

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

Comes your complainant, SOPHIA MACH, and humbly complain-
ing against the defendants hereinafter named, respectfully repre-
sents and shows unto your Honor as follows:

FIRST:

That she is a resident of Baldwin County, Alabama, over
twenty-one years of age.

SECOND:

That the defendants, Edward P. Totten, and R. C. Keeney,
are residents of Baldwin County, Alabama, over twenty-one years of
age; that the defendant, Esther L. Gordon is over the age of twen-
ty-one years, a non-resident of the State of Alabama, her address
being New York City, New York; that the Orange Beach Land Company
is a corporation duly organized and existing under the laws of
the State of Alabama, with its principal place of business at
Robertsdale, Baldwin County, Alabama.

THIRD:

That at the time the Orange Beach Land Company was or-
ganized there were fifteen original stockholders, including the
complainant; that each of the stockholders were issued a certifi-
cate of stock representing ten shares of the capital stock of said
corporation.

FOURTH:

That it was the understanding among all the stockholders
that the corporation was buying a tract of land at Orange Beach,
in Baldwin County, Alabama, and that the title to said property
would be taken in the name of the corporation; that soon after
issuance of stock to your complainant she learned that the title
to the property had been taken not in the name of the Orange Beach
Land Company, but in the name of one A. F. Wesley, which was con-
trary to the agreement between all the stockholders.

FIFTH:

That about the time the property was acquired, Thomas Vonashek, Secretary of the Company, notified the members of the Orange Beach Land Company, including your complainant, that the papers were ready and that the organization needed Six Thousand Dollars (\$6,000.00) more to pay for the land.

SIXTH:

That your complainant, fearing that her interests would not be amply protected, consulted one of the defendants, R. C. Keeney, who was at that time Secretary of the Baldwin County Realty Board, and asked him if he would represent and protect her interests and the interest of our relatives in the Orange Beach Land Company; your complainant at that time had full faith and implicit confidence in the said R. C. Keeney.

SEVENTH:

That your complainant, with the express understanding that the said R. C. Keeney would protect her interests, delivered over to him her certificate of stock in the Orange Beach Land Company, with the understanding that he would represent her and protect her interests and with the further understanding that if he should sell said stock or be instrumental in a sale of the property of the Orange Beach Land Company, he should be allowed to retain for his services any amount secured for said stock in excess of Sixteen Hundred Dollars (\$1600.00), the amount it cost your complainant.

EIGHTH:

That the said R. C. Keeney received the certificate of ten shares with that understanding and with the further understanding that he would give to your complainant a written statement that he was holding the said certificate of stock as the representative and in trust for your complainant; that although called upon several times for said written agreement, the said R. C. Keeney did not furnish the said written agreement, but on each

occasion said that it would be necessary to get a lawyer to write it, which was never done; that soon after delivery by your complainant to said R. C. Keeney of the said certificate of stock, the said R. C. Keeney had it transferred to him on the books of the corporation; that soon thereafter the said R. C. Keeney was elected President of the said Orange Beach Land Company.

NINTH:

That immediately after the said R. C. Keeney became President of the Orange Beach Land Company the land owned by said corporation was subdivided and each member received three lots, two on the water front and one in the back; that the said R. C. Keeney, immediately after acquiring title to said lots and contrary to the oral agreement with your complainant, went to the said Thomas Vonashek and borrowed from him Five Hundred Dollars (\$500.00) on the lots and later, when the mortgage became due, deeded them to the said Thomas Vonashek.

TENTH:

That your complainant on various and sundry occasions went to the said R. C. Keeney and demanded a return of the certificate of stock; that she was finally advised by the said R. C. Keeney that he had placed the same with an attorney as good faith in relation to the indebtedness to Mrs. Gordon, and not as security for any debt.

ELEVENTH:

That the said delivery of the certificate of stock to the said attorney was contrary to the agreement between your complainant and the said R. C. Keeney and that your complainant did not and has never consented to or approved the placing of said certificate of stock as collateral by the said R. C. Keeney.

TWELFTH:

That immediately your complainant learned that the certificate had been placed with an attorney, she made an effort to find where it was placed, and finally learned

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that it was with Edward P. Totten of Fairhope, Alabama; that she immediately went to the said Edward P. Totten and advised him that the certificate belonged to her, also advised him of the agreement with the said R. C. Keeney, and that the stock had been placed as collateral contrary to her agreement with the said R. C. Keeney; that the said R. C. Keeney had no right whatever to pledge the said certificate of stock; and that she demanded a return of the certificate of stock to her, but the said Edward P. Totten refused and continues to refuse to deliver the certificate of stock over to her.

THIRTEENTH:

That on account of the conduct of the defendants as hereinabove set out, your complainant has been caused to employ and expend money for counsel in protecting her rights.

WHEREFORE, the premises considered, your complainant prays that your Honor will by proper process make the said Edward P. Totten, R. C. Keeney, Esther L. Gordon and the Orange Beach Land Company, a corporation, parties defendant to this cause of action, requiring them to plead, answer or demur to the same within the time and under the penalties prescribed by law and the practice of this Honorable Court.

Your complainant further prays that upon a final hearing of this cause your Honor will enter a decree directing that the said certificate of stock be delivered over to or surrendered to the Orange Beach Land Company and a new certificate for the same number of shares issued to your complainant; that your Honor will enter a further order that the defendants shall pay to your complainant such a reasonable attorney's fee as your Honor may deem meet and proper; that your Honor will give and grant unto your complainant such other, further, different or general relief as she may be in equity and good conscience entitled to receive.

And as in duty bound your complainant will ever pray.

Sophia Mach

Bebe & Stace
Sol. for Camp

FOOT NOTE:

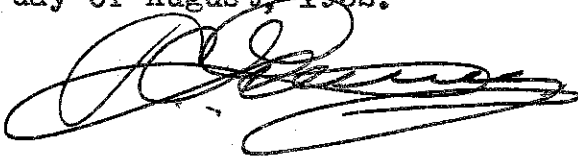
The defendants, Edward P. Totten, R. C. Keeney, Esther L. Gordon and the Orange Beach Land Company, a corporation, are required to answer each and every allegation contained in the foregoing bill of complaint, paragraphs "FIRST" to "THIRTEENTH" inclusive, but not under oath, oath being hereby expressly waived.

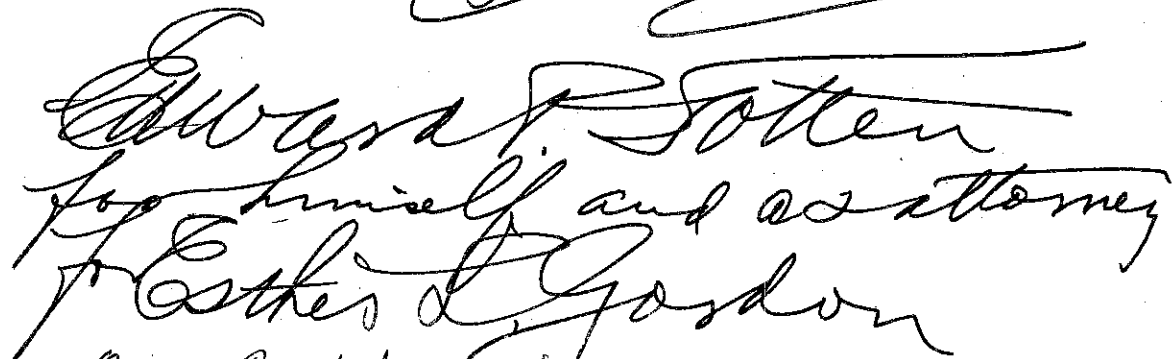
Sophia Mach

Bebe & Stace
Sol for Camp

We accept service of the above, waive notice of the taking of testimony and all other notices, and consent and agree that testimony be taken and the matter submitted for a final decree forthwith.

This the 23rd day of August, 1932.




for himself and as attorney
for Esther L. Gordon

Orange Beach Land Co., Inc.

per Thomas Umashok, Secretary Treasurer

SOPHIA MACH,
Complainant,

vs.

EDWARD P. TOTTEN ET AL.,
Defendants.

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

BILL OF COMPLAINT.

Filed August 23, 1932
W. H. Bickman
Register

BEEBE & HALL
LAWYERS
BAY MINETTE, ALABAMA

ESTHER L. GORDON,
Complainant,

vs.

R. C. KEENEY and
BESSIE M. KEENEY,
Defendants.

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

AND

SOPHIA MACH,
Complainant,

vs.

EDWARD P. TOTTEN ET AL.,
Defendants.

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

B R I E F

BEEBE & HALL,
Attorneys.

ESTHER L. GORDON,)	
Complainant,	)	IN THE CIRCUIT COURT OF
)	
vs.	)	BALDWIN COUNTY, ALABAMA.
)	
R. C. KEENEY and	)	IN EQUITY.
BESSIE M. KEENEY,)	
Defendants.)	

AND

SOPHIA MACH,)	
Complainant,	)	IN THE CIRCUIT COURT OF
)	
vs.	)	BALDWIN COUNTY, ALABAMA.
)	
EDWARD P. TOTTEN ET AL.,	)	IN EQUITY.
Defendants.)	

The original bill of complaint in the cause of Esther L. Gordon vs. R. C. Keeney and Bessie M. Keeney was filed to collect rent alleged to be due by the defendants to the complainant for the dwelling house and premises with the furniture therein located in the Town of Fairhope, in Baldwin County, Alabama, and in which bill of complaint the complainant asked for a judgment for the sum of \$480.00, with legal interest, less certain amounts paid by the defendant, R. C. Keeney, to the credit of the complainant, and also prayed that a landlord's lien be decreed against the furniture alleged to belong to the defendants and located in the house and on the premises belonging to the complainant. The complainant also

prayed for a decree giving her the right to sell a certain stock certificate delivered over to Edward P. Totten, as attorney for the complainant, by one of the defendants, R. C. Keeney, and also for a decree allowing to the complainant the sum of \$75.00 as counsel fees.

The cause of Sophia Mach vs. Edward P. Totten et al. was originally begun in the Circuit Court, Law Side, to recover of the said Edward P. Totten one certificate of stock representing ten shares of the capital stock of the Orange Beach Land Company, and being the certificate of stock described in the bill of complaint in the cause of Esther L. Gordon vs. R. C. Keeney et al. The two suits were by an order of the court consolidated.

We will endeavor to discuss the two cases separately, except where there is an overlapping, in which case we will discuss them jointly.

We wish to first discuss briefly the case of Esther L. Gordon vs. R. C. Keeney et al.:

It will be noted in the original bill of complaint and also in the testimony of Edward P. Totten, a witness for the complainant, that the defendants, if indebted in any amount, would not be greater than \$480.00, with interest, less \$38.80, the amount admitted to have been paid by R. C. Keeney. If we accept the theory of the attorney-witness, Judge Totten, the defendants would then be indebted to the complainant in the amount of \$480.00, less \$38.80, or a total of \$441.20. However, we cannot say that

the statements of Judge Totten can be accepted as conclusive against the defendants, as it is conclusively shown by his own testimony that he knows absolutely nothing about the arrangements made between the defendant, R. C. Keeney, and the agents representing Mrs. Gordon. We are wondering why Judge Totten did not produce these agents as witnesses for the complainant, as his entire testimony indicates that they are residents of Fairhope, Baldwin County, Alabama.

It will be noted from the testimony of the defendant, R. C. Keeney, that he admits an indebtedness to the complainant for sixteen months' rental at \$20.00 per month, or a total of \$320.00. There is to be deducted from this amount certain money expended by the defendant, R. C. Keeney, for the use of Mrs. Gordon, which amounts are not in any manner contradicted by any testimony on behalf of the complainant. The defendants claim as a set-off against the said sum of \$320.00, \$38.80 paid as taxes on the Gordon place, and \$7.00 for plumbing, making a total of \$45.80 to be deducted from \$320.00, or a balance due of \$274.20. The evidence on behalf of the defendant, and which is not contradicted by any evidence on behalf of the complainant, is to the effect that there was an agreement entered into between the defendant and the agent representing Mrs. Gordon, wherein the defendant would erect on the premises belonging to the complainant a garage costing \$190.00, with the understanding that each would bear one-half the cost thereof. This garage was erected by the defendant on the premises of the complainant, and when the defendant removed from the premises of the complainant, the garage was left there. It is the contention of

the defendant, and he most strenuously contends, that he is entitled to a credit of one-half the total cost (\$190.00) of the garage, or \$95.00, and that this amount should also be deducted from the \$320.00 which he admits owing to the complainant. This would leave a balance of \$179.20, with interest, due from the defendant, R. C. Keeney, to the complainant. However, should the court determine that the defendant, R. C. Keeney, is not entitled to the reduction in monthly rental which he alleges was agreed to, and holds that Mrs. Gordon is entitled to the sum of \$30.00 per month, then in that event the defendant, R. C. Keeney, would be indebted to the complainant in the sum of \$480.00, from which amount should be deducted \$140.80, covering one-half the garage, the taxes and the plumbing. This would leave a balance due of \$339.20. The defendant does not agree with this theory of the case, but contends that he is indebted to the complainant only in the sum of \$179.20.

The complainant also attempts to hold Bessie M. Keeney jointly liable for the amount due. However, we are of the opinion, and insist, that Mrs. Keeney, being the wife of R. C. Keeney, and not being a party to the leasing of the premises, and there being no evidence in the case whatever to connect her in any way, except as the wife of R. C. Keeney, that she is not in any way liable. It is a fundamental principle of law that the wife is not liable for the debts of the husband and cannot be made a surety for his debts.

The evidence in the cause is uncontradicted that the furniture used in the house, other than that belonging to Mrs. Gordon,

belonged to Mrs. Bessie M. Keeney, and that R. C. Keeney had no interest in it whatever, so that in that event the complainant would not under any circumstances be entitled to establish a lien against the furniture belonging to Bessie M. Keeney, the wife of R. C. Keeney.

The complainant also prays in her bill that she be allowed the sum of \$75.00 as attorney's fees in the cause.

We know of no provision of the law wherein, in cases of this nature, a complainant is entitled to have taxed against a defendant money expended by her in an effort to collect rent.

It will be noted throughout all the testimony of Edward P. Totten, a witness and attorney for complainant, that he has made a most noble effort to frame his testimony so as to burden the defendant, R. C. Keeney, unduly. However, we feel that the court, when it reads over and considers the evidence in the case, will give proper credit to all the testimony offered, and upon a final adjudication of the matter, award to the complainant only that which ~~she is entitled to~~, that is, a judgment for \$179.20, together with the legal interest thereon.

There is mentioned in the bill a certain certificate of stock which was left by the defendant, R. C. Keeney, with Hon. Edward P. Totten, but as it is involved in the second suit, we will omit discussion of it here.

Sophia Mach vs. Edward P. Totten et al.:

The facts in this case are, briefly, as follows: Several individuals, including the complainant, entered into an agreement to

form the Orange Beach Land Company; that at the time the said company was organized there were fifteen original stockholders, including the complainant, and that each of the stockholders was issued a certificate of stock representing ten shares of the capital stock of said corporation. There was also an agreement or understanding among the stockholders that the corporation was buying a tract of land at Orange Beach, in Baldwin County, Alabama, and that the title to said property would be taken in the name of the Orange Beach Land Company; that soon after the issuance of the stock to your complainant, she was advised and learned that the title to the property had been taken not in the name of the corporation, but in the name of one A. F. Wesley, which was contrary to the agreement between the several stockholders.

That about the time the property was acquired, Thomas Vonashek, Secretary-Treasurer of the Orange Beach Land Company, notified the members of the corporation, including the complainant, that the papers were ready for delivery and that the organization needed \$6,000.00 more to pay for the land.

That prior to this time the complainant had had quite a bit of difficulty or trouble with Thomas Vonashek and A. F. Wesley, and fearing that her interests would not be amply protected, consulted one of the defendants, R. C. Keeney, who was at that time Secretary of the Baldwin County Realty Board, and asked him if he would represent and protect her interests and the interests of her relatives in the Orange Beach Land Company, which he consented to do. That the complainant had at that time full faith and implicit

confidence in the said Keeney.

That the complainant, with the express understanding that the said R. C. Keeney would protect her interests, delivered over to him her certificate of stock in the Orange Beach Land Company, with the express understanding that he would represent her and protect her interest and with the further understanding that if he should sell said stock, or be instrumental in a sale of the property of the Orange Beach Land Company, he should be allowed to retain for his services any amount secured for said stock or in the sale of said property in excess of \$1600.00, the amount the stock had cost her.

That the said R. C. Keeney received the certificate of stock with that understanding, and with the further understanding that he would give to the complainant a written statement that he was holding the said certificate of stock as the representative and in trust for the complainant; that though she called upon him several times for said written agreement, he did not furnish it, but on each occasion said that it would be necessary to get a lawyer to write it, which was never done; that sometime after the delivery of the stock certificate by her to the said R. C. Keeney, he had it transferred without her knowledge to him on the books of the corporation; that he was soon thereafter elected President of the Orange Beach Land Company. That soon after the said Keeney became President of the Orange Beach Land Company, the land owned by said corporation was subdivided and each member received three lots, two on the water front and one on the back; that three of the lots were conveyed to the said R. C. Keeney and that he soon thereafter

mortgaged the same to Thomas Vonashek for the sum of \$500.00, which money he himself used and never delivered over to the complainant; that the complainant on various occasions demanded of the said Keeney a return of the certificate of stock, but it was never returned; she was finally advised by Keeney that he had placed the same with an attorney, which was contrary to the agreement between her and Keeney, and to which she never did consent and to which she has never given her approval.

