

1002

STATE OF ALABAMA
COUNTY OF BALDWIN

IN CIRCUIT COURT
IN EQUITY

EDWARD P. TOTTEN, Complainant.

vs.

BILL OF COMPLAINT

ARABELLA F. ARMSTRONG, Defendant.

To the Honorable F. W. Hare,
Judge of said Court:

Humbly complaining, your orator brings this bill of complaint against the defendant above named and respectfully shows unto this Honorable Court as follows:

That your orator is over the age of twenty-one years, a bona fide resident of Baldwin County, Alabama, at the town of Fairhope therein, and is there engaged in the practice of the Law;

That the defendant is an unmarried woman, over the age of twenty-one years and is a resident of said county and state;

That heretofore on, to-wit: July 15th, 1931, your orator and the defendant entered into a certain agreement whereby the defendant was to furnish and provide the money and your orator was to furnish knowledge, skill and experience in purchasing at a public sale of property for state and county taxes, to be held at Fairhope in said county on July 16th, 1931, certain improvements of Lots fourteen and fifteen, of Block thirteen, in Division four, of the lands of the Fairhope Single Tax Corporation, in said town of Fairhope, title to be taken in the name of said defendant for the use and benefit of both of the parties to said agreement and both parties to share equally in all the profits derived from such transaction;

That in pursuance of said agreement and in accordance with the terms thereof your orator furnished the requisite knowledge, skill and experience and proceeded to and did purchase at such public sale the afore-described property, taking title thereto in the name of the defendant, and the defendant furnished the money in the amount required to purchase the property;

That the amount required to purchase the said property was the sum of \$251.00 and that said property was then and there of the reasonable worth and value of \$750.00; that the said property has a rental value of at least Twenty (\$20.00) Dollars a month and is now being rented by the defendant to a tenant for the sum of Twenty (\$20.00) Dollars a month; that the said property can be sold for the reasonable worth and value and that the interest and share of your orator is the sum of \$250.00;

That notwithstanding her agreement as aforesaid the defendant has willfully, falsely and fraudulently attempted to renounce the same and has denied the rights, interests and equities of your orator in the property and has wholly refused to admit him to a one-half share in the profits derived from the transaction made pursuant to such agreement and is endeavoring to defraud your orator of his just and true share in said property and the proceeds and profits thereof, and that the actions and endeavors of defendant so to defeat the rights of your orator and defraud him of his interests in said property and the profits thereof continue to the date of the filing of this bill.

PRAYER FOR PROCESS AND FOR RELIEF

The premises considered your orator respectfully prays that by the usual process of this Honorable Court the defendant, Arabella F. Armstrong, may be made party respondent to this bill of complaint and required to demur, plead to or answer the same within the time allowed by the law or that the same be forever confessed.

Your orator further prays that upon the final hearing of this cause the defendant may be required by the order of this court ^{to} account for the proceeds and profits derived by her from the transactions under such agreement and that the court will determine the share of complainant in the same and, by order, compel the production thereof and the payment by defendant to complainant; the property described in this bill may be impressed with a lien in favor of complainant for the amount determined by the court to be due to him and the defendant declared trustee of said property for the complainant to the extent of your orator's interest therein.

That your orator prays for such other, further and different relief as may in equity and good conscience be due to him or, as to the court may seem just and equitable in the premises, if your orator has in anywise prayed or asked amiss of this Honorable Court.

Dated this 23rd day of September, 1931.


Edward P. Totten
Complainant (in propria persona)

RICKARBY & COBB
Solicitors for complainant

FOOTNOTE:

The respondent above named is required to answer each and every allegation contained in the foregoing bill of complaint, but not under oath, as answer under oath is hereby expressly waived.


Edward P. Totten
Complainant (in propria persona)

RICKARBY & COBB
Solicitors for Complainant.

STATE OF ALABAMA,)
COUNTY OF BALDWIN.)

IN THE CIRCUIT COURT
IN EQUITY

EDWARD P. TOTEN,)
Complainant,)

TO THE HON. W. F. HARE, JUDGE
OF SAID COURT

VS

ARABELLA F. ARMSTRONG,)
Respondent,)

ANSWER

TO BILL OF COMPLAINT

1. Your respondent in the above entitled cause shows to this Honorable Court that she is over the age of twenty-one years and that she has been and was at the time of this alleged transaction a resident of the state of Florida and does not now and has not for the past several years been a bona fide resident of the state of Alabama and the county of Baldwin.

2. Your respondent respectfully shows to this Honorable Court that while and during a time that she was on a visit to the state of Alabama, to-wit, on or about the 15th day of July, 1931, the complainant in this cause approached the respondent and made a proposition to her to buy in certain property, with improvements thereon, located in the town of Fairhope and more particularly described as:

Lots Fourteen and Fifteen (14 and 15), Block
Thirteen (13), Division Four (4) of the
land of the Fairhope Single Tax Corpora-
tion in said town of Fairhope;

and that he be employed as her attorney to negotiate, transfer and carry through the deal. That at the time and place, to-wit, on or about the 15th day of July, 1931, at Fairhope, Alabama, that your respondent refused and denied the complainant the agreement or contract as dictated or stated by him and told the complainant at the time that she would not entertain a proposed agreement whereby that both parties were to share equally in any of the proceeds, profits or ownership of the property aforesaid. Your respondent further shows to this honorable court that she never agreed to furnish to the said complainant any money or anything of value for the purchase of said property at said sale, and that the complainant was never furnished any money by this respondent in pursuance of the proposed agreement to buy the above and foregoing property at said tax sale. Your respondent further shows to this Honorable Court that after the refusal on the part of the respondent to enter into or to deal with the said complainant in accordance with the agreement proposed by this complainant that the respondent denied the complainant his request and then and there refused to deliver to the said complainant or anyone acting for him any money

or other thing of value under the terms and conditions of the proposed agreement stated by the complainant. Your respondent denies that she ever entered into or ever entertained such an agreement.

