described in the mortgage and in the

proceeded to sale and did sell, at public outcry, on such date and

closure of said mortgage; the defendants M. Dyson and M. A. Bowen

That, in accordance with such published notice of foree

selves and others Mortgagees";

lished notice as follows, viz.- "M. DYSON, M.A. BOWEN, For them;

1930, at noon", and that the said defendants signed the said pub-

of the Post Office in the town of Fairhope, on Saturday, April 19,

therein "at public outcry to the highest bidder for cash in front

closure of such mortgage and the sale of said property described

the Mortgagees named in said mortgage" would proceed to the fore-

said defendants stated that "the undersigned for and in behalf of

published at Fairhope, Baldwin County, Alabama, in which notice the

effect in the Fairhope Courier, a newspaper of general circulation

That, subsequent to the date of the foreclosure of such mortgage and the purchase of such property by the defendant Dyson as aforesaid, the defendants Dyson and Bowen proceeded to associate with themselves the defendant Dyson and the defendants, acting together, procured and arranged a sale of the said foreclosed premises and property at the price and for the sum of Five Thousand Dollars, as your orators are informed and verily believe;

That, subsequent to the date of such foreclosure and at ~~the~~ about the time of the sale of such property by the defendants as aforesaid, to-wit: on June 3rd, 1930, the defendants, conspiring ~~xx~~ together to the injury and damage of your orators and the other persons named herein as mortgagees, caused to be sent and did send unto your orators and the other mortgagees, a certain notice in writing in the following terms, to-wit: "We are ready to pay the note you hold against the Cooperative Store Building, if you will bring the note to this office we will pay the amount fixed by the court. Yours truly, DYSON, BOWEN & DYSON, E.M. T."

With the intent and for the purpose of leading your orators and the other persons named herein as mortgagees to believe that there had been a judicial determination of the issues and an adjudication of the rights of all the parties, when, in fact, there had been no such determination of adjudication, all of which was well known to the defendants, Dyson, Bowen and Dyson and all of them;

That, influenced by such false and misleading statement of the defendants, your orators and other mortgagees named herein did surrender unto the said defendants ~~the~~ several notes held by them, which were secured by the aforesaid mortgage, upon the payment by the defendants to them individually of the sum of \$17.50 on each \$100.00 secured note held by them;

That the defendants discriminated against your orators and acted against their interest and to their injury in this: that defendants made settlement with certain of the mortgagees to-wit:

RECORDED  
40  
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O. A. Darrow, Fiske Warren, Richard Vanderwall and others whose names are to your orators unknown and who were similarly situated with your orators and holders of certain of such mortgage notes by paying to such persons and to each of them 40% of the face value of the notes held by them respectively.

That by the wrongful and fraudulent actions of the defendants your orators have severally suffered injury by reason of such misrepresentation and by the payment to some note holders of 40% of the face value of their notes while improperly inducing your orators to accept payment on the basis of 17½% of the face value of their notes, wherefore your orators severally suffered damage as aforesaid;

PRAYER FOR PROCESS AND FOR RELIEF:

RECORDED  
The premises considered your orators pray that, by the usual process of this Honorable Court the above named defendants may be made parties respondent to this bill of complaint and that they may be ordered to demur, plead to or answer the same within the time and under the penalties allowed by law or that the same be forever confessed.

And your orators further pray that upon a final hearing of this cause the defendants and each of them may be required to make a full and complete account of the sum received from the sale of such mortgaged property under said foreclosure and that this Honorable Court will order, adjudge and decree unto your orators from the defendants such amounts as the court shall find them severally entitled to upon such account, and that there may be further awarded to your orators from defendants the sum of \$100.00 as counsel fees in this proceeding and ~~for~~ such other and further and further relief as they may in equity and good conscience be entitled to ~~if~~ they have in any wise prayed or asked amiss of this Honorable Court.

FOOTNOTE:

The above named respondents are hereby required to answer each and every allegation contained in said complaint, but not under oath, as answer under oath is hereby expressly waived.

*Edward J. Gotten*  
SOLICITOR FOR COMPLAINANTS.

RECORDED

RECORDED

IN CLERK'S  
COURT

IN EQUITY

RAITHERSON

DYSON

AMEND

FILED  
24 NOV 1991

Handwritten signature

That by the wrongful and fraudulent actions of the defendants your orators have severely suffered injury by reason of such misrepresentation and by the payment to some note holders of 40% of the face value of their notes while improperly inducing your orators to accept payment on the basis of 17 1/2% of the face value of their notes, wherefore your orators severely suffered damage as aforesaid:

PRAYER FOR PROCESS AND FOR RELIEF:

The premises considered your orators pray that, by the usual process of this Honorable Court the above named defendants may be made parties respondent to this bill of complaint and that they may be ordered to demur, plead to or answer the same within the time and under the penalties allowed by law of that the same be forever confessed.