That immediately she learned the whereabouts of the said certificate and that it was with Hon. Edward P. Totten of Fairhope, she immediately went to the said Totten and advised him that the certificate belonged to her, and also advised him of the agreement with Keeney and that the stock had been left with him contrary to her agreement with Keeney and that the said Keeney had no right whatever to pledge the said certificate of stock; that she demanded a return of the said certificate of stock to her, but the said Totten refused and continued to refuse to deliver the said certificate to her.

The evidence on behalf of Sophia Mach, the complainant, and of R. C. Keeney, one of the defendants, uncontradicted, conclusively shows that the stock was delivered over to Keeney by the complainant, in trust, for the purpose of the said Keeney being in position to protect the interests of the complainant and her relatives.

The attorney-defendant, in his brief, contends that the complainant, in parting with possession of the certificate of stock, lost all her rights therein. However, we feel that we are amply

borne out by the decisions of the Supreme Court of the State of Alabama in that where property is delivered by one to another for a specific purpose, or to be held in trust, the acts of the party to whom the property may be delivered will not bar the rights of the true owner thereof, and that the conduct of the said Keeney in having the certificate transferred on the records of the corporation to his name would not in any wise bar the rights of the complainant.

It will be noted from all the evidence that there is no question but that the certificate of stock delivered by the complainant to Keeney was transferred on the records of the corporation and that the certificate received by him in lieu thereof was and is the identical certificate which is now in the possession of Judge Totten, one of the defendants.

It will also be noted from the evidence that the acts on the part of the said Keeney in having the stock transferred on the books of the corporation, and then in delivering the said certificate received by him to the said Edward P. Totten, is directly contrary to the agreement between the complainant and the said Keeney.

We wish to cite to the court the following decisions which we deem bear us out in the above contention:

"Property impressed with a trust or proceeds thereof may be followed so long as it can be identified in hands of subsequent holders who are not bona fide purchasers for value without notice."

Teal vs. Pleasant Grove Local Union, 75 So., 335.

"Where a trustee invests the trust funds in his hands in specific property, into which the money can be traced, he will be held as trustee of that property for the cestui que trust."

Goldsmith vs. Stetson, 30 Ala., 164.

"Where a trustee wrongfully converts a trust fund into another species of property, the beneficiary will be entitled to the property so acquired."

Carleton vs. Rivers, 54 Ala., 467.

"Trust funds may be followed into the hands of a third person so long as they can be satisfactorily traced and identified, although he has taken the title to the property purchased with them in his own name."

McCall vs. Rogers, 77 Ala., 349.

"So long as trust property can be followed, property in which it has been converted remains subject to trust."

Evans vs. Evans, 76 So., 95.

We deem that the above sufficiently eliminates all question as to the complainant being able to follow the certificate into the hands of the defendant, Edward P. Totten, with the single exception: That the said Totten or Esther L. Gordon hold it as a bona fide purchaser for value without notice. If we are to accept the theory of the attorney for the defendants, Edward P. Totten and Esther L. Gordon, that the relation of pledgor and pledgee exists, then we wish to call your Honor's attention to the principle of law that:

"A pledgee is presumed to hold the property pledged subject to the pledgor's title."

Keeble vs. Jones, 187 Ala., 207.

As a general rule a pledgor of property, other than negotiable securities, can convey no greater right or title than he has.

Capital National Bank vs. Fourth National Bank,
101 So., 424.

We wish also to call your Honor's attention to that principle of law that:

"One by taking possession, in assertion of his own right, of property hypothecated to him by another than the true owner, is guilty of conversion, though not knowing of the rights of the true owner, as he takes at his own peril as regards ownership."

This principle is borne out in the case of Peoples Savings Bank & Trust Company vs. Huttig Mfg. Company, 55 So., 929.

Can the defendants, Edward P. Totten and Esther L. Gordon, or either of them, conscientiously claim that they are bona fide purchasers for value without notice of the certificate of stock in this cause? Surely there is nothing in the record to show any facts whatever tending to show that Esther L. Gordon is a bona fide purchaser for value without notice. The only evidence in the cause that tends in any wise to hinder the rights of the complainant to follow the certificate of stock is that offered by the attorney-defendant, Edward P. Totten. Now, is it sufficient to fully satisfy the court that he is a bona fide purchaser for value without notice? The burden, we deem, the certificate of stock not being a negotiable security, is upon him to establish the fact that he is a bona fide purchaser for value without notice.

We wish to most emphatically call the court's attention to the testimony of the attorney-defendant relative to the certificate of stock in question, offered in the case of Esther L. Gordon vs. R. C. Keeney et al. A reading of Judge Totten's testimony shows as follows:

"Some time during the month of February, 1931, defendant, R. C. Keeney, brought to my office and left with me as security for the payment of rent due to complainant a certain cer-

tificate numbered 16 for ten shares of capital stock of the Orange Beach Land Company of Robertsdale, Alabama. This certificate was for ten shares of \$100.00 each of the capital stock of said company which was incorporated under the laws of Alabama. As attorney for Mrs. Esther L. Gordon I received and accepted the said stock certificate at R. C. Keeney's suggestion and held the same and still hold it in possession for Mrs. Gordon as security for the payment of rent due from defendant to complainant."

It will be noted from this testimony on behalf of Judge Totten that the certificate of stock which he now holds is the identical certificate of stock delivered to him by Keeney and which was acquired by the said Keeney in lieu of the original certificate of stock delivered to him by the complainant, Sophia Mach. It also conclusively shows that the stock was delivered, if we are to accept Judge Totten's theory of the case, as a pledge to secure a past due indebtedness. This being the case, absolutely no consideration passed for the delivery of said certificate and absolutely breaks down the theory that either he or Mrs. Gordon are bona fide purchasers for value without notice.

The attorney-witness-defendant, Edward P. Totten, in his testimony in this cause, upon second thought, makes a noble effort to tear down the evidence offered by him on a former occasion, and as the only explanation thereof intimates that the former evidence was against him. It will also be noted from the testimony of Judge Totten in this cause that at the time Keeney brought the certificate of stock to his office he (Keeney)

threw it on his desk, saying, "Here's the last piece of property I have. Hold this as security for rent due to Mrs. Gordon."

It will be noted from this part of Judge Totten's testimony that he again bears out his statement in the first instance that the stock certificate was delivered to him as security for a debt then due. If we are to accept Judge Totten's evidence in this case, then it, too, destroys his theory that he is a bona fide purchaser for value without notice, as most certainly no consideration passed at the time of the delivery of the certificate to him.

Suppose the court should temporarily allow itself to delve into the Totten theories, which are not borne out by the evidence, and say that the consideration for the leaving of the certificate of stock with Totten by Keeney was the promise on the part of Totten to forego the institution of suit - then what would be the result? The only lien that could possibly exist would be for the rent falling due subsequent to the time of delivery of the certificate, sometime in February, as surely no lien could attach for the past due rent - there being absolutely no consideration - but even this theory is amply, and we submit completely, torn down by the evidence of Keeney in the case and even that of Totten, and, too, the fact of Mrs. Mach's visit and full disclosure of the true facts to Judge Totten immediately after the delivery of the certificate to him, and to rebut any possible weight that might be given to Judge Totten's theory that there was a consideration passing for the delivery of the certificate to him by Keeney, we have the evidence of the defendant Keeney,

which is uncontradicted, that he, Keeney, delivered the certificate to Judge Totten and stated for him to hold it as good faith in relation to the indebtedness to Mrs. Gordon and not as security for any debt then due or for any debt that was accruing. This theory of the case is also amply borne out by the fact that the certificate was not endorsed by R. C. Keeney. It will also be noted from the evidence that soon after Judge Totten had gotten possession of the certificate, Mrs. Mach, the complainant, called at his office and advised him that the certificate belonged to her and that Keeney had left it with him contrary to her orders and without her consent or approval. This, coupled with the statements made by Keeney at the time the stock was left with Totten, and the fact that the certificate of stock was not endorsed by Keeney, amply, we deem, meets any question as to whether or not Totten or Mrs. Gordon were bona fide purchasers for value without notice. We deem that it conclusively shows that they were not, nor either of them, bona fide purchasers for value without notice, and that Mrs. Mach should now, under the principles of law hereinabove enumerated, have the right to follow the certificate of stock in question into the hands of Judge Totten, who now holds it.

Counsel for the defendants insists in his brief that there was a consideration for the delivery of the certificate to Judge Totten by Keeney, in that it was delivered on February 1st, 1931, to prevent legal action being brought against Keeney and to procure the further use of the premises. While there is no dir-

ect evidence in the case as to Keeney being permitted, on the strength of the delivery of the certificate to him, to remain on the premises, Judge Totten has overlooked the fact, which is a matter of record, that he consistently demanded that the Keeneys move, and long before June 4, 1931, filed a suit in court to eject them from the premises, which tears down any possibility of his theory of a consideration passing in this particular instance.

The evidence in this cause, uncontradicted, conclusively shows that the complainant has on various occasions demanded a return of the certificate of stock from the defendants, R. C. Keeney and Edward P. Totten, both individually and as attorney for Mrs. Esther L. Gordon, and as a result of their continued refusal to return said certificate, has been forced to hire counsel and go into court to protect her interests.

Section 10390 of the Code of 1923 provides:

"Said court shall hear and determine all questions which may arise in the case, may tax costs at its discretion, and, under the rules applicable to an action of interpleader, may allow to one or more of the parties a reasonable sum or sums for counsel fees and disbursements, payable out of the said fund or property; but no such allowance shall be made unless it is claimed by the party in his complaint or answer."

The complainant having asserted her claim to counsel fees, it is our contention that under the above statute the complainant should be entitled and a decree entered giving to her such reasonable attorneys' fees as your Honor may deem fit and proper to be recovered from the defendants, R. C. Keeney, Edward P. Totten and Esther L. Gordon, or either of them. The testimony

of Hon. R. C. Heard, a witness for the complainant, is to the effect that \$150.00 is a reasonable attorneys' fee in this cause, and we earnestly insist that such amount should be allowed to the complainant.

We do not deem it necessary to discuss that part of the learned counsel's brief in which he insists upon the objection that H. M. Hall, as attorney for the complainant, should be allowed to appear in this cause. Your Honor will recall that the two causes were by an order of the court ordered consolidated.

We wish also to call your Honor's attention to that part of his brief in which he objects to the testimony of R. C. Heard, on the ground that he had no opportunity whatever to cross-examine said witness. This is absolutely contrary to the true facts in the case, as Judge Totten was given the right to appear and cross-examine the said witness if he wished, and declined to do so.

Judge Totten in his brief calls the court's attention to the fact that, although made a party to the suit, he has not at any time had an individual interest or claim upon the stock certificate in question, but that his custody of the same has been wholly and solely for Esther L. Gordon, as her attorney. This may be the true statement of fact. However, since the complainant in this cause has made repeated efforts to regain possession of the property, which rightly belongs to her, and Judge Totten having repeatedly refused, and, too, there being no evidence of a knowledge on the part of Mrs. Gordon confirm-

ing his acts, we think sufficiently connects Judge Totten with the case, and he should be bound equally and along with the other defendants.

We respectfully submit and earnestly insist that both the law and the facts bear out Mrs. Mach's, the complainant's, contention and ask that a proper decree be entered that the stock may be again placed in her name on the record of the corporation.

Respectfully Submitted,

Beebe & Hall.

Copy mailed to Hon Edward P. Totten.

Beebe & Hall

SOPHIA MACH,
Complainant,
vs.
EDWARD P. TOTTEN
ET AL.,
Defendants.

Comes the defendant, Orange Beach Land Company, a corporation, and for answer to the Plaintiff's bill of complaint, and to each paragraph thereof, separately and severally, says:

That it admits the allegations contained in Paragraph
"THIRD".

ORANGE BEACH LAND COMPANY,

Sophia Ward
Edward P. Hutton et al

Answer
of George Reed Ford &

Filed Aug 23. 1935 ✓
Wm. B. Coleman
Clerk

COPY for H. M. Hall

STATE OF ALABAMA
COUNTY OF BALDWIN

IN THE
CIRCUIT COURT IN EQUITY

IN THE CONSOLIDATED SUIT OF ESTHER L. GORDON vs. R. C. KEENEY and SOPHIA MACH vs. ORANGE BEACH LAND COMPANY, a corporation, R. C. KEENEY, ESTHER L. GORDON and EDWARD P. TOTTEN

ARGUMENT ON SUBMISSION

We respectfully submit that in Gordon vs. Keeney it is clear from the evidence that there is due from Defendant Keeney to Complainant Gordon, for rent of residence, the sum of \$540.00, including interest to this date. From the additional testimony submitted by Complainant, it is apparent that there was no agreement either by Complainant or her agents to make any allowance for the building of a garage, since we find Keeney several years after its construction, still trying to procure from Complainant's representative an allowance on the rental in that behalf. It further appears in the evidence that Keeney told Complainant's representative, when he was being urged to make payment of rent, that the furniture in the house and one motor-car belonged to him, personally, and that his wife owned only the sedan car which she drove and which she had bought out of her own earnings.

We submit that as far as Defendant R. C. Keeney is concerned, the Complainant, Esther L. Gordon is entitled to a judgement, First, for the full amount of rent due with interest, \$540.00, Second, to the foreclosure and sale of the certificate of stock pledged as security, and Third, to the foreclosure of the landlord's lien held by Complainant on the household furniture effects, and property of Defendant R. C. Keeney, which enjoyed the protection of the premises during the entire rental period. On the basis of the evidence submitted in this cause, therefore, we request decree for the full amount due as above and for the foreclosure of the pledge and of the landlord's lien in satisfaction of such decree.

In the second part of this consolidated suit, Mach vs. Keeney et al, it appears from the undisputed testimony therein that at the time of his making of the pledge of stock certificate No. 16, in the Orange Beach Land Co. with Edward P. Totten as attorney

as to the rent due at the time of the deposit of the certificate for Esther L. Gordon, that Defendant Keeney was the legal owner of such certificate and, further, that there was a valid consideration for his making of a pledge of such certificate to in the forbearance of Esther L. Gordon from instituting legal proceedings for the collection of rent then due and in granting a further period of leasing of said residence premises.

Keeney, as the legal owner of this stock certificate, pledged it as security for the payment of rent then due on February 1st, 1931 to prevent legal action being brought against him and to procure the further use of the residence premises. Both of these objects he obtained, as Esther L. Gordon deferred bringing suit, by reason of such pledge, and permitted him to use her said certificate as security for the said residence until the 4th day of June, 1931. The legal title of said stock certificate being plainly in R. C. Keeney, there was no duty resting upon Esther L. Gordon to enquire further into the matter, and there was nothing whatever in the circumstances surrounding the pledging of this certificate to put her on inquiry and she had a right to and did assume that the said stock certificate was, as represented to her by said Keeney, the property of said Keeney.

By the deposit and pledge of this stock certificate, Esther L. Gordon was induced to and did, acting in entire good faith, forego the institution of suit and continue to allow Keeney the occupancy of the premises, to her detriment. By her forbearance and by her extension of the leasing period, Esther L. Gordon was injured and suffered damages. It appears without question from the entire evidence that she acted with the utmost good faith and in reliance upon Keeney's legal ownership and possession of such stock certificate.

We submit that legal ownership coupled with possession, where there is nothing in the circumstances to put an innocent party, acting in good faith upon inquiry, should be sufficient to constitute a binding pledge of the property as to all persons whomsoever, where the innocent party has been induced thereby to act to her injury and damage. We would submit that that is exactly the situation, from the undisputed evidence, in the present case, and that the rights of Esther L. Gordon are fixed.

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Both as to the rent due at the time of the deposit of the certificate as a pledge, about February 1st, 1931 and as to the rent accruing subsequent to such date, and between February 1st and June 4th, 1931, the lien of Esther L. Gordon on such pledged property should hold as against all persons whomsoever. It would clearly be the case without question as to the rent subsequently accruing, in the amount of \$180.00, and there would seem to be no good reason, under the circumstances and facts as stated, why it should not hold good as to the entire amount of rent due from Keeney.

✓
+ Sophia Mach, the Complainant, in the second part of this consolidated cause, placed her endorsed certificate ~~of deposit~~ in Keeney's hands, thereby authorizing him to have her said certificate transferred on the books of the corporation, the Orange Beach Land Co., and giving him, whether intentionally or not, ~~it~~ is beside the point, the full legal powers of a stockholder of said corporation. Keeney, as the legal owner of the certificate of stock, pledges his legal property as security for a legal indebtedness, accrued and accruing, and Mrs. Mach should be estopped from denying Keeney's ownership of such certificate insofar as the rights of an innocent third party acting in good faith are concerned. It was Mrs. Mach who placed in Keeney's hands the power to so act as to lead Esther L. Gordon to her detriment, injury and damage as stated above, and although it is abundantly clear from the evidence that Keeney's has violated every principle of good faith, honor and decency insofar as his dealing with Mrs. Mach is concerned, his actions in that behalf must not be allowed to prejudice the rights and interests of an innocent third party, without notice, acting in good faith, upon a valuable consideration. Mrs. Mach's negligence must not be allowed to defeat the rights acquired by Esther L. Gordon, the innocent third party, no matter how black the perfidy of Keeney may be. We submit that Mrs. Mach's proven equitable right to ~~have~~ the stock certificate is subject to the acquired right of Esther L. Gordon, to the extent of Esther L. Gordon's claim and that Mrs. Mach's remedy and redress is against Keeney, and not Gordon.

