

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

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

Your Petitioner Mrs. Mollie K. Frank respectfully represents and shows
unto Your Honor as follows:

FIRST:

That she is a bona fide resident citizen of Baldwin County, Alabama, and
over the age of twenty-one years and resides at Magnolia Springs, in the said
County and State.

That Albert W. Keller is over twenty-one years of age and a resident of
Foley, Baldwin County, Alabama.

That Thomas H. Watts is over the age of twenty-one years and is a resident
of Birmingham, Alabama, and also has a residence at Magnolia Springs, in said
County and State.

SECOND:

That Mrs. Mollie K. Frank, Your Petitioner is the owner of the following
described real estate located in Baldwin County, Alabama, to-wit:

Lot Twenty-eight (28) and the West half of Lot Twenty-
seven (W¹/₂ of Lot 27) in Lyman's addition to Magnolia
Springs, Baldwin County, Alabama, as per plat of said
Lyman's addition of record in the office of the Probate
Judge of Baldwin County, Alabama, and being a part of
Section Twenty-eight (28) and Thirty-three (33) in Town-
ship Seven (7) South, Range Three (3) East of St. Stephens
Meridian and being the same land conveyed to Devore N.
Simonson by George G. Richards and Minnie W. Richards,
his wife, by Deed dated April 16th., 1915, which is re-
corded in Book 23 N.S. Baldwin County Probate Records,
Page 182, together with all improvements and appurte-
nances.

That Lot numbered 28 is the homestead and place of residence of Your Petitioner Mollie K. Frank and her husband, Morris Frank, and that it was the homestead and place of residence of Your Petitioner and her husband on the 15th. day of March, 1926, and has been the homestead and place of residence before and on March 15th. 1926 and ever since thereafter.

THIRD:

That on March 15th. 1926, Your Petitioner Mollie K. Frank and Morris Frank, her husband, executed to Albert W. Keller a mortgage in the sum of \$6600.00, which described all the property mentioned herein, said mortgage being due on or before three years after date with interest thereon at the rate of eight percent; said mortgage being filed in office of Judge of Probate on March 25, 1926, recorded in mortgage Book No. _____, page _____; that the said mortgage was given solely for the purpose of securing the indebtedness of Morris Frank, the husband of Your Petitioner which was due Albert W. Keller, and that Your Petitioner Mollie Frank did not receive the said sum of \$6600.00 or any part thereof, nor did Your Petitioner borrow any money from Albert W. Keller, the mortgagee, named in the said mortgage; that at the time the said mortgage was executed the above described property was and has been ever since, the property of Your Petitioner, and the said property being actually owned and in the name of Your Petitioner on the date of execution of the said mortgage and ever since thereafter; that Your Petitioner was then living on the said premises claiming the same as her own, exercising absolute control and possession of same, and that the said Morris Frank, her husband had no interest whatever in the said premises, nor had he any interest then or any time thereafter; that a copy of the said mortgage is hereto attached and marked exhibit "A"

That on to-wit: March 12, 1932, Albert W. Keller, as mortgagee, attempted to sell the interest of Your Petitioner in the above described property under and by virtue of the Mortgage and Power of Sale contained therein and executed to the respondent herein named, Thos. H. Watts, a purported foreclosure deed

attempting to convey the above described property to the said Thos. H. Watts, which said purported deed is recorded in Deed Book 52 N.S. pages 203-4, in the office of Judge of Probate, Baldwin County, Alabama.

FOURTH:

Your Petitioner further shows and alleges that the said mortgage above referred to is wholly void and that the said foreclosure deed executed under virtue of the attempted foreclosure of said mortgage is wholly void and that the said mortgage and the foreclosure deed is a cloud upon the title of Your Petitioner to the above described property and she is desirous of removing said cloud from her title to same.

FIFTH:

And on to-wit: Sept 27, 1926, Your Petitioner and her husband Morris Frank executed to the Farmers & Merchants Bank a mortgage in the sum of \$3500.00, described therein the property of Your Petitioner and alleging therein that the said mortgage was subject to a prior mortgage given to Albert W. Keller, which Keller mortgage is the first mortgage mentioned herein and being in the sum of \$6600.00; that the property immediately before and at the time of execution of this mortgage and ever since thereafter has been and is still the property of Your Petitioner, Mollie K. Frank; that Your Petitioner executed this mortgage solely as surety for the indebtedness of her husband, Morris Frank; that the said Morris Frank received the total benefit of the proceeds of this mortgage by virtue of Your Petitioner becoming surety, and that the said Morris Frank also received the total proceeds of the first mortgage, in the sum of \$6600.00.