3. Your respondent further shows to this Honorable Court that the said complainant then, after the refusal to enter into the proposed agreement as heretofore set forth by the complainant, accepted employment from the respondent for a reasonable attorney's fee, and that the property was sold and bought in, and that your respondent paid the money directly to the state and county for the taxes as aforesaid, and that a transfer was made directly to her.

4. Your respondent further shows to this Honorable Court that she has at often times seen and talked with the complainant herein and has offered to pay him his fee in compliance with his employment, and that he has wholly and willfully refused to receive the same.

5. Your respondent further shows to this Honorable Court that she now stands ready and is able and willing to pay a reasonable attorney's fee for the services rendered by the said complainant, and that the said complainant has no contract or agreement in writing or otherwise whereby he was to participate or share in the property or to derive any benefit therefrom other than the fee to be paid him from this respondent.

Your respondent, having fully answered each and every allegation set forth in the complainant's Bill of Complaint, prays this honorable Court that upon the final hearing of this cause that this action be dismissed as against her, and that the complainant be denied any right, title or interest therein, and for such other and further relief as this Court may deem just and meet in the premises, and for her costs expended.


Solicitor for Respondent

Edward P. Totten

Arabella Amstrong

In Circuit Court
in Equity
Baldwin County

Answer

Filed Sept 24th 1933

J W Rickman

Plaintiff

vs
De Fred June 8th

1933

J W Rickman

Plaintiff

STATE OF ALABAMA,)
COUNTY OF BALDWIN.)

EDWARD P. TOTEN,
Complainant,

VS

ARABELLA F. ARMSTRONG,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY

MOTION

TO QUASH SERVICE

First, Comes now the Respondent and moves the court to quash and hold for naught a purported service of summons in a certain purported case wherein EDWARD P. TOTEN is Complainant, and ARABELLA F. ARMSTRONG respondent, for the reason that said service of summons was not served upon the Respondent as required by law; that said summons was not served by the sheriff upon the Respondent within six months after its issuance.

Second, That the Respondent herein appears specially for the purpose of moving to quash said summons, and this appearance only, and without submission to the jurisdiction of this Court.

F. F. McLean
Atty for Resp.

1002

RECORDED

Edward P. Lottin

vs

Arabella Armstrong,

Motion & Quash

Filed July 5, 1932

D. W. Richardson

Register

EDWARD P. TOTTON,
Complainant,

-vs-

ARABELLA F. ARMSTRONG,
Defendant.

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

CASE NUMBER _____

APPLICATION FOR ORAL EXAMINATION.

Now comes the complainant by E. G. Rickarby, Jr., solicitor of record, and makes application to the register of said court to issue a commission to take the testimony in said cause, on oral examination, of the following witnesses in said cause who reside in said county, viz:

Edward P. Totten, Esq., of Fairhope, Alabama.

Mr. Carl L. Bloxham, of Fairhope, Alabama.

Mrs. Mary Bauer, of Fairhope, Alabama.

E. G. Rickarby Jr.
AS SOLICITOR FOR COMPLAINANT.

Complainant suggests that Miss Geraldine Ninneman whose address is Bank Building, Fairhope, Alabama is a suitable person to act as the commissioner in the taking of the testimony in this cause.

E. G. Rickarby Jr.
AS SOLICITOR FOR COMPLAINANT.

*Received copy of the foregoing this April 28,
1933. Further action waived.*

J. F. F. Allen
Solicitor for Respondent

RECORDED

EDWARD P. TOTTEN,

Complainant.

VS

ARABELLA ARMSTRONG,

Defendant.

APPLICATION FOR ORAL
EXAMINATION.

*Filed May 4th 1923
DOR, Wisconsin
Riggs*

E. G. RICKARDY JR.,
Solicitor for Complainant.

The State of Alabama, }
Baldwin County

CIRCUIT COURT OF BALDWIN COUNTY,
IN EQUITY

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

WE COMMAND YOU, That you summon Arabella F. Armstrong

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

Edward P. Totten,

against said

Arabella F. Armstrong,

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 1st day of October, 1931.

T. W. Richerson 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.

No. _____
SUMMONS

Edward P. Totten

vs.

Arabella F. Armstrong
(*Decedent*)

Rickarby & Cobb,
Solicitor for Complainant.

Recorded in Vol. _____ Page _____

The State of Alabama,
BALDWIN COUNTY.

Received in office this _____
day of _____ 193

Sheriff.

Executed this *25th* day of *June* 193 *2*

by leaving a copy of the within Summons with
Arabella F. Armstrong

Defendant.

W. P. Seay
By *J. H. Cobb* Sheriff.
Deputy Sheriff.

EDWARD P. TOTTON,

Complainant,

-vs-

ARABELLA F. ARMSTRONG,

Respondent.

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

AMMENDED BILL OF COMPLAINT.

Comes your complainant, Edward P. Totten
and hereby ammendes his bill of complaint to read as follows:

* * * *

Comes your orator and brings this his bill
of complaint against the above named defendant, respectfully
showing the following facts to the court as a basis for the re-
lief hereinafter sought.

1. That your orator is over the age of
twenty-one years of age and a bona fide resident of Baldwin
County, Alabama, residing at the town of Fairhope, where at
and before the time of the filing of this his bill of complaint
he was engaged in the practice of law.

2. That the defendant is an unmarried woman,
over the age of twenty-one years of age and also a resident of
said state and county.

3. That heretofore on, to-wit the fifteenth
of July, 1931, your orator and the defendant entered into a certain
oral agreement whereby the defendant was to furnish and provide
the money and your orator was to furnish knowledge, skill and ex-
perience in purchasing at a public sale of property for state and
county taxes, to be held at Fairhope in said state and county on
to-wit the sixteenth of July, 1931, certain improvements on lots
fourteen and fifteen, of Block thirteen in Division four, of the
lands of the Fairhope Single Tax Corporation, in said town of
Fairhope, title to be taken in the name of said defendant but the

profits on the money realized or to be realized, if any, were to be devided between this complainant and this respondent, share and share alike.

4. That in pursuance of said agreement and in accordance with the terms thereof your orator furnished the requisite knowledge, skill and experience and proceeded to and did purchase at such public sale the aforesaid property taking title thereto in the name of the defendant and the defendant accepted his work by furnishing the money in the amount required to purchase this property.