+ This is upon the well recognized and generally established principle

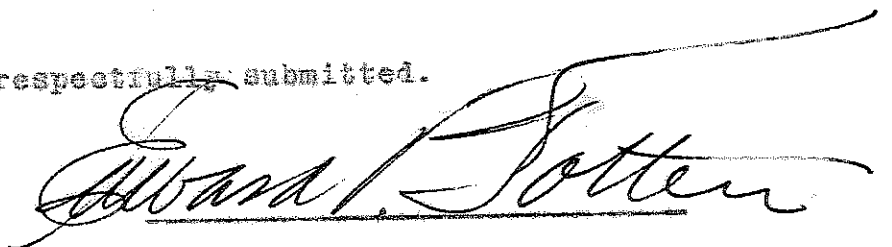
principle of law and equity that whenever it is necessary for one of two innocent parties to suffer by the wrongful acts of a third party, the one must suffer whose actions made the injury possible. We submit that is the situation in the last at case and that Esther L. Gordon should not be injured and damaged because Mrs. Mach placed implicit confidence in Keeney's integrity which has since been shown to have been entirely misplaced. Upon the record, therefore, we respectfully ask that the equitable interest of Sophia Mach be subjected to Mrs. Gordon's lien thereon for rent due from Keeney, and the decree entered accordingly.

+ In enclosing, we would call the court's attention to the fact that Edward P. Totten, although made a party to this second part of the consolidated suit, has not at any time had any individual interest or claim upon the stock certificate in question but that his custody of the same has been wholly and solely for Esther L. Gordon as her attorney, under the pledge of the certificate to Keeney.

+ We would further call the court's attention to the objection interposed by us at the hearing that it appears from the record and from the facts that H. M. Hall acted in the consolidated suit as attorney for the complainant, Sophia Mach, and the defendant R. C. Keeney, whose interests are in apparent conflict therein.

+ In this connection we object entirely to the consideration of the testimony of one R. C. Heard, who did not appear at the hearings set, whom we had no opportunity whatsoever to cross-examine and whose purported testimony is attempted wrongfully to be included with the testimony submitted in such consolidated cause, and we move that same be excluded.

All of which is respectfully submitted.

Edward P. Totten

ESTHER L. GORDON, complainant,

vs.

R. C. KEENEY and BESSIE M. KEENEY,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY, No. 976

BRIEF OF COMPLAINANT ON SUBMISSION OF CAUSE.

This is an action in which is sought the foreclosure of a pledge of a certain corporation stock certificate, and also the foreclosure of a landlord's lien upon household furniture and effects and the subjection of both to the complainant's claim for rent due from defendants for dwelling house and premises.

It is undisputed in the evidence that the defendants occupied the described dwelling house of complainant for the entire period named in complaint, February 4th, 1930, to June 4th, 1931. It is undisputed that the defendants, as husband and wife, occupied the premises during this period and that during all of that time they were each engaged in gainful occupations, R. C. Keeney as a real estate dealer and Bessie M. Keeney as a school teacher. It is undisputed in the evidence that the defendants occupied the premises under oral lease from complainant's agent at the agreed rental of \$30.00 per month, but it is disputed that Bessie M. Keeney was a party to the lease and there is evidence of an unsuccessful attempt on the part of R. C. Keeney to secure a reduction of the rental to \$20.00 a month.

It is undisputed in the evidence that the total amount claimed by complainant in the bill is due from the defendant, R. C. Keeney, less the sum of Seven (\$7.00) Dollars paid by him on a plumbing bill, but it is disputed in the evidence that the defendant, Bessie M. Keeney, is liable for the amount of rent due.

The total amount due for rent, including legal interest, is, at this date, \$569.40; the credit of \$38.80, admitted in the bill with the \$7.00 additional claimed by defendant and legal interest totals \$49.40; leaving a net balance due on rent from the defendant to complainant of \$520.00.

It is undisputed in the evidence that the household furniture, effects and property, including defendant's motor car which enjoyed protection of the premises for which the rent is claimed in the bill of complaint, was in June 1931, removed to a dwelling house owned by E. G. Dougherty and situated on part of his tract embracing lots Eight, Nine and Ten, in Block Ten, Division Two, of the town of Fairhope, and that the premises are now occupied by the defendants and that said personal property is situated therein and thereon.

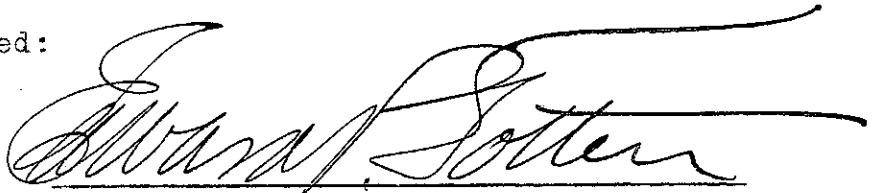
It is undisputed in the evidence that defendant, R. C. Keeney, delivered to Edward P. Totten, as attorney for complainant, the certificate for stock, as set forth in the complaint. There is some attempt on the part of defendant, R. C. Keeney, to quibble as to the conditions under which this deposit of stock was made by him, but it seems very clear from a consideration of all the evidence that the stock was pledged by him to the payment of the indebtedness due and to become due. Defendant Keeney admits in his testimony that the allegations of his answer as to consulting Edward P. Totten as to whether he could find a purchaser for said stock is wholly untrue. The additional fact testified to by defendant Keeney, that he did not endorse the certificate serves further to prove the allegation of the bill that such certificate was placed with complainant as a pledge.

There is in the answer of defendants, no counterclaim or allegation of setoff to the demand and claim of complainant's bill, but in his testimony defendant, R. C. Keeney, attempts to inject some unsupported statements regarding a purported agreement with the former agent of Mrs. Gordon to allow some credit on a garage. Testimony makes no attempt to show that this purported agreement bears any relation to the claim here sued on, in fact, context shows that any discussion was had with the former agent of Mrs. Gordon long before the claim here sued for originated. There being no counterclaim or setoff made in the answer we submit that the testimony of Defendant Keeney, relating to allowance for garage, is wholly immaterial, irrelevant, and not within the issues framed by the complaint and answer and should be stricken from the record. To allow defendant to introduce for the first time in the evidence a matter of counterclaim or setoff would deprive complainant of her legal right to be advised fully as to what testimony on the part of defendant she is to be required to meet. This point seems so clear as not to call for any extended argument.

That complainant has lien on defendants' furniture, under statute and decisions, is unquestioned. The Supreme Court in 84 Alabama, 540, asserts that lien for the entire rent attaches to such property of the tenant as has at any time during the term of occupancy enjoyed the protection of the premises for which the rent is claimed. In 112 Alabama, 38, it is decided that the lien is not lost by the removal of the property from the rented premises to another location. We submit that from the evidence and upon the law the complainant is entitled to decree for the foreclosure and sale of defendants' property to satisfy the claim for rent. We submit further that complainant is entitled upon the evidence and the law to judgment for the foreclosure of the pledge made by defendant to secure complainant's claim for rent.

Regarding last paragraph of the prayer of complainant's bill for the allowance of the sum of \$75.00 as counsel fees to complainant upon foreclosure, we submit that the defendant, knowing and realizing his indebtedness to complainant, as his answer and testimony show, has nevertheless, obliged complainant to resort to this court for redress and necessitated employment by her of counsel to present her case. That the Court of Equity may grant full and adequate redress to a party seems implicit in the very nature of the court and we can see no reason why, in fairness, the defendant should not be obliged to compensate complainant for the expense their action or non-action has caused. In Pearce vs. Third Avenue Improvement Co., 128 Southern, 396, the Supreme Court of Alabama held that the Court of Equity may award such sums as may be warranted in adjusting equities incident to granting appropriate relief and doing complete justice between the parties in the premises. Under the authority of this decision it would seem that the Court would be fully warranted in granting to complainant her prayer for allowance of counsel fees necessarily expended in the cause.

Respectfully submitted:

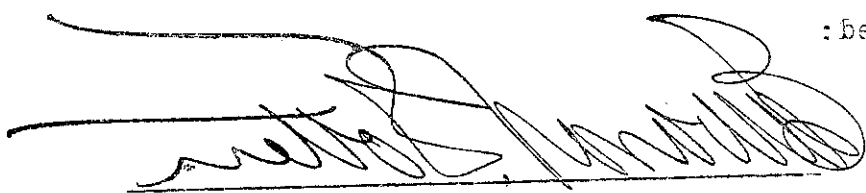


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That complainant has lien on defendant's furniture, under statute and decision, is undisputed. The Supreme Court in 84 Alabama, 541, states that lien on the entire rent attaches to each property of the tenant at any time during the term of occupancy and the protection of the premises for which the rent is claimed. In its April 28, it is decided that the lien is not lost by the removal of the property from the premises to another location. We submit that from the evidence and upon the law the complainant is entitled to decree for the foreclosure and sale of defendant's property to satisfy the claim for rent. We submit further that complainant is entitled of the proceeds and the law to judgment for the foreclosure of the pledge made by defendant to secure complainant's claim for rent.

Regarding last paragraph of the prayer of complainant's bill for the allowance of the sum of \$75.00 as counsel fees to complainant upon foreclosure, we submit that the defendant, knowing and realizing his indebtedness to complainant, as his answer and testimony show, has nevertheless, obliged complainant to resort to this court for redress and necessitated employment by her of counsel to present her case. That the Court of Equity may grant full and adequate redress to a party seems implicit in the very nature of the court and we can see no reason why, in fairness, the defendant should not be obliged to compensate complainant for the expense their action or non-action has caused. In *Pierce vs. Third Avenue Improvement Co.*, 138 Southern, 393, the Supreme Court of Alabama held that the Court of Equity may award such sums as may be warranted in adjusting equities incident to granting appropriate relief and doing complete justice between the parties in the premises. Under the authority of this decision it would seem that the Court would be fully warranted in granting to complainant her prayer for allowance of counsel fees necessarily expended in the cause.

Respectfully submitted:



The State of Alabama }
Baldwin County

Circuit Court of Baldwin County, Alabama.
(In Equity)

Sophia Mach

COMPLAINANT

VS.

Edward P. Totten et al,

RESPONDENT

I, T.W. Richerson,

as Register and Commissioner

have called and caused to come before me Sophia Mach, George Mach, R.C. Keeney,
R.C. Heard, Edward P. Totten,

witnesses named in the requirement for Oral Examination, on the 23 day of Sept
1932, at the office of Register,

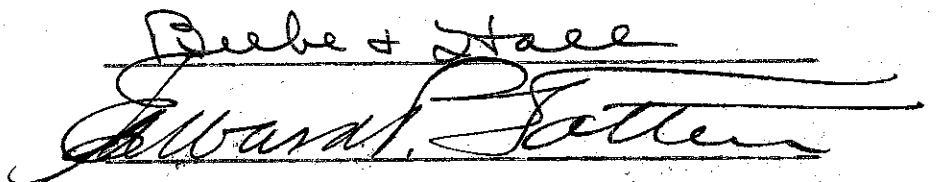
in Bay Minette, Alabama, and having first sworn said witness to speak the
truth, the whole truth, and nothing but the truth, the said Witnesses,

doth depose and say as follows:

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SOPHIA MACH,)	
)	IN THE CIRCUIT COURT OF
Complainant,)	BALDWIN COUNTY, ALABAMA.
)	
vs.)	IN CHANCERY.
)	
EDWARD P. TOTTEN)	
ET AL.,)	
Defendants.)	

It is agreed between the attorneys of record for the respective parties herein that the testimony of the several witnesses be taken down in shorthand and transcribed by the stenographer and used as original testimony without the necessity of being read over to and subscribed by the witnesses.



For himself and as attorney for Mrs. Esther L. Gordon, one of the defendants in this action, Edward P. Totten objects to the appearance of H. M. Hall as attorney for the complainant, Sophia Mach, and the defendant, R. C. Keeney, it being the contention of this defendant that the interests of said complainant and of the defendant, R. C. Keeney, are in conflict and that the said attorney cannot properly represent both parties to this action.

For answer to the objection of the said Edward P. Totten the said H. M. Hall states that he does not represent R. C. Keeney in this cause.

The said R. C. Keeney, the defendant in said cause, also testifies that the said H. M. Hall does not represent him in said cause.

SOPHIA MACH, a witness for the complainant, being duly sworn, testified as follows:

My name is Sophia Mach; I am a resident of Robertsdale, Baldwin County, Alabama, over twenty-one years of age; that the defendants, Edward P. Totten and R. C. Keeney, are both residents of Fairhope, Baldwin County, Alabama, and are over twenty-one years of age; that she is informed and believes that the said Esther L. Gordon is over the age of twenty-one years, a non-resident of the State of Alabama, her address being New York City, New York; that the Orange Beach Land Company is a corporation duly organized and existing under the laws of the State of Alabama, with its principal place of business at Robertsdale, Baldwin County, Alabama.

That at the time the Orange Beach Land Company was organized there were fifteen original stockholders, including herself; that each of the stockholders were issued a certificate of stock representing ten shares of the capital stock of said corporation.

MR. TOTTON: I object on the ground that it is incompetent, irrelevant and immaterial.

There was an agreement or understanding among the stockholders that the corporation was buying a tract of land at Orange Beach, in Baldwin County, Alabama, and that the title to said property would be taken in the name of the Orange Beach Land Company; that soon after the issuance of the stock to your complainant she was advised and learned that the title to the property had been taken not in the name of the Orange Beach Land Company, but in the name of A. F. Wesley, which was contrary to the agreement between the stockholders.

That about the time the property was acquired Thomas Vonashek, Secretary-Treasurer of the Orange Beach Land Company, notified the members of the corporation, including complainant, that the papers were ready for delivery and that the organization

needed \$6,000.00 more to pay for the land.

MR. TOTTEN: I object on the ground that it is incompetent, irrelevant and immaterial.

That she had prior to this time had quite a bit of trouble and difficulty with Thomas Vonashek and A. F. Wesley, and fearing that her interest would not be amply protected, consulted R. C. Keeney, who was at that time Secretary of the Baldwin County Realty Board, and asked him if he would represent and protect her interests and the interests of her relatives in the Orange Beach Land Company, which he consented to do; that your complainant at that time had full faith and implicit confidence in the said R. C. Keeney.

That she, with the express understanding that the said R. C. Keeney would protect her interests, delivered over to him her certificate of stock in the Orange Beach Land Company with the express understanding that he would represent her and protect her interests, and with the further understanding that if he should sell said stock or be instrumental in a sale of the property of the Orange Beach Land Company, he should be allowed to retain for his services any amount secured for said stock in excess of \$1600.00, the amount it cost her.

That the said R. C. Keeney received the certificate of ten shares with that understanding and with the further understanding that he would give to your complainant a written statement that he was holding the said certificate of stock as the representative and in trust for your complainant, and though she called upon him several times for said written agreement, he did not furnish it, but on each occasion said that it would be necessary to get a lawyer to write it, which was never done; that sometime after the delivery of the certificate of stock by her to the said R. C. Keeney he had it transferred to him on the books of the corporation; that he was soon thereafter elected President of the Orange Beach Land Company.

That soon after the said R. C. Keeney became President of the Orange Beach Land Company, the land owned by said corporation was subdivided and each member received three lots, two on the water front and one on the back; that three of the lots were conveyed to the said R. C. Keeney; that soon after acquiring title to said lots and contrary to the oral agreement with her, the said R. C. Keeney borrowed \$500.00 from Thomas Vonashek, and later, when the mortgage became due, deeded them to him; that she on various occasions demanded of the said R. C. Keeney a return of the certificate of stock, but it was never returned; she was finally advised by Keeney that he had placed the same with an attorney; that she was advised that the said R. C. Keeney had placed the certificate of stock with an attorney as collateral for \$525.00.

That the delivery of the certificate of stock to the said attorney was contrary to the agreement between her and Keeney, and that she did not and has never consented to or approved the placing of said certificate of stock as collateral or pledge by the said Keeney.

That immediately she learned that the said certificate had been placed with an attorney she made an effort to find out where it had been placed and finally learned that it was with Edward P. Totten of Fairhope, Alabama; that she immediately went to the said Edward P. Totten and advised him that the certificate belonged to her, and also advised him of the agreement with Keeney and that the stock had been placed as collateral contrary to her agreement with said Keeney, and that the said Keeney had no right whatever to pledge the said certificate of stock; that she demanded a return of the certificate of stock to her, but the said Totten refused and continues to refuse to deliver the said certificate of stock to her.

That on account of the conduct of the defendants as stated above, she has been caused to employ and expend money in

the employment of counsel in protecting her rights and effecting a proper return of the certificate of stock to her.

GEORGE MACH, a witness for the complainant, being duly sworn, testified as follows:

That he knows of the agreement between the complainant, Sophia Mach, and R. C. Keeney; that the stock was delivered by Mrs. Mach to Keeney in trust for her, and with the understanding that he would protect her interest in the Orange Beach Land Company, and with the further understanding that if he sold the stock he should for his services retain any amount in excess of \$1600.00, the amount it cost Mrs. Mach.

Under the agreement between Keeney and Mrs. Mach, Keeney was not given the right to pledge the certificate of stock for security of any debt; we at that time had full faith and confidence in the said R. C. Keeney.

CROSS EXAMINATION BY

MR. TOTTEN.

MR. HALL: We object to the following testimony of the witness, on the ground that it is not shown anywhere that the complainant was present at the time the certificate was transferred, nor is there anything to indicate that it was with her consent or approval, or that the said George Mach and R. C. Keeney had any right to represent her in such transaction.

I was the President of the Orange Beach Land Company at the time my wife, Sophia Mach, transferred her certificate of stock to R. C. Keeney; her certificate was regularly endorsed by her and was taken by Mr. Keeney and myself, acting as agent for my wife, to Thomas Vonashek, the Secretary of the Orange

Beach Land Company, and the transfer was made at Vonashek's home and a new certificate was then issued to Keeney and signed by me as President of the company and by Thomas Vonashek as Secretary.