And your orators further pray that upon a final hearing of this cause the defendants and each of them may be required to make a full and complete account of the same received from the sale of such mortgaged property under said foreclosure and that this Honorable Court will order, adjudge and decree into your orators from the defendants such amounts as the court shall find them severally entitled to upon such account, and that they may be further awarded to your orators from defendants the sum of \$100.00 as counsel fees in this proceeding and for such other and further and further relief as they may in equity and good conscience be entitled to if they have in any wise prayed or asked relief of this Honorable Court.

FOOTNOTE:

The above named respondents are hereby required to answer each and every allegation contained in said complaint, but not under oath, as answer under oath is hereby expressly waived.

Handwritten signature  
SOLICITOR FOR COMPLAINANTS.

EDWARD P. TOTTEN  
SOLICITOR FOR COMPLAINANTS  
FAIRHARVE, N.H.

John A. Patterson,	}	Circuit Court,
et al.		Baldwin County
vs.		Alabama.
M. Ryan,	}	In. Equity
et al.		

This cause coming on to be heard is submitted for decree and demurrer to the amended Bill of Complaint and upon consideration I am of the opinion that the demurrer is well taken.

It is, therefore, ordered, adjudged and decreed by the Court that said demurrer to the Bill of Complaint as amended be, and same hereby is, sustained.

Complainants allowed twenty days to further amend if they are so advised.

This Jan. 6<sup>th</sup> 1932,

D. W. Hare  
Judge

Acene an Western  
Stemmed Bill  
Great Jan 6th 1932  
Dr. R. R. R.  
Leggett

STATE OF ALABAMA  
COUNTY OF BALDWIN

IN CIRCUIT COURT  
IN EQUITY

JOHN A. PATTERSON, et al. Complainants.

vs.

COMPLAINANTS' BRIEF ON DEMURRERS.

M. DYSON, et al. Respondents,

Two points are raised by the complaint against the defendants and over these two points arises the difference between the parties.

Did the defendants, Dyson and Bowen, by undertaking the foreclosure of this mortgage "for themselves and other mortgagees" assume any liability toward parties similarly situated with themselves as creditors of the mortgagor? The allegations of the Bill are to the effect that defendants gave notice by publication that they were acting for themselves as well as other fellow mortgagees in making this foreclosure. It might be asked at what point in these proceedings the defendants ceased acting "for themselves and other mortgagees" and commenced acting in their own interest and without any regard to the rights and interests of their fellow mortgagees. The foreclosure proceedings are concluded only by the sale and when one of the defendants bids the property in at the sale which he has been instrumental in procuring is there not thereby created a resultant trust in favor of his fellow mortgagees? If it be agreed that the foreclosure as a transaction is not complete until the sale is made then would it not seem to follow that the defendants having voluntarily taken upon themselves the foreclosure of the mortgage "for themselves <sup>AND</sup> other mortgagees" are bound by their own actions as trustees when they completed the foreclosure and sale by the buying in or purchase of the property?

But whether or not the status of trustee is sustained by the foregoing, the allegations of the Bill as to misrepresentation and fraud of the part of the defendants is alone amply sufficient to sustain the equity of the Bill. This raises the

JOHN A. PATTERSON, JAMES A. PROUT,  
JESSE STIMPSON and FRANK A. MILIPCHEK,  
for themselves and for other persons  
similarly situated. - Complainants.

IN CIRCUIT COURT

vs.

BALDWIN COUNTY, ALABAMA,

M. DYSON, M. A. BOWEN, and E. M.  
TUVESON, - - - - - Defendants.

IN EQUITY

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

Humbly complaining, your orators  
bring this bill of complaint against the defendants above named  
and respectfully represent and shew unto Your Honor and to this  
Court as follows:

That your orators are all bona fide residents of the county  
of Baldwin, Alabama, and are each over the age of twentyone years;  
that the defendants above named are all residents of said county  
and state and are each over the age of twenty one years;

