

The State of Alabama, {
Baldwin County

CIRCUIT COURT

To Hon. L. F. Farrell

Foley, Alabama

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 Karl Hanselman, Mrs. Karl Hanselman, Carl Hanselman,
Robert Bruhn, Frank W. Walker, E. S. Hugger, August Noltensmier,
Max Neumann and John Werner

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

Karl Hanselman

Complainant

and

Anna H. Nagele, et al.

Defendant, s

on oath to be by you administered, upon them
to take and certify the deposition s of the witness es and return the same to our Court, with all convenient speed, under your hand.

Witness 8th day of December, 19 32

T. W. Richardson

REGISTER

COMMISSIONER'S FEE, \$ 15.00

WITNESS' FEES, \$ 12.00

KARL HANSELMAN,

COMPLAINANT,

vs

ANNA H. NAGELE AND AUGUST
NAGELE,

RESPONDENTS.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

DEPOSITION

I, L. F. Farrell do hereby certify that under the authority upon me conferred by the attached commission issued out of the Circuit Court of Baldwin County, Alabama, I did on the 28th day of December, 1932 cause the witnesses named in said commission to come before me in Foley, Alabama at which time and place the following proceedings were had and done:

Mr. Lloyd A. Magney appeared for the Complainant and Mr. E. G. Rickarby appeared for the Respondents.

The following stipulation was made and entered into between the Solicitors for the parties:

STIPULATION

It is hereby stipulated by and between the parties to this cause, by their respective Solicitors, that the testimony of the witnesses may be taken in short hand by the Commissioner and transcribed at a later date and that the signature of each witness to his testimony is hereby waived.

Solicitor for Complainant.

Solicitor for Respondents.

August Noltensmier, being by me first duly solemnly sworn, did depose and testify as follows:-

TESTIMONY OF AUGUST NOLTENSMIER

My name is August Noltensmier. I live in Elberta, Baldwin County, Alabama and have resided there constantly since 1916. I am 64 years old and at the present time am engaged in farming but I have had experience in the building and construction of houses and am familiar with real estate and real estate values in and around Elberta, Alabama.

I am familiar with the property located just south of Mr. Hanselman's store in Elberta and described as Lot 4 in Block 10 in the Town of Elberta. I have known this property ever since the building was

erected which, I believe, was in the year 1918, in any event, just after the war and have seen the property every week or two since it was erected. Within the past two weeks I have had occasion to make an examination of this property, particularly the building property, as I was asked by Mr. Hanselman to do so and at his request, I did make such an examination. It was my purpose in making this examination to familiarize myself with the details of the building, the dimensions, the amount of lumber in it and its present condition. At the time of this examination I made a sketch of the building and wrote down the lumber which it contains and which would be necessary to re-place it and itemized the various amounts. According to my estimate it would require 9,309 feet of lumber to duplicate this building. At the present time I believe such lumber to be worth about \$12.00 per thousand feet and on this basis the cost of the lumber necessary to duplicate this building would be \$111.70. I am not positive, but think that on April 29, 1930 this lumber would have been worth one to two dollars per thousand more than the price of \$12.00 which I have given as today's price. I also made an estimate of the amount of labor necessary to building a duplicate of this building at this time, and in my judgment \$75.00 would be ample for that purpose. I have had more or less experience with real estate in and around Elberta for the past sixteen years and know the value of town lots in Elberta. I know the value of this lot 4 in Block 10 and, in my opinion, the lot, exclusive of any building upon it, is worth \$300.00. So far as I am able to judge, there is no difference in the value of town lots in Elberta today than on April 29, 1930 and I think this lot was worth the same in April, 1930 as it is today, that is the sum of \$300.00. I give it as my opinion, therefore, that this building could be duplicated of new material on this same lot for the sum of \$525.70 which I arrive at as follows: \$117.70 for lumber, \$75.00 for labor, \$18.00 for concrete blocks, hardware, etc., \$21.00 for roofing and \$300.00 for the lot.

I know that the building has depreciated somewhat from age; that the porch on the front has rotted somewhat and that some of the siding on the rear is also rotten but I did not go under the building to see what shape the joists and sills were in and so I am not prepared to say in dollars and cents just how much less the building in its present

condition is worth than a new building would be but, of course, it is worth less than a new building.

With reference to Complainant's Exhibit "A" now handed to me, I state that it is a photograph of the rear of the building about which I have been talking and is a fair representation of the present condition and that it discloses rotting and breakage of the siding on the rear of the building.

With reference to the photograph of Complainant's Exhibit "B" now handed to me which shows the rear and north side of the building and is a fair representation of the building and its condition.

With reference to Complainant's Exhibit "C" now handed to me, I state that it is a photograph showing the front of the building and I consider it a fair representation except that because of the heavy shadows it does not disclose the broken and rotted condition of the porch.

CROSS-EXAMINATION BY MR. RICKARBY

I cannot tell how much of the decay and depreciation of the building took place in the last two and one half years.

Max Neumann, being by me first duly solemnly sworn, did depose and testify as follows:-

TESTIMONY OF MAX NEUMANN

My name is Max Neumann. I live in Elberta, Alabama and have lived there for the past twelve years since 1920. My occupation is that of a farmer but I have dealt somewhat in real estate and have observed real estate transactions in and around Elberta and know property values there.

I am familiar with Mrs. Nagele's property next to Mr. Hanselman's store described as Lot 4 in Block 10 in the Town of Elberta and have known this property ever since I came to Elberta twelve years ago. The building was erected at that time and I do not know just when it was built. I have been familiar with this property in a general way ever since I came to Elberta but on December 9, 1932 I made an examination of it at the request of Mr. Hanselman. On this date I went over the building and made an examination of it both inside and out, for the purpose of arriving at the present value of it. In arriving at such valuation I took into consideration the size of the building, its condition and the size and location of the lot on

which it stands and formed a conclusion as to the value of the building worth what it would cost to re-place it which I estimate at \$275. and I consider the lot worth \$250.00, basing this opinion upon the sale of lots in the same block about two and one half or three years ago. In my opinion, the fair market valuation of this property, including both building and lot, is \$525.00 at this time. I do not think that there is any substantial difference in market values of real estate in the Town of Elberta between this date and April 29, 1930. There has been very little movement of real estate in Elberta for several years and I consider this value of \$525.00 a fair and reasonable market value of this property on April 29, 1930.

With refernece to Complaint's Exhibits "A", "B", and "C" now handed to me, Exhibit "A" is a photograph of the rear or west end of this building; Exhibit "B" is a photograph of the west and north sides of the building and Exhibit "C" is a photograph of the front or east end of the building. These photographs truly show the condition of the building except that Exhibit "C" does not show the condition of the porch properly as the front porch is considerably rotten and broken and this, by reason of the shadows of the picture, is not disclosed on the photograph.

CROSS EXAMINATION BY MR. RICKARBY

I make my estimate of the value of this lot from sales of other lots in Elberta. One lot a block away was sold for \$200.00. Some other lots on the next block south sold at auction for \$75.00 and some cheaper than that.

Q. Would not what someone was willing to pay for this lot about the time the contract was made between Mr. Hanselman and Mrs. Nagele have, in your opinion, any effect upon the value of the lot?

OBJECTION BY MR. MAGNEY.

Complainant objects to the question for the reason that it is improper cross examination, assumes facts not in evidence, calls for the conclusion of the witness based upon facts not in evidence and does not call for the statement of any fact.

A. If some one was willing to pay Mrs. Nagele much more than \$500.00 for the lot at that time this would still not affect my idea of its value because I would think they were paying too much for it.

John Werner, being by me first duly solemnly sworn, did depose and testify as follows:-

TESTIMONY OF JOHN WERNER.

My name is John Werner. I live in Elberta, Alabama and have lived there since last April but I have lived in south Baldwin County within a few miles of Elberta, since 1911. My business is that of a contractor, carpenter and building and I have been engaged in this line of work nearly all my life. I am 48 years old. I have known Mrs. Nagele's property described as Lot 4 in Block 10 in the Town of Elberta for a good many years. I do not know just when it was built but it was a long time ago. However, I have never paid any particular attention to the property until just about a month ago when Mr. Hanselman asked me to go down and make an examination of the building and I did so. I make a careful examination of this building and tested the joists and sills and find that it has deteriorated badly and much of the timber is rotten. I would not consider the building of any value at all to move, although it might be worth \$75.00 or \$100.00 to anyone who owned it and had use for it. The roof has leaked badly and the siding and sheeting on the outside is badly rotted and I do not consider the building much. I say that the building could not be moved, but that is not exact. It could be moved but it would be necessary to spend so much to put in condition to stand moving that it would not pay as you could build the building new for very little more than it would cost to fix it up to move. In my opinion, this building could be constructed new of all new material for between \$250.00 and \$300.00 and I would be willing to take a contract to furnish all labor and material and build it for such a price. Of course, this building in its present condition is not worth as much as the new building would be and in my judgment three quarters of its value at least, has been destroyed by the deterioration, this, on the basis of leaving the building where it is. To fix a value on it for the purpose of moving it off, I do not consider that it has any value for that purpose and if I owned it and had to move it I would be glad to give it to anyone who would take it down without expense to me.

I did not make any examination of this building in 1930 but I do not think that its condition can be very much different now than it was then. It was a very cheaply constructed building in the first

place with the cheapest kind of a roof and, in my opinion, the decay and deterioration has been going on gradually ever since the building was constructed. Certainly, the condition I find there is not the result of anything recent and for these reasons I do not think that the value of the building could have been much different on April 29, 1930 than it is today.

There is no substantial difference between the cost of duplicating the building today than on April 29, 1930. Possibly it would have cost 5% more on April 29, 1930 than today, but I do not think there is any greater difference than that and so I think and give it as my best judgment, that the building was worth practically the same then as it is today.

I am not so familiar with real estate and land values and would not care to express an opinion as to the value of this lot.

With reference to Complainant's Exhibit "A" now handed to me, this is a photograph of the rear end of the building and shows plainly the rotted condition of the siding at the ground.

With reference to Complainant's Exhibit "B", this is a photograph showing the north side of the building, as well as the rear, but it really shows the building better than it is. When I examined it I noticed that all along the north side where the building comes down to the ground it is all rotted away there but the photograph does not make this appear clearly.