MR. HALL: We move to exclude the above testimony on the ground stated above and on the further ground that it is immaterial, incompetent and irrelevant.

MR. HALL: We object to the following testimony on the ground that it is immaterial, incompetent and irrelevant.

The original \$1,000.00 was paid by my wife and I paid for her the amount of \$603.98, the balance on this certificate due for assessments and taxes.

RE-DIRECT EXAMINATION BY

MR. HALL.

At the time the stock was transferred on the books of the corporation we were at Vonashek's home and not at the office of the corporation; I at that time was acting as President of the corporation and contrary to instructions from my wife, Sophia Mach, in transferring the stock on the books of the corporation.

R. C. KEENEY, a witness for the complainant, being duly sworn, testified as follows:

Sometime after the organization of the Orange Beach Land Company Mrs. Mach came to me and said that I had been represented to them as someone they could have faith in and they told me what they wanted me to do; that they wanted to assign to me their interest in ten shares of stock in the Orange Beach Land Company, as they felt that they were going to be beaten out of their interest and they meant their friends. After consideration for sometime - I had to consider it - I finally decided

to go ahead and do it. She assigned the stock to me in trust and to protect her interest. As to pay, well, I think we finally agreed on \$1,000.00, and of course we didn't know at that time there was going to be any assessment, the assessment came later, and then Mr. Mach agreed to put up the assessment money; then there was an assessment of \$600.00 which came later, making a total of \$1600.00 or thereabouts. It was agreed that I was to receive for my services any amount in excess of \$1600.00 that the stock might be sold for, or anything pertaining to the stock or property of the corporation in excess of the \$1600.00 which had been paid by Mrs. Mach. I later took the original certificate of stock to Mr. Vonashek, Secretary of the corporation, and it was transferred on the books and new certificate issued to me. I then kept the certificate of stock for quite a while and then handed it to Edward P. Totten, who was pressing me for funds, for him to hold in good faith for me. I did not sign the certificate of stock. There was absolutely no consideration passing from Judge Totten either individually or as attorney to me for the delivery of said certificate of stock; it was not delivered by me to Judge Totten as security for any debt; the certificate was, as I said before, delivered to him as good faith in relation to the indebtedness to Mrs. Gordon and not as security for any debt then due or for any debt that was accruing.

CROSS EXAMINATION BY

MR. TOTTON.

Q I will ask you whose certificate of stock was this that you had?

MR. HALL: We object to that question, on the ground that it is incompetent, irrelevant and immaterial.

A Well, I figured that it was mine subject to what I had to pay when we sold the stock.

Q Was there any agreement for payment between the

complainant and you outside of this delivery of this certificate to you?

MR. HALL: We object to this on the ground that it is incompetent, irrelevant and immaterial.

A Well, I testified that over and above the \$1600.00 anything pertaining to the stock coming out of the Orange Beach Land Company would come to me.

Q Do you recall that at the time you brought me the certificate I had previously advised you that I had been instructed to commence suit for rent past due?

MR. HALL: We object to this on the ground that it is incompetent, irrelevant and immaterial.

A Yes, I do.

Q And that at that time you requested that you be allowed to continue in the house until summer?

MR. HALL: We object to that on the ground that it is incompetent, irrelevant and immaterial, and we move to exclude it on the same ground.

A Until the end of the school term.

MR. HALL: We move to exclude the evidence.

Q And that you placed this certificate with me as security for the rent that was past due, that was then due at that time, and the rent that was to come due?

A Not as security or a pledge; I placed it in good faith; I was trying to rustle up the money.

Q Do you recall that you brought in this certificate and said "Here's the last piece of property I have and I want you to hold this as security for the payment of the rent"?

A I don't just remember that; no.

Q Did you tell me that this was your property or not at that time?

MR. HALL: We object to that on the ground that it is incompetent, irrelevant and immaterial.

A I don't remember telling you whether it was or not; I don't recall that particular thing; I don't think you asked me; I don't remember that.

Q I will ask you whether you did not pledge this certificate with me to prevent suit on rent that was then due?

A Not as a pledge, just to show you my good faith.

Q But to prevent an action being brought for rent?

A I don't think you tried to force that on me at that time; I don't remember that.

Q At that time was this property, was this certificate the property of Mrs. Mach, Mrs. Sophia Mach, the complainant, or was it your property?

MR. HALL: We object to that question as immaterial, incompetent and irrelevant.

A It was my property over and above the \$1600.00.

R. C. HEARD, a witness for the complainant, being duly sworn, testified as follows:

My name is R. C. Heard; I am a resident of Bay Minette, Baldwin County, Alabama, and a member of the Baldwin County Bar. I have been practising law in Baldwin County, Alabama, for the past three years. \$150.00 I consider would be a reasonable attorney's fee to allow the complainant in the case of Mach vs. Totten et al., now pending in the Circuit Court of Baldwin County, Alabama, on the Equity side.

EDWARD P. TOTTON, being first duly sworn, deposes and says as follows:

The stock certificate involved in this action came into my custody by the delivery of it to me as attorney for Esther L. Gordon by R. C. Keeney on or about February 1st, 1931. I had notified Mr. Keeney of my being instructed to commence action for rent due to Mrs. Gordon on the residence occupied by himself and family. He brought this stock certificate in the Orange Beach Land Company to my office, threw it on my desk and said, "Here's the last piece of property I have; hold this as security for rent due to Mrs. Gordon". He at the same time told me of the deal that he had pending from which he expected to realize the money for payment and asked that the rent then accruing on the house be allowed to stand until he could get up the money by the closing of some real estate deal. This stock certificate was to stand as security for his indebtedness accrued and accruing to Mrs. Gordon for rent of residence. I have retained custody of the certificate as attorney for Mrs. Gordon ever since that time and have held it and still hold it for her possession under the pledge of security made by R. C. Keeney.

CROSS EXAMINATION BY

H. M. HALL, ATTORNEY FOR COMPLAINANT.

Q What did this certificate represent?

A This stock certificate in the name of R. C. Keeney was for ten shares of \$100.00 each in the Orange Beach Land Company, an Alabama corporation.

Q What was the number of the certificate?

A Number 16.

Q At the time Mr. Keeney delivered this certificate to you was it endorsed or signed by him?

A No.

Q Did you ask him to endorse or sign it?

A I did not.

Q Have you since that time asked him to sign or endorse this certificate?

A Yes.

Q When?

A In the late summer of '31.

Q That was after he had moved out of the house?

A After he had moved out of the house. I asked him to endorse the certificate, telling him that I had a buyer for it.

Q What did he tell you?

A He told me nothing except that the certificate was worth more than I told him I could sell it for, which was some \$600.00 or \$700.00.

Q Did you testify as a witness relative to the stock certificate mentioned in this suit on December 11, 1931, in the case of Esther L. Gordon vs. R. C. Keeney and Bessie M. Keeney?

A. Yes, I did.

Q Did you in that testimony make the following statement: "Sometime during the month of February, 1931, defendant R. C. Keeney brought to my office and left with me as security for the payment of rent due to complainant a certain certificate numbered 16 for ten shares of capital stock of the Orange Beach Land Company of Robertsedale, Alabama"?

A I believe I did.

Q "This certificate was for ten shares of \$100.00 each of the capital stock of said company which was incorporated under the laws of Alabama. As attorney for Mrs. Esther L. Gordon I received and accepted the said stock certificate at R. C. Keeney's suggestion and held the same and still hold it in possession for Mrs. Gordon as security for the payment of rent due from defendant to complainant?"

A I did.

ORAL EXAMINTAION

I, T.W.Richerson, as Register and Commissioner hereby certify
that the foregoing deposition on Oral Examination was taken down in short hand
~~of the witness~~ es and read over to them ~~and~~ signed ~~the same~~ in the presence of
myself and H.M.Hall

at the time and place herein mentioned; that I have personal knowledge of personal identity of said
witnesses or had proof made before me of the identity of said witness es; that I am not of
counsel or of kin to any of the parties to said cause, or any manner interested in the result thereof.

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

Given under my hand and seal, this 23 day of Aug 1932.

T.W.Richerson (L. S.)

No. _____ Page _____

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN CIRCUIT COURT, IN EQUITY

Sophia Mach

COMPLAINANT

vs.

Edward P. Totten et al

RESPONDENT

ORAL DEPOSITION

Filed Aug 23rd, 1932

T.W.Richerson, Register.

RECORDED IN

Record

Vol. _____ Page _____

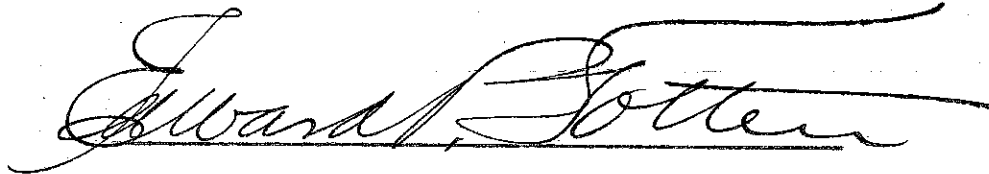
Register

SOPHIA MACH,)	
	)	IN THE CIRCUIT COURT OF
Complainant,)	
	)	BALDWIN COUNTY, ALABAMA.
vs.)	
	)	IN CHANCERY.
EDWARD P. TOTTEN)	
ET AL.,)	
Defendants.)	

For answer to the complaint of plaintiff, the defendant, Edward P. Totten, for himself and as attorney for Esther L. Gordon, denies every allegation in said complaint contained, except such as are hereinafter specifically admitted.

He admits the allegations of the SECOND paragraph that Edward P. Totten is over twenty-one years of age and a resident of Baldwin County, Alabama, and that Esther L. Gordon is over the age of twenty-one years and is a non-resident of the State of Alabama, her address being New York City, New York.

He admits the allegations of Paragraph TWELFTH that complainant advised him of the agreement with the said R. C. Keeney and that the stock had been placed as collateral contrary to her agreement with the said R. C. Keeney, and that the said R. C. Keeney had no right whatever to pledge the said certificate of stock.



Sophia Wash

Is
Susan Patten at al

Annex P Edward P.
Jettie Foster & Graham

Dec 23, 1932

W. M. P. P. P.
Clear

STATE OF ALABAMA
COUNTY OF BALDWIN

IN THE
CIRCUIT COURT IN EQUITY

IN THE CONSOLIDATED SUIT OF ESTHER L. GORDON vs. R. C. KEENEY and SOPHIA MACH vs. ORANGE BEACH LAND COMPANY, a corporation, R. C. KEENEY, ESTHER L. GORDON and EDWARD P. TOTTEN

ARGUMENT ON SUBMISSION

We respectfully submit that in Gordon vs. Keeney it is clear from the evidence that there is due from Defendant Keeney to Complainant Gordon, for rent of residence, the sum of \$540.00, including interest to this date. From the additional testimony submitted by Complainant, it is apparent that there was no agreement either by Complainant or her agents to make any allowance for the building of a garage, since we find Keeney several years after its construction, still trying to procure from Complainant's representative an allowance on the rental in that behalf. It further appears in the evidence that Keeney told Complainant's representative, when he was being urged to make payment of rent, that the furniture in the house and one motor-car belonged to him, personally, and that his wife owned only the sedan car which she drove and which she had bought out of her own earnings.

We submit that as far as Defendant R. C. Keeney is concerned, the Complainant, Esther L. Gordon is entitled to a judgement, First, for the full amount of rent due with interest, \$540.00. Second, to the foreclosure and sale of the certificate of stock pledged as security, and Third, to the foreclosure of the landlords lien held by Complainant on the household furniture effects, and property of Defendant R. C. Keeney, which enjoyed the protection of the premises during the entire rental period. On the basis of the evidence submitted in this cause, therefore, we request decree for the full amount due as above and for the foreclosure of the pledge and of the landlord's lien in satisfaction of such decree.

In the second part of this consolidated suit, Mach vs. Keeney et al, it appears from the undisputed testimony therein that at the time of his making of the pledge of stock certificate No. 16, in the Orange Beach Land Co. with Edward P. Totten as attorney

for Esther L. Gordon, that Defendant Keeney was the legal owner of such certificate and, further, that there was a valid consideration for his making of a pledge of such certificate in the forbearance of Esther L. Gordon from instituting legal proceedings for the collection of rent then due and in granting a further period of leasing of said residence premises. Keeney, as the legal owner of this stock certificate, pledged it as security for the payment of rent then due on February 1st, 1931 to prevent legal action being brought against him and to procure the further use of the residence premises. Both of these objects he obtained, as Esther L. Gordon deferred bringing suit, by reason of such pledge, and permitted him on the strength of it to occupy the said residence until the 4th day of June, 1931. The legal title of said stock certificate being plainly in R. O. Keeney, there was no duty resting upon Esther L. Gordon to enquire further into the matter, and there was nothing whatever in the circumstances surrounding the pledging of this certificate to put her on inquiry and she had a right to and did assume that the said stock certificate was, as represented to her by said Keeney, the property of said Keeney. By the deposit and pledge of this stock certificate, Esther L. Gordon was induced to and did, acting in entire good faith, forego the institution of suit and continue to allow Keeney the occupancy of the premises, to her detriment. By her forbearance and by her extension of the leasing period, Esther L. Gordon was injured and suffered damages. It appears without question from the entire evidence that she acted with the utmost good faith and in reliance upon Keeney's legal ownership and possession of such stock certificate. We submit that legal ownership coupled with possession, where there is nothing in the circumstances to put an innocent party, acting in good faith upon inquiry, should be sufficient to constitute a binding pledge of the property to all persons whomsoever, where the innocent party has been induced thereby to act to her injury and damage. We would submit that that is exactly the situation, from the undisputed evidence, in the present case, and that the rights of Esther L. Gordon are fixed.

Both as to the rent due at the time of the deposit of the certificate as a pledge, about February 1st, 1931 and as to the rent accruing subsequent to such date, and between February 1st and June 4th, 1931, the lien of Esther L. Gordon on such pledged property should hold as against all persons whom soever. It would clearly be the case without question as to the rent subsequently accruing, in the amount of \$120.00, and there would seem to be no good reason, under the circumstances and facts as stated, why it should not hold good as to the entire amount of rent due from Keeney.

Sophia Mach, the Complainant, in the second part of this consolidated cause, placed her endorsed certificate ~~of stock~~ in Keeney's hands, thereby authorizing him to have her said certificate transferred on the books of the corporation, the Orange Beach Land Co., and giving him, whether intentionally or not, ~~it~~ is beside the point, the full legal powers of a stockholder of said corporation. Keeney, as the legal owner of the certificate of stock, pledges his legal property as security for a legal indebtedness, accrued and accruing, and Mrs. Mach should be estopped from denying Keeney's ownership of such certificate insofar as the rights of an innocent third party acting in good faith are concerned. It was Mrs. Mach who placed in Keeney's hands the power to so act as to lead Esther L. Gordon to her detriment, injury and damage as stated above, and although it is abundantly clear from the evidence that Keeney's has violated every principle of good faith, honor and decency insofar as his dealing with Mrs. Mach is concerned, his actions in that behalf must not be allowed to prejudice the rights and interests of an innocent third party, without notice, acting in good faith, upon a valuable consideration. Mrs. Mach's negligence must not be allowed to defeat the rights acquired by Esther L. Gordon, the innocent third party, no matter how black the perfidy of Keeney may be. We submit that Mrs. Mach's proven equitable right to ~~the~~ the stock certificate is subject to the acquired rights of Esther L. Gordon, to the extent of Esther L. Gordon's claim, and that Mrs. Mach's remedy and redress is against Keeney, and not Gordon.

This is upon the well recognized and generally established

Principle of law and equity that whenever it is necessary for one of two innocent parties to suffer by the wrongful acts of a third party, the one must suffer whose actions made the injury possible. We submit that in the situation in the last case and that Esther L. Gordon should not be injured and damaged because Mrs. Mach placed implicit confidence in Keeney's integrity which has since been shown to have been entirely misplaced. Upon the record, therefore, we respectfully ask that the equitable interest of Sophia Mach be subjected to Mrs. Gordon's lien thereon for rent due from Keeney, and the decree entered accordingly.

In enclosing, we would call the court's attention to the fact that Edward P. Totten, although made a party to this second part of the consolidated suit, has not at any time had any individual interest or claim upon the stock certificate in question but that his custody of the same has been wholly and solely for Esther L. Gordon as her attorney, under the pledge of the certificate by Keeney.

We would further call the court's attention to the objection interposed by us at the hearing that it appears from the record and from the facts that H. M. Hall acted in the consolidated suit as attorney for the complainant, Sophia Mach, and the defendant R. C. Keeney, whose interests are in apparent conflict therein.

In this connection we object entirely to the consideration of the testimony of one R. C. Heard, who did not appear at the hearings set, whom we had no opportunity whatsoever to cross-examine and whose purported testimony is attempted wrongfully to be included with the testimony submitted in such consolidated cause, and we move that same be excluded.

All of which is respectfully submitted.