That on to-wit: November 1, 1930, the Farmers & Merchants Bank transferred to Thos. H. Watts the said mortgage in the sum of \$3500.00, which transfer is recorded in Mortgage Book 37, pages 123-4 in the office of Judge of Probate, Baldwin County, Alabama, for and in consideration of the sum of \$3400.00, and that the said Farmers & Merchants Bank transferred said mortgage together with

the notes and debt thereby secured without recourse on it; that said transfer is recorded in the office of Judge of Probate, Baldwin County, Alabama, on January 21, 1932; that a copy of the said mortgage is hereto attached and marked Exhibit "B" and a copy of the transfer is hereto attached and marked Exhibit "C". Your Petitioner is desirous of cancelling the said mortgage, which is marked as Exhibit "B" and the transfer which is marked as Exhibit "C" as a cloud upon her title.

That the said mortgage marked Exhibit "B" and transfer marked Exhibit "C" are wholly void and is a cloud upon the title of Your Petitioner, Mrs. Mollie K. Frank, who was owner and in possession, exercising ownership and control over said property at the time of the execution of the mortgage, and assignment used the property solely as her property.


Your Petitioner avers that the mortgage in the sum of \$5600.00 and the foreclosure sale under and by virtue of same is a nullity, and that the mortgage in the sum of \$3500.00 is a nullity, and Your Petitioner further avers that she is ready, able and willing to pay and hereby seek to redeem in the event any part of the debt in controversy is decreed to be her debt and hereby offers to do equity as maybe decreed by this Honorable Court.

THE PREMISES CONSIDERED, Your Petitioner prays that the said Thos. H. Watts, and Albert W. Keller be made party respondents to this bill of complaint; that all necessary subpoenas, decrees or orders be issued by this Honorable Court as necessary to perfect service upon the said respondents above named, requiring them to answer the same within the time and under the pains and penalty as required by law, or that same be forever confessed.

Your Petitioner further prays that upon hearing of this cause Your Honor will issue the proper and necessary orders or decrees for the purpose of removing the instruments herein above referred to as a cloud upon the title of Your Petitioner to the property above described.

Your Petitioner further prays that if she is mistaken in the relief pray-

ed; that Your Honor will grant unto her such other, further, different and general relief that she may in equity be entitled.


Attorney for Petitioner

FOOTNOTE:

The respondents Thos. H. Watts and Albert W. Keller are required to answer each and every paragraph, numbered from one to five inclusive, but not under oath.

Answer under oath being hereby expressly waived.


Attorney for Petitioner

Exhibit "A"

STATE OF ALABAMA,)

MORTGAGE DEED WITH POWER OF SALE

BALDWIN COUNTY.)

KNOW ALL MEN BY THESE PRESENTS:

That Mollie K. Frank and Morris Frank, her husband in consideration of the sum of Sixty-six hundred and no/100 (\$600.00) Dollars, to them in hand paid, by Albert W. Keller the receipt whereof is hereby acknowledged, do grant, bargain, sell and convey unto Albert W. Keller, his heirs and assigns, forever, ALL of the following described Real Estate, situated in Baldwin County, State of Alabama, described as follows, to-wit:

Lot twenty-eight (28) and the West half of lot twenty-seven (W. $\frac{1}{2}$ of lot 27) in Lyman's addition to Magnolia Springs, Baldwin County, Alabama, as per plat of said Lyman's addition of record in the office of the Probate Judge of Baldwin County, Alabama, and being a part of Section Twenty-eight (28) and thirty-three (33) in Township Seven (7) South, Range three (3) east of St. Stephens Meridian and being the same land conveyed to Devore N. Simonson by George G. Richards and Minnie W. Richards, his wife, by deed dated April 16th 1915 which is recorded in book 23 N S Baldwin County Probate records page 182, together with all improvements and appurtenances.

TO HAVE AND TO HOLD, the above granted and described premises with the appurtenances unto the said Albert W. Keller and to his heirs and assigns, and to their sole and only proper use, benefit and behoof forever, PROVIDED ALWAYS, and these Presents are upon the express condition, that if the said Millie K. Frank and Morris Frank, her husband, shall well and truly pay to the said Albert W. Keller the sum of Sixty-six hundred and no/100 Dollars, due on or before three (3) years after date hereof, with interest thereon at the rate of Eight (8) per cent, per annum. payable semi-annually, the several installments of semi-annual interest being evidenced and secured by six (6) interest notes of even date herewith, executed by the said Mollie K. Frank and Morris Frank, her husband to the order of said Albert W. Keller, each note being for the sum of Two Hundred sixty-four (\$264.00) Dollars due respectively on the 15th day of September and of March in each year until paid.