With reference to Complainant's Exhibit "C" which is a photograph showing the front or east end of the building, I think the picture makes the building look much better than it is. The porch roof and floor are both badly rotted, practically gone, but to look at this picture one would think it was almost a new building and so I say I think the picture makes the building look much better than it is on Exhibit "C".

CROSS EXAMINATION BY MR. RICKARBY

This was a pretty punk building.

E. S. Hugger, being by me first duly solemnly sworn, did depose and testify as follows:-

TESTIMONY OF E. S. HUGGER

My name is E. S. Hugger. I reside now in Mifflin, Alabama where I have lived since last February. Prior to that time I lived in Montgomery, Alabama where I was engaged in the construction business for

forty four years. My business in Montgomery was the contracting of and construction of all kinds of buildings and I am thoroughly familiar with the erection and construction of buildings and houses of all kinds.

I am familiar with the property in Elberta, Alabama described as Lot 4 in Block 10. About three or four weeks ago Mr. Hanselman asked me to come up and inspect the building and make an estimate as to its value and re-placement costs.

I did not make this examination with the express idea of moving the building in mind, but I do know that the sills are rotten and that it would require considerable work on the building to put it in condition to move.

I discovered that the roof on this building is very bad, that the siding or sheeting on the rear is also in very bad shape; that the sills are rotten, that the porch roofing is gone and the sheeting rotted away and that the porch floor is in bad condition.

I figured what it would cost to re-place this building at this time as it was originally viz: all new materials and according to my figures, that cost would be \$239.00 and I would be willing to contract to duplicate the building with all new materials of the same quality for that price.

There would be a difference in my estimate of the cost of replacing this business if that estimate had been made on April 29, 1930 instead of about a month ago. That difference would be from four to six per cent., in other words, the contract would have been that much greater in 1930 than now.

I do not consider that this building in its present condition, has any value at all for removal purposes. In other words, if I owned the property and had to move it I would think that I should be able to break even and get it moved for the value of the building but I would not consider it as of any value to me. Of course, it can be moved if enough money is spent on it to put it in condition to move, but if I owned it I would not spend that money and so give it as my opinion that if the building had to be moved from the lot where it now stands that it would be without any substantial value.

On buildings of this kind I figure the annual depreciation as from two and one-half to three per cent. and, consequently, I do not think

that there is any great difference between the condition of the building now and what it was on April 29, 1930.

With reference to Complainant's Exhibit "A" which is a photograph showing the rear of the building, it shows clearly the rotten condition of the siding. However, this is probably in worse condition than the rest of the building as these are merely up and down boards.

Exhibit "B" shows the north side of the building, shows on the bottom of the house the rotten condition there and while it does not make it clear, it does show the rotten condition of the sills.

Exhibit "C" which is a photograph showing the front of the house, does not show its condition clearly. On account of the shadows from the trees and the angle at which the photograph was taken, the condition of the porch roof is not apparent but the roofing is gone and most of the sheeting is rotted away also. Neither does the photograph show the condition of the porch floor which is badly rotted, and so I would say that the photograph makes the front of the building appear to be much better than it really is.

This building was constructed a good many years ago, I do not know just how long, but it was very cheaply constructed and of very cheap material when it was built and I think that the building has depreciated at least 50% from its original value.

CROSS EXAMINATION BY MR. RICKARBY

In estimating a depreciation of two and one half to three per cent. per annum, I am taking the scale of depreciation that is generally recognized by builders. A building built eleven years ago would depreciate much faster in the last three years than in the first three. I estimate that this building has depreciated 50% and also it has depreciated only about an average of $2\frac{1}{2}\%$ or 3% a year.

I repeat that there is not more than four to six per cent. difference in the cost of building of the class of which this house was constructed in the spring of 1930 as against the end of 1932.

There are more people out of work now but they worked at the lowest scale in 1930.

This building is about seventy-five feet from the Post Office.

Mr. Hanselman has a very nice store; one of the best in Elberta. It is only on the other side of the alley way from this building. This

building is but a short city block from the highway from Foley to Pensacola and about the same distance from the bank. I would say that the/^{bank}building is the center of the business district.

Robert Bruhn, being by me first duly solemnly sworn, did depose and testify as follows:-

TESTIMONY OF ROBERT BRUHN

My name is Robert Bruhn and I live in Elberta, Alabama and have lived there since 1920. My business is that of a farmer and mill operator and I have done considerable building and construction work.

I know the property of Mrs. Nagele in Elberta described as Lot 4 in Block 10 and have known it in a general way for a number of years but about three weeks ago I was asked by Mr. Hanselman to make an examination of the building with the idea of placing a value upon it in its present condition and also to place a value upon it for the purpose of removing it from the lot.

I know the cost of lumber and building materials and the cost and amount of labor which it would take to re-place this building with new material and it is my opinion that the building can be replaced of all new material for about \$285.00. There is a little difference in construction costs between now and April 29, 1932 and I expect that costs were approximately 6% higher in 1930 than they are now.

This building is not in good condition. It has leaked and this has brought on decay but the rate of decay depends on the weather and the amount of rainfall and it is difficult to fix any per cent. for each year as it may be more one year than another. However, this building has rotted and decayed and is in poor condition now. The older a building gets the more rapidly it decays. This building is, undoubtedly in worse condition today than it was two and one half years ago but I am unable to state exactly how much because, as I said, the rate at which a building deteriorates depends so much upon the weather. In a dry year it might not rot at all but a wet year would cause it to decay considerably. While it is hard to state exactly, I do not think there is much difference in the condition of this building now than in April 29, 1930 although there undoubtedly is some difference.

It would be possible, of course, to move this building but there would have to be considerable work done to it and if I owned it I would rather tear it down than to attempt to move it but I do say that the building has a value of \$75.00 on the basis of not moving it off.

I do not consider myself competent to place a value on Elberta real estate, viz: land values, but, as I have stated, I do say that if this building had to be moved off it has no value but it can be re-placed of all new material for \$285.00 and I would consider it worth \$75.00 in its present condition.

CROSS EXAMINATION BY MR. RICKARBY

It is worth \$75.00 now. In April, 1930 it was worth about this much plus 5% on April, 1930.

I looked carefully on the outside of the building but paid no attention to whether or not there had been any new work done on it.

Frank W. Walker, being by me first duly solemnly sworn did depose and testify as follows:-

TESTIMONY OF FRANK W. WALKER

My name is Frank W. Walker. I live in Foley, Alabama and have lived here for about 17 years. My business since coming to Alabama and before that time has had largely to do with real estate and the construction of houses and buildings. I have also had considerable experience in the moving of buildings, having moved three here in Foley and two in the country since coming to Alabama and having done considerable of this work in the north before I came to Alabama.

I know the property of Mrs. Nagele between the Post Office and Mr. Hanselman's store in the Town of Elberta, although I do not know it by the legal description.

I have known the property in a general way for a number of years. I cannot tell exactly when it was built but I think that I have known it for some thirteen or fourteen years.

I am also a general agent for the Baldwin Mutual Insurance Company and my duties require me to inspect and appraise and value buildings of all kinds. I have made two examinations of this particular building. About eight years ago I inspected it for insurance purposes and about a month ago I made a careful examination of it at the request of Mr. Hanselman.

This building was constructed for a store building, is an oblong building with a lean-to shed on the rear or west end of it, has a flat roof and was constructed with just the ordinary run of building material.

As I recall the condition of the building at the time I examined it eight years ago for insurance purposes, it was then in good condition but when I examined it about a month ago I found it in very bad condition. The building had leaked and the siding and sills were rotting and inside where an ice box or something of the sort had stood, the floor was rotting and the building has deteriorated considerably from neglect.

In my opinion, this building on April 29, 1930 would have had a value, to leave the building where it is, of approximately \$250.00 but to sell the building for the purpose of moving it off, I do not think that it would have had a value of more than \$50.00. The building could not have been moved without cross loading and bracing so as to carry itself up. the shed on the west end would have been of more expense to move than it is worth to the building. I would consider the cost to put the building in shape to stand moving of about \$40.00. If I had been figuring to take the contract to move the building this would have been based necessarily upon the distance to be moved but a minimum figure in addition to getting the building ready to move, would have been \$100.00. It would have been necessary to put a new foundation under it wherever it was moved and then the building would only have been worth somewhere between two hundred and two hundred fifty dollars.

NO CROSS EXAMINATION

Karl Hanselman, being by me first duly solemnly sworn, did depose and testify as follows:-

TESTIMONY OF KARL HANSELMAN

My name is Karl Hanselman. I live in Elberta, Alabama where I moved from Pittsburgh, Pennsylvania in September, 1923. I conduct a general merchandise store in the Town of Elberta.

My store is located on Lot 3 in Block 10 in the Town of Elberta and this is immediately north of Lot 4 in Block 10, the property in controversy in this case, there being a ten foot alley running east and west between these two lots.

Lot 4 was owned by Mrs. Anna Nagele, the Respondent in this case, and there is a small one-story building on the lot.

This store building had been standing vacant for some time prior to April 29, 1930.

As I have stated, there is just a ten foot alley between Lot 3

and 4. I had built a garage on the back of Lot 2 for my truck and one morning in April 1930 my boy, in backing the truck out of the garage, backed it into Mrs. Nagele's fence on the south side of the alley. Mrs. Nagele was in the yard and saw this and came over to the fence and I apologized for the truck backing into her fence stating that there was not as much room in the alley as I had thought when I built the garage. Mrs. Nagele then said to me, "Well, Mr. Hanselman, this property is for sale, why don't you buy it?"

Mrs. Nagele also stated to me that she wanted to go to California with her mother and wanted to sell the property. I asked her what the price was. She stated that she wanted for the property \$500.00. Then I said to her, "Would you rent the property to me, and how much rent would you want?" Mrs. Nagele said, "I want \$5.00 a month for the property." I told her that I would think it over and I went home and talked it over with my wife and boys. Three or four days later I walked to my farm and when I came back I passed the Post Office and Mrs. Nagele was standing outside on the front porch on this side between per property and the store. I saw Mrs. Nagele there and I asked Mrs. Nagele, "How wide and how deep is this property you want to sell me?" Mrs. Nagele said, "I don't know exactly, Mr. Hanselman, on account of this alley." She said, "It is, I think, between forty and forty-two feet wide and one hundred eighty feet deep." There is a tree growing there and she walked there and said, "This is the line."