5. That the amount required to purchase this property was the sum of TWO HUNDRED AND FIFTY-ONE DOLLARS and that the property is reasonably worth the sum of SEVEN HUNDRED and FIFTY DOLLARS and during this time the property has had a rental value of approximately twenty dollars a month and has been rented by this defendant to one Mary Bauer.

6. That this defendant in utter disregard of her contractual duty to the complainant transferred her interest in this property to her sister, one Mrs. Worsham, the assignment not stateing the consideration so as to defraud your orator out of his just share of the fruits of his labors in this undertaking. This assignment being made between October 1st, 1931 and June, 1932. And that the Defendant has failed and refused to account to your complainant for the profits made out of this purchase and agreement though often requested to do so.

THE PREMISES CONSIDERED: your orator prays that the court will by supeona make ARABELLA F. ARMSTRONG a party defendant to this bill, requiring her to plead, answer or demur to the same within the time required by law.

And to the end, therefore, that the said defendant may show why your orator should not have the relief hereby prayed, and may, upon her oath, according to the best of and utmost of of her knowledge, remembrance, information, and belief, ~~make~~ true, direct and perfect answers make to such of the statements, several interrogatories hereinafter numbered and set forth, as by hereunder written she is required to answer :

See questions on next page.

1. Whether or not she made any agreement about haveing Edward P. Totten perform any services for her in the purchase of the tax title refered to in this bill, and if so what was the agreement and what was he to do and what fee was he to receive?

2. Did the said Edward P. Totten perform his part of the agreement and did she in reliance of his work purchase this property?

3. Did Edward P. Totten ever ask her for an accounting for his share of the profits out of the sale of the property?

4. Did she ever pay the said Edward P. Totten any fee for his services in this matter, if so when and in what amount?

5. Did she sell, convey, release, give or in any way alienate the property which she acquired through the purchase at the tax sale above refered to, if so to whom did she sell or dispose of the property to, when did she do it, and what was the actual consideration for the conveyance?

6. At the time of this conveyance did the party to whom you conveyed know that you were having a dispute about the profits to be derived form the sale of this property.

7. Was the party who took this property a bona fide purchasor for value without notice?

8. Was that party your sister?

9. Please list all the profits derived from this property, such as rents and sale price?

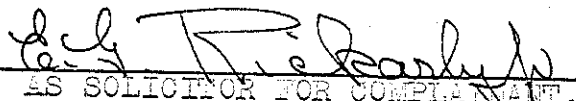
10. Please list all the the expenses that you were put to in purchasing, holding and renting this property?

11. What was the actual value of this property at the time you conveyed this property? at the time that Edward P. Totten first asked you to account for the profits made on this property?

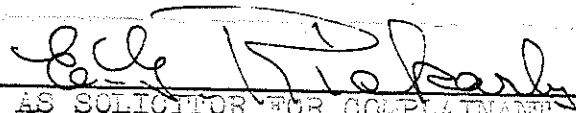
12. Please make up an itemized statement showing what profits if any were made on this piece of property so that the court can debermin the amount of Totten's one half of the profits.

Your orator further prays that upon the final hearing of this cause the defendant may be required to account to this honorable court for the profits derived by her from this transaction and, if the court finds that the sale of this property to the defendant's sister was not a bona fide sale but a breach of this agreement, then make her account to the court for the reasonable value of this property at the time of the breaching of this agreement and that the court will further determine the amount of this complainant's compensation under the agreement, namely, a sum equal to one-half of the profits derived from this transaction, and render a judgment for this complainant, against this respondent with interest from the date it was due.

And your orator prays for such other further different or additional relief as to equity may seem meet.


AS SOLICITOR FOR COMPLAINANT.

FOOT NOTE: The defendant is required to answer each and every paragraph of the foregoing bill of complaint from paragraph one to six both inclusive, but not under oath, oath being hereby expressly waived as to the answers to the bill proper but not to the interrogatories.


AS SOLICITOR FOR COMPLAINANT.

Received a copy of the foregoing amended bill of complaint this 19th day of May, 1933.


Solicitor for Respondent.

RECORDED

Edward O. Totten

Complaints and

in

Charles F. Armstrong

Respondents

Amended Bill

Filed May 22, 1933

McKinnon,

Clerk

C. G. Rieckhoff Jr.

Witness

EDWARD P. TOTTEN,
Complainant.

vs.

ARABELLA E. ARMSTRONG.
Respondent.

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

THE DEPOSITIONS OF EDWARD P. TOTTEN, CARL BLOXHAM AND MARY
F. BAUER, WITNESSES FOR COMPLAINANT.

Before me, the Commissioner named in the attached
Commission, appeared this day at my office in Room 1, of the
Fairhope Bank building, in Fairhope, Alabama, the witnesses
above named, together with E. G. Rickarby, Jr, Solicitor
for Complainant.

F. F. Nelson, Esq., Solicitor for Respondent,
~~appeared but did not remain for the examination.~~

The said witnesses having been first duly sworn,
testified upon examination by Complainant's Solicitor, as
hereinafter set forth.

Geraldine Winneman
COMMISSIONER.

DEPOSITION OF EDWARD P. TOTTEN.

Edward P. Totten, Witness for Complainant, being by me first duly sworn deposes and says:

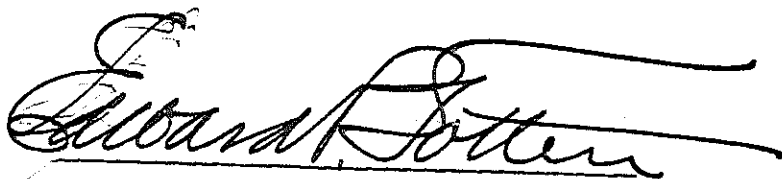
I am a bona fide resident of Fairhope, Baldwin County Alabama, and have been such for several years, next proceeding the date of the filing of this bill. I am over the age of twenty-one years and was engaged in the practice of law with an office at the Town of Fairhope until the autumn of 1932.