Then these presents shall cease, determine to be void, otherwise to remain in full force.

AND THE said Mollie K. Frank and Morris Frank, her husband do hereby vest the said Albert W. Keller or his assigns, with full power and authority upon the happening of a default in the payment of the notes above described, to sell their interest in said above described Real Estate at public sale for cash, giving thirty days notice in a newspaper published in Baldwin County, Alabama, and the proceeds to apply, first, to the payment of the amount due on said note with interest on same; second, to the payment of the cost of sale, including a reasonable attorney's fee, and if there shall be a surplus then the balance to be paid over to Mollie K. Frank and Morris Frank. And Mollie K. Frank and Morris Frank do authorize the said Albert W. Keller to conduct the sale, and to make Deed to the purchaser, and the title so made we hereby agree to defend against all persons. It is agreed that the mortgagee herein may bid at said sale as if he were a stranger to this instrument.

GIVEN under our Hands and Seals this 15th day of March in the year of our Lord one thousand nine hundred and twenty six (1926).

Signed, sealed and delivered in the presence of

Mollie K. Frank (SEAL)
Morris Frank (SEAL)

STATE OF ALABAMA,)

BALDWIN COUNTY.)

I, Miles M. Morris a Notary Public in and for said County in said State do hereby certify that Mollie K. Frank & Morris Frank her husband whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me, on this day, that being informed of the contents of the conveyance they executed the same voluntarily on the day the same bears date.

Given under my hand this 23rd day of March A.D., 1926.

Miles M. Morris.

And I do further certify that on the 23rd day of March 1926, came before me the above named Mollie K. Frank, known to me to be the wife of the above named

Morris Frank, who being examined by me separate and apart from her husband, touching her signature to the above instrument, acknowledged that she signed the same of her own free will and accord, and without fear, constraint, or threats on the part of her husband.

In witness whereof, I hereunto set my hand this 23rd day of March 1926.

Miles M. Morris.

I hereby certify that the Mortgage or Privilege tax on within instrument was paid by the lender or creditor. (See general acts of the Legislature of 1919, on page 420.)

Farmers & Merchants Bank
By J. L. Kessler.

STATE OF ALABAMA,)

BALDWIN COUNTY.)

I, W. D. Stapleton, Judge of Probate for said County hereby certify that the following privilege tax has been paid on the within instrument as required by acts 1902, Viz. \$ 9 Cts. 90

W. D. Stapleton, Judge of Probate,
By J. L. Kessler, Clerk.

Filed for record Mar. 25th 1926 at 3 P.M.
Recorded April 5th 1926.

W. D. Stapleton, Judge of Probate.

Exhibit "B".

STATE OF ALABAMA,) MORTGAGE DEED WITH POWER OF SALE.
BALDWIN COUNTY.)

KNOW ALL MEN BY THESE PRESENTS:

That Mollie K. Frank, and M. Frank, her husband, in consideration of the sum of Thirty-five hundred Dollars to us in hand paid by Farmers and Merchants Bank, Foley Ala., the receipt whereof is hereby acknowledged, do grant, bargain, sell and convey unto said Farmers & Merchants Bank, its successors heirs and assigns forever, ALL the described property situated in the County of Baldwin and State of Alabama, to-wit:

Lot Twenty-eight (28) and the West half of Lot Twenty-seven (W $\frac{1}{2}$ of Lot 27) in Lyman's Addition to Magnolia Springs, Baldwin County, Alabama, as per plat of said Lyman's addition of record in the office of the Probate Judge of Baldwin County, Alabama, and being a part of Section Twenty-eight (28) and Thirty-three (33) in Township Seven South, Range three (3) East of St. Stephens Meridian and being the same land conveyed to Devore N. Simmons by George G. Richards and Minnie W. Richards, his wife, by deed dated April 16th, 1915, which is recorded in Book 23 of Mtgs. Baldwin County Probate Records, page 182, together with all improvements and appurtenances.

TO HAVE AND TO HOLD the above granted and described premises with the appurtenances unto the said Farmers & Merchants Bank and to its successors heirs and assigns, and to their sole and only proper use, benefit and behoof forever, PROVIDED ALWAYS, and these presents are upon the express condition, that if the said Mollie K. Frank and M. Frank, her husband shall well and truly pay to the said Farmers & Merchants Bank the sum of Thirty-five Hundred Dollars as is evidenced by their two certain promissory notes bearing even date herewith, or any renewal thereof, and payable to the said Farmers & Merchants Bank ninety days after date with interest at the rate of Eight (8) per cent (Until paid)/

(It is agreed and understood that this is subject to a prior mortgage given to A. W. Keller)

Then these Presents shall cease, determine to be void, otherwise to remain in full force.