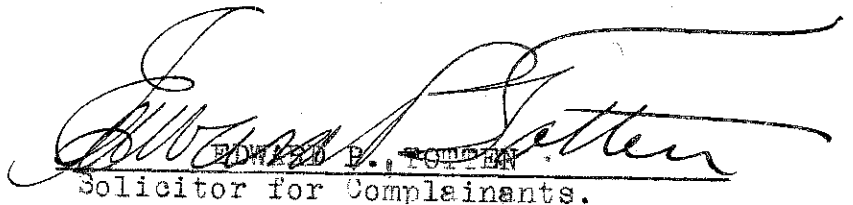
That your orators, with the defendants M. Dyson and M. A.  
Bowen, and other persons, were the owners and holders of a certain  
real estate mortgage given by the Peoples Cooperative Store, of  
Fairhope, Alabama, a corporation existing under the laws of this  
state, upon the following described property: "all of the right,  
title, interest and equity of the mortgagor in and to that parcel  
of land seventy feet wide and one hundred sixty three feet deep,  
being Lot One of Block Seven of Division One of the Town of Fair-  
hope, Alabama, as per plat of said town recorded in the Probate  
Court, together with the two storey brick and block building situa-  
ted thereon" which said mortgage was dated on April 1st, 1922,  
and recorded in Mortgage Book No. 27 at page 253 of the Probate  
records of Baldwin county, Alabama;

That a default was made in the payment of certain of the in-  
debtedness secured by the said mortgage, in which your orators and  
the defendants were interested as holders and owners of individual  
notes secured thereby, and that the defendants M. Dyson and M. A.  
Bowen, acting on their own motion, commenced and instituted proceed-  
ings of foreclosure, by publication of a certain notice to that  
effect in the Fairhope Courier, a newspaper of general circulation  
published at Fairhope, Baldwin County, Alabama, in which notice the

second point of difference in the suit and the allegations clearly present a case against the defendants and all of them. The Bill alleges a misrepresentation of an existing situation by the defendants through which the complainants were misled to their injury and damage. It is plain, in any event, that there was a duty devolving upon the defendants toward the complainants of stating the truth in attempting to make a settlement with them, and the Bill alleges a breach of this duty by the defendants by reason of which the complainants suffered a material damage. To contend that there is no equity in this section of the Bill is, in effect, to deny that the granting of a remedy for fraud and misrepresentation are within the jurisdiction of the court of equity. It is plain that this contention of defendants is so entirely groundless as to need no extended argument to refute.

We maintain that there is ample equity in the Bill and that defendants demurrers should be overruled.

Respectfully submitted:

  
EDWARD P. TOTEN  
Solicitor for Complainants.

copy

IN CIRCUIT COURT

IN EQUITY

PATTERSON ET AL

DYSON ET AL

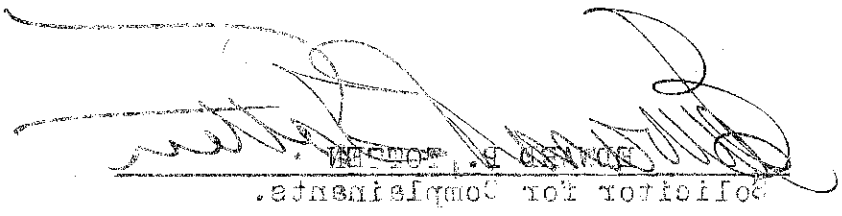
COMPLAINANTS

BRIT

DEFENDERS

and that defendants demurrers should be overruled. We maintain that there is ample equity in the Bill extended argument to refute. tion of defendants is so entirely groundless as to need no diction of the court of equity. It is plain that this con- a remedy for fraud and misrepresentation are within the juris- section of the Bill is, in effect, to deny that the granting of erial damage. To contend that there is no equity in this defendants by reason of which the complainants suffered a mat- with them, and the Bill alleges a breach of this duty by the rate of stating the truth in attempting to make a settlement was a duty devolving upon the defendants toward the complain- their injury and damage. It is plain, in any event, that there to the defendants through which the complainants were misled to the Bill alleges a misrepresentation of an existing situation. The Bill alleges a case against the defendants and all of them. second point of difference in the suit and the allegations

Respectfully submitted:

  
Edward P. Totten  
Solicitor for Complainants.

EDWARD P. TOTTON  
SOLICITOR FOR COMPLAINANTS

said defendants stated that "the undersigned for and in behalf of the Mortgagees named in said mortgage" would proceed to the foreclosure of such mortgage and the sale of said property described therein "at public outcry to the highest bidder for cash in front of the Post Office in the town of Fairhope, on Saturday, April 19, 1930, at noon", and that the said defendants signed the said published notice as follows, viz.- "M. DYSON, M. A. BOWEN, For themselves and other Mortgagees";

That, in accordance with such published notice of foreclosure of said mortgage, the defendants M. Dyson and M. A. Bowen proceeded to sale and did sell, at public outcry, on such date and at such place, the premises described in the mortgage and in the notice of foreclosure, and that the defendant M. A. Dyson bid in, ~~xxxxxx~~ purchased and bought such premises for the sum of One Thousand Nine Hundred Fifty Dollars;