Edward P. Totten
Attorney for Esther L. Gordon

San Circuit Court

In Equity

vs. Gordon

Keeney and

March 25, 1908

Keeney, et al

Argument on

by Edward P. Totten

Attorney for E. & J. Gordon

Travis B. Smith

...for ...
...of two ...
...party, the ...
...possible.
...We submit that in the ...
...case and that ...
...because Mrs. ...
...which has since been shown to have been entirely misplaced.
Upon the record, therefore, we respectfully ask that the ...
interest of Sophia ... be subjected to Mrs. Gordon's ...
for ... from Keeney, and the ... accordingly.
In ... we would call the court's attention to the ...
fact that ... E. Totten, although made a party to this ...
second part of the consolidated ... has not at any time ...
had any individual interest or claim upon the stock certificate ...
in question but that his custody of the same has been wholly ...
and solely for ... E. Gordon as her attorney, under the ...
pledge of the certificate by Keeney.
We would further call the court's attention to the ...
section introduced by us at the hearing that it appears from ...
the record and from the facts that ... E. Hall acted in the ...
consolidated ... for the completion of ...
March, and the defendant E. C. Keeney, whose interests are ...
in apparent conflict ...
In this connection we object entirely to the ...
consideration of the testimony of one ... E. Heard, who did ...
not appear at the hearing set, whom we had no opportunity ...
... to cross-examine and whose ...
is attempted wrongly to be included with the testimony ...
submitted in such consolidated case, and we move that same ...
be excluded.
All of which is respectfully submitted.

Edward P. Totten
Attorney for E. & J. Gordon

SOPHIA MACH,)	
	)	IN THE CIRCUIT COURT OF
Complainant,	)	BALDWIN COUNTY, ALABAMA.
)	
vs.	)	IN CHANCERY.
)	
EDWARD P. TOTTON)	
ET AL.,)	
Defendants.)	

Comes the defendant, R. C. KEENEY, and for answer to the bill of complaint in this cause, and to each paragraph thereof, separately and severally, says:

That he admits the allegations set out in Paragraphs "FIRST", "SECOND", "THIRD", "FIFTH", "SIXTH", "SEVENTH" and "EIGHTH".

That he knows nothing about the allegations contained in Paragraph "FOURTH".

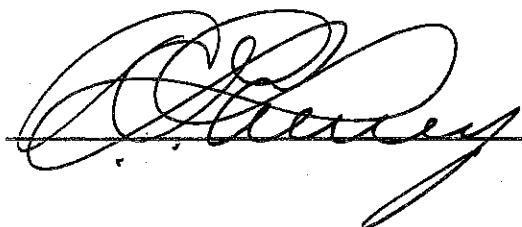
That he admits all the allegations contained in Paragraph "NINTH", except that part which states that it was contrary to the oral agreement with your complainant.

That he admits all the allegations contained in Paragraph "TENTH", with the exception that the complainant made only one demand on him for the return of the certificate of stock.

That he admits the allegations contained in Paragraph "ELEVENTH", with the exception that there was no agreement between him and the complainant that he was not to place the stock as collateral.

That he does not know anything about the allegations contained in Paragraph "TWELFTH".

That he knows nothing about the allegations contained in Paragraph "THIRTEENTH".

 _____

Sophia Mack
15

Edward O Jetterson

Inverness?

J^r R. Clemons

Stark Aug 23. 1932

P. M. M. M. M. M.
Reports

SOPHIA MACH,

Complainant,

VS.

EDWARD P. TOTTEN ET AL.,

Respondents.

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN EQUITY,
CIRCUIT COURT OF BALDWIN COUNTY.

This cause is submitted in behalf of Complainant upon the original Bill of Complaint,
Testimony of Sophia Mach, George Mach, R. C. Keeney and R. C.
Heard, and Brief;

and in behalf of Defendant upon Answers, testimony of Edward P. Totten
and Brief.

J. W. Pickens

Register.

No. _____

THE STATE OF ALABAMA
BALDWIN COUNTY

IN EQUITY,
CIRCUIT COURT OF BALDWIN COUNTY.

Stephen Mack

VS

Edward P. Patten
et al

NOTE OF TESTIMONY

Filed in Open Court this *13th*

day of *Sept* 19*32*

D. W. Patten

Register

CARL A. SWANSTROM,

PLAINTIFF

VS

THE FIRST NATIONAL LIFE INSURANCE COMPANY
OF AMERICA, A CORPORATION; TROY BANK &
TRUST COMPANY, A CORPORATION; EMORY POL-
MAR; FRANK P. POLMAR; R. A. BURLISON;
WALTER HOILES and J. C. HUCKABEE,

DEFENDANTS

STATE OF ALABAMA }
BALDWIN COUNTY. }

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

DEPOSITIONS FOR PLAINTIFF

Personally appeared before me, the undersigned, Commissioner to take depositions in the above entitled cause, Carl A. Swanstrom, who, being by me first duly sworn on oath did depose and say:

TESTIMONY OF CARL A. SWANSTROM

My name is Carl A. Swanstrom. I reside in Summerdale in Baldwin County, Alabama and I am the Plaintiff in the above entitled action.

During the early part of July, 1930 Defendants Walter Hoiles and J. C. Huckabee called on me in Summerdale, Alabama, stated to me that they were representing the Defendant The First National Life Insurance Company of American and that they desired to sell me stock in that Company. I explained to them that I was not interested in buying stock in any corporation but that I had considerable real estate in Baldwin County which I would be glad to dispose of and suggested to them that if they could arrange a sale of my ware house property in Summerdale that then I might be interested in purchasing stock. We had considerable conversation about it and they went away and a few days later returned with Defendants Frank P. Folmar and R. A. Burlison whom they introduced as officials of Defendant The First National Life Insurance Company of America.

They expressed themselves as interested in my property and we made a tentative arrangement by which Defendant Emory Folmar was to purchase my ware house property for TWENTY-FIVE THOUSAND & 00/100 (\$25,000.00) DOLLARS and I was to apply TEN THOUSAND & 00/100 (\$10,000.00) DOLLARS of this purchase price to the purchase of stock

in Defendant The First National Life Insurance Company of America.

Mr. Frank Folmar then asked me to sign a note for TEN THOUSAND TWENTY & 00/100 (\$10,020.00) DOLLARS representing the three hundred thirty-four (334) shares of Founder's Stock in the Defendant the First National Life Insurance Company of American and when I objected to signing the note before the real estate transaction was closed he told me that it was not necessary in order to hold the stock but that the note would not be binding unless the real estate transaction was closed and after some protest I signed it and deliver it to him.

A few days later I went, at his suggestion, to Montgomery, Alabama where I talked with Defendant Emory Folmar at the offices of Defendant The First National Life Insurance Company of America of which Defendant Emory Folmar was President. He stated to me that he would be able to dispose of my property without difficulty and we drew up a memorandum of agreement by which he agreed to buy and I to sell the property for TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS on which TEN THOUSAND & 00/100 (\$10,000.00) DOLLARS was to be paid by his taking up my note and the balance to be paid in six annual installments with interest at six per cent. This transaction was to be closed as soon as I had my abstract extended to date.

The real estate transaction was never closed for the reason that Defendant Emory Folmar refused to execute the notes called for by the agreement secured by mortgage on the property but instead insisted that I must take unsecured notes and notes of various kinds were offered to me, all of which I refused to accept for the reason that they were worthless.

Prior to this time I had not been so much concerned about the

value of the stock in the Defendant corporation for which I had given my note but when it came apparent that the real estate transaction was not going to be consummated I made an investigation concerning the stock and found that its value had been grossly misrepresented to me by all of the Defendants and that it was of but little value and that it had never been entered on the register of qualified securities by the Securities Commission of the State of Alabama as provided by law and I was informed and advised by my attorney that by reason of that fact alone I was entitled to declare the sale of the stock to me void and to receive back the consideration paid ^{by} me which was my note for TEN THOUSAND TWENTY & 00/100 (\$10,020.00) DOLLARS and I filed this proceeding for the purpose of declaring said sale to me void and to recover back my note.

No stock was ever delivered to me and I have received absolutely nothing for the said note.

TESTIMONY OF A. H. GROVATT

A. H. Grovatt, being by me first duly sworn, on oath deposes and says:

My name is A. H. Grovatt and I am duly licensed and qualified Attorney at Law in the State of Alabama with my offices and residence in Foley, Alabama.

I have been engaged in the practise of the law for twenty-five (25) years and from my experience as such practitioner I know the value of legal services.

It is my opinion that a reasonable attorney's fee for bringing the action authorized by Section 98-99 of the Code of Alabama, 1923 to declare void a sale or contract of sale of corporation stock which at the time of the sale was not qualified for sale in the State of Alabama by the necessary action of the Public Service Commission, in which case the amount of TEN THOUSAND TWENTY & 00/100 (\$10,020.00) DOLLARS is involved and which results in the securing

of a court decree cancelling such sale and recovering back for the Plaintiff therein his promissory note given in payment for such stock in the amount of TEN THOUSAND TWENTY & 00/100 (\$10,020.00) DOLLARS, is the sum of ONE THOUSAND & 00/100 (\$1,000.00) DOLLARS.

STATE OF ALABAMA }
BALDWIN COUNTY. }

I, L. F. Farrell, by virtue of the attached commission, having been appointed Commissioner for the purpose of taking the testimony of witnesses in behalf of the Complainant in the above entitled cause, do hereby certify that I caused to come before me at my office in Foley, Alabama, Carl A. Swanstrom and A. H. Crovatt, said witness who are known to me and after being by me first duly sworn, said witnesses testified as hereinbefore set forth and their testimony was by me reduced to writing as nearly as may be in their own language and subscribed by them.

That I am not of counsel nor of kin to any of the parties to the cause, or in any manner interested in the result thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of December, 1931.

Commissioner.

CARL A. SWANSTROM,
PLAINTIFF

VS

THE FIRST NATIONAL LIFE INSURANCE
COMPANY OF AMERICA, A CORPORATION;
TROY BANK & TRUST COMPANY, A CORP-
ORATION; EMORY POLMAR; FRANK P.
POLMAR; R. A. BURLERSON; WALTER HOILES;
AND J. B. HUCKABEE.

DEFENDANTS

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

INTERROGATORIES PROPOUNDED BY PLAINTIFF TO DEFENDANT, TROY BANK &
TRUST COMPANY, a corporation, UNDER SECTION 6569, ET. SEQ., CODE
OF ALABAMA 1923.

1. State your name and address.
2. Do you now have in your possession the note for TEN THOUSAND
TWENTY & 00/100 (\$10,020.00) DOLLARS dated July 17, 1930, due on de-
mand, payable either to Frank P. Polmar or The First National Life
Insurance Company of America and signed by Carl A. Swanstrom?
3. If your answer to the foregoing question is "no" when did
you part with possession of said note and to whom did you deliver it?
4. Under what circumstances and for what consideration did you
part with the possession of said note?
5. Do you know who now has possession of said note? if so, please
state.
6. Who, to your knowledge, last had possession of said note?
7. Attach copy of note to your answer.

STATE OF ALABAMA)
BALDWIN COUNTY.)

Lloyd A. Magney
Solicitor for Plaintiff.

Personally appeared before me E. Frank Sanders, a
notary public in and for said County and State, Lloyd A. Magney, who,
upon oath, deposes and says that he is the solicitor for the Plaintiff
in the above entitled case, and that the answers of the Defendant to
the above and foregoing interrogatories, if well and truthfully made,
will be material evidence for the Plaintiff in the said cause.

Subscribed in my presence and sworn to before me this 1 day of
July, 1931.

E. Frank Sanders
Notary Public.

CARL A. SWANSTROM,
PLAINTIFF

VS

THE FIRST NATIONAL LIFE INSURANCE
COMPANY OF AMERICA, A CORPORATION;
TROY BANK & TRUST COMPANY, A CORP-
ORATION; EMORY FOLMAR; FRANK P.
FOLMAR; R. A. BURLESON; WALTER HOILES
AND J. B. HUCKABEE

DEFENDANTS

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

INTERROGATORIES PROPOUNDED BY PLAINTIFF TO DEFENDANT, the FIRST
NATIONAL LIFE INSURANCE COMPANY OF AMERICA, A CORPORATION, UNDER
SECTION 6569, ET. SEQ; CODE OF ALABAMA 1923.

1. State your name and address.
2. Do you now have in your possession the note for TEN
THOUSAND TWENTY & 00/100 (\$10,020.00) DOLLARS dated July 17, 1930,
due on demand, payable either to Frank P. Folmar or The First
National Life Insurance Company of America and signed by Carl A.
Swanstrom?
3. If your answer to the preceeding question is "no", do you
know who now has possession of said note? If you do know, please
state.
4. Who, to your knowledge, last had possession of said note?
5. Attach copy of note to your answer.

Lloyd A. Magney
Solicitor for Plaintiff.

STATE OF ALABAMA)
BALDWIN COUNTY.)

Personally appeared before me E. Frank Sanders,

a notary public in and for said County and State, Lloyd A. Magney, who,
upon oath, deposes and says that he is the solicitor for the Plaintiff
in the above entitled case, and that the answers of the Defendant to
the above and foregoing interrogatories, if well and truthfully made,
will be material evidence for the Plaintiff in the said cause.

Subscribed in my presence and sworn to before me this ___ day
of July, 1931.

E. Frank Sanders
Notary Public.

Original
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

RECORDED

RECORDED

CARL. A. SWANSTROM,

PLAINTIFF

VS

THE FIRST NATIONAL LIFE
INSURANCE COMPANY OF
AMERICA, A CORPORATION,
ET AL.

RECOUNTED BY SERVING.
a copy of the within on
A.P. Felmar as Sec. The First
National Life Ins. Co., of
America. A Corporation, This
15th. day of July. 1931.

Sam D. Stearns
County Clerk
Calico

INTERROGATORIES TO DEFENDANT
THE FIRST NATIONAL LIFE IN-
SURANCE COMPANY OF AMERICA,
A CORPORATION.

Filed July 15 1931
T. D. Richardson

RECEIVED ANTOFFICE
5 JUL 15 1931
SAM D. STEARNS Sheriff

LLOYD A. MAGNEY,
for Plaintiff.

IN THE CIRCUIT COURT OF *Sequoyia*
BALDWIN COUNTY, ALABAMA
IN CHANCERY

RECORDED

CARL A. SWANSTROM,

PLAINTIFF

VS

THE FIRST NATIONAL LIFE
INSURANCE COMPANY OF
AMERICA, A CORPORATION,
ET AL.

DEFENDANTS

Filed July 19 1931
J. A. Magney
Attorney

INTERROGATORIES TO DEFEND-
ANT TROY BANK & TRUST COM-
PANY, A CORPORATION

LLOYD A. MAGNEY,
Attorney for Plaintiff.

Entered this 11th
Day of July 1931
by Swain & Company
or J. C. Howell
Clerk of Troy Bank
Trust Co. of Georgia

Wm. H. Nichols
Shuff
Leville
Expert Shuff

CARL A. SWANSTROM,

PLAINTIFF

VS

THE FIRST NATIONAL LIFE INSURANCE
COMPANY OF AMERICA, A CORPORATION;
TROY BANK & TRUST COMPANY, A CORP-
ORATION; EMORY FOLMAR; FRANK P.
FOLMAR; R. A. BURLISON; WALTER
HOILES, and J. B. HUCKABEE.

DEFENDANTS

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

INTERROGATORIES PROPOUNDED BY PLAINTIFF TO DEFENDANT, EMORY FOLMAR,
UNDER SECTION 6569, ET. SEQ; CODE OF ALABAMA 1923.

1. State your name and address.
2. Do you now have in your possession the note for TEN THOUSAND
TWENTY & 00/100 (\$10,020.00) DOLLARS dated July 17, 1930, due on
demand, payable either to Frank P. Folmar or The First National Life
Insurance Company of America and signed by Carl A. Swanstrom?
3. If your answer to the preceeding question is "no", do you know
who now has possession of said note? If you do know, please state.
4. Who, to your knowledge, last had possession of said note?
5. Attach copy of note to your answer.

Lloyd A. Magney
Solicitor for Plaintiff.

STATE OF ALABAMA)
(
BALDWIN COUNTY.)

Personally appeared before me E. Frank Sanders, a notary pub-
lic, in and for said County and State, Lloyd A. Magney, who, upon
oath, deposes and says that he is the solicitor for the Plaintiff in
the above entitled case, and that the answers of the Defendant to
the above and foregoing interrogatories, if well and truthfully made,
will be material evidence for the Plaintiff in the said cause.

Subscribed in my presence and sworn to before me this ___ day of
July, 1931.

E. Frank Sanders
Notary Public.

IN THE CIRCUIT COURT OF Circuit
BALDWIN COUNTY, ALABAMA
IN CHANCERY

RECORDED

CARL A. SWANSTROM

PLAINTIFF

VS

THE FIRST NATIONAL LIFE
INSURANCE COMPANY OF
AMERICA, A CORPORATION,
ET AL.

DEFENDANTS.

Filed August 1931
Wm. H. Stearns
Deputy

Executed by serving a copy of
the within on A.P. Folmar, as Sec.
of the First National Life Ins.
Co., of America, a Corporation,
This 15th day of July, 1931.

Wm. H. Stearns
Sheriff

Wm. H. Stearns
Deputy Sheriff

INTERROGATORIES TO DEFEND-
ANT EMORY FOLMAR.

RECEIVED A. O. WAGNER,
Attorney for Plaintiff.

JUL 25 1931
SAM B. STEARNS, Sheriff

CARL A. SWANSTROM,

PLAINTIFF,

vs.