Then my son was sweeping the sidewalk in front and I said, "Carl, look there, this is the line." We were standing there. Carl said, "I see."

That evening we talked the matter over at home and my son Walter was against buying the property but I explained to him that on account of the alley and there not being room to get in and out of the garage without interfering with the fence that I thought we should buy the property.

Within the next day or so my wife went to Mrs. Nagele and paid her \$20.00 to bind the bargain.

All of this, of course, within a few days before April 29, 1930. On the morning of April 29, 1930 immediately after breakfast, around eight o'clock in the morning, my wife, my son Carl and I went

over to Mrs. Nagele's house. In this house Mrs. Nagele, in the front room, operates the Elberta Post Office and we went to the back part of the house in the living quarters. Mrs. and Mrs. Nagele were there and we met as friends and neighbors to discuss the sale.

Then I asked Mrs. Nagele to give me a contract for this property so I can show that I got this property from you, as I am a sickly man and I was sick for five years and I am sick today and I don't know what is going to happen. I might die so my people would have no trouble if I have this contract to show that I bought this property from you. Mrs. Nagele said, "Mr. Hanselman, that is not necessary", and then she offered me the rest of her property where the Post Office is located. She says, "Mr. Hanselman, I want that you buy this property then we can put all in one." I said: "I cannot figure on that." All I want is a contract for this property which I have bought from you."

I asked Mrs. Nagele to write a contract. She said, "Carl, will you write this contract? You are a better writer than I am."

Q. Did you carry any paper or writing materials over there with you?

A. No sir.

Mrs. Nagele said, "Here is a tablet, will that do?"

She handed Carl a tablet and Carl sat down and wrote with his pencil. Mrs. Nagele said, "Will that do? I said, I think that is alright."

Q. Did Carl write the contract?

A. Carl wrote the contract.

This paper marked Complainant's Exhibit "D", that is the contract we wrote. I said to my son, "Read that contract aloud", and I called Mrs. Nagele to the table. I said, "Read it aloud so everyone can understand it."

Carl was sitting at the table, the contract was lying on the table and Mrs. Nagle was standing by Carl looking at the contract. I was standing next to Carl on the other side. Carl read the contract aloud and Mrs. Nagele stood over him reading the contract as it lay on the table.

Then I said, "Is this perfectly satisfactory?" and Mrs. Nagele picked the contract up off the table and carried it across the room to where her husband was sitting beside my wife and said to him,

"Gus, what have you got to say about this?" Mr. Nagele said, "It is alright, with me if it is alright with you." I do not know whether Mr. Nagele took the contract and read it or not.

Mrs. Nagele said, "Yes, it is alright."

She took the pencil and signed as first party. She called her husband and I said, "How about Mr. Nagele?" and she said, "This is my property and Mr. Nagele has nothing to do with it. He cannot sign as owner, only as a witness." She made him sign on the other side as witness. They signed first and I signed after and then Carl signed as my witness.

Q. Did any money change hands when the contract was signed?

A. We were through then and I said to Mrs. Nagele, "Mrs. Nagele, I want to make it \$100.00 full. I paid \$20.00 before and I had \$80.00 in my pocket and I gave her the \$80.00 and she gave me a receipt for \$100.00.

The paper marked Exhibit "E" is the receipt for \$100.00 which Mrs. Nagele gave me.

Mrs. Nagele and I were looking out of her back window at this property and I asked her, "Mrs. Nagele, is your garage on this lot?" She said, "I dont know exactly, but guess yes." She said, "He has his chickens in this yard." I said, "I will allow you to keep your chickens in this yard until you move in the spring."

Mrs. Nagele said, "It's alright."

I told Mrs. Nagele she could use the garage as I had no use for it and had one of my own.

We took possession the day after the contract was signed and Mrs. Nagele told me that she expected to move in the spring and I told her that it was alright to use the garage and keep her chickens on the back part of the lot until that time. The same morning that we took possession of the property we had my boys move the fence in front of my garage further south on to this lot so as to give me room to get out of the garage, and the fence is there today.

Since April, 1930 I have made three more payments on this property of \$100.00 each and paid interest on the balance each time so that I have paid all told \$400.00 and interest on the purchase price of \$500.00.

From April, 1930 the matter went along without argument. There were no terms set in the contract as to when I was to pay and so whenever I got \$100.00 I gave it to Mrs. Nagele. I do not remember the exact date, but after I had paid her \$400.00 the first trouble about the deal came up. I was lying down and one of my boys brought a load of fire wood and was unloading it in this lot. We had always used the lot and stored fire wood, etc. on it but this morning Mr. Nagele came out and ordered my boy not to put wood on this lot. He said he wanted to clean it up. They got to arguing pretty loud so I went down and talked to Mr. Nagele. I asked him what the argument was about and he said that we had no right to put on the load and he would not allow it as we had bought nothing but the store. Then Mrs. Nagele came out and she said the same thing. This was the first time that any question was ever raised about our having bought all of the property. I said, "Mrs. Nagele, what is the use of arguing? There was a contract made and I wonder if I still have that contract, but it will explain everything." Then Mrs. Nagele laughed in my face and said that there was no contract; that she did not really sign anything. Then I said, "Do you remember us all sitting together in your kitchen and writing out this contract?" And she was so excited she said, "No, if there is a contract show it to me." Then I said to my son, "Carl, open up that safe and bring me the contract", and he did.

Then I held it up and showed it to Mrs. Nagele; she was on one side of the fence and I was on the other and she wanted me to hand it to her but I would not but I held it up so she could see it and said, "Mrs. Nagele, do you know your own signature?" And when she saw it she was quiet and said no more.

After this conversation I had no direct talk with Mrs. Nagele although both she and Mr. Nagele several times became abusive and attempted to start arguments, but I went instead, to my attorney and asked him what to do. Acting upon his advice, I went one morning and Mr. Nagele was in the yard and Mrs. Nagele on her back porch. I said to them, "I am willing to pay you the other \$100.00 for the property if you will give me a deed." I do not remember that Mrs. Nagele said anything but her husband became very loud and abusive and talked so loud and so fast that I cannot recall all that he said but the substance of it was that they would not give me a deed to the property but that the matter

would have to be settled in court.

After that I arranged with my attorney to file this suit.

There is one thing which I think should be added to my testimony. At the time Mrs. Nagele showed me the lines of the property, as I have testified to, she stated that she thought the property was forty-two or forty-five feet wide by one hundred eighty-five feet deep but that she was not sure and that whatever her deed called for that was what she was selling to me and I said "Alright, I don't want any more than just what your deed calls for."

CROSS EXAMINATION BY MR. RICKARBY

The original trade did not start between Mrs. Hanselman and Mrs. Nagele. Mrs. Nagele offered me the property first.

The conversation took place in the back of the lot across from my garage.

Mrs. Nagele then offered the property to me. There was no one else present.

The next thing that was done was when I sent \$20.00 to Mrs. Nagele by Mrs. Hanselman. No papers passed at that time.

The next thing that happened was when Mrs. Hanselman, my son Carl and I went over to the Nagele's house, going in the back way.

This was after breakfast and was not just as the morning mail came in. When we were over there at that time there was nothing else to do and Mr. and Mrs. Nagele were present the whole time.

As I said, before, at the time we closed the trade, I told Mrs. Nagele she could continue to use the back lot for her chickens until she moved in the spring and I did not ask her two days later for permission to use a part of the back lot to cut up wood.

Q. Did you or not ask Mrs. Nagele about two days after April 29th for permission to use the back lot in which to cut up wood?

A. I did not.

Q. Did you cut up wood in the back yard?

A. We cut up wood in the back yard.

Mrs. Nagele never, at any time made any complaint about the wood we had cut up being scattered about in the lot and did not tell us that she did not object to our cutting the wood but did object to

leaving it around so as to be a danger to fire.

Q. Did not your wife, in your presence, say to Mr. Nagele, "Mr. Nagele, have a heart and give us a chance." "We have no other place to cut our fire wood. " Was any expression like this used?

A. Not that I know.

Q. Did not Mr. Nagele also say, "We would not care about your cutting the wood but you should pile it up."

A. He did not say that.

Q. About a month after April 29th when you spoke to Mrs. Nagele about using the back lot for a garden and either he or she told you you could not do so as it would make trouble from Mrs. Nagele's chickens.

A. Nothing was said.

Q. Mr. Nagele put up a fence across the lot, Did you ask him if that was for your garden and he said no?

A. No sir.

Q. Did you not ask Mrs. Nagele about two days after April 29th, 1930 for permission to move that fence off the northwest corner of the lot so you could back your truck properly out of the garage?

A. I cannot remember that.

Q. You do not remember then whether or not you asked that question?

A. I do not.

Q. Do you remember the afternoon of Wednes, July 20th when Mr. Magney and I and you went out and looked at that fence at the time when we were discussing the question of having it re-placed.

A. Yes sir.

Q. Did you come out and join Mr. Magney and I as we walked from the back of the lot to the front?

A. Yes sir.

Q. Did you not, at the time state that the fence had been there ever since two days after you had traded for the place?

(At this point in the testimony of this witness, it being 6:15 P. M. of December 28, 1932, the witness suffered a fainting spell and became so ill as to be unable to proceed with his testimony. It was thereupon agreed between the Solicitors for the parties to continue the taking of testimony in this case to a future date to be agreed upon at which time the balance of the testimony of the witness Karl

Hanselman will be taken and all of the testimony of the witnesses Carl Hanselman and Mrs. Karl Hanselman will also be taken.)

On this the 17th day of April, 1933 by agreement between the parties hereto and their respective solicitors the taking of the testimony begun on December 28, 1932 was continued.

Appearances: Mr. E. G. Rickarby for the Respondent and Mr. Lloyd A. Magney for Complainant.

Cross-examination by Mr. Rickarby
continued

Did you not say that that fence had been there since two days after you had traded for the place?

Which fence do you mean?

The fence in the back that was moved and put diagonally.

The fence was moved several times.

The fence in the back of the lot where your garage is?

I told you it was two days after Mrs. Nagele offered me her property. I asked her if she would allow me to move the fence so I could go in and out and she said I should buy the property and in the meantime I bought this property and when I had purchased this property, the same day I set the fence back.