The Defendant, Miss Arabella E. Armstrong is an unmarried woman, over the age of twenty-one years and at the time of our agreement and up until the date of the filing of the bill was a resident of the Town of Fairhope, in Baldwin County, Alabama.

In the early part of July, 1931, it came to my knowledge that the tax-collector of Baldwin County had made public announcement of the intended sale for State and County taxes a dwelling house and other improvements on Lots 14 and 15 of Block 13, in Division 4 of the lands of the Fairhope Single Tax Corporation in said Town of Fairhope and that such sale was to be held publicly at said Fairhope on July 16th, 1931. I was acquainted with the property in question and thought that it could be bought at such public tax-sale for a fraction of its actual value. On the evening of July 15th, 1931, I called a taxi and drove out to see Miss. Armstrong, the Defendant, where she was residing, in Fairhope, and interested her in buying this property with me. I told her, then and there, that if she would furnish the money, I would attend to the purchase of the property and we would divide the profits to be realized on a fifty-fifty basis. Miss Armstrong then asked me: "What do you mean by a fifty-fifty basis?" I then explained to her that if she would furnish the money, taking title in her name, I would handle the matter and when we sold the property, we would divide the profits from such sale half to her and half to me, or share and share alike. Then she asked: "What do you think the property

x can be bought for?" I told her I believed it could be bought for Two Hundred and fifty dollars and that it was ^{actually} worth at least three times that sum. She then assented to this arrangement and in accordance therewith I attended this sale on the next morning, July 16, and bought the property for Two Hundred and Fifty-one dollars. I at once took a taxi and went out to her residence and told her of what I had done under our agreement. She then came down town, paid the money and took title in her name as we had arranged, and in pursuance of our agreement. Later an agent of the former owner approached me with a proposition to buy back the property at a figure which would give us a small profit on the transaction. I communicated with Miss Armstrong at once relative to this offer, and whereupon she flatly repudiated her agreement as to my sharing equally with her in the profits of our trade, and suggested that she would pay me simply a small fee as for legal services, which suggestion I firmly declined to accept. In the next morning's mail I found an envelope addressed to me enclosing a check for \$12.50, which check is marked exhibit "A" and made a part of this testimony.

The property hereinbefore described as being on Lots 14 and 15 of Block 13, in Division 4 of the lands of the Fairhope Single Tax Corporation in the Town of Fairhope is the identical place described by Mrs. Mary F. Bauer in her testimony as the Armstrong property on Stimpson street in the Town of Fairhope.

Edward R. Potter

DEPOSITION OF MARY F. BAUER.

Mary F. Bauer, Witness for Complainant,
being by me first duly sworn deposes and says:

My name is Mrs. Mary Bauer and I am a resident of Fairhope, Alabama during the winter months. In september 20th, 1931 I rented the Armstrong property on Stimpson street from Mrs. Arabella Armstrong at Twenty dollars a month and stayed there approximately until February or March when I was able to have the rent reduced to Fifteen dollars a month. This was ⁱⁿ 1932. I moved from the place about on the first of June. I might have stayed there a week or two longer, but I paid the rent only to the first of June.

While I was renting this property, I was ~~informed~~ informed that Mrs. Worsham had taken over the property and I paid rent direct to her. I do not remember when I stopped paying the rent to Miss Armstrong and began paying it to Mrs. Worsham.

As I remember I paid One hundred and forty-five or fifty dollars rent for this place during the time I rented it.

Mary F. Bauer

DEPOSITION OF CARL L. BLOXHAM, AS WITNESS
FOR COMPLAINANT.

Q. What is your name, address and occupation?

A. My name is Carl L. Bloxham. My address is Fairhope, Alabama.
My occupation is Real Estate Broker.

Q. How long have you lived in Fairhope?

A. I have lived in Fairhope eight years.

Q. How long have you been engaged in business as real estate broker in Fairhope?

A. Eight years last past.

Q. Were you generally acquainted through your business with the values of real estate and residence property in Fairhope, Alabama, in the early part of the summer of 1931?

A. Yes.

Q. Were you particularly acquainted with the improvements on lots 14 and 15, in Block 13, of Division 4 of the lands of the Fairhope Single Tax Corporation in the Town of Fairhope, Alabama, which were sold by public authority for State and County taxes on July 18, 1931?

A. Yes.

Q. How did you come to be acquainted with this particular property?

As
A. Agent of the owner.

Q. What, in your opinion, was the reasonable worth and value of this residence property on July 18, 1931?

A. Four hundred dollars.

Carl L. Bloxham

C E R T I F I C A T E

I, Geraldine Winneman, the Commissioner named in the attached commission, issued from the Circuit Court of Baldwin County in the case pending in Equity wherein Edward P. Totten is the Complainant and Arabella F. Armstrong Defendant, hereby certify that pursuant to the instructions in said Commission, I caused Mrs. Mary Bauer and Edward P. Totten, witnesses for Complainant, to appear before me at my office in Fairhope, Alabama on the 27th day of May, 1933, and Carl L. Bloxham, witness for Complainant, on the 1st day of June, 1933, where after being duly sworn, upon my examination by Elliott G. Rickarby, Jr., Esq., Solicitor for Complainant, they testified as is therein set forth that their answers were by me reduced to writing and read over and signed by them in my presence and in the presence of the Solicitor for Complainant.

I further certify that I am neither of counsel nor of kin to either of the parties in said cause or in anywise interested in the outcome thereof.

Before the taking of this testimony, F. F. Nelson, Esq., as Solicitor for Respondent and E. G. Rickarby, Jr., Esq., as Solicitor for Complainant, agreed that as the Respondent's Solicitor could not conveniently be present at the taking of the testimony on the day set to take the same, he shall have the right to cross-examine the witnesses so examined if he should see fit to do so.

Given under my hand and seal as Commissioner this 27th day of May, 1933.

Geraldine Winneman
Commissioner.

Commissioner's fee(\$5.00)

Witness Fees

Mary F. Bauer(\$2.00)

Carl L. Bloxham(\$2.00)

The State of Alabama, {
Baldwin County

CIRCUIT COURT

To Miss Geraldine Wynneman, Fairhope Bank Bldg, Fairhope Ala.