THE FIRST NATIONAL LIFE INSURANCE
COMPANY OF AMERICA, A CORPORATION;
TROY BANK & TRUST COMPANY, A
CORPORATION; EMORY FOLMAR; FRANK
P. FOLMAR; R. A. BURLESON; WALTER
HOILES AND J. C. HUCKABEE,

DEFENDANTS.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

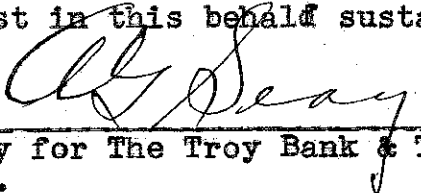
- IN EQUITY -

Comes The Troy Bank & Trust Company, one of the Respondents in
the above styled cause, and for answer to the bill of complaint herein
filed says:

1. Answering Part One of said bill this Respondent admits the
allegations contained therein as true as therein stated.

2. Answering Part Two, each paragraph thereof and every allegation
contained therein, this Respondent says that it knows nothing of the
allegations contained therein; that it has never owned any right, title,
interest or claim in or to the note therein described; that it has
never been in possession of the same and is not now in the possession
of the said note; that said note was never pledged to or in any way
transferred or assigned to it, nor has it ever been in possession of
the said note for or on behalf of any other person, firm or corporation.

And now having answered said bill as fully as it is advised that
it is necessary for it so to do it prays that it be dismissed out of
this honorable court with its reasonable cost in this behalf sustained.


Attorney for The Troy Bank & Trust
Company.

Col A. Beauchamp

is

The first part of the
the first part of the

RECORDED

Answer 17

by Beauchamp C.

First part of the

of the first part of the

First part of the

Beauchamp
Beauchamp

CARL A. SWANSTROM,

PLAINTIFF

VS

THE FIRST NATIONAL LIFE INSURANCE
COMPANY OF AMERICA, A CORPORATION;
TROY BANK & TRUST COMPANY, A CORP-
ORATION; EMORY FOLMAR; FRANK P.
FOLMAR; R. A. BURLERSON; WALTER HOILES
AND J. B. HUCKABEE.

DEFENDANTS

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

INTERROGATORIES PROPOUNDED BY PLAINTIFF TO DEFENDANT FRANK P. FOLMAR,
UNDER SECTION 6569, ET. SEQ; CODE OF ALABAMA 1923.

1. State your name and address.
2. Do you now have in your possession the note for TEN
THOUSAND TWENTY & 00/100 (\$10,020.00) DOLLARS dated July 17, 1930,
due on demand, payable either to Frank P. Folmar or The First Nation-
al Life Insurance Company of America and signed by Carl A. Swanstrom?
3. If your answer to the preceeding question is "no", do you
know who now has possession of said note? If you do know, please
state.
4. Who, to your knowledge, last had possession of said note?
5. Attach copy of note to your answer.

Lloyd A. Magney
Solicitor for Plaintiff.

STATE OF ALABAMA)
BALDWIN COUNTY.)

Personally appeared before me, E. Frank Sanders, a notary
public in and for said County and State, Lloyd A. Magney, who, upon
oath, deposes and says that he is the solicitor for the Plaintiff in
the above entitled case, and that the answers of the Defendant to
the above and foregoing interrogatories, if well and truthfully made,
will be material evidence for the Plaintiff in the said cause.

Lloyd A. Magney

Subscribed in my presence and sworn to before me this _____
day of July, 1931.

E. Frank Sanders
Notary Public.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

81/1
RECORDED

CARL A. SWANSTROM

PLAINTIFF

VS

THE FIRST NATIONAL LIFE
INSURANCE COMPANY OF
AMERICA, A CORPORATION,
ET AL.

DEFENDANTS.

*Filed Aug 12 1931.
H. H. Holcombe
Register*

INTERROGATORIES TO DEFENDANT
FRANK P. FOIMAR.

LLOYD A. MAGNEY,
Attorney for Plaintiff.

Received 11 Day of July 1931
and on 11 Day of July 1931
I served A Copy of the within
on *Frank P. Foimar.*
by service on _____
W. H. HOLCOMBE JR., SHERIFF.
BY *Wm. H. Holcombe Jr.* D. S.

The State of Alabama, }
Baldwin County.

No. 977.

CIRCUIT COURT, IN EQUITY

Carl Swanstrom,

Complainant.

vs.

First National Life Insurance Co, of America, et al,

Defendant.

In this cause it appears to the Register,

that a Summons requiring the Defendant s, First National Life Insurance Co, of
America, Walter Hoiles, Frank P. Folmar, R.A. Burleson, J.A. Huckabee,
Emory Folmar, F

to appear and demur, plead to or answer the Bill of Complaint in this cause within thirty days after the
service of said Summons upon the above named defendants

was served upon them, by the Sheriff of Montgomery, Pike, & Mobile Counties
s Baldwin, Alabama, on the

&&&&&

&&& as follows:-

Walter Hoiles July, 9th, 1931, Frank P. Folmar, July 27th, 1931

R.A. Burleson, July 11th, 1931, J.A. Huckabee July 17th, 1931.

Emory Folmar, July 15th, 1931, First National Life Insurance Co,
of America, July 15th, 1931,

And the said Defendant having failed to demur, plead to or answer the said Bill of Complaint
to this date, it is now, therefore, on motion of Lloyd A. Magney, Atty for Complainant,

ordered and decreed that the said Bill of Complaint in this cause be and it hereby is in all things taken as
confessed against the said Walter Hoiles, Frank P. Folmar, R.A. Burleson,

J.A. Huckabee, Emory Folmar, First National Life Insurance Co, of
America,

Defendant s aforesaid.

This 30th day of November 1931.



Register.

The State of Alabama,
Baldwin County.

No. 977.

CIRCUIT COURT, IN EQUITY

Carl Swanstrom,

Complainant.

vs.

First National Life Insurance Co, of America, et al, s
Defendant.

In this cause it appears to the Register,

that a Summons requiring the Defendant s, First National Life Insurance Co., of
America, Walter Hoiles, Frank P. Folmar, R.A. Burleson, J.A. Huckabee,
Emory Folmar, F

to appear and demur, plead to or answer the Bill of Complaint in this cause within thirty days after the
service of said Summons upon the above named defendants
was served upon them, by the Sheriff of Montgomery, Pike, & Mobile Counties
s Baldwin, Alabama, on the

&&&&

&&& as follows:-

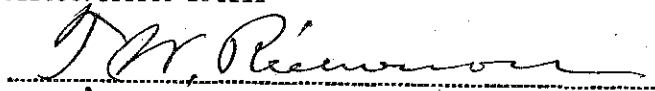
Walter Hoiles July, 9th, 1931, Frank P. Folmar, July 27th, 1931
R.A. Burleson, July 11th, 1931, J.A. Huckabee July 17th, 1931.
Emory Folmar, July 15th, 1931, First National Life Insurance Co.,
of America, July 15th, 1931,

And the said Defendant having failed to demur, plead to or answer the said Bill of Complaint
to this date, it is now, therefore, on motion of Lloyd A. Magney, Atty for Complainant,

ordered and decreed that the said Bill of Complaint in this cause be and it hereby is in all things taken as
confessed against the said Walter Hoiles, Frank P. Folmar, R.A. Burleson,
J.A. Huckabee, Emory Folmar, First National Life Insurance Co, of
America,

Defendant s aforesaid.

This 30th day of November 1931.



Register.

CARL A. SWANSTROM,

PLAINTIFF,

VS.

THE FIRST NATIONAL LIFE INSURANCE
COMPANY, OF AMERICA, A CORPORATION;
TROY BANK & TRUST COMPANY, A CORP-
ORATION; EMORY FOLMAR; FRANK P.
FOLMAR; R. A. BURLESON; WALTER HOILES;
AND J. C. HUCKABEE,

DEFENDANTS.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

- IN CHANCERY -

ANSWERS TO INTERROGATORIES PROPOUNDED BY PLAIN-
TIF TO DEFENDANT, TROY BANK & TRUST COMPANY, A
CORPORATION:

Comes L. C. Powell, Cashier of the Troy Bank & Trust Company,
who has knowledge of the matters and things herein inquired about,
and for answer to the interrogatories propounded as above says:

1. Answering the first interrogatory he says: My name and
address is L. C. Powell, Troy, Alabama.

2. Answering the second interrogatory he says: No.

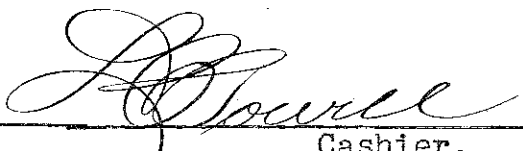
3. Answering the third interrogatory he says: To the best of
his information and belief said note was at one time placed with
Troy Bank & Trust Company for collection; that after diligent search
he is unable to find any record of such an item; but to the best of
his judgment said item was placed with defendant bank for collection;
that he does not remember the date the said note was returned unpaid
and was returned to Charles Henderson, from whom it was received for
collection.

4. Answering the fourth interrogatory he says: Said note was
returned to Charles Henderson from whom it was received for col-
lection.

5. Answering the fifth interrogatory he says: No.

6. Answering the sixth interrogatory he says: The last I knew
of said note it was returned to Charles Henderson and I have known
nothing of it since.

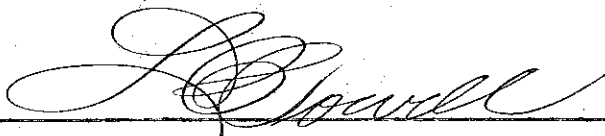
7. Answering the seventh interrogatory he says: I do not have
the said note and for that reason cannot a copy of it.


Cashier.

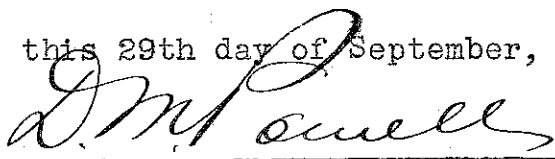
AFFIDAVIT.

THE STATE OF ALABAMA, PIKE COUNTY.

Before me, _____, a Notary Public in and for said State and County, personally appeared L. C. Powell, who being by me first duly sworn deposes and says: That he is Cashier of the Troy Bank & Trust Company, one of the Respondents in the above cause; that he has personal knowledge of the matters and things inquired about in the interrogatories filed herein; that he is authorized to answer the same and that the foregoing answers to said interrogatories are true and correct as therein stated.



Sworn to and subscribed before me
this 29th day of September, 1931.


Notary Public.

Carl A. Lumsden

and Martin G. Lumsden
et al.

RECORDED

Deceased to be brought
to my house & buried.

Filed Oct 22nd 1931
J. W. McNamee
Register

Filed Oct 1931.

W. W. McNamee

Register

CARL A. SWANSTROM,

PLAINTIFF

VS

THE FIRST NATIONAL LIFE INSURANCE
COMPANY OF AMERICA, A CORPORATION;
TROY BANK AND TRUST COMPANY, A
CORPORATION; EMORY FOLMAR; FRANK
P. FOLMAR; R. A. BURLESON; WALTER
HOILES AND J. C. HUCKABEE,

DEFENDANTS.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

DECREE

This cause coming on to be heard on the Bill of Complaint, decree pro confesso against the Defendants The First National Life Insurance Company of America, Walter Hoiles, Frank P. Folmar, R. A. Burleson, J. B. Huckabee and Emory Folmar and the testimony noted by the Register, was considered by the Court and being fully advised in the premises, the Court finds:

That the allegations of the Bill of Complaint are true and that the Plaintiff is entitled to relief as therein prayed.

That the note given by the Plaintiff dated July 17, 1930 in the principal sum of TEN THOUSAND TWENTY & 00/100 (\$10,020.00) DOLLARS and payable upon demand was given by the Plaintiff in payment of three hundred thirty-four (334) shares of the capital stock of Defendant The First National Life Insurance Company of America, being that class of stock known and designated as Founders' Stock and that such stock was not, at the time of such sale hereof to the Plaintiff, entered on the Register of Qualified Securities by the Securities Commission of the State of Alabama and was not qualified for sale in the State of Alabama, as required by Article Twelve of Chapter 335 of the Code of Alabama, 1923 and that for that reason such sale was and is void and the Plaintiff is entitled to the return of his said note.

That the Defendants Emory Folmar, Frank P. Folmar, R. A. Burleson, Walter Hoiles and J. B. Huckabee each and all participated and aided in making such sale to the Plaintiff, knowing the same to be in violation of the law of the State of Alabama and that they and each

of them, together with the Defendant The First National Life Insurance Company of America are jointly and severally liable to the Plaintiff for the full amount paid by the Plaintiff, together with all taxable court costs and attorney's fees and the Court further finds that a reasonable attorney's fee for the services performed by the Attorney for the Plaintiff herein is the sum of ONE THOUSAND & 00/100 (\$1,000.00) DOLLARS.

It is therefore Ordered, Adjudged and Decreed that the Defendants and each of them are hereby ordered to return to the Plaintiff, said note dated July 17, 1930 in the principal sum of ~~ONE~~ ^{Ten} THOUSAND, ^{Twenty} & 00/100 ^(\$10,020.00) ~~(\$10,000.00)~~ DOLLARS and that upon the failure of the Defendants so to return said note that the same be, and it hereby is, decreed to be null and void and cancelled; that the Plaintiff have and recover from the Defendants The First National Life Insurance Company of America, Walter Hoiles, Frank P. Folmar, R. A. Burleson, J. B. Huckabee and Emory Folmar, the sum of ONE THOUSAND & 00/100 (\$1,000.00) DOLLARS as an attorney's fee, together with his costs herein expended, ~~taxed at \$~~ ^{for which execution} ~~issue~~ Dated this 22nd day of December, 1931.

J. W. Kare
Judge of Circuit Court.

~~10070~~
12/80.
6.67 1/2
13.34
333
16.67 1/2

IN THE CHANCERY COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

RECORDED

CARL A. SWANSTROM,

PLAINTIFF

VS

THE FIRST NATIONAL LIFE
INSURANCE COMPANY OF
AMERICA, ET AL

DECREED

*Filed Dec 23/93
J. A. Magney
Foley, Alabama*

LLOYD A. MAGNEY
ATTORNEY AT LAW
FOLEY, ALABAMA

LLOYD A. MAGNEY
ATTORNEY AND COUNSELLOR AT LAW
FOLEY, ALABAMA

September 12, 1932.

Hon. T. W. Richerson,
Clerk of Circuit Court,
Bay Minette, Ala.

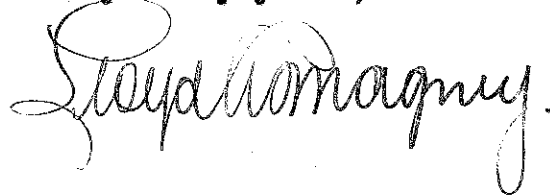
Dear Mr. Richerson:-

You were going to issue two copies of an alias execution in the case of Swanstrom vs First National Life Insurance Company of American, et al and send them to me.

I have not received them as yet and wish that you would issue and send them to me at once as they should be filed with the Register of Montgomery County and the Receiver of the Insurance Company.

Thanking you in advance for your prompt attention,
I am

Very truly yours,

A handwritten signature in cursive script, reading "Lloyd A. Magney". The signature is written in dark ink and is positioned below the typed name "Lloyd A. Magney".

lam/lff

The State of Alabama, { **CIRCUIT COURT OF BALDWIN COUNTY,**
Baldwin County **IN EQUITY**

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

WE COMMAND YOU, That you summon_____

Troy Bank & Trust Company, a corporation

Troy, Alabama

of Pike 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

Carl A. Swanstrom

against said _____

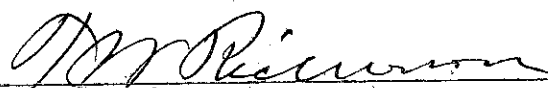
Troy Bank & Trust Company, a corporation

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

WITNESS, T. W. Richerson, Register of said Circuit Court, this 9th day of

July

193 1

 Register.

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

Original

Serve on _____

Circuit Court of Baldwin County
In Equity.

RECEIVED

No. _____

SUMMONS

Carl Swenstrom,

vs.

Troy Bank & Trust Company,

Troy, Ala.

Lloyd A. Megney,

Solicitor for Complainant.

Recorded in Vol. _____ Page, _____

The State of Alabama,
BALDWIN COUNTY.

Received in office this _____

day of _____ 1931

Sheriff.

Executed this 11th day of

1931

by leaving a copy of the within Summons with

by leaving a copy of the within Summons with
of the Justice Clerk of
Troy Bank & Trust Co.

Defendant.

Sheriff.

By

Deputy Sheriff.

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 Emory Folmar

o/o The First National Life Insurance Co.,

Montgomery Alabama,

of Montgomery 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 Carl Swanstrom,

against said

Emory Folmar,

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 9th 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.

✓ Original

Served on
RECORDED

Circuit Court of Baldwin County
In Equity.

No. _____

SUMMONS

Carl A. Swanstrom,

vs.

Emery Folmer,

a/o The First National Life

Insurance Co.,

Montgomery Ala.

Lloyd A. Magney.

Solicitor for Complainant.

RECEIVED IN OFFICE

Recorded in Vol. _____

Page _____

JUL 15 1931

SAM B. STEARNS, Sheriff

The State of Alabama,
BALDWIN COUNTY.

Received in office this _____

day of _____ 1931

Sheriff.

Executed this 15th. day of

July 1931

by leaving a copy of the within Summons with

Samuel H. Folmer Defendant.

Sam B. Stearns Sheriff.

By _____

Deputy Sheriff.

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_____

J. B. Huckabee

Foley, Alabama

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

Carl A. Swanstrom


against said _____

J. B. Huckabee

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 9th day of

July 1931

 Register.

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

Original

Serve on J. B. Huckabee
Foley, Jr

Circuit Court of Baldwin County

RECORDED
In Equipped

No. _____

SUMMONS

Carl A. Swensstrom

vs.

J. B. Huckabee

Foley Jr

Lloyd A. Magney

Solicitor for Complainant.