How long ago?

I do not remember how long it was. Maybe a year or so. Mr. Nagele moved the fence out again and then the third time when you went to Mrs. Nagele and told her to move the fence back again. That was three times the fence had been moved.

Please answer the question exactly as I am asking you.

Did you not, that afternoon when Mr. Magney and I were walking down the lane back to the street, state that the fence had been there two days after you had bought the place?

No, sir. I put the fence there the same day I bought the property. That is correct.

Did you not say that the fence had been there since two days after you traded for the place?

No sir.

Then did you not say that that fence had been moved with Mrs. Nagele's permission?

To my lawyer Mr. Magney and you? You see.....

Mr. Hanselman please do not answer anything except about what

took place on that land on the evening of the 20th of July.

Then you did not say that the fence had been there two days after you traded with Mrs. Nagele?

The fence was moved the same day I bought the property and not later.

Then you did not say to Mr. Magney and to me at that time that you moved it two days later after you had asked Mrs. Nagele and she had given you permission?

I never said anything of the kind.

Didn't Mr. Magney tell you at that time it wasn't necessary for you to make any further statements then?

I could not remember that- even if I wanted to.

Mr. Hanselman, wasn't the first time that you claimed that lot in October, 1931 when Mrs. Nagele made some complaint about wood and your wife said, "The lot belongs to us" and that she had it in writing?

That was like this: Mrs. Nagele said we had bought nothing else but the store and then I said, "I think there is an agreement made, or contract," and when I showed her the contract and she saw the signature then she agreed to it. I do not remember what date that was.

Did your wife go in the house and get the paper?

My son.

He then read it, did he not, to Mrs. Nagele?

No sir, he handed it to me and I showed it to Mrs. Nagele.

You would not let her take it in her hand?

No sir.

About a month after you got this paper, did you not speak of going to Foley to get the papers drawn up to complete the trade?

Nothing like that.

Didn't Mrs. Nagele tell you that papers for the trade could be drawn in Elberta?

No sir. I don't remember.

Mr. Magney

When you made this deal with Mrs. Nagele to buy the property, you knew what the building was didn't you?

Sure I did.

And you knew the value of it at that time?

I think I did. She made a price and I got it alright.

You agreed to pay her \$500.00 for the property?

Yes sir.

Would you have agreed to pay her \$500.00 just for the building without the ground?

I should say not.

You knew what the building was and how much it would cost to build it new, didn't you?

Yes sir.

So what you want us to understand is that you would not have agreed to pay \$500.00 just for that old building?

No I would not.

TESTIMONY OF CARL HANSELMAN

My name is Carl Hanselman. I am 27 years old and am the son of Karl Hanselman, the Plaintiff in this case.

My business is that of a merchant; I operate the general merchandise store owned by my father in Elberta for the reason that his health is such that he cannot do much. I have lived in Elberta for the past ten years.

I am familiar with the property involved in this case described as Lot 4 in Block 10 in the Town of Elberta. This property lies immediately south of our store with just a ten-foot alley between.

I am familiar with the building on the property known as Lot 4 in Block 10;; it is a one story frame building with tar paper roof and sides and it has been there ever since we came to Elberta. I do not know when before this, it was built.

I know that during the month of April, 1930 my father and Mrs. Nagele had some negotiations about his buying this property. I wasn't present at their first conversation but I recall one day, a day or

two before the contract was signed, that I was out in front sweeping the walk when my father called me over to where he and Mrs. Nagele were standing and pointed out to me a tree and stated that Mrs. Nagele said this was the line. Mrs. Nagele was there at that time.

I had heard Mrs. Nagele offer to sell the property before; in fact she had talked about it several times in our store to me and my mother and sister and had offered it to us for \$500.00 and also offered her other property in which she lived and operates the Post Office.

The reason Mrs. Nagele gave me for wanting to sell her property was that her mother had arranged to sell her property and was going to California and Mrs. Nagele wanted to dispose of all of her property in Elberta so she could go with her mother.

On the morning of April 29, 1930 my father and mother and I went over to Nagele's house. My father had stated that he had agreed with Mrs. Nagele to buy the property and had paid her \$20.00 and that he wanted to go over and complete the sale. This was immediately after breakfast, about 8:00 o'clock in the morning. The first mail comes into the Post Office in Elberta at 10:00 o'clock in the morning and we had been over to Nagele's and transacted our business and returned home long before the mail came in that morning.

The Nageles operate the United States Post Office in the front room of their house and so we went to the back of the house, the living quarters. The Post Office room is visible from the living quarters and during the short time we were there, it was only about twenty or twenty-five minutes, no one came into the Post Office and Mrs. Nagele was not disturbed.

When we came into the Nagele's house my father said to her that he wanted to make a payment on the property and that he wanted a contract or something to show that he had bought the property. Mrs. Nagele said to my father that she was going to California and would like to have him buy all of her property and that he could run the Post Office.

My father told Mrs. Nagele that he did not have enough money to

buy all of her property and wasn't interested in buying anything except this one piece. He told her that he was a sick man and wanted a contract of some sort to show that he was buying this property.

Mrs. Nagele said "Alright", but she said, "There is no paper here", and she went and got some scratch paper - a tablet. She got this tablet from the table in the same room.

My father said, "Write up the contract", and Mrs. Nagele said, "Carl, you are a better writer than I am, you write it."

Prior to this the matter had been generally discussed and Mrs. Nagele stated that she didn't know the exact size of the lot but thought it was about 45 x 185 feet but that whatever her deed called for that was what she was selling.

My father stated that he was satisfied with whatever her deed called for.

The price was \$500.00. There was no definite time for payment fixed; Mrs. Nagele said whenever we got the money, she was in no hurry.

I had been present and had heard all of the conversation and knew what the agreement was and so when Mrs. Nagele gave me a tablet and asked me to write the contract I sat down at the table and wrote the contract. The paper marked "Complainant's Exhibit 'D'" now handed to me is the paper I wrote at that time.

Mrs. Nagele stood by my side where she could see what I wrote on the paper; Mr. Nagele and my mother were sitting down at the table and my father was standing on the other side of me.

After the paper was written I handed it to my father and he handed it back and said, "Carl, read it out loud." I did read it out loud and handed it again to my father. He handed it to Mrs. Nagele and she read it and then carried it over to Mr. Nagele and handed it to him. She said, "Gus, what do you think of that?"

He read it and said, "If it is alright with you it is alright with me."

Mrs. Nagele laid the paper on the table and signed it while she was standing. She pushed it over to Mr. Nagele. Mrs. Nagele

said that she owned the property; that she had earned it before she married Mr. Nagele and that he didn't need to sign as a seller but only as a witness to her signature and he signed it. Then my father signed it and then I signed it as a witness.

After the contract was signed my father paid Mrs. Nagele \$80.00 and she gave him a receipt for \$100.00 as \$20.00 had been paid before. The paper now handed me marked "Plaintiff's Exhibit 'E'" is the receipt for \$100.00 which Mrs. Nagele gave my father at that time.

After these papers were signed and the money was paid we went back home and took possession of the property the same day. The first thing we did was to move the fence on the west part of the lot back so as to give us room to get out with the school bus. We moved into the house and put our feed in there. That is the only use we have ever made, a storage place for our feed.

We also stored our fire wood in the lot back of the building and used it as a wood yard and to cut our wood.

Mr. Nagele had a small chicken yard fenced off on the back of the lot and he continued to keep his chickens there. I didn't hear any conversation between my father and Mrs. Nagele about these chickens.

After this the matter went along without any trouble or arguments for some time and my father continued to make payments to Mrs. Nagele until he had paid a total of \$400.00 and the interest.

The first I knew of any dispute in the matter at all was one time when my younger brother was unloading some wood. This was a long time after the sale, probably a year and a half. I was not present at that dispute and only know what my father has told me about it. I do know that at that time my father came into the store where I was and asked me for the contract and I got it out of the safe and gave it to him and he took it back to where Mrs. Nagele was. I did not go out and did not hear that conversation.

After this I went with my father to consult with an attorney.

CROSS-EXAMINATION BY E. G. RICKARBY

It is not a fact that after my father and Mrs. Nagele had come

to what they considered a trade that he and I went across the alley to the Nagele's house bearing with us the contract marked "Complainant's Exhibit 'D'" for Mrs. Nagele's signature.

Did you not hand this paper to Mrs. Nagele after your father had talked with her for a while and she told you that she was relying on your honesty as to its being correct?

No sir.

When were the words "45 feet wide and 185 feet long" added to this paper?

As we wrote the contract.

From where did you get those figures?

From Mrs. Nagele.

Were those words written in when you first drafted this?

These words were written into the contract right along; that is to say, when we had the contract partly written we noted that we did not have the size of the lot and I wrote them in from what Mrs. Nagele told me.

Did she have her deed there at the time?

She did not have her deed at the time.

Have you ever seen her deed?

I have never seen her deed. I am taking her reliability for it.

My name is signed to this contract to the left only as a witness and Mr. August Nagele signed also only as a witness.

Mr. Hanselman, how did this receipt happen to be written on the back of an old check when the other testimony was written on a scratch paid which you had before you?

I did not write that receipt.

As a matter of fact, was not this money, \$80.00, paid a few minutes after the transaction in the back of your store?

No sir.

And was not this written on an egg crate in the back of the store?

No sir.

Now that fence in the back that got in the way of your backing

cars out of the garage, you say that was moved the same day you made the trade?

The same day.

As a matter of fact, wasn't it moved about two days later?

As far as I can recollect, it was moved the same day.

As a matter of fact it was moved after your father had gotten Mrs. Nagele's permission, was it not?

We didn't need any permission.

Now, did you or your father ever pay more than one year's interest on that?

I have always paid interest.

Did you make any payment other than one of \$12.00 on June 25, 1931 at the time when you paid \$100.00 payment?

I know I have paid interest on the \$400.00.

The Nageles still have their chickens and chicken house on the back of this lot, have they not?

There were chickens in there. Maybe on part of it, I have never observed that close.

The chicken lot reaches to the alley, does it not?

Yes.

Mr. Hanselman, do you know about any sale of property which had taken place in the last two years?

I do, I have purchased two lots adjoining this lot that is in controversy - two lots for \$95.00.

They are in the rear, are they not?