KNOW YE: That we, having full faith in your prudence and competency, have appointed you Commissioner, and by these presents do authorize you, at such time and place as you may appoint, to call before you and examine Edward P. Totten, Esq., Fairhope, Ala,

Mr. Carl L. Bloxam, Fairhope Ala. Mrs. Mary Bauer, Fairhope,

as witnesses in behalf of Complainant, in a cause pending in our Circuit Court of Baldwin County, of said State, wherein Edward P. Totten,

Complainant

and

Arabella F. Armstrong,

Defendant,

on oath to be by you administered, upon oral examination

to take and certify the deposition of the witness es and return the same to our Court, with all convenient speed, under your hand.

Witness 4th day of May 19 33.

T. W. Robinson

REGISTER

COMMISSIONER'S FEE, \$

WITNESS' FEES, \$

NO.

The State of Alabama
BALDWIN COUNTY
CIRCUIT COURT

Edward P. Totten

Complainant
vs.

Arabella F. Armstrong

Defendant

COMMISSION TO TAKE DEPOSITION

COMMISSIONER:

Miss Gerald Ninneman,
Fairhope Bank Bldg, Fairhope
Fairhope Ala.

WITNESSES:

Edward P. Totten (Fairhope)
Carl L. Bloxam " "
Mrs. Mary Bauer, " " "

To be adopted as testimony of Witness in Case of TOTTEN vs. ARMSTRONG:

My name is Mary Quarles. I am a resident of Fairhope, Baldwin County, Alabama, and I am Field Visitor for the Baldwin County Relief Administration.

- - - -

I was at the home of Mrs. Worsham on the evening of July 15, 1931, when Mr. Totten came to see Miss Armstrong. I was in the living room talking with Mr. Young and Miss Armstrong.

As I remember the evening, Mr. Totten came on the porch, having driven up in a car. The evening was rainy. Mr. Totten knocked on the door and Miss Armstrong went there and he asked to speak to her privately. She went out on the porch and we, in deference to her, practically stopped talking. As we were not speaking we overheard the conversation.

The conversation was evidently about some business arrangement of a house which Miss Armstrong was contemplating buying. The first thing that I heard of the conversation was about going into partnership and I noted very distinctly that Judge Totten rather lowered his voice, in evidence trying to keep us from hearing, but at times he raised his voice quite high so that we could hear him very plainly, as though he were in the room. In the conversation about the partnership, Miss Armstrong stated that she was not interested in going into a partnership. I do not remember exactly, - I mean the exact words that were stated. But I remember very distinctly Miss Armstrong asking the Judge what he meant by "we" going into a partnership. If I remember distinctly, she asked what was his part of it and he spoke stating that he had experience to balance anything that she would give in towards it. My next impression was Miss Armstrong made the statement that she would go so high for the house and that if it could be purchased for that price she would buy it in.

Atty: Miss Quarles, did you hear Miss Armstrong say anything about whether she would or would not enter into the partnership with Judge Totten?

Wit: She most certainly stated that she would not go into a partnership.

#2.

Atty: After she had stated to Judge Totten that she would not go into a partnership with him, was there any further conversation between them, as you recall it?

Wit: I think there was.

Atty: Was it about the purchasing of the house?

Wit: I do not remember.

Comp: State whether or not you heard the word 'partnership' used in the conversation between Miss Armstrong and myself on that occasion.

Wit: I did.

Comp: State whether or not you heard the amount named in the proposed purchase of the house.

Wit: I think I did.

Comp: What was that amount, if you remember?

Wit: \$250.00.

Mary Pearson
Witness for the Defendant.

To be adopted as testimony of Witnesses in Case of Totten vs. Armstrong:

My name is William A. Young. I am a resident of Fairhope, Baldwin County, Alabama. For many years I have dealt with so-called contracts, bills of sales in real estate matters, in construction, specifications for buildings, and the final consumption of deals covering those items above mentioned, and am qualified, under the Act passed by the Legislature of Pennsylvania, as a Registered Architect and Engineer.

- - - - -
I remember the occasion when Mr. Totten came to the home of Mrs. Worsham. It was on the night of the 15th of July, 1931. I was sitting in Mrs. Worsham's living room. Mr. Totten came and knocked on the door. He was on the front porch and did not come in the house. He asked to see Miss Armstrong, of course Miss Armstrong alone. At the window to the South side, to the West, was where Miss Quarles and I were sitting, waiting for Miss Armstrong to return to the room, - we could not help hearing the conversation. The conversation was about buying a house next door, which was supposed to have been foreclosed and taken by adverse possession, due to the fact of the decision of the Attorney-General, whereby the house was made personal property.

I heard Mr. Totten ask Miss Armstrong whether they could not buy the house together, or words to that effect, which I understand means a partnership. Miss Armstrong asked Mr. Totten whether he had any money to put up and in an under-current tone, he answered he would put his experience in against anything she might do. Miss Armstrong in turn said that she didn't want to do that and that she would be willing to buy the property if it could be purchased reasonably. And the discussion came up about how much it would bring at a sale and Mr. Totten suggested that it would not go for over \$250.00, and Miss Armstrong stated that she would be willing to pay that, but not more than that because she had not sufficient funds to pay more.

#2.

I take it, sitting on the side as a friend of probably both of them, and when Miss Armstrong came in I asked if she had agreed to go into partnership with the Judge and she said no, she had not.

(Objection by Complainant to conversation between Witness and Defendant)

I then said that from my previous experience, when a man in the states where I had practiced my profession (Same objection entered) did not put anything substantial; such as money, or other valuable assets or securities, in a deal, and then claimed to participate in any partnership arrangement, whether verbally or otherwise, unless specifically set forth in writing, he had no redress in any future claim in any of the business or other things transacted.

Complainant moves to strike out all testimony subsequent to the objection hereintofore entered on the ground that it is opinion evidence; is incompetent, irrevelant and immaterial.