AND the said Mollie K. Frank and M. Frank, her husband do hereby vest the said Farmers & Merchants Bank, or its successors, assigns with full power and authority upon the happening of a default in the payment of the note above described, to sell their interest in said real estate at public sale for cash, giving 30 days notice in a newspaper published in Baldwin, and the proceeds to apply, first to the payment of the amount due on said note with interest on same; second, to the payment of the cost of sale, including a reasonable attorney's fee, and if there shall be a surplus, then the balance to be paid over to Mollie K. Frank and M. Frank her husband, AND we do authorize the said Farmers & Merchants Bank to conduct the sale, and to make deed to the purchaser and the title so made we hereby agree to defend against all persons. It is agreed that the mortgagee herein may bid at said sale as if he were a stranger to this instrument.

GIVEN under our hands and seals this 27th day of September, in the year of our Lord one thousand nine hundred and twenty six.

Signed, Sealed and Delivered in the presence of

Mollie K. Frank (SEAL)
M. Frank (SEAL)

STATE OF ALABAMA,)

BALDWIN COUNTY.)

I, _____ a Notary Public in and for said County and State hereby certify that Mollie K. Frank & M. Frank, her husband, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that being informed of the contents of the conveyance they executed the same voluntarily on the day the same bears date.

Given under my hand this 27th day of September, A.D. 1926.

P. J. Cooney,
A Notary Public Baldwin Co.
Ala.

And I do further certify that on the 27th day of September, 1926, came before me the above named Mollie K. Frank known to me to be the wife of the

Exhibit "C"

Foley, Ala., Nov. 1, 1930.

STATE OF ALABAMA,
BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS, That we, Farmers & Merchants Bank, a corporation, and named as Mortgagee in that certain mortgage executed to it by Mollie K. Frank and M. Frank, dated September 27th, 1926, recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Mortgage Book 37 pages 123 and 124. In consideration of the sum of Thirty-four Hundred (\$3400.00) dollars to us in hand paid by Thos. H. Watts, the receipt of which is hereby acknowledged do hereby grant, bargain, sell, transfer, set over and assign to the said Thos. H. Watts, the aforesaid mortgage together with the notes and debt thereby secured, and as well all right, title and interest in and to the property thereby conveyed without recourse on us.

IN WITNESS WHEREOF, the said Farmers & Merchants Bank, has caused its Corporate seal to be attached, on this 1st. day of November, 1930.

(CORP. SEAL)

Farmers & Merchants Bank
By H. L. McCain, Vice Pres &
Cashier.

STATE OF ALABAMA,
BALDWIN COUNTY,

I, F. Lucile Anderson a Notary Public in and for said County in said State do hereby certify that H. L. McCain, whose name as Cashier of the Farmers & Merchants Bank, a Corporation is signed to the foregoing conveyance, he as such officer and with full authority executed the same voluntarily as the act of the said Corporation on the day the same bears date.

Given under my hand and official seal this 1st. day of November, 1930.

F. Lucile Anderson, A Notary Public
Baldwin County, Ala.

Filed for record January 19, 1932 at 11:25 A.M. Recorded January 21, 1932.

G. W. Humphries, Judge of Probate.

Mollie H. Franke,
Complainant

vs

Thos H. Matta and
Albert M. Fuller.

Bill to Quit Title

Filed December 9, 1932

J. M. Schuman
Proxies

James H. Moore
Attorney for Complainant
vs by Court Registry

BRIEF OF RESPONDENT ALBERT
W. KELLER ON DEMURRER

The Demurrer filed in this case raised the single point that the Bill is multifarious.

The Bill discloses an attack by the Complainant on two real estate mortgages on the single ground that each of the mortgages is void for the reason that it was executed by the Complainant, a married woman, as surety for the debt of her husband.

The first mortgage was executed by the Complainant and her husband to this Respondent on March 15, 1926, in the principal sum of \$6,600.00. This mortgage remained unpaid until March 12, 1932 at which time the Respondent Keller proceeded to foreclose the mortgage and at the sale under the power the Respondent Watts became the purchaser.

In the meantime, however, and on September 27, 1926 Complainant executed a second mortgage on the same real estate to Farmers & Merchants Bank for \$3500.00 which mortgage has been by said bank assigned and transferred to the Respondent Watts who now holds the same.

It is obvious that the Respondent Keller has no interest in and is not in any way concerned with the second mortgage. All controversy as to whether or not the second mortgage is valid or void is entirely between the Complainant and Respondent Watts and it makes no difference to Respondent Keller and does not in the least affect any of his rights whether this second mortgage be declared to be valid or void. His sole concern is with the question of whether or not the first mortgage and the foreclosure of it and the deed executed under it is valid.