Yes, they are touching ends.

This lot fronts on one of the main streets of Elberta right where the store and Post Office is - the lot you are asking for - the other lots back up to this lot?

Yes sir.

Didn't Mr. Martin Ehl, in July of 1931, sell his store building and lot?

Note: Objected to as incompetent and improper cross examination.

Do you know what price was brought for that Ehl property?

I do not.

Wasn't Mr. Heinzl still in this building up until after this property was traded for?

I do not know. I was not there at that time. He stayed at Loewens' place.

He was not then staying in your house when this trade was made?

I told you I did not know.

Do you remember where Mr. Heinzl was staying when he left for Germany in July, 1931?

I do not know.

Were not his goods in the upstairs room in your house at that time?

I do not know.

TESTIMONY OF EMMA HANSELMAN

My name is Emma Hanselman and I am the wife of Karl Hanselman, the Complainant in the case and the mother of Carl Hanselman who has testified as a witness.

I live with my family in Elberta and know the property described as Lot 4 in Block 10 in the Town of Elberta. It lies just south of our home and store with just an alley between.

We have lived at the place next to Mrs. Nagele's property for about four years and during all of that time I have known Mrs. Nagele as the owner of this property.

I had not talked with Mrs. Nagele about buying this property but I do know what my husband had some conversation with her one morning when the boy was taking the truck out of the garage and bumped into her fence. I was not present at that conversation but Mr. Hanselman told me about it. I do not know the exact date of this conversation but it was shortly before the contract with Mrs. Nagele.

After this, but before the contract was signed, Mrs. Nagele came into the store one day. I was present and my daughter and my son Carl and at that time Mrs. Nagele offered to sell us all of her

property. She said that my son could be the Post Master and my daughter could act as the Clerk and her talk was that she wanted to go to California and to get rid of her property. At this time Mrs. Nagele also said that she was going to sell the property and that if the alley was so narrow we would surely have trouble with our new neighbor and that we had better buy it and so we talked it over among ourselves and decided to buy it. Mrs. Nagele made a price on this lot and the store building of \$500.00.

We talked the matter over at home among ourselves and after a while decided to buy the property and my husband sent me over to Mrs. Nagele's to give her part of the money - \$20.00.

At the time I took this money to Mrs. Nagele I said to her: "Mrs. Nagele, we have decided to buy this one property because of the trouble about the fence and here is \$20.00 on the contract." Mrs. Nagele said: "Oh, I am so glad, now I have one property less to dispose of and I hope you will buy the other property too", and I told her, "We will see about that later."

A few days later I went with my husband and son over to Nagele's house to make another payment and fix up the papers. I do not recall the exact date but know that it was the same day the contract was written out.

We went into the house and were all sitting around talking as friends and my husband told Mrs. Nagele that he would like to have some kind of a contract about the property; that he was a sick man and had been sick for five years and felt that the contract should be put in writing. Mrs. Nagele said that this was not necessary. She said it wasn't necessary because she hoped we would buy the other property and then we could put it all in one.

My husband insisted that he wanted to have a contract for what he had bought. Then Mrs. Nagele said, "Well, Carl you can write better than I can" and she went into the other room and got a tablet and said, "Will this do?"

Mrs. Nagele was standing at the table so that she could see into the Post Office. My son Carl was seated at the table writing the paper and my husband was sitting on the other side of Carl. Mr. Nagele and I were sitting a little piece off and we were all talking about the contract.

Carl wrote the contract and then his father said, "Now, Carl read it out loud and see if it's satisfactory. Mrs. Nagele was standing right beside Carl looking over his shoulder while he wrote. Carl read the contract aloud and Mrs. Nagele took it and handed it to her husband and asked him what he thought about it and he said, "Whatever is alright with you is alright with me; it is your property."

Mrs. Nagele had the paper in her hands and looked at it and read it over before it was signed.

Mrs. Nagele signed the contract but she said, "My husband cannot sign as an owner as this is my property and he must sign as a witness and so he signed on the other side of the paper. Then my husband signed and Carl signed as a witness. The paper marked "Complainant's Exhibit 'D'" now handed to me is the contract which was drawn up and signed that morning. After the contract was signed my husband reached in his pocket and took out \$80.00 and told Mrs. Nagele he wanted to make the first payment, \$100.00 and she gave him a receipt for the \$100.00. The paper now handed to me marked "Plaintiff's Exhibit 'E'" is the receipt which Mrs. Nagele wrote out at that time and gave to my husband. After the contract was signed and we were all sitting around talking, my husband and Mrs. Nagele went to the back window and looked out over this lot and he asked her if the garage stood on the lot and she said that she didn't know for sure. She said, "My husband is going to miss this lot for his chickens" and Mr. Hanselman said that he had no use for the ground just then and that Mr. Nagele could keep his chickens where they were until next spring when the Nageles left for California. Nothing further was said and we left shortly and went home the same way we had come.

Mrs. Nagele had given me the key and we took possession of the property at once. The boys went out that same day and moved the fence back to get it out of the way of the cars coming out of the garage and either that day or the next we moved our feed into the

store building. We also stored all of our fire wood on this lot and used it as a wood lot.

For more than a year after this we continued to make the same use of this property without any trouble or arguments and were very friendly with the Nageles. I do not know the exact date but more than a year after this one morning my boys were unloading some fire wood on this lot when Mr. Nagele came out and told them to stop. They said, "Why Mr. Nagele, whose lot is this?" And he said it was his lot and that we could not put the wood on it so then the boys came to the house and got me. I went out and talked with Mr. Nagele and asked him what all the trouble was about and he said we could not unload the wood on the lot. I said, "Well, Mr. Nagele, whose lot is this?" And he said, "It is mine." And I said, "Well, Mr. Nagele, I can't talk with you, I will go and see Mrs. Nagele." I went through the lot to see Mrs. Nagele and by this time she had come out and was standing by the fence. I asked her what was the meaning of all this and she became excited and said that it was not our lot, that it was hers, that she had never sold us the lot and was had no right to it and were simply using it by her permission.

Of course, I got excited too then and I said, "Why, Mrs. Nagele, don't you remember that we have paid you \$⁴00.00", and she said, "Yes" and I said, "Well, what do you think we paid you that \$400.00 for?" And she said, "Just for the building."

My husband had been lying down up stairs but he heard the argument and came down about this time and tried to talk to Mrs. Nagele and then he said, "Why what is the use of arguing?" We have a contract with it all written down", and he went into the store to get the contract.

Mr. Hanselman came back with the contract and held it up for Mrs. Nagele to see. He was on one side of the fence and she on the other and he said^{to}/her, "Mrs. Nagele, don't you recognize your own signature to this contract?" Mrs. Nagele tried to grab the contract and said, "Let me have it; let me see it." But Mr. Hanselman did not give it to her as she was so nervous he was afraid she

would tear it to pieces. Then Mrs. Nagele laughed and said there was nothing made, there was nothing to show it.

This argument made Mr. Hanselman nervous and sick and I had to take him home and then the boys went on and unloaded the wood.

Just a few days after this argument we received a letter from Mrs. Nagele's attorney for Mrs. Nagele demanding that we pay the other \$100.00 and then we went and got a lawyer and since that time the lawyers have been taking care of the matter.

Plaintiff's Exhibit "F" now handed to me is the letter we received from Mr. Rickarby and it was just a few days before this letter that this argument occurred.

Mr. Magney: As a part of the examination of this witness Plaintiff offers as evidence Exhibit "F".

I was a party to all of the negotiations and transactions between my husband and Mrs. Nagele and it was never my understanding or agreement that we were buying just the building and paying \$500.00 for it without any ground. Of course, we would never have agreed to pay \$500.00 for this old building without any ground.

CROSS-EXAMINATION BY MR. RICKARBY

Mrs. Hanselman, didn't Mrs. Nagele tell you when you were talking about the trade with her that she would sell you the house for what it was insured for?

No sir.

A short while before you made this trade didn't Mr. Hanselman bring an insurance man over and introduce him to the Nageles?

I do not know.

Didn't Mrs. Nagele tell you what the property was insured for?

No sir.

Now this contract that you have testified to, that was signed in the kitchen was it not?

It was the next room so she could see in the Post Office.

Your son read this contract aloud. Did he read it in English or German?

In English.

When Mr. & Mrs. Nagele were talking were they speaking in English or German?

I cannot remember. We were all talking partly in English and partly German.

Their conversation that you testified to took place in your presence, did it not?

Yes sir.

In the wood lot that you had put your wood, wasn't that used by the Nageles as a wood lot and wood shed?

I am not sure. The Nageles had wood in the shed but I do not know whether they had any out in the yard.

They still have wood in that shed, have they not?

The Nageles now have no^wood in this shed or the lot.

The garage that the Nageles use, isn't that on this lot that is in dispute?

Mrs. Nagele told me that the garage was partly on this lot.

Did Mrs. Nagele not tell you that this was the reason she did not want to sell the lot?

No sir.

Mr. Heinzel, wasn't he in your house at the time this trade was made?

I could not recall.

He did stay at your place?

For a while.

Where was he staying when he left for Germany?

He was in our place at that time.

ELLIOTT G. RICKARBY
LAWYER
ROBERTSDALE, ALABAMA

May 10th, 1932

Mr. Carl Hanselman
Elberta, Alabama

Dear Mr. Hanselman:

Mrs. Anna H. Nagele has requested me to take up with you the matter of an adjustment for the building on her lot which you purchased from her in May, 1930, and on which she tells me you have paid all but \$100.00 and the interest from July of last year.

The purchase of this building seems to have been conducted in a rather informal way but Mrs. Nagele tells me that some misunderstanding seems to have arisen between you and the matter can not be discussed dispassionately by the parties most interested. She has therefore placed the matter in my hands feeling that with a proper understanding of the rights of both parties a friendly arrangement can readily be reached. I was in Elberta today and would have liked to have called on you but was with a client who was in a great hurry and could not stay. I would, however, be glad if you would send me a copy of the agreement between you two and let me know your reason for not paying the balance so that we can have a starting point in trying to get together. If you are likely to be in this community any time in the near future it would perhaps be better if you could call by this office that we may discuss the matter in person.