Atty: Mr. Young, you were close enough to hear the conversation between Mr. Totten and Miss Armstrong?

Wit: Seven feet, through the window.

Atty: You heard Judge Totten mention to Miss Armstrong about going into a partnership and buying this property?

Wit: He said that they would buy the property together, as I have previously testified.

Atty: And Miss Armstrong at that time said she would not enter into such an agreement?

Wit: She said she would not enter into such an agreement.

Atty: And after that Judge Totten left?

Wit: Yes, after this conversation he left.

- - - -

Comp: Were you, Mr. Young, alone in the room at the time?

Wit: Miss Quarles and I were waiting for Miss Armstrong to return to the room, as I have testified.

Comp: I would ask whether you were in conversation with Miss Quarles at this time, or whether you were listening in in a conversation which plainly was not intended for you?

Wit: Unfortunately, I heard it for the simple reason that when Miss Armstrong answered your knock at the door you asked, "Are you alone, and can I speak to you privately?" Of course it wasn't a case of anybody eaves-dropping, but certainly you know you raise your voice sometimes and you popped off something and I said to myself, "What's this all about?" Naturally, when you and Miss Armstrong were talking out on the porch and we were in here where our conversation would be annoying to you, as you were trying to transact some business, out of deference to Miss Armstrong and you we both stopped talking. Anyone knows what happens when the rains falls, as through a blanket of fog, by the fact that when the rain is falling the sound carries very easily and it is possible to know what is going on even if you are having a conversation of your own.

Comp: Did you hear all of the conversation, Mr. Young, that took place between Miss Armstrong and myself?

Wit: The conversation I have testified to is what I heard.

Comp: State, if you can, as to the tone of voice in which this conversation was carried on, - as to whether it was a low, moderate, or high tone of voice.

Wit: The tone of the conversation was sufficient for me to hear to that which I have testified.

Comp: That doesn't answer the question as to whether it was a low, moderate, or high tone of voice.

Wit: The total conversation ranged from a low tone to a high tone.

Comp: Did you hear any proposition of a partnership arrangement?

Wit: When I specifically stated 'partnership', I heard this, that "WE" would go into this thing when you asked Miss Armstrong would she put up the money and you would put up your experience.

Comp: State whether or not you heard this conversation on my part; suggesting that we go in to purchase the house on a 50-50 basis and Miss Armstrong responding, "What do you mean, 50-50 basis?" and my explaining that we would buy the place, she furnishing the money, I handling the whole transaction, and that we share in the profits of the transaction 50-50?

Wit: I heard part of that but not all of it, because part of it wasn't said.

Comp: State whether or not you subsequently discussed with Miss Armstrong the value of the house I had proposed that we purchase together.

#4.

Wit: I did not, to my knowledge, discuss the value of the house, as asked in the question, and I do not agree to the last part of the question and enter the statement that Miss Armstrong and Mr. Totten did not agree to a partnership. And that finishes my testimony.

William A. Young
Witness for the Defendant

EDWARD P. TOTTON,
Complainant,
vs.
ARABELLA F. ARMSTRONG,
Respondent.

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

ARABELLA F. ARMSTRONG, a witness for the respondent,
being first duly sworn, deposes and says:

My name is Arabella Armstrong. I live at Fairhope,
in Baldwin County, Alabama; I am over twenty-one years of age;
I am the party named as respondent in the above styled cause.

On the date specified I was staying alone at Mrs.
Worsham's home, she being absent two months. I had two guests
with me. Mr. Totten arrived and came in and seemed surprised to
find that there was anyone else there, and asked if he could speak
to me alone. There is a porch outside the living room, practi-
cally all in one, and I had no intention of seeing him alone, but
I allowed him to go out on the porch with the door open, and there
he talked in as low a voice as he could manage, but which was aud-
ible to my guests, he told me the house next door was to be sold
next morning and made a proposition that we should buy it together.
I said, "What do you mean, that you should put in half the money
and I should put in half the money?" And he said, "I have no
money", and I said, "Well, I couldn't possible undertake any such
agreement as that", and he said "Well, I think you could make some
money if you would go into it", and I said, "I have no money to
go into such a proposition; I couldn't possibly buy the place
on those terms." Nothing more of any importance was said, and
he turned to go. As he turned to go, he said, "Well, I think
it will go very cheap", and I said, "Do you?" I would like to

have it, because it is adjacent to my sister's home and I am afraid if it does go, it might become a nuisance and injure her place,"and I said, "What do you think it will bring?" And he said "Well, I think the house \$250.00." That seemed to be an absurdly low price and I half laughed and said, "Well, if it goes for that, you can bid it in for me." This was almost entirely a speculative proposition on my part, because I should never have chosen Mr. Totten as an agent, but under the circumstances I was willing to take the chance, as I couldn't be at the sale myself. I had had reason to distrust Mr. Totten and had definitely made up my mind to have nothing further to do with him in any shape or form. He then left and I went back to my guests, and they said, one of them said, the man, Mr. Young said, "I couldn't help overhearing what was said, and of course you wouldn't go into a proposition like that?" I laughed and said, "Well, I certainly would not, never had the slightest intention", and I said, "I have heard all my life about people, the bargain, which put in money and the other experience, but it was always a jest, and we had some joking conversation about it;that was the end of that. The next morning Mr. Totten came in and said that he had bought the house for me, and I said, "Well, I will have to get the money then in a few days". "Well", he said,"the Sheriff is waiting for it now." I said, "I'll have to go to the Bank and arrange to get the cash." I then went down with him and interviewed the Banker, he (Mr. Totten) was driving, it was raining, and he extended credit until he could sell some stock for me, and I gave the Sheriff the check for the amount.