Recorded in Vol. _____ Page _____

The State of Alabama,
BALDWIN COUNTY.

Received in office this _____

day of _____ 193_____

Sheriff.

Executed this 17th day of

Foley 1931

by leaving a copy of the within Summons with

J B Huckabee

Defendant.

MR Stuart

Sheriff.

By _____

Deputy Sheriff.

The State of Alabama, { **CIRCUIT COURT OF BALDWIN COUNTY,**
Baldwin County { **IN EQUITY**

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

WE COMMAND YOU, That you summon_____

Walter Hoiles

Robertsdale, Alabama

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

Carl A. Swanstrom

against said _____

Walter Hoiles

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 9th day of

July 1931

 Register.

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

Original

Serve on Walter Holmes
Roberttsdale

Circuit Court of Baldwin County
In Equity.

No. RECORDED

SUMMONS

Carl A. Swanstrom

vs.

Walter Holmes

Roberttsdale
Ala

Lloyd A. Magney
Solicitor for Complainant.

Recorded in Vol. _____ Page _____

The State of Alabama,
BALDWIN COUNTY.

Received in office this _____

day of _____ 1931

Sheriff.

Executed this 9th day of

July 1931
by leaving a copy of the within Summons with

Walter Holmes
Defendant.

W. R. Stuart
Sheriff.

By J. B. McKee
Deputy Sheriff.

CARL. A. SWANSTROM,
PLAINTIFF

VS

THE FIRST NATIONAL LIFE INSURANCE
COMPANY OF AMERICA, A CORPORATION;
TROY BANK AND TRUST COMPANY, A
CORPORATION; EMORY FOLMAR; FRANK P.
FOLMAR; R. A. BURLERSON; WALTER
HOILES AND J. B. HUCKABEE,

DEFENDANTS.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

BILL OF COMPLAINT

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

PART ONE.

Your Orator, Carl A. Swanstrom, the Plaintiff herein, a resident of the County of Baldwin in this State and over twenty-one (21) years old, respectfully exhibits this his bill of complaint against the First National Life Insurance Company of America, a corporation organized under the laws of the State of Alabama with its principal place of business in Montgomery in Montgomery County, Alabama and against Troy Bank & Trust Company, a corporation organized under the laws of the State of Alabama with its principal place of business in Troy, Pike County, Alabama and against Frank P. Folmar, who is also over the age of twenty-one (21) years and a resident of Mobile, County, Alabama and against Emory Folmar who is also over the age of twenty-one (21) years and a resident of Montgomery County, Alabama and against R. A. Burler son who is also over the age of twenty-one (21) years and a resident of Mobile County, Alabama and against Walter Hoiles who is also over the age of twenty-one (21) years and a resident of Baldwin County, Alabama and against J. B. Huckabee who is also over the age of twenty-one (21) years and a resident of Baldwin County, Alabama.

PART TWO.

For complaint against said Defendants and each of them Plaintiff represents unto Your Honor as follows:

1. That Defendant, The First National Life Insurance Company of America is a corporation organized under the laws of the State of Alabama and with its principal place of business in the city of Montgomery, Alabama, That said corporation was incorporated in Montgomery County, Alabama on the 3rd day of September, 1927 and ever since said time has

been actively engaged in the sale of its capital stock in the State of Alabama and that the Defendants Frank P. Folmar, Emory Folmar, Walter Hoiles, R. A. Burleson, and J. B. Huckabee were employed by said Defendant corporation, to sell its stock and securities and at the times mentioned herein were each the agent of said Defendant corporation, for the purpose of selling and disposing of its capital stock as aforesaid.

2. That the First National Life Insurance company of America acting by and through its agents Frank P. Folmar, Emory Folmar, R. A. Burleson, Walter Hoiles and J. B. Huckabee sold to the Plaintiff on the 17th day of July, 1930 three hundred thirty-four (334) shares of common stock in said Defendant, The First National Life Insurance Company of America, known as Founders' Stock, and in payment for such stock procured from the Plaintiff his negotiable promissory note dated July 17th, 1930, payable to the order of the Defendant Frank P. Folmar, and by him transferred to Defendant First National Life Insurance Company of America, due on demand, in the amount of TEN THOUSAND TWENTY & 00/100 (\$10,020.00) DOLLARS.

3. That the said stock of the Defendant, The First National Life Insurance Company of America, so sold to the Plaintiff, was not, at the time of such sale thereof to the Plaintiff, entered on the register of qualified securities by the Securities Commission of the State of Alabama and was not qualified for sale in the State of Alabama, as provided by Article 12 of Chapter 335 of the Code of Alabama 1923, and that by reason thereof such sale and contract of sale was and is voidable at the election of the Plaintiff and Plaintiff does hereby elect to and hereby does declare the same void; and the Defendants, The First National Life Insurance Company of America, Frank P. Folmar, Emory Folmar, R. A. Burleson, Walter Hoiles, and J. B. Huckabee, well knew at the time of making such sale to the Plaintiff that, for the reasons aforesaid, the same was in violation of said Article 12 of Chapter 335 of the Code of Alabama 1923 and by reason thereof the said Defendants and each of them is jointly and severally liable to the Plaintiff for the return to him of his note hereinbefore described and for all taxable court costs and attorney's fees.

4. That Defendant, the First National Life Insurance Company of America has caused Plaintiff's name to be entered upon its records as a stockholder in said Defendant corporation and has issued in his name a certificate representing three hundred thirty-four (334) shares

of the common stock of said Defendant corporation, which said stock certificate has never been delivered to the Plaintiff but is attached to his said note as collateral security for the same.

5. That Defendant, Troy Bank & Trust Company is a corporation organized under the laws of the State of Alabama and engaged in the banking business with its banking rooms and principal place of business in the city of Troy, Pike County, Alabama and said Defendant is now in possession of said note executed by the Plaintiff claiming to own the same.

6. Plaintiff further avers that the sum of ONE THOUSAND & 00/100 (\$1,000.00) DOLLARS is a reasonable attorney's fee for the bringing of this action.

7. The Plaintiff further avers that for the reason that his right to declare said sale and contract of sale void is, by Section 9899 of the Code of Alabama 1923, limited to a period of two (2) years from the date of said sale or contract for sale, while the right of the holder of his said note hereinbefore described will not be barred by the statute of limitations until six (6) years after the due date of said note, he has no adequate remedy at law.

PART THREE.

Wherefore Plaintiff prays that this court will require the Defendants and each of them to deliver up said note of the Plaintiff hereinbefore described and will order the same cancelled and destroyed; that the court will order and decree that the name of the Plaintiff be stricken from the records of the Defendant The First National Life Insurance Company of America as a stockholder thereof and said certificate of stock issued in his name cancelled; that he may have and recover of the Defendants, The First National Life Insurance Company of America, Emory Folmar, Frank P. Folmar, R. A. Burleson, Walter Hoiles and J. C. Huckabee, the sum of ONE THOUSAND & 00/100 (\$1,000.00) DOLLARS as an attorney's fee together with his costs herein expended. And if he has not asked for the proper relief, the Plaintiff further prays that he may have such other and further relief in the premises as the nature of his case shall require and as to Your Honor may seem meet.

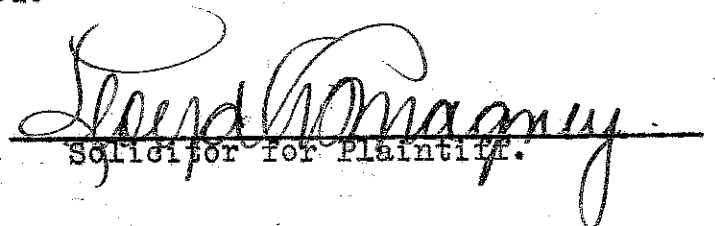
The Plaintiff submits himself to the jurisdiction of the court and offers to do whatever the court may consider necessary to be done on his part towards making the decree which he seeks just and equitable with regard to the other parties to the suit.

PART FOUR.

Plaintiff further prays that Your Honor will grant to him the writ of summons of the State of Alabama to be directed to the said The First National Life Insurance Company of America, a corporation, Troy Bank & Trust Company, a corporation, Emory Folmar, Frank P. Folmar, R. A. Burleson, Walter Hoiles, and J. C. Huckabee, thereby commanding them and each of them personally to appear before Your Honor in this Honorable Court within thirty (30) days from the service thereof and then and there to answer all and singular the premises and to stand to and abide such order and decree therein as to this Honorable Court shall seem meet; and Your Orator shall ever pray &c.


Solicitor for Plaintiff.

The Defendants, The First National Life Insurance Company of America, a corporation; Troy Bank & Trust Company, a corporation; Emory Folmar; Frank P. Folmar; R. A. Burleson; Walter Hoiles and J. C. Huckabee are hereby required to answer the allegations of Part Two of the above bill from Section One to Section Seven, inclusive, but not under oath, oath to answer being expressly waived.


Solicitor for Plaintiff.

RECORDED

CARL A. SWANSTROM,

PLAINTIFF

VS

THE FIRST NATIONAL LIFE INSURANCE COMPANY OF AMERICA, A CORPORATION; TROY BANK AND TRUST COMPANY, A CORPORATION; EMORY FOLMAR; FRANK P. FOLMAR; R. A. BURLISON; WALTER HOLLES AND J. B. HUCKABEE,

DEFENDANTS.

Filed July 9th 1931
J. M. Dickinson
Register

BILL OF COMPLAINT

LLOYD A. MAGNEY

ATTORNEY AT LAW

FOLEY, ALABAMA

Attorney for Plaintiff.

The State of Alabama, { **CIRCUIT COURT OF BALDWIN COUNTY,**
Baldwin County **IN EQUITY**

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

WE COMMAND YOU, That you summon_____

Frank P. Folmar

Mobile, Alabama

of Mobile 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

Carl A. Swanstrom

against said _____

Frank P. Folmar

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 9th day of

July 1931

 Register.

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

Original
8/1 *Recd*
Frank P. Folmer,

Serve on _____ Mobile, Ala.

RECORDED
Circuit Court of Baldwin County
In Equity.

No. _____

SUMMONS

Carl A. Swanstrom

vs.

Frank P. Folmer

Lloyd A. Magney

Solicitor for Complainant.

Recorded in Vol. _____ Page _____

The State of Alabama,
BALDWIN COUNTY.

Received in office this _____

day of July 1931

J. D. Alexander, Jr.
Sheriff.

Executed this 21 day of

July 1931

by leaving a copy of the within Summons with

Frank P. Folmer

Defendant.

J. D. Alexander, Jr.
Sheriff.

By More Rasmussen
Deputy Sheriff.

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

R. A. Burleson

Mobile, Alabama

of Mobile 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

Carl A. Swanstrom

against said

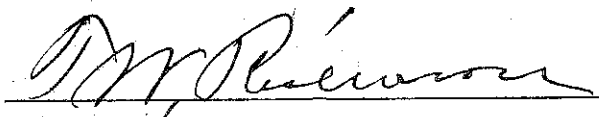
R. A. Burleson

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 9th day of

July

1931

 Register.

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

22 Original
1 *Wright*

Serve on R. A. Burleson,
Mobile, Ala.

Circuit Court of Baldwin County
RECORDED
CLERK

No. _____

SUMMONS

Carl A. Swanstrom

vs.

R. A. Burleson

Mobile Ala

Lloyd A. Magney

Solicitor for Complainant.

Recorded in Vol. _____ Page _____

The State of Alabama,
BALDWIN COUNTY.

Received in office this 11

day of July 1931

G. W. Richmond, Jr.
Sheriff.

Executed this 11 day of

July 1931

by leaving a copy of the within Summons with

R. A. Burleson

Defendant.

G. W. Richmond, Jr.
Sheriff.

By More Ramester
Deputy Sheriff.

CARL A. SWANSTROM,

PLAINTIFF

VS

THE FIRST NATIONAL LIFE INSURANCE
COMPANY OF AMERICA, A CORPORATION;
TROY BANK AND TRUST COMPANY, a
CORPORATION; EMORY POLMAR; FRANK
P. POLMAR; R. A. BURLINSON; WALTER
HOILES AND J. B. HUCKABEE,

DEFENDANTS.

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

BILL OF COMPLAINT

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

PART ONE.

Your Orator, Carl A. Swanstrom, the Plaintiff herein, a resident of the County of Baldwin in this State and over twenty-one (21) years old, respectfully exhibits this his bill of complaint against the First National Life Insurance Company of America, a corporation organized under the laws of the State of Alabama with its principal place of business in Montgomery in Montgomery County, Alabama and against Troy Bank & Trust Company, a corporation organized under the laws of the State of Alabama with its principal place of business in Troy, Pike County, Alabama and against Frank P. Polmar, who is also over the age of twenty-one (21) years and a resident of Mobile County, Alabama and against Emory Polmar who is also over the age of twenty-one (21) years and a resident of Montgomery County, Alabama and against R. A. Burlinson who is also over the age of twenty-one (21) years and a resident of Mobile County, Alabama and against Walter Hoiles who is also over the age of twenty-one (21) years and a resident of Baldwin County, Alabama and against J. B. Huckabee who is also over the age of twenty-one (21) years and a resident of Baldwin County, Alabama.

PART TWO.

For complaint against said Defendants and each of them Plaintiff represents unto Your Honor as follows:

1. That Defendant, The First National Life Insurance Company of America is a corporation organized under the laws of the State of Alabama and with its principal place of business in the city of Montgomery, Alabama, That said corporation was incorporated in Montgomery County, Alabama on the 3rd day of September, 1927 and ever since said time has

a certificate representing three hundred thirty-four (334) shares
a stockholder in said defendant corporation and was issued in his name
America has caused Plaintiff's name to be entered upon its records as
4. That defendant, the First National Life Insurance Company of
attorney, a case.

his note heretofore described and for all taxable court costs and
jointly and severally liable to the Plaintiff for the return to him of
Alabama and by reason thereof the said defendants and each of them is
same was in violation of said Article 12 of Chapter 225 of the Code of
making such sale to the Plaintiff that, for the reasons aforesaid, the
Burlison, Walter Hollis, and J. B. Hughes, well known at the time of
Insurance Company of America, Frank P. Polmer, Emory Polmer, R. A.
does declare the same void; and the defendants, the First National Life
election of the Plaintiff and Plaintiff does hereby object to and hereby
reason thereof such sale and contract of sale was and is voidable at the
by Article 12 of Chapter 225 of the Code of Alabama 1923, and that by

been and was not qualified for sale in the state of Alabama, as provided
qualified securities by the securities commission of the state of Ala-
time of such sale thereof to the Plaintiff, entered on the register of
Insurance Company of America, as sold to the Plaintiff, was not, at the
5. That the said stock of the defendant, the First National Life
and, in the amount of TEN THOUSAND DOLLARS (\$10,000.00) DOLLARS,
to defendant First National Life Insurance Company of America, due on de-
to the order of the defendant Frank P. Polmer, and by him transferred
Plaintiff his negotiable promissory note dated July 17th, 1920, payable
known as founders' stock, and in payment for such stock procured from the
in said defendant, the First National Life Insurance Company of America,
day of July, 1920 three hundred thirty-four (334) shares of common stock
son, Walter Hollis and J. B. Hughes sold to the Plaintiff on the 17th
ing by and through its agents Frank P. Polmer, Emory Polmer, R. A. Burli-
6. That the First National Life Insurance Company of America not-
the purpose of selling and disposing of its capital stock as aforesaid,
mentioned herein were each the agent of said defendant corporation, for
defendant corporation, to sell its stock and securities and at the times
Hollis, R. A. Burlison, and J. B. Hughes were employed by said de-
Alabama and that the defendants Frank P. Polmer, Emory Polmer, Walter
been actively engaged in the sale of its capital stock in the state of

of the common stock of said Defendant corporation, which said stock certificate has never been delivered to the Plaintiff but is attached to his said note as collateral security for the same.

5. That Defendant, Troy Bank & Trust Company is a corporation organized under the laws of the State of Alabama and engaged in the banking business with its banking rooms and principal place of business in the city of Troy, Pike County, Alabama and said Defendant is now in possession of said note executed by the Plaintiff claiming to own the same.

6. Plaintiff further avers that the sum of ONE THOUSAND & 00/100 (\$1,000.00) DOLLARS is a reasonable attorney's fee for the bringing of this action.

7. The Plaintiff further avers that for the reason that his right to declare said sale and contract of sale void is, by Section 9899 of the Code of Alabama 1923, limited to a period of two (2) years from the date of said sale or contract for sale, while the right of the holder of his said note hereinbefore described will not be barred by the statute of limitations until six (6) years after the due date of said note, he has no adequate remedy at law.

PART THREE.

Wherefore Plaintiff prays that this court will require the Defendants and each of them to deliver up said note of the Plaintiff hereinbefore described and will order the same cancelled and destroyed; that the court will order and decree that the name of the Plaintiff be stricken from the records of the Defendant The First National Life Insurance Company of America as a stockholder thereof and said certificate of stock issued in his name cancelled; that he may have and recover of the Defendants, The First National Life Insurance Company of America, Emory Folmer, Frank P. Folmer, R. A. Burleson, Walter Hilles and J. E. Haskins, the sum of ONE THOUSAND & 00/100 (\$1,000.00) DOLLARS as an attorney's fee together with his costs herein expended. And if he has not asked for the proper relief, the Plaintiff farther prays that he may have such other and farther relief in the premises as the nature of his case shall require and as to Your Honor may seem meet.

The Plaintiff submits himself to the jurisdiction of the court and offers to do whatever the court may consider necessary to be done on his part towards making the decree which he seeks just and equitable with regard to the other parties to the suit.

PART FOUR.