With thanks in advance for an early reply and assuring you that my client desires to meet you on a friendly basis, I am

Very truly yours,

Elliott G. Rickarby

R:F
439

Philipp E. Wright
200

STATE OF ALABAMA)
BALDWIN COUNTY.)

I, L. F. Farrell, heretofore and on the 8th day of December, 1932 appointed Commissioner for the purpose of taking the depositions of Karl Hanselman, Mrs. Karl Hanselman, Carl Hanselman, Robert Bruhn, F. W. Walker, E. S. Hugger, August Noltensmier, Max Neumann and John Werner as witnesses in behalf of the Complainant in a cause pending in the Circuit Court of Baldwin County, Alabama wherein Karl Hanselman is Complainant and Anna H. Nagele, et al are Defendants, do hereby certify that on the 28th day of December, 1932 I did cause the witnesses named in said commission to come before me in Foley, Alabama; that each of said witnesses was by me duly and solemnly sworn; that the testimony of the witnesses Karl Hanselman, Robert Bruhn, F. W. Walker, E. S. Hugger, August Noltensmier, Max Neumann and John Werner was taken on said 28th day of December, 1932 except for a part of the cross examination of Karl Hanselman and that the taking of the testimony of the other of said witnesses was, by agreement, continued until April 17, 1933 at which time the cross-examination of the witness Karl Hanselman was completed and testimony of the witnesses Mrs. Karl Hanselman and Carl Hanselman was taken; that the testimony of each and all of said witnesses was taken by me in shorthand and later transcribed on the typewriter, the signature of the witnesses to the testimony being waived by stipulation; that I have personal knowledge of the identity of each of the witnesses and that I am not of counsel nor of kin to any of the parties to the cause or in any manner interested in the result thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of April, 1933.

L. F. Farrell
Commissioner.

C. S. E. D.
L. H.

April 29, 1930.

Colbert, Ala.

Inconsideration between
Mrs & Mrs Nagels party of
first part and Carl Hanselmann
party of second part.

Party of first part
agrees to sell to party of
2nd part store and lot 45 ft
for the sum of \$500.⁰⁰ ^{wide} 185 ft long
Down payment \$20.⁰⁰

Witness

August Nagels Anna H. Nagels

Carl Hanselmann x Karl Hanselmann

Received payment of
\$100.00 on account
Anna H. Nagels
C. S. E. D.
L. H.

KARL HANSELMAN,

Complainant.

vs

ANNA H. NAGELE, et al

Respondent.

IN EQUITY.

IN THE CIRCUIT COURT OF
BADDWIN COUNTY, ALABAMA.

It is agreed between the parties to this cause acting by their respective solicitors that the testimony of Respondent may be taken before Miss Bernice S. Folmar as commissioner acting with all the powers of such commissioner, formal issue of commission to be hereby waived.

It is further agreed that the testimony of the witnesses may be taken in shorthand by the commissioner and transcribed at a late date and that the signature of each witness to his or her respective testimony is hereby waived.

Dated at Elberta, Alabama, this the 9th day of August, 1933.

Solicitor for Complainant.

Edw. L. Riscally
Solicitor for Respondent.

CARL HANSELMAN,

Complainant.

VS

ANNA H. NAGELE, et al

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

The depositions of Anna H. Nagele, August Nagele, Rudolph Wiehr, Knud Jensen, and Herman Lorenz, witnesses for Complainant, taken before Bernice S. Folmar acting as commissioner by agreement of parties hereto attached.

The parties with their respective witnesses were before the commissioner above named at the office of L. Lindoerfer in Elberta, Alabama, on the 9th day of August, 1935, and upon examination by Elliott G. Rickarby, Solicitor for Respondents, and cross examination by Lloyd A. Magney, Esq., Solicitor for Complainants, testified as is herein set forth.

ANNA H. NAGELE:

My name is Anna H. Nagele, and I am one of the Respondents in this cause. In the spring of 1930 I had some dealings with Mrs. Hanselman, wife of Mr. Karl Hanselman relative to the purchase of some property next door to my home in Elberta. One day when I came in the store Mrs. Hanselman spoke to me and asked me if I could rent it to them and I said I would rather sell it than rent it. Then they could do with it as they please, but they were only speaking about the building and not the ground. I spoke right away and said there was no ground attached and she said, "Well, we do not need the ground. We only need the room. We are too crowded in the house as Miss Emma and Mrs. Heinzl had rooms there and they did not have room enough in the house."

Complainant objects to this testimony and moves to

strike same for the reason that it is not responsive to any question but is volunteer testimony on the part of the witness; for the further reason that it is hearsay testimony being a report of the conversation between the witness and Mrs. Karl Hanselman not in the presence of the Complainant, the said Mrs. Karl Hanselman not being a party to this cause. The Complainant further objects to any further testimony relating to conversations with Mrs. Hanselman for the reason that same are hearsay. It is agreed that this objection shall be held to apply to all further testimony by this witness as to conversations with any other person not in the presence of Karl Hanselman, the Complainant.

I talked with Mr. Hanselman very little, as they always said he was sickly. My transactions in this matter were entirely with Mrs. Hanselman until they brought over a paper for me to sign.

Q. By whom was the trade for the place made on the Hanselman side?

A. The trade for the place was made with Mrs. Hanselman but Mr. Hanselman made me the down payment of Twenty Dollars over the counter in his own store.

When I told her that I would rather sell she asked me what I wanted for it. Then I said Five Hundred Dollars. I was getting eighteen dollars a month rent for it from Mrs. Tenthoff and I said "for \$15.00 a month figuring up in a couple of years time you will have paid what I am asking for the building, and then you can do with it what you please. I will then have nothing to say over it". She said it was all right. She was satisfied and was willing to pay the price of Five hundred Dollars. I always mentioned the ground as I had no intention of selling it at all. This was several days before any paper was brought to me to sign. There was no payment made on this as I recollect until the day when the paper was brought over. That morning Mr. Hanselman paid me twenty dollars in his own store. It was in the morning, possibly about eight o'clock. Carl, the son, was not there as he had gone out on the school route. At the time Mr. Hanselman paid me the twenty dollars there was nothing much said about the trade except that he wanted to pay twenty dollars to bind the trade for the building. It was in the same afternoon that

Page Three.

they brought the paper over. At about ten o'clock that morning when we were busy with the mail, Mother came to the door and called me to come to the kitchen. I saw right away what they had and I called Mr. Nagele out, as we had no right to leave the mail and Carl says "I have a temporary agreement drawn up as we cannot tell what may happen to Dad." He had the piece of paper in his hand. I never saw it and did not read it and we said "we'll take your word to be honest about the deal" and I signed it and Mr. Nagele signed as a witness, also Carl Hanselman signed as a witness.

The diagram marked "Exhibit A" shown to me is a pencil sketch of the post office and my dwelling in the rear.

Respondent offers this sketch in evidence.

Complainant objects to the sketch for the reason that it is not a complete representation of the building and is not accurate in that it is not drawn to scale, and for the further reason that it is incompetent, irrelevant and immaterial and does not tend to prove or disprove any of the issues of this case and is a self-serving paper prepared by the Respondent.

On the sketch the part marked "post office" is the location of the post office of Elberta, fronting East on Main Street.

Complainant objects to this on the ground that this question and all other questions seeking to explain and elaborate upon the plot are objected to as incompetent, irrelevant, and immaterial, and based upon facts not in evidence, as calling for the conclusion of the witness, and as not tending to prove or disprove any of the issues of this case.

The room in the rear of the post office in which you have put the points of the compass is used for a dining room, and the room to the south of it, reached through an arched door, is a sitting room. When one is in the kitchen standing near the door he can see through the dining room and into the post office through the doors. When the Hanselmans came over to get this paper signed, the morning mail from Bay Minette was being distributed. That, as a rule, is the heaviest mail of the day.

Page Four.

I was at that time post master at Elberta and my duties required me to distribute this mail immediately when it came. When Mr. Nagels and I went back when Mother called us, we went into the kitchen and found there Carl Hanselman Jr., and his father. To the best of my recollection, we stayed there not five minutes in conversation with them. In my sketch of the kitchen, the positions of the stove, sink and the table were approximately correct as they were on that day. While this conversation was going on none of the five people there were seated. On the sketch the initials E. Z refer to my mother, Mrs. Emma Zimmerman, who was staying with me at that time. The initials Mr. A. N. and Mrs. A. N. refer to Mr. Nagels and me. The initials C. H. and K. H. refer to the two Hanselmans, son and father respectively. The son was the spokesman at the time this paper was brought in. As soon as I had signed this paper I went back and distributed the mail and the two Hanselmans went on out. I did not read the paper over when I signed it, but relied on Mr. Carl Hanselman Jr.'s statement as to its contents. He said "This is a temporary agreement until we get other papers drawn up." About a month later Mr. Karl Hanselman asked me to go to Foley to have some papers made out but I objected to this on the ground that there were people in Elberta competent to draw whatever papers were necessary. Nothing was done further than that. Mr. Karl Hanselman had this temporary paper written when he came to the house. I did not sit down at a table to write anything at all. The entire transaction took place in the kitchen, and we did not go into the dining room at all. Mr. Carl Hanselman did not read the paper aloud to me at his father's request. They did not ask me if this contract was perfectly satisfactory. I never had it in my hands. He laid it on the table and I signed it there, right on the kitchen table. Carl Hanselman asked Mr. Nagels to sign as a witness and he did so.

V

Page Five.

No more money was paid me at that time. There was eighty dollars more paid that day, in the afternoon, I think, in the back room of their store and the receipt was written on the back of an old check. If it had been paid in my house I had plenty of receipt books there. The lot on which my home is located is Lot 5, the Hanselman store is separated from this by an alley. As far as I know, this blue print of the Town of Elberta and signed by the Baldwin County Colonization Company is a correct plat of the lots in Elberta. Respondent offers said plat in evidence, marked Exhibit "B". Later on that day I went on over and opened the store building for Mr Hanselman and moved some things of ours out of his way. There are still some things of ours in that building.

Q. Did you put him in possession of the lot in the rear of the building?

Complainant objects to this as calling for the conclusion of the witness and not for the statement of any fact, and is incompetent, irrelevant and immaterial.

A. No, Sir.

Q. Who has been in possession of that lot since that time?

Complainant objects to this as calling for the conclusion of the witness and not a statement of fact, as calling it a self-serving declaration, incompetent, irrelevant, and immaterial.