I then went down alone to see Mr. Gaston about having the transfer made, and he told me that it would be two or three days, or several days, before it could be done; there had to be a Council meeting. I then went back to the Bank and told Mr. Totten that I would see him in a few days, intending then after the transaction was closed, for I had no intention of paying him

before I had possession, to give him his fee. Some days after that, I don't remember, two or three, perhaps longer, I happened to meet him on the street corner, and he said that he had just seen Bloxham, the real estate agent, who had a letter from the man who owned the house. He said, he is an old soldier and he seems to hate to lose his place, and he thinks he can perhaps pay for it out of his pension. I said, "In that case I will turn it right over to him, because I don't want to benefit or take advantage in any way of his necessities, and when he recoups me for what little expense I have been to, I will make it back to him", and Mr. Totten said, "Well, I thought we could charge him \$50.00 profit, that would give you \$25.00 and me \$25.00." I was surprised and expressed it in my tone. I said, "I don't see why you, Mr. Totten, should have \$25.00. You will have your fee", and he said, "I am your partner". I said, "partner, there is no partnership, what funds had you to put into a partnership, even if I had agreed to one?" He said, "my experience and my knowledge". And I said, "Is that a proposition that you would make to a business man, Mr. Totten?" I said, "there has been no partnership and I expect to pay you your fee as my agent, as your commission, and if the old man wants his place back, I say again he can have it without any profit for me and you. If you feel as you seem to do about him, perhaps you will be willing to remit your fee which he would otherwise have to pay", and he turned on his heel and walked away. I have not seen nor heard of him since.

After my conversation with Mr. Totten, I immediately went home and mailed him my check for \$12.50 in payment for his services in buying the property for me. I closed the entire transaction with the officer selling the property. The only thing that Mr. Totten did was to introduce me to him.

Mr. Totten has not at any time demanded an accounting

of me and I have not failed nor refused an accounting, as I did not consider him interested in the property, and had paid him the entire fee that was coming to him. At the time I delivered my check to Mr. Totten I had ample funds in the Bank of Fairhope, on which the check was drawn, to pay it, and the funds remained there for some six weeks, until some time the latter part of September, some six or eight weeks. I left for Florida the end of September, and before going I suggested to my sister, as I was a resident of Florida, in case of my death there might be some legal difficulty about Alabama laws, which I didn't know of, and I would prefer to make it over to her. Also I had been living with her, provided by her with a home, and I felt that it was only due to her that that little piece of property should go to her, to only in part return her for the hospitality which she had given me. I carried this out after I went to Florida, this transfer.

I have since purchasing the property put about \$800.00 in repairs and improvements in the property. In addition to this the taxes have been paid, both state, county and city taxes. I paid \$251.00 for the property, \$12.50 to Mr. Totten for his services and approximately \$800.00 for improvements. The property has been rented for short periods of time since I have had it, but I do not know the exact amount received. Mrs. Worsham, my sister, has kept a record of the rents received. The improvements were made to the property before I conveyed it to my sister, Mrs. Worsham.

I did not at any time enter into an agreement with Mr. Totten that I would furnish the money and the title be taken in my name and held on a fifty-fifty basis. It was at all times understood that the property was to be mine entirely. Mr. Totten was only to receive a fee for his services in acting as my agent and attending the sale. At the time Judge Totten discussed the matter with me I explained to him that I wanted to

buy the property to hold on account of its proximity to the property of my sister.

There has been no profit received from the property since I purchased it, other than a small amount of rents, and to offset this I have been to the expense of something much over \$1,000.00.

CROSS EXAMINATION BY

MR. TOTTEN.

Q. On your direct examination, Mrs. Armstrong, you said you thought that the price named, \$250.00,^{an}/absurdly low price?

Ans. Yes.

Q. What did you think was the value of the house at that time?

Ans. I hadn't thought about it at all, but I thought it would be much more than that. I had never been inside the house and it seemed as good a house as the one next door, for which my sister had paid \$750.00, so that \$250.00 seemed very low.

Q. Then at that time this house, in your judgment, was worth about \$750.00?

Ans. Oh, no, I didn't think it was worth that; I really hadn't thought about it. I never considered buying it. I had wished that I might buy it, because it was a menace to our comfort in the adjoining house, but I hadn't thought of going into it and buying it until I heard of this price, which I thought I might possibly manage.

Q. You hadn't thought of buying this until I came to you with a definite proposition? Ans. I didn't know it was for sale.

Q. Can you give any statement or estimate of the value of the property at the time that we bought it, at the time of this transaction?

Ans. I don't know, none except the price I paid for it. I found that it was not as good a house as I thought it was from

the outside, and as I stated, I had to add considerable money in order to make it rentable.

Q. What you mean by the answer to the question before the last is that you didn't know it was for sale until I came to your house and told you, is that right? Ans. Yes.

Q. How long were you staying with Mrs. Worsham at this time; how long had you been staying; how long did you stay altogether?

Ans. I came about the first of April of that year and stayed until the end of September.

Q. This stay with Mrs. Worsham was approximately six months, was it? Ans. I can count it up -- six months.

Q. You testified that you transferred this house subsequently to our transaction to Mrs. Worsham in return for her hospitality?

Ans. No, my chief reason, as I have stated, was because I had no knowledge of the laws concerned with inheritances in Alabama, and I was a citizen of Florida and wished my entire estate to be administered there as far as possible; that was my principal reason.

Q. You wish to be understood then, as testifying that the large share of your estate is in Florida, not in Alabama?

Ans. I have nothing in Alabama, nothing in Alabama.

Q. Would you state for what you spent the amount of which you have testified approximately \$800.00 on the house?

Ans. I built on a kitchen and a bath room and a garage and put various and sundry repairs on it, which were very much needed. The house had been vacant and was tending towards dilapidation and -- well that's the extent of it.

Q. Did you at any time make any attempt to sell this house? Ans. No, I didn't want to sell it; I wanted to control it.

Q. Did you at any time enter into negotiations with any

one for its sale by you and purchase by them? Ans. No.

Q. Do you wish to be understood as testifying then you had no desire or intention to sell it?

Ans. Not so long as Mrs. Worsham was living there; I wanted to control the house.

Q. And that you actually entered into no negotiations with anyone for its sale or purchase by them?

Ans. I don't know what Mrs. Worsham may have done, I have never heard her say that she did, until the other day, as I say, when she offered it to the present tenants, as she is contemplating going away.

Q. You had considerable business experience, Mrs. Armstrong?

Ans. Well, of some sorts; no I haven't. I have had some business experience, not considerable; I have never been in the business world.