In other words, in its present state the Bill involves Respondent Keller in an action with a large part of which and in the case made by which he has no connection whatever. The Supreme Court of Alabama has held that such a Bill is multifarious. In the case of Ford vs

Borders, et. al., 200 Ala. 70, 75 So 400, it is said:

"Multifariousness is generally understood to infect those cases where a party is brought in as a Defendant as to matters with a large portion of which, or with the case made by which, he had no connection whatever. It may be described as a joinder of different and distinct independent matters thereby confounding them, or a uniting in one bill of several matters perfectly distinct and unconnected against one defendant, or the demands of several matters of a distinct and independent nature against several defendants in the same bill. A. G. R. R. Co. vs Prouty, 149 Ala. 71, 43 So 352; 6 Mayf. Dig. 318."

"The joinder of two distinct subject matters, not having any connection, renders a bill multifarious; but on the sustaining of a demurrer for the misjoinder the proper practise is to afford the Plaintiff the opportunity to elect to proceed for one only of the matters of suit. Junkins vs Lovelace 72 Ala. 302; 3 Mayf. Dig. 291."

"No general rule defining what causes of action may be properly joined and what may not can be laid down. The question is always one of convenience in conducting a suit, and not of principle, and is addressed to the sound discretion of the Court.* * * If it appears that the causes of action or claim are so dissimilar or distinct in their nature that they cannot be heard and determined together, but must be heard piecemeal, first one and then the other, a clear case of fatal misjoinder is presented; Ferry vs. Laible, 27 N. J. Eq. 146, 150 and authorities cited; Singer vs Singer 165 Ala. 145-147, 51 So. 755, 29 L. R. A. (N. S.) 819, 138 Am. St. Rep. 19, 21 Ann. Cas. 1102; 7 Mayf. Dig., 289-290."

In the case of O'Neal vs Cooper, et. al. 191 Ala. 182, 67 So 689, the Supreme Court said:

"No universal rule in regard to multifariousness is admitted to be established as to cover all possible cases. As said in the case of Adams vs Jones 68 Ala. 117:


"Multifariousness, abstractly, has been properly said to be incapable of an accurate definition; but is generally understood to include those cases where a party is brought as a defendant on a record, with a large portion of which, and in the case made by which, he has no connection whatever.' Story's Eq. Pl. 530; Kennedy vs Kennedy 2 Ala. 573"

It is obvious that the case made by this Bill is one, with a large part of which, the Respondent Keller has no connection whatever, inasmuch as all of that part of the bill which has to do with the second mortgage does not concern Respondent Keller in the slightest.


It is also obvious that the case made by the bill would have to be tried "piecemeal". It would be necessary to try first the.

question of whether or not the first mortgage was void as having been given by a married woman as surety for the indebtedness of her husband. After that case had first been tried it would then be necessary to take up the separate question of whether or not the second mortgage to the bank was void as having been given by the Complainant as surety for an indebtedness of her husband. Under the rulings of the Supreme Court cited above such a bill is multifarious and the demurrer should be sustained.

Respectfully submitted,


Solicitor for Respondent
Albert W. Keller

I hereby certify that a copy of the above brief was served upon Hon. Henry D. Moorer, Solicitor for Complainant, this 9th day of February, 1933.


Solicitor for Respondent
Albert W. Keller.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

FILED

MOLLY K. FRANK,
COMPLAINANT,

VS

ALBERT W. KELLER AND
THOMAS E. WATTS,
RESPONDENTS.

BRIEF OF RESPONDENT ALBERT
W. KELLER ON DEMURRER

*Filed 9/26/93
OK, Respondent
Regester*

LLOYD A. MAGNEY
ATTORNEY AT LAW
FOLEY, ALABAMA

MOLLIE K. FRANK,
COMPLAINANT,

VS.

ALBERT W. KELLER AND THOMAS
H. WATTS,
RESPONDENTS.

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

BRIEF OF MOLLIE K. FRANK IN ANSWER TO THE BRIEF FILED BY RESPONDENTS A. W.
KELLER ON DEMURRER.

The bill is filed for the purpose of setting a purported mortgage given by Mollie K. Frank and her husband to Albert W. Keller, and also for the purpose of setting aside the purported foreclosure deed from Alabert W. Keller, as mortgagee, to Thomas H. Watts, and also for the purpose of setting aside a mortgage given to the Farmers & Merchants Bank which was transferred to Thomas H. Watts without recourse.

The principle subject matter of the suit is the land in question, and the primarily purpose of the bill is to remove the afore mentioned instruments as a cloud upon the title of the complainant.