That your orators and the following persons, viz.- Susana Guindon, Mrs. James A. Prout, Mrs. Bertha Matthusson, Mrs. Ruth Watrous, T. H. Molton, and L. C. Aylsworth, as owners and holders of notes secured by such mortgage, were among "the Mortgagees named in said mortgage" for whom the defendants Dyson and Bowen acted in foreclosing such mortgage "for themselves and other mortgagees", and for whom the said defendant Dyson acted in bidding in, buying and purchasing the mortgaged property and premises at such foreclosure sale, and that the several amounts of the notes secured by such mortgage held by your orators and by the other persons named, for whom they are acting in bringing this suit as persons similarly situated, are as follows:

\$200.00	- held by John A. Patterson,
\$200.00	- held by James A. Prout,
\$100.00	- held by Jesse Stimpson,
\$500.00	- held by Frank A. Milifchek,
\$100.00	- held by Susana Guindon
\$100.00	- held by Mrs. James A. Prout
\$200.00	- held by Mrs. Bertha Matthusson
\$100.00	- held by Mrs. Ruth Watrous,
\$100.00	- held by T. H. Molton
\$100.00	- held by L. C. Aylsworth,

making a total sum of \$1600.00 held by your orators and the persons named of the notes secured by such mortgage;

That, subsequent to the date of the foreclosure of such mortgage and the bidding in and purchase of such property by the defendant Dyson as aforesaid, the defendants Dyson and Bowen proceeded to associate with themselves the defendant Tuveson and the defendants, acting together, procured and arranged a sale of the said foreclosed premises and property at the price and for the sum of Five Thousand Dollars, as your orators are informed and verily believe;

That, subsequent to the date of such foreclosure and at about the time of the sale of such property by the defendants as aforesaid, to-wit: on June 3rd, 1930, the defendants, conspiring together to the injury and damage of your orators and the other persons named herein as mortgagees, caused to be sent and did send unto your orators and their other mortgagees, a certain notice in writing in the following terms, to-wit: "We are ready to pay the note you hold against the Cooperative Store building. If you will bring the note to this office we will pay amount fixed by the court. Yours truly, TUVESON, BOWEN & DYSON, E. M. T. " with the intent and for the purpose of leading your orators and the other persons named ~~xxx~~ herein as mortgagees to believe that there had been a judicial determination of the issues and an adjudication of the rights of all the parties, when in fact there had been no such determination or adjudication, all of which was well known to the defendants, Dyson, Bowen and Tuveson and all of them;

That, influenced by such false and misleading statement of the defendants, your orators and other mortgagees named herein did surrender unto the said defendants the several notes held by them, which were secured by the aforesaid mortgage, upon the ~~may~~ payment by the defendants to them individually of the sum of \$17.50 on each \$100.00 secured note held by them;

That, from the proceeds of such sale of said ~~mortgaged~~ <sup>foreclosed</sup> premises, the defendants received a sum sufficient to pay unto the holders of all of such secured notes the amount of approximately fifty cents on the dollar, after the payment of all costs and expenses of such foreclosure, as your orators have been informed

and verily believe, and that the defendants, disregarding their duty in the premises and conspiring together to make a personal gain and profit from such transaction, by such wilful and wrongful misrepresentations of fact, injured and damaged your orators and the other mortgagees named herein by inducing them to part with the said several secured notes described herein at and for an amount very greatly below their real and actual value in cash;

That by the wrongful and fraudulent actions of the defendants, your orators and the other mortgagees herein named, have suffered injury severally in the amount and sum representing the difference between what they were induced to accept by the defendants and what the defendants should rightfully, properly and lawfully have paid them in settlement of the said several secured notes held by your orators and the other mortgagees named herein.

PRAYER FOR PROCESS AND FOR RELIEF.


The premises considered, your orators pray that, by the usual process of this Honorable Court the above named defendants may be made parties respondent to this bill of complaint and that they may be ordered to demur, plead to or answer the same within the time and under the penalties allowed by law or that the same be forever confessed.

And your orators further pray that, upon the final hearing of this cause, the defendants and each of them may be required to make a full and complete accounting of their trusteeship for the mortgagees protected by the described mortgaged, and that this Honorable Court will order, adjudge and decree unto your orators and other mortgagees named herein, from the said defendants, the several amounts to which the Court shall find them entitled upon such accounting, and that there may be further awarded to your orators, against defendants, the sum of One Hundred Dollars as counsel fees in this proceeding, and for such other and further relief as they may in equity and good conscience be entitled to, if they have in anywise prayed or asked amiss.

FOOTNOTE:

The above named respondents are hereby required to answer each and every allegation contained in said complaint, but not under oath, as answer under oath is hereby expressly waived.

  
Solicitor for Complainants.

  
SOLICITOR FOR COMPLAINANTS.