Q. I will ask you whether or not you have handled your own business?

Ans. Yes, that's the business experience, all the business experience I have had.

Q. You recall my coming to your home on the night of July, 1931, and telling you that the house next door was to be sold the next morning at the tax sale? Ans. Yes.

Q. Do you recall, do you not, my statement to you, a proposition that we purchase it on a fifty-fifty basis?

Ans. Yes, I recall it.

Q. You recall, do you not, that you asked me "what do you mean by a fifty-fifty basis?"

Ans. No, I don't remember that phrase; I remember asking you just what you meant by proposing we should buy it together.

Q. You don't recall asking, "what do you mean by fifty-fifty?" Ans. No, I don't recall that phrase.

Q. You don't recall my stating to you in answer to such question, "By fifty-fifty basis I mean that you furnish the mon"

and I buy and handle the house, and we share equally in the proceeds and profits?

Ans. No absolutely not, you made no such statement. You said, I asked you what you meant, and you said, "to go into equal partnership." No, I said, "what do you mean, that you will put in half and I will put in half", and you said, "I have no money", and I then said, "Well, I have no money for such a proposition."

Q. Do you recall my saying to you, "If you will put up the money, I will buy this property and we will share equally in the proceeds and profits?"

Ans. I do not.

Q. Do you recall the weather on that evening?

Ans. Yes, it was raining.

Q. It was a rainy night? Ans. Yes.

Q. And muddy? Ans. Yes.

Q. Do you recall whether there was a taxi driver waiting on the outside while we were in conversation?

Ans. I recall there was a car outside; I was not aware of a taxi.

Q. Do you recall that on the next morning, July 16th, 1931, I came to your home in a car and said to you, "We have bought a house and asked you to come down to the Bank and close the deal?"

Ans. Yes, you said "We have bought a house"; you had used the same phrase exactly when you bought a house for my sister, because I was struck with it. You came to her and said, "We have bought a house." You remember she had commissioned you to bid in the house she occupies at present, and you came the next morning and in a similar manner said, "Well, we have bought a house", and I was struck by your repetition of the phrase, thinking that it meant, of course knowing that it meant nothing as it sounded.

Q. You may state whether or not you got into the car with me and the driver, and went to the Bank and arranged for the funds and paid them to the tax collector for this property in

the amount of \$251.00? Ans. Yes.

Q. Do you recall in our conversation, when the agreement was made on the evening of July 15th, your asking, what would your security be in the event of a purchase, and my response, that "you will have ample security, we will take the title in your name."

Ans. I don't recall; I don't recall that I discussed it to that extent. I assumed, as you said, that you had no money, and I said, "Well I have none for such a proposition as that."

MR. TOTTEN. I think that's all.

RE DIRECT EXAMINATION by

MR. HALL.

I did not at the time Mr. Totten was at my house, and have never agreed or assented to any proposition of his that I would put up the money with which to buy the property and we own it on a fifty-fifty basis and share the profits. As I have stated, I have managed my own property, and I have never been cheated or deceived by anyone with whom I have had business transactions. To that extent I may state that I understand business.

Q. Mrs. Armstrong, you have stated that you paid in addition to the purchase price something like \$800.00 in improvements and also state, county and city taxes since purchasing the property, is that right, approximately that?

Ans. As I say, I never paid anything; yes, I did, I paid the tax that was then due to the Colony. You see the purchase price covered the past due taxes, but I paid Mr. Gaston I think a half year's tax which was then due; that was all I have had to pay except improvements, because when the next came due, it was the property of Mrs. Worsham.

I did not see Mr. Totten any more and he did not and has never offered to pay any part of the money that I have been called upon to expend in the caring for and protection of the property.

Q. Mrs. Armstrong, Mrs. Mary F. Bauer has testified that she paid something like One hundred forty-five or fifty dollars rent for the place. So far as you know, that is approximately correct?

Ans. She paid \$20.00 a month for some months, I think, and I don't know when Mrs. Worsham dropped to \$15.00 a month, I have never calculated it; that was just for nine months I think.

Q. Assuming that she has paid \$150.00 as rent on the property, that would still leave something like \$800.00 or \$900.00 invested in the property, for which there is no income; in other words, it might be considered a loss?

Ans. I don't quite understand that?

Q. In other words, there has been no profit for you from the property?

Ans. No, except \$10.00, that was one month's rent.

MR. HALL: Q. Mrs. Armstrong, look at this letter; is that a copy of the letter received by the Executive Council of the Fairhope Single Tax Corporation?

Ans. To the best of my knowledge it is; I have never seen it. I showed this to Mr. Gaston.

Q. Where did you get that copy?

Ans. It came to me through the mail.

Q. From Mr. Totten?

Ans. The envelope has his office address on it.

Q. Mrs. Armstrong, did you receive this copy of a letter through the mail? Ans. Yes.

Q. It bore the office address of Mr. Totten?

Ans. Yes, and it was also signed by him.

Q. Came just that way?

Ans. Just that way enclosed in that envelope.

Q. That came through the Fairhope post office through the United States mail? Ans. Yes.

MR. HALL: I offer this in evidence as Respondent's Exhibit "A".

MR. TOTTEN: I object to that; it is incompetent and immaterial and not tending to prove or disprove any issues involved in this case.

Respectfully,
J. L. Totten

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

C O P Y

July 21, 1931

The Executive Council,
Fairhope Single Tax Corporation,
Fairhope, Alabama

Gentlemen and Ladies of the Council:

I would respectfully request that you defer action at your meeting on the 21st instant upon the application of Arabella F. Armstrong for lease of lands in Lots 14 & 15, Block 15, Division 4, to permit of the filing of charges with your Honorable Body that said Arabella F. Armstrong is not a qualified and satisfactory person to receive a lease from your Corporation.

Trusting that, in the exercise of a sound discretion, you will grant this request for deferring of action ^{upon} such application, I am,

Yours very respectfully,

Edward P. Totten

EPT:MG

C. Copy to:
Arabella F. Armstrong