The respondent Keller insists that the bill is multifarious and the above statement together with the original bill shows his connection with Thomas H. Watts and his interest therein which clearly shows that the bill is not multifarious.

IN THE CASE OF TRUSS VS. MILLER, 116 ALA. PG. 505, THE SUPREME COURT SAID:

"When, as in the present case, the objection is, that distinct and unconnected matters are joined against several defendants, it is not necessary that all the parties should have an interest in all the matters of controversy; it is sufficient if each defendant has an interest in some of the matters involved and they are connected with the others. Story Eq. Pl., 271a; Kennedy v. Kennedy, 2 Ala. 609; Larkins v. Biddle, 21 Ala. 252; Fleming v. Gilmer, 35 Ala. 62; Randle v. Boyd, 73 Ala. 282; Bolman v. Lohman, 74 Ala. 507.

AGAIN IN THE CASE OF FORCHEIMER VS. FOSTER, BOTTOM OF PAGE, 221,
192 ALABAMA, THE SUPREME COURT SAID:

"When the object of a suit is single, it is no objection that the defendants have separate interest in distinct and independent questions, provided they are 'all connected with and arose out of the single object of the suit.'" Randle v. Boyd, 73 Ala. 282.

"It is not necessary that all the parties should have an interest in all the matters of controversy; it is sufficient if each defendant has an interest in some of the matters involved and they are connected with the others." Truss v. Miller, 116 Ala. 495, 22 South. 863.

"A bill is not multifarious which unites several matters distinct in themselves, but which together make up the complainant's equity and are necessary to complete relief." Stone v. Knickerbocker Ins. Co., 52 Ala. 589.

"The reason of the rule is that courts of equity are averse to a multiplicity of suits, and always strive to prevent unnecessary litigation, as far as possible, without, at the same time vexing parties with the litigation of questions with which they have no concern." Bolman v. Lohman, 74 Ala. 507.

AS TO THE INTEREST OF THE DEFENDANTS, THE SUPREME COURT SAID:
IN THE CASE OF RANDLE VS. BOYD, 73 ALA. PAGE 288.

"The objection of multifariousness does not hold 'where one general right is claimed by the plaintiff, although the defendants may have separate and distinct rights.'" Dimmock v. Bixby, 20 Pick. 377; Larkins v. Biddle, 21 Ala. 252. Where the object of the suit is single, it is no objection that the different defendants have separate interest in distinct and independent questions, provided they are "all connected with and arise out of the single object of the suit." Boyd v. Hoyt, 5 Paige, 65. The reason of the rule is that courts of equity are averse to a multiplicity of suits, and always strive to prevent unnecessary and useless litigation, so far as they can, without, on the other hand, vexing parties with the litigation of questions with which they have no concern. Fellows v. Fellows, 15 Amer. Dec. pp. 428-29, note.

The one general right claimed by plaintiff is to remove the instruments described in the bill as a cloud upon her title and this certainly and clearly comes within the citation just referred to in the 73 Ala. and the 116 Ala., above mentioned, stating that it is not necessary that all the parties should

even have an interest in all the matters of controversy.

Re-stating the case; Mrs. Mollie K. Frank and husband gave to Albert W. Keller a mortgage in the sum of \$6600.00, and later executed a mortgage to the Farmers & Merchants Bank in the sum of \$3500.00, which mortgage was transferred to Thomas H. Watts, Albert W. Keller foreclosed his first mortgage and the property was bought in by Thomas H. Watts, holder of the second mortgage, Watts paying a portion of the purchase price and gave a mortgage back to Albert W. Keller for the balance.

The last mortgage from Thomas H. Watts to Albert W. Keller was given at or about the time of foreclosure sale which was subsequent to giving of the first mortgage which was foreclosed and is also subsequent to the second mortgage, and the deed from Keller to Watts is subsequent to the second mortgage.


The bill does not show a mortgage from Thomas H. Watts to Keller, due to the fact that this mortgage was not discovered until after the demurrer filed, but explanation was made to Mr. Magney that the bill would be amended to show the third mortgage being the one from Watts to Keller, and with the courts permission will gladly amend the bill so as to show the mortgage before passing on same, and this is mentioned here only for the purpose of showing the entire transaction.

The respondent Keller cites, 200 Ala. page 70, insisting that the bill is multifarious and I wish to call the courts attention to the fact that this case will not be tried in piece meal as Mr. Keller will be only required to defend that portion in which he is interested and any portion relative to the second mortgage will not effect him whatever as he and Thomas H. Watts both being all the respondents interested in the first mortgage, foreclosure deed and the third mortgage.