A. We have.

Q. What is the nature of your possession?

A. Used as a chicken run, garage and woodshed; water line and cess-pools are on that lot. That is the reason I could not sell it.

Q. On that portion of Lot 4 that lies south of the building on that lot, what use is being made of that now?

A. It is used as a lawn, with shrubbery and flowers on it, cultivated by us.

Q. Will you look at this picture which I hand you and tell me if that is a fairly accurate picture of the side of the Hanselman store building, the building in controversy, and the building where your home is as they were at the time of the sale and as they are now?

Page Six.

A. Yes.

Respondent offers this in evidence as Exhibit "C".

Q. Will you look at that photograph and tell me what that is a picture of?

The photograph now shown me is a close up view of the chicken yards in the rear of the small store building and the chickens in it are ours.

Respondent offers this as Exhibit "D".

Q. Will you now look at this picture and tell whether or not that is a correct photograph of the lot taken from the rear looking East?

A. Yes. The photograph now shown me is a correct view of the lot taken from the rear looking east, the large building to the right that is partially shown is my garage. The small building at the extreme left is the building in controversy and the alley running alongside.

Respondent offers this in evidence as Exhibit "E".
The orange and pecan trees shown in these pictures have been bearing fruit for the last two years and we gathered the fruit. These photographs are all offered in evidence by Respondent.

In the extreme northwest corner of this lot there is no fence. This was left open so that we could get in and out of our garage. Mr. Hanselman has a garage in the rear of his lot, No. 3, but his lot is not as deep as No. 4. After we made this trade there was a fence on lot 4 directly in the front of the opening of Mr. Hanselman's garage and right on the line of the alley. That fence was moved later, a long time after we had made the trade. They both came over and asked me if I would allow them to take down the fence so it would be easier to get in and out of their garage and I assented and this fence has been moved every since.

Q. At the time you sold this property to the Hanselmans for Five Hundred Dollars what was it your understanding that you were selling?

Complainant objects to that as calling for the conclusion

Page Seven.

of the witness and not for the statement of any fact. It is a self-serving declaration not tending to prove or disprove any feature of the case; that it is incompetent, irrelevant, and immaterial.

A. I understood I sold the building only.

Q. When you signed the paper that was handed you, did you do so relying on Mr. Hanselman Jr.'s representation that it was simply a paper to bind the trade already made or did you read its contents for yourself.

Complainant objects to that as calling for the conclusion of the witness and not for a statement of fact, assuming facts not in evidence, that it is incompetent, irrelevant and immaterial.

A. It was not handed to me. It was laid on the table for me to sign. I did not read it at all. I figured that they were honest people.

Q. From that time on until the summer of 1932 did the Hanselman's make any effort to use the back lot?

A. They asked once if they could get a little space to put in a garden and I refused on account of the chickens. I had not sold the lot and figured it was my own. I had let them use in back of the store building to cut up wood.

Q. When was the first time that the Hanselmans claimed to own this lot?

A. the 14th day of November, 1931, on Saturday.

Q. What occasion came up to make this used there?

A. I told them if they did not intend to keep it cleaned up to keep the wood out entirely. Mrs. Hanselman said "It is ours. We can do with it as we please." I said, "Since when?" "I never sold any ground." Mr. Hanselman was not there right then.

Complainant moves to strike all of that answer as not responsive to the question and as being hearsay testimony, it appearing that the conversation was not in the presence of the Complainant.

Mr. Hanselman came out later.

Q. When Mr. Hanselman came out what was said?

A. He said, "I believe we have a paper about that." That the ground belonged to him. I said I never sold any ground. "I want to see that paper, to see what is on it. I never sold

Page Eight.

any ground."

Q. What was done then?

A. Young Carl went in and got the paper. I asked Mr. Hanselman to let me see it, and he would not let me. The first time that I saw that paper again was later on in Mr. Magney's office in Foley, after this suit had been started and I have never read that paper until this day and have never had it in my hands.

Q. Mrs. Nagels, you heard the statements made by Mr. Hanselman and Mrs. Hanselman about what took place on the occasion when this paper was signed by you, and it was stated that this took place in your dining room, that Carl wrote the paper in your presence; that you read it over, consulted with Mr. Nagels about it and then signed it with a full knowledge of its contents. Are those statements true?

A. No!

Q. In addition to the little building which you claim is the only thing you sold, what else is there on the lot listing it from main street back West?

A. There is a lawn in the front, and alongside, back of that is the chicken yard, the fruit trees, pecan, orange and plum, and in the extreme rear is my garage. The cess-pool that receives the sewage from my home is on lot 4 near the building that was sold. This is one of those double sanitary cess pools underground. There is also a water line that comes from my house and runs back to the garage.

Q. If lot 4 should pass into the hands of other people what would you do with your sewage?

Complainant objects to this question as incompetent, irrelevant and immaterial, calling for the conclusion of the witness and not for the statement of any fact, and not tending to prove or disprove any of the issues in this case.

A. That is what I would like to know.

The store building that we sold was built by Mr. Wiehr, who is a contractor and builder of Elberta.

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Q. Do you remember what you paid him for the total cost of the building?

Complainant objects to this question as being incompetent, irrelevant, and immaterial.

A. Between eight and nine hundred dollars.

This was built in 1931. After it was built it was used as a store until about a year before I sold it. We used it as a store first and then rented it later. We rented it to Mr. Schreck and then later to Mrs. Tenthoff, who paid \$18.00 a month. After Mrs. Tenthoff moved I had an extra room built on and rented it as an office to Dr. Holmes, for \$10.00 a month, just the room. We kept out things in the other part. Since the Hanselmans bought it they used the building in connection with their store. There is an opening on the side into the alley that they used for access to the building from their own store, just across the alley.

Q. About the time you made the trade did you take out insurance on the building?

Complainant objects to that as being incompetent, irrelevant, and immaterial.

A. Yes, shortly before. The building was insured by the agent of the New Orleans concern.

Q. For what amount did he issue you a policy on the building after the inspection?

Complainant objects to that as incompetent, irrelevant and immaterial.

A. Five hundred dollars.

Q. Do you know of your own personal knowledge of any lots in your neighborhood being sold in 1930 and 1931 and if so at what prices?

Complainant objects to that as being incompetent, irrelevant, and immaterial; and not tending to prove or disprove any of the issues of the case.

A. Yes.

Q. What sales do you know of?

Complainant objects to that on the grounds that it is incompetent, irrelevant and immaterial.

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A. Mr. Ehl bought a lot facing north on the highway Lot No. 2 in Block 8, for \$500.00 without improvements.

Q. Do you know what Mr. Knud Jensen paid for the three fifty foot lots described as lots 6 and 7 in Block 11 in the year of 1928?

Complainant objects to that question as being incompetent, irrelevant, and immaterial.

A. I was told he paid \$1500.00 for the three.

Complainant moves to strike the answer as not responsive to the question.

Q. Is Mr. Hanselman's store one of the largest and most prosperous grocery stores in Elberta?

A. They are all about the same. All handle the same kind of goods.

The highway is on State Street. The State Bank of Elberta is located on Lot 10 in Block 7.

Q. How near is lot 4 to the business center of Elberta?

A. About 150 feet.

Cross-Examination by LLOYD A. MAGNEY, ESQ.

MRS. ANNA H. NAGELE.

Q. Mrs. Nagele, when was this first conversation you had, you say, with Mrs. Hanselman about buying this property?

A. Some time before Mr. Hanselman made his first payment.

Q. A few days before?

A. Yes. She spoke about it when we were picking mulberries under the tree.

Q. Was there no one else present?

A. My mother.

Q. Was anyone else present in the store when you talked about it?

A. Their own family.

Q. By their own family you mean Emma and Carl?

A. Mostly Emma. Carl was not there much.

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Q. Now, as I understand it, you had no conversation about this trade with Mr. Karl Hanselman Sr., until the morning he and his son came over to your house to sign the papers. Is that right?

A. Yes.

Q. On the morning that they came over about signing the paper, I think you said that the son Carl did all of the talking that morning?

A. Yes.

Q. Mr. Hanselman Sr., had nothing to say that morning?

A. Not very much.

Q. In other words you and Mr. Hanselman made this trade for this property without your talking to him very much about it?

A. One time is all that I can remember he ever spoke about it.

Q. I understood you to say that when they came in they were alone. That is Mrs. Hanselman was not with them?

A. No, she was not.

Q. And Carl said to you "I have a temporary agreement I would like to have you sign as my father is sick and he wants something to show for it."

A. Yes, a temporary agreement.

Q. And then he laid this piece of paper down on the table and you signed it without reading it?

A. Yes.

Q. Were you born in this country, Mrs. Nagele?

A. Yes.

Q. What education have you had, Mrs. Nagele?

A. Common school, through the eighth grade.

Q. You have been engaged in business for yourself for a number of years?

A. Almost twenty years.

Q. During part of that time you have conducted a retail store?

A. Yes, connected with the post office.

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Q. How long have you been post master?

A. Nearly twenty years.

Q. You of course can read the English language without difficulty?

A. I should think so.

Q. Now, this piece of paper which you signed your name to that morning was written on one sheet of tablet paper, was it not?

A. The way it looked to me.

Q. It was only one sheet?

A. That was all I saw. I never got a copy.

Q. All of the writing was on one side of the page, was it not?

A. Yes, I believe it was.

Q. As a matter of fact, there are only about forty words in the whole agreement, aren't there?

A. I do not know what was on there.

Q. You of course saw the paper even if you did not read it?

A. Carl had it in his hand until he laid it on the table and asked us to sign, which we did, then went about our work.

Q. In that agreement there are some figures as well as letters, were there not?

A. I do not know.

Q. You did not see the figures 45 feet wide and 185 feet long?

A. No. There was no land mentioned.

Q. If you do not know what was in the paper, as you say, how do you know whether there was any land mentioned?

A. Just since we had the arguments with them they claim they bought ground.

Q. Mrs. Nagele, I am trying to ask you only about this

Page Thirteen.

paper which you signed and not about any arguments before or since. Now, this paper was plainly written, was it not?

A. Well, I never paid that much attention to it.

Q. Simply then on Carl's statement that this is a temporary agreement that we want you to sign, you signed your name to this little piece of paper containing only about thirty five words and did not know then and do not know now what was in it?