Plaintiff further prays that Your Honor will grant to him the writ of summons of the State of Alabama to be directed to the said The First National Life Insurance Company of America, a corporation, Troy Bank & Trust Company, a corporation, Emory Polmar, Frank P. Polmar, R. A. Burleson, Walter Holles, and J. B. Huckabee, thereby commanding them and each of them personally to appear before Your Honor in this Honorable Court within thirty (30) days from the service thereof and then and there to answer all and singular the premises and to stand to and abide such order and decree therein as to this Honorable Court shall seem meet; and Your Orator shall ever pray &c.

David A. Magney
Solicitor for Plaintiff.

The Defendants, The First National Life Insurance Company of America, a corporation; Troy Bank & Trust Company, a corporation; Emory Polmar; Frank P. Polmar; R. A. Burleson; Walter Holles and J. B. Huckabee are hereby required to answer the allegations of Part Two of the above bill from Section One to Section Seven, inclusive, but not under oath, oath to answer being expressly waived.

David A. Magney
Solicitor for Plaintiff.

CARL A. SWANSTROM,

PLAINTIFF

VS

THE FIRST NATIONAL LIFE INSURANCE
COMPANY OF AMERICA, A CORPORATION;
TROY BANK AND TRUST COMPANY, a
CORPORATION; EMORY POLMAR; FRANK
P. POLMAR; R. A. BURLISON; WALTER
HOILES AND J. C. HUCKABEE,

DEFENDANTS.

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

BILL OF COMPLAINT

TO THE HON. F. W. HARE, JUDGE OF CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA, IN CHANCERY SITTING;

PART ONE.

Your Orator, Carl A. Swanstrom, the Plaintiff herein, a resident of the County of Baldwin in this State and over twenty-one (21) years old, respectfully exhibits this his bill of complaint against the First National Life Insurance Company of America, a corporation organized under the laws of the State of Alabama with its principal place of business in Montgomery in Montgomery County, Alabama and against Troy Bank & Trust Company, a corporation organized under the laws of the State of Alabama with its principal place of business in Troy, Pike County, Alabama and against Frank P. Polmar, who is also over the age of twenty-one (21) years and a resident of Mobile County, Alabama and against Emory Polmar who is also over the age of twenty-one (21) years and a resident of Montgomery County, Alabama and against R. A. Burlison who is also over the age of twenty-one (21) years and a resident of Mobile County, Alabama and against Walter Hoiles who is also over the age of twenty-one (21) years and a resident of Baldwin County, Alabama and against J. C. Huckabee who is also over the age of twenty-one (21) years and a resident of Baldwin County, Alabama.

PART TWO.

For complaint against said Defendants and each of them Plaintiff represents unto Your Honor as follows:

1. That Defendant, The First National Life Insurance Company of America is a corporation organized under the laws of the State of Alabama and with its principal place of business in the city of Montgomery, Alabama. That said corporation was incorporated in Montgomery County, Alabama on the 5rd day of September, 1927 and ever since said time has

been actively engaged in the sale of its capital stock in the State of Alabama and that the Defendants Frank P. Polmar, Emory Polmar, Walter Hoiles, R. A. Burleson, and J. B. Huckabee were employed by said Defendant corporation, to sell its stock and securities and at the times mentioned herein were each the agent of said Defendant corporation, for the purpose of selling and disposing of its capital stock as aforesaid.

2. That the First National Life Insurance company of America acting by and through its agents Frank P. Polmar, Emory Polmar, R. A. Burleson, Walter Hoiles and J. B. Huckabee sold to the Plaintiff on the 17th day of July, 1930 three hundred thirty-four (334) shares of common stock in said Defendant, The First National Life Insurance Company of America, known as Founders' Stock, and in payment for such stock procured from the Plaintiff his negotiable promissory note dated July 17th, 1930, payable to the order of the Defendant Frank P. Polmar, and by him transferred to Defendant First National Life Insurance Company of America, due on demand, in the amount of TEN THOUSAND TWENTY & 00/100 (\$10,020.00) DOLLARS.

3. That the said stock of the Defendant, The First National Life Insurance Company of America, so sold to the Plaintiff, was not, at the time of such sale thereof to the Plaintiff, entered on the register of qualified securities by the Securities Commission of the State of Alabama and was not qualified for sale in the State of Alabama, as provided by Article 12 of Chapter 335 of the Code of Alabama 1923, and that by reason thereof such sale and contract of sale was and is voidable at the election of the Plaintiff and Plaintiff does hereby elect to and hereby does declare the same void; and the Defendants, The First National Life Insurance Company of America, Frank P. Polmar, Emory Polmar, R. A. Burleson, Walter Hoiles, and J. B. Huckabee, well knew at the time of making such sale to the Plaintiff that, for the reasons aforesaid, the same was in violation of said Article 12 of Chapter 335 of the Code of Alabama 1923 and by reason thereof the said Defendants and each of them is jointly and severally liable to the Plaintiff for the return to him of his note hereinbefore described and for all taxable court costs and attorney's fees.

4. That Defendant, the First National Life Insurance Company of America has caused Plaintiff's name to be entered upon its records as a stockholder in said Defendant corporation and has issued in his name a certificate representing three hundred thirty-four (334) shares

of the common stock of said Defendant corporation, which said stock certificate has never been delivered to the Plaintiff but is attached to his said note as collateral security for the same.

5. That Defendant, Troy Bank & Trust Company is a corporation organized under the laws of the State of Alabama and engaged in the banking business with its banking rooms and principal place of business in the city of Troy, Pike County, Alabama and said Defendant is now in possession of said note executed by the Plaintiff claiming to own the same.

6. Plaintiff further avers that the sum of ONE THOUSAND & 00/100 (\$1,000.00) DOLLARS is a reasonable attorney's fee for the bringing of this action.

7. The Plaintiff further avers that for the reason that his right to declare said sale and contract of sale void is, by Section 9899 of the Code of Alabama 1923, limited to a period of two (2) years from the date of said sale or contract for sale, while the right of the holder of his said note hereinbefore described will not be barred by the statute of limitations until six (6) years after the due date of said note, he has no adequate remedy at law.

PART THREE.

Wherefore Plaintiff prays that this court will require the Defendants and each of them to deliver up said note of the Plaintiff hereinbefore described and will order the same cancelled and destroyed; that the court will order and decree that the name of the Plaintiff be stricken from the records of the Defendant The First National Life Insurance Company of America as a stockholder thereof and said certificate of stock issued in his name cancelled; that he may have and recover of the Defendants, The First National Life Insurance Company of America, Emory Folmer, Frank P. Folmer, R. A. Barleson, Walter Holles and J. C. Huokabee, the sum of ONE THOUSAND & 00/100 (\$1,000.00) DOLLARS as an attorney's fee together with his costs herein expended. And if he has not asked for the proper relief, the Plaintiff further prays that he may have such other and further relief in the premises as the nature of his case shall require and as to Your Honor may seem meet.

The Plaintiff submits himself to the jurisdiction of the court and offers to do whatever the court may consider necessary to be done on his part towards making the decree which he seeks just and equitable with regard to the other parties to the suit.

PART FOUR.

Plaintiff further prays that Your Honor will grant to him the writ of summons of the State of Alabama to be directed to the said The First National Life Insurance Company of America, a corporation, Troy Bank & Trust Company, a corporation, Emory Polmar, Frank P. Polmar, R. A. Barleson, Walter Moiles, and J. C. Huchabee, thereby commanding them and each of them personally to appear before Your Honor in this Honorable Court within thirty (30) days from the service thereof and then and there to answer all and singular the premises and to stand to and abide such order and decree therein as to this Honorable Court shall seem meet; and Your Orator shall ever pray &c.


Solicitor for Plaintiff.

The Defendants, The First National Life Insurance Company of America, a corporation; Troy Bank & Trust Company, a corporation; Emory Polmar; Frank P. Polmar; R. A. Barleson; Walter Moiles and J. C. Huchabee are hereby required to answer the allegations of Part Two of the above bill from Section One to Section Seven, inclusive, but not under oath, oath to answer being expressly waived.


Solicitor for Plaintiff.

CARL A. SWANSTROM,

PLAINTIFF

VS

THE FIRST NATIONAL LIFE INSURANCE
COMPANY OF AMERICA, A CORPORATION;
TROY BANK AND TRUST COMPANY, a
CORPORATION; EMORY FOLMAR; FRANK
P. FOLMAR; R. A. BURLISON; WALTER
HOILES AND J. B. HUCKABEE,

DEFENDANTS.

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

BILL OF COMPLAINT

TO THE HON. P. W. HARR, JUDGE OF CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA, IN CHANCERY SITTING:

PART ONE.

Your Orator, Carl A. Swanstrom, the Plaintiff herein, a resident of the County of Baldwin in this State and over twenty-one (21) years old, respectfully exhibits this his bill of complaint against the First National Life Insurance Company of America, a corporation organized under the laws of the State of Alabama with its principal place of business in Montgomery in Montgomery County, Alabama and against Troy Bank & Trust Company, a corporation organized under the laws of the State of Alabama with its principal place of business in Troy, Pike County, Alabama and against Frank P. Folmar, who is also over the age of twenty-one (21) years and a resident of Mobile County, Alabama and against Emory Folmar who is also over the age of twenty-one (21) years and a resident of Montgomery County, Alabama and against R. A. Burlison who is also over the age of twenty-one (21) years and a resident of Mobile County, Alabama and against Walter Hoiles who is also over the age of twenty-one (21) years and a resident of Baldwin County, Alabama and against J. B. Huckabee who is also over the age of twenty-one (21) years and a resident of Baldwin County, Alabama.

PART TWO.

For complaint against said Defendants and each of them Plaintiff represents unto Your Honor as follows:

1. That Defendant, The First National Life Insurance Company of America is a corporation organized under the laws of the State of Alabama and with its principal place of business in the city of Montgomery, Alabama, That said corporation was incorporated in Montgomery County, Alabama on the 3rd day of September, 1927 and ever since said time has

been actively engaged in the sale of its capital stock in the State of Alabama and that the Defendants Frank P. Folmar, Emory Folmar, Walter Hoiles, R. A. Burleson, and J. B. Huckabee were employed by said Defendant corporation, to sell its stock and securities and at the times mentioned herein were each the agent of said Defendant corporation, for the purpose of selling and disposing of its capital stock as aforesaid.

2. That the First National Life Insurance company of America acting by and through its agents Frank P. Folmar, Emory Folmar, R. A. Burleson, Walter Hoiles and J. B. Huckabee sold to the Plaintiff on the 17th day of July, 1930 three hundred thirty-four (334) shares of common stock in said Defendant, The First National Life Insurance Company of America, known as Founders' Stock, and in payment for such stock procured from the Plaintiff his negotiable promissory note dated July 17th, 1930, payable to the order of the Defendant Frank P. Folmar, and by him transferred to Defendant First National Life Insurance Company of America, due on demand, in the amount of TEN THOUSAND TWENTY & 00/100 (\$10,020.00) DOLLARS.

3. That the said stock of the Defendant, The First National Life Insurance Company of America, so sold to the Plaintiff, was not, at the time of such sale thereof to the Plaintiff, entered on the register of qualified securities by the Securities Commission of the State of Alabama and was not qualified for sale in the State of Alabama, as provided by Article 12 of Chapter 335 of the Code of Alabama 1923, and that by reason thereof such sale and contract of sale was and is voidable at the election of the Plaintiff and Plaintiff does hereby elect to and hereby does declare the same void; and the Defendants, The First National Life Insurance Company of America, Frank P. Folmar, Emory Folmar, R. A. Burleson, Walter Hoiles, and J. B. Huckabee, well knew at the time of making such sale to the Plaintiff that, for the reasons aforesaid, the same was in violation of said Article 12 of Chapter 335 of the Code of Alabama 1923 and by reason thereof the said Defendants and each of them is jointly and severally liable to the Plaintiff for the return to him of his note hereinbefore described and for all taxable court costs and attorney's fees.

4. That Defendant, the First National Life Insurance Company of America has caused Plaintiff's name to be entered upon its records as a stockholder in said Defendant corporation and has issued in his name a certificate representing three hundred thirty-four (334) shares

of the common stock of said Defendant corporation, which said stock certificate has never been delivered to the Plaintiff but is attached to his said note as collateral security for the same.

5. That Defendant, Troy Bank & Trust Company is a corporation organized under the laws of the State of Alabama and engaged in the banking business with its banking rooms and principal place of business in the city of Troy, Pike County, Alabama and said Defendant is now in possession of said note executed by the Plaintiff claiming to own the same.

6. Plaintiff further avers that the sum of ONE THOUSAND & 00/100 (\$1,000.00) DOLLARS is a reasonable attorney's fee for the bringing of this action.

7. The Plaintiff further avers that for the reason that his right to declare said sale and contract of sale void is, by Section 9599 of the Code of Alabama 1923, limited to a period of two (2) years from the date of said sale or contract for sale, while the right of the holder of his said note hereinbefore described will not be barred by the statute of limitations until six (6) years after the due date of said note, he has no adequate remedy at law.

PART THREE.

Wherefore Plaintiff prays that this court will require the Defendants and each of them to deliver up said note of the Plaintiff hereinbefore described and will order the same cancelled and destroyed; that the court will order and decree that the name of the Plaintiff be stricken from the records of the Defendant The First National Life Insurance Company of America as a stockholder thereof and said certificate of stock issued in his name cancelled; that he may have and recover of the Defendants, The First National Life Insurance Company of America, Emory Palmer, Frank P. Palmer, R. A. Burlison, Walter Hoiles and J. C. Hackabee, the sum of ONE THOUSAND & 00/100 (\$1,000.00) DOLLARS as an attorney's fee together with his costs herein expended. And if he has not asked for the proper relief, the Plaintiff further prays that he may have such other and further relief in the premises as the nature of his case shall require and as to Your Honor may seem meet.

The Plaintiff submits himself to the jurisdiction of the court and offers to do whatever the court may consider necessary to be done on his part towards making the decree which he seeks just and equitable with regard to the other parties to the suit.

PART FOUR.

Plaintiff further prays that Your Honor will grant to him the writ of summons of the State of Alabama to be directed to the said The First National Life Insurance Company of America, a corporation, Troy Bank & Trust Company, a corporation, Emory Polmar, Frank P. Polmar, R. A. Barleson, Walter Holles, and J. C. Hackabee, thereby commanding them and each of them personally to appear before Your Honor in this Honorable Court within thirty (30) days from the service thereof and then and there to answer all and singular the premises and to stand to and abide such order and decree therein as to this Honorable Court shall seem meet; and Your Orator shall ever pray &c.

Leola Tompkins
Solicitor for Plaintiff.

The Defendants, The First National Life Insurance Company of America, a corporation; Troy Bank & Trust Company, a corporation; Emory Polmar; Frank P. Polmar; R. A. Barleson; Walter Holles and J. C. Hackabee are hereby required to answer the allegations of Part Two of the above bill from Section One to Section Seven, inclusive, but not under oath, oath to answer being expressly waived.

Leola Tompkins
Solicitor for Plaintiff.

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_____

First National Life Insurance Company of America, a
corporation

Montgomery, Alabama

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

Carl A. Swanstrom

against said _____

First National Life Insurance Company of America, a corporation

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

WITNESS, T. W. Richerson, Register of said Circuit Court, this 9th 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.

ORIGINAL

First National Life Insurance
Company of America,
Serve on _____

Circuit Court of Baldwin County
In Equity.

No. **RECORDED**
SUMMONS

Carl A. Swanstrom

vs.

First National Life In-
surance Company of America
a corporation

Lloyd A. Magney

RECEIVED IN OFFICE
Solicitor for Complainant.

Recorded in Vol 5 1931

Page _____

SAMUEL STEPHENS, Sheriff

The State of Alabama,
BALDWIN COUNTY.

Received in office this _____

day of _____ 1931

Sheriff.

Executed this 15 day of

1931

by leaving a copy of the within Summons with

A. C. Holman, as

Deputy Secretary of the

First National Life Insurance Company of America

at _____

Sheriff.

By _____

Deputy Sheriff.

CARL A. SWANSTROM,
PLAINTIFF

vs

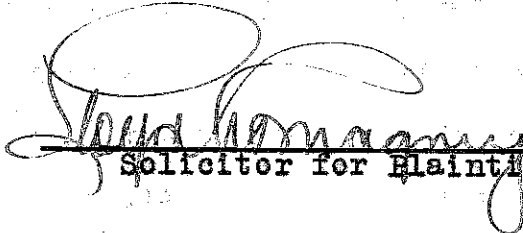
THE FIRST NATIONAL LIFE INSURANCE
COMPANY OF AMERICA, A CORPORATION;
TROY BANK & TRUST COMPANY, A CORP-
ORATION; EMORY FOLMAR; FRANK P. FOL-
MAR, F. A. BURLESON; WALTER HOILES
and J. C. HUCKABEE,

Defendants

) IN THE CIRCUIT COURT OF
(BALDWIN COUNTY, ALABAMA
) IN CHANCERY

) AMENDMENT TO BILL

Comes now the Plaintiff and amends his Bill of
Complaint herein by striking therefrom the name of Troy
Bank & Trust Company as a party Defendant and by striking
from said Bill Paragraph Five of Part Two of said Bill.


Solicitor for Plaintiff.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

RECORDED

CARL A. SWANSTROM,

PLAINTIFF

vs

THE FIRST NATIONAL LIFE
INSURANCE COMPANY, ET AL,

DEFENDANTS

Filed Dec. 21, 1931

W. H. H. H. H.
Judge

AMENDMENT TO BILL

LLOYD A. MAGNEY,
Attorney for
Plaintiff.