Respectfully submitted,


Attorney for Mollie K. Frank.

I hereby certify that a copy of the above brief was served upon Hon. Lloyd A. Magney, Attorney for Complainant, this 11th. day of February, 1933.


Attorney for Mollie K. Frank.

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

RECORDED
as is

MOLLIE K. FRANK,
COMPLAINANT,

VS.

ALBERT W. KELLER AND
THOMAS H. WATTS,
RESPONDENTS.

BRIEF OF COMPLAINANT MOLLIE K. FRANK.
ON DEMURDER.

HENRY D. MOORER,
Attorney for Complainant,
Mollie K. Frank.

HENRY D. MOORER
ATTORNEY AT LAW
BAY MINETTE, ALA.

MOLLIE K. FRANK,
COMPLAINANT,

VS

ALBERT W. KELLER & THOMAS
H. WATTS,

RESPONDENTS.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

DEMURRERS OF ALBERT W.
KELLER

Comes now the Respondent Albert W. Keller and demurs to the Bill of Complaint in the above entitled cause and as grounds for such demurrer says:-

One. There is no equity in the Bill.

Two. The Bill is multifarious in that it seeks to combine in one suit an attack upon a mortgage executed by the Complainant to this Respondent, with an attack upon an entirely separate and distinct mortgage executed at a later time by the Complainant to the other Respondent Thomas H. Watts, which said mortgage to said Watts is a matter with which this Respondent has no concern and in which he has no interest.


Solicitor for Respondent Albert
W. Keller.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

RECORDED

MOLLIE K. FRANK,

COMPLAINANT,

VS

ALBERT W. KELLER & THOMAS
H. WATTS,

RESPONDENTS.

*Filed Jan 13 1933
J. M. Williams
Clerk*

DEMURRERS OF ALBERT W. KELLER

LLOYD A. MAGNEY,
Attorney for Respondent
Albert W. Keller.

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 ALBERT E. KELLER (POLLY, ALA)
THOMAS H. WATTS (Magnolia Springs)

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

MR. HOLLIS E. FRANK

against said ALBERT E. KELLER & THOMAS H. WATTS

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

DECEMBER 1932

T. W. Richerson Register.

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

COPY

1020
29

Serve on THOMAS H. WATTS

Circuit Court of Baldwin County
In Equity.

No. _____

SUMMONS

MRS. MOLLIE K. FRANK

vs.

THOMAS H. WATTS, ET AL
(MAGNOLIA SPRINGS)

HENRY D. MOORE.
Solicitor for Complainant.

Recorded in Vol. _____ Page _____

The State of Alabama,
BALDWIN COUNTY.

Received in office this _____

day of _____ 193_____

Sheriff.

Executed this _____ day of _____
193_____

by leaving a copy of the within Summons with

Defendant.

Sheriff.

By _____
Deputy Sheriff.

CIRCUIT COURT, BALDWIN COUNTY, ALA., IN EQUITY.

No.

VS.

PLAINTIFF

DEFENDANT

BILL OF COSTS

Fees of Register

Dollars Cts.

Brought Forward - - - -

Filing each bill and other papers \$ 10
 Issuing each Subpoena 50
 Issuing each copy thereof 40
 Entering each return thereof 15
 For each Order of Publication 1 00
 Issuing Writ of Injunction 1 50
 For each copy thereof 50
 Entering each return thereof 15
 Issuing Writ of Attachment 1 00
 Entering each return thereof 15
 Docketing each case 1 00
 Entering each Appearance 25
 Issuing each Decree Pro Confesso on personal service.. 1 00
 Issuing each Decree Pro Confesso on publication 1 00
 Each order Appointing Guardian 1 00
 Any other order by Register 50
 Issuing Commission to Take Testimony 50
 Receiving and Filing 10
 Endorsing each package 10
 Entering order Submitting Cause 50
 Entering any other Order of Court 25
 Noting all Testimony 50
 Abstract of Cause, etc. 1 00
 Entering each Decree 75
 For every 100 words over 500 15
 Taking account, etc 3 00
 Taking Testimony, etc 15
 Each Report, 500 words or less 2 50
 For every 100 words over 500 15
 Amount claimed less than \$500, etc 2 00
 Issuing each Subpoena 25
 Witness Certificate, each 25
 Issuing Execution, each 25
 Entering each return 25
 Taking and Approving Bond, each 1 00
 Making copy of bill, etc. mag. 15
 Each notice not otherwise provided for 50
 Each certificate of affidavit, with seal 50
 Each certificate or affidavit, no seal 50
 Hearing and passing on application, etc 50
 Each settlement with receiver, etc 25
 Examining each voucher of receiver, etc 10
 Examining each answer, etc 3 00
 Recording resignation, etc 75
 Entering each certificate to Supreme Court 50
 Taking questions and answers, etc 25
 For all other service relating to each proceedings. 1 00
 For service in proceeding to relieve minors, etc.
 same fee as in similar cases.
 Commission on sales, etc.: 1st \$100 2 per cent, all over
 \$100, and not exceeding \$1,000, 1 1-2 per ct.; all
 over \$1,000 and not exceeding \$20,000, 1 per ct;
 all over \$20,000, 1-4 of 1 per ct.

For receiving, keeping and paying out or distributing
 money, etc.; 1st \$1,000 1 per ct.; all over \$1,000
 and not over \$5,000, 3-4 of 1 per ct.; all over \$5,
 000 and not exceeding \$10,000, 1-2 of 1 per ct.;
 all over \$10,000, 1-4 of 1 per ct.

Receiving, keeping and paying out money paid into
 court, etc., 1-2 of 1 per cent of amount received.

Each Notice Sent by Mail to creditors 15
 Filing, Receipting for and Docketing each Claim, etc... 25
 For all entries on Subpoena Docket, etc 50
 For all entries on Commission Docket, etc. 50
 Making Final Record, per hundred words 15
 Certified Copy of Decree 1 00
 Report of Divorce to State Health Office 50

Acts 1915

Total Fees of Register

Fees of Sheriff

Serving and Returning Subpoena on Deft. \$1 50
 Serving and Returning Subpoena for Witness 65
 Levying Attachment 1 50
 Entering and Returning same 25
 Selling Property Attached 75
 Impaneling Jury 75
 Executing Writ of Possession 2 50
 Collecting Execution for Costs 1 50
 Serving and Returning Sci. fa., each 65
 Serving and Returning Notice 65
 Serving and Returning Writ of Injunction 1 50
 Serving and Returning Writ of Exeat 1 50
 Taking and Approving Bonds, Each 75
 Collecting Money on Execution 2 50
 Making Deed 1 00
 Serving and Returning Application, 1 50
 Serving Attachment, Contempt of Court 1 50

Total Fees of Sheriff

Recapitulation

Register's Fees
 Sheriff's Fees
 Commissioner's Fees
 Solicitor's Fees
 Witness Fees
 Guardian Ad Litem
 Printer's Fees
 Trial Tax 3 00
 Recording Decree in Probate Court

Total - - - -

Sub Total Carried Forward - - -

Received payment this _____ day of _____ 193_____

Register.

Circuit Court, Baldwin County, Ala.
In Equity.

No. _____

Charles Melbie D'Amico

vs.

Albion M. Hall
for estate of

Cost Bill

Paid _____, 193

Register

Moore Ptg. Co.

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 ALBERT W. KELLER (FOLEY, ALA)
THOMAS H. WATTS (Magnolia Springs)

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

MRS. MOLLIE K. FRANK

against said ALBERT W. KELLER & THOMAS H. WATTS

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

DECEMBER 193 2

T. W. Richerson Register.

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

ORIGINAL

RECORDED
227

Serve on

Circuit Court of Baldwin County
In Equity.

No. _____

SUMMONS

MRS. MOLLIE K. FRANK

VS.

ALBERT W. KELLER,
(FOLEY)

THOMAS H. WATTS
(MAGNOLIA SPRINGS)

HENRY D. MOORE
Solicitor for Complainant.

Recorded in Vol. _____ Page _____

The State of Alabama,
BALDWIN COUNTY.

Received in office this _____

day of _____ 193 _____

Sheriff.

Executed this 12/16/32 day of _____

by Levin's copy of
Waltham's
by leaving a copy of the within summons with
one Albert W. Keller

W. R. Smith

Defendant.

By John C. Davis
Deputy Sheriff.

By _____
Deputy Sheriff.

*These summons not
served in Baldwin
Co. MR Smith
12/14/32
32 B John C. Davis*

MRS. MOLLIE K. FRANK

VS.

ALBERT W. KELLER AND
THOMAS H. WATTS.

)
) IN THE CIRCUIT COURT OF BALDWIN COUNTY,
)
)

ALABAMA. IN EQUITY.
)
)
)

This cause coming on to be heard is submitted on demurrer of the respondent, Albert W. Keller, to the original bill of complaint, and upon a consideration thereof the Court is of the opinion that said demurrer is not well taken.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that said demurrer be, and the same hereby is, overruled.

This the 27th., day of April, 1933.



Judge.

RECEIVED

Recd and
referred to
Jill

Recd April 29th 1933

J. M. Reimer
Detroit

Copy made. No money
in copy. No money
in copy.