A. No, I do not know.

Q. You said, I believe, that Carl did not read the paper aloud to you?

A. I know he did not read it. He was just explaining it. He said "I wrote a temporary agreement" and he did not read it.

Q. You had this building erected in 1921, I believe you said?

A. Yes.

Q. In 1921 and 1922 alone in there were the boom years around here, were they not?

A. Not exactly.

Q. As much boom as this county ever had, were they not?

A. Just about.

Q. Your garage, Mrs. Nagele, does not go clear across the west end of lot 4 does it, clear out to the alley?

A. No.

Q. As a matter of fact, isn't your garage on lot 5? south of this lot in controversy?

A. It is half on each lot. Partly on lot 5, and partly on lot 4.

Q. The garage runs north and south, and partly on lot 5 and partly on lot 4?

A. Yes.

Q. Well, isn't it a fact that you told Mr. Hanselman that you did not know just where the line was and just where the garage was, whether it was on lot 5 or lot 4?

A. I never said anything of the kind. I surely know it was on them.

Page Fourteen.

Q. You would have us believe, Mrs. Nagele, that Mr. Hanselman's getting in and out of his garage did not have anything to do with this trade you made with him?

A. It did not have anything to do with it.

Q. Well, it is a fact is it not, Mrs. Nagele, that in getting out of their garage into this narrow ten foot alley, the Hanselman cars would sometimes bump into your fence?

A. They never bumped into the fence when it was standing on the line, only after the fence was moved back.

Q. About the time of this trade you made this fence was moved back from the line was it not?

A. Afterwards.

Q. Well, about then?

A. Well, it was some time afterwards when they came and asked for it.

Q. Do you know the date on which the fence was moved back?

A. In the fall.

Q. You would have us believe then that it is not a fact that Mr. Hanselman and his boys moved this fence on the same day they paid you the \$100.00 and you signed the contract?

A. No, sir.

REDIRECT EXAMINATION OF MRS. ANNA H. NAGELE BY

ELLIOTT G. RICKARBY, ESQ.

Q. Mrs. Nagele, up to the time this trade had been made you and the Hanselman were on very good terms, close neighbors and good friends?

A. Yes.

Q. At the time you were talking trade was anything said at all about where that garage was located?

A. I told Mrs. Hanselman that the garage was partly on that lot and partly on the other one, and that was the reason I could not sell it.

MR. RUDOLPH WIEHR, EXAMINATION BY
ELLIOTT G. RICKARBY, ESQ.

My name is Rudolph Wiehr, and I am a resident of Alberta community. My business is farming. Before I started farming my business was carpentering and contracting in which business I was for three years. I know the little building on Lot 4 between the Hanzelman store and the post office. I built it. I did not keep a record of what labor and material I put into this building but having been in the contracting business it was an easy matter for me to tell right away what went into that building, because I know how I built it. I do not remember just when I built it but it must have been about six or seven years ago. I did not have occasion to look at it in 1930, and have made no careful inspection of the building since that time though when those folks used to keep a store in there I went in there to buy things but I paid no careful attention to the building.

Q. Do you remember just what that building cost when you put it up?

Complainant objects to this question on the grounds that it is incompetent, irrelevant and immaterial.

A. I figured out the lumber according to the price that it was bought at the time we built it.

Q. Are you in a position now from any investigation that you have made subsequently to say what that building cost when it was built?

Complainant objects to that question as being incompetent, irrelevant, and immaterial, and calling for conclusion of the witness for which no sufficient foundation has been laid and not tending to prove or disprove any of the issues of this case.

A. I do not remember exactly but according to my best knowledge and recollection it cost about six hundred dollars.

Q. Have you had occasion or been over to look at it any time lately?

A. No, I had no occasion to. Nobody asked me to and I saw no reason to do so.

Q. Then you do not know the condition of the building now?

A. No, I do not.

CROSS EXAMINATION OF RUDOLPH WIEHR

BY LLOYD A. MAGNEY, ESQ.

Q. Mr. Wiehr, can you tell us the year in which you built this building?

A. No, not exactly. I should say about six or seven years ago.

Q. Well, now, Mr. Wiehr, six or seven years ago would be in 1926, or 1927, would it not?

A. Well, I think that it about as near as I can remember.

Q. And you gave us your best recollection of the cost of this building by figuring what you put into it with what you know lumber prices in 1926 or 1927 were, when you built it. Is that the way you fixed your valuation or your cost?

A. Yes.

Q. Was there any difference in the cost of building in 1921 and 1926 or 1927?

A. Well, I have not done any more building since that time in which I had to deal in lumber so I paid no attention to the price and could not say.

Q. I asked you in 1921.

A. Well, that is so long ago I have to think a little bit. As near as I can remember, now, lumber ranged in price in 1921 and along in those years practically staple until we had the drop.

Q. What was the staple price of the lumber you put in that building?

A. Rough lumber was from \$30.00 to \$35.00 per thousand dressed lumber was from \$40.00 to \$45.00 a thousand.

Q. Whether you built this building in 1921 or 1926

you fixed your judgment of what it cost on those prices, did you not?

of lumber at the time you built this building any better than your recollection about the year in which you built it?

A. It is for the simple reason that at that time I was working at building and was also working at a saw mill and handling lumber every day and it was no guess work.

Q. Was that true from 1921 to 1926?

A. Yes.

Q. And you are sure that at the time you built this building whether it was in 1921 or 1926 that the price of raw lumber was \$30.00 to \$35.00 a thousand, and dressed lumber was \$40.00 to \$45.00 a thousand?

A. Yes.

REDIRECT EXAMINATION BY

ELLIOTT G. RICKARBY, ESQ.

Q. Mr. Wiehr if a portion of any building had been torn off in the early part of 1932 would not the building itself have depreciated much more rapidly since that date?

A. Certainly.

RECROSS EXAMINATION BY

LLOYD A. MAGNEY, ESQ.

Q. Mr. Wiehr, what do you figure the rate of depreciation on a frame building such as this was?

A. 10% per year.

Q. If this building were built in 1921 then it would be 90% depreciated in 1930, would it not?

A. Yes, according to that.

Q. Its value then in 1930 would be less than its cost by ten per cent each year after it was built?

A. Yes, that would be it.

REDIRECT EXAMINATION BY

ELLIOTT G. RICKARBY, ESQ.

Q. What was the depreciation in this particular building

knowing the class of lumber you put in it?

Complainant objects to this as calling for the conclusion of the witness, that that is no sufficient foundation laid, the witness having testified that he has made no inspection of the building since he erected it, and does not know its present condition; and for the further reason that it calls for incompetent, irrelevant and immaterial testimony.

A. This particular building has not depreciated three per cent all told.

Q. How do you estimate the depreciation of that building now?

Complainant objects to this as calling for the conclusion of the witness, that there is no sufficient foundation laid, the witness having testified that he has made no inspection of the building since he erected it, and does not know its present condition; and for the further reason that it calls for incompetent, irrelevant and immaterial testimony.

A. The reason I am saying that this building has not depreciated is that it is covered on the outside and everywhere with tar paper and water cannot get to it, and on the other hand if it was not covered and stood just with unpainted lumber as most buildings do, the depreciation would be ten per cent per year.

RE-CROSS EXAMINATION BY

LLOYD A. MAGNEY, Esq.

Q. Mr. Wiehr, you do not know whether the water has got under this tar paper and hurt the wood at all, do you?

A. No, sir.

MR. AUGUST NAGELE; EXAMINED BY

ELLIOTT G. RICKARDY, Esq.

On the morning of April 29th, 1930, the date when this paper was signed, I was present. About ten O'clock A. M. the Star Route mail had arrived from Bay Minette for distribution from the post office at Elberta. The Post Mistress, Mrs. Anna H. Nagele was called to the back room of the post office building by her mother, then Mrs. Nagele called me out and then I entered the kitchen room with Mrs. Nagele. Karl Hanselman Sr., and Jr., were in the kitchen and Mrs. Nagele was asked to sign a temporary agreement to bind the sale

✓ of the store building to Mr. Karl Hanselman, Sr. I was also asked to sign as a witness when Carl Hanselman, Jr., told me that it was only a temporary piece of paper to bind the agreement of the sale of the store building to Mr. Hanselman, so we signed the papers without reading them and rushed back to our work in the post office to dispatch the next mail going out.

Q. Did Mrs. Nagele read that paper?

Complainant objects to this question as calling for the conclusion of the witness and not for the statement of any fact.

A. Not in my presence.

Q. Were you with her the whole time she was back there?

A. Yes, sir.

Q. Was the paper that Mrs. Nagele and you signed already written before you came in the room?

Complainant objects to this as misleading and suggestive.

A. The paper was written and folded by Carl Hanselman when I came into the room.

Q. What did he tell Mrs. Nagele in your presence was in that paper?

A. He said it was a temporary piece of paper to show that the sale was made of the store building to Mr. Hanselman and in a few days from now we shall have this paper drawn up.

Q. What were you and Mrs. Nagele's relations with the Hanselmans at that time?

A. We were friendly, doing all of our trading at the store at that time.

REDIRECT EXAMINATION OF MR. NAGELE.

Q. Mr. Nagele, was the roof of that porch injured at any time?

A. Part of the roofing of the porch was blown off last September

KARL HANSEIDMAN, et al

Complainants.

VS

ANNA H. NAGELE, et al

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Taking of testimony having been continued by agreement of counsel, was resumed November 17th, 1933, at the Director's Room of the State Bank of Elberta, at 10:00 A. M. at which time there were present, Lloyd A. Magney, Esq., Solicitor for the Complainants, and Elliott G. Rickarby, Esq., C. L. Hybart, Esq., and John Chason, Esq., Solicitors for Respondents. The witnesses present were Rudolph Wiehr, Martin Ehl, Ludwig Lindoerfer, Alfred M. Neumann, and Samuel De Paola, who having been sworn upon examination and cross examination by counsel testified as follows:

RUDOLPH WIEHR.

Q. What is your name?

A. Rudolph Wiehr.

Q. Where do you live?

A. In Elberta district about two and one half miles north.

Q. Are you familiar with the building on Mrs. Nagele's lot?

A. Yes.

Q. Did you construct it?

A. Yes Sir, I did, with the help of Mr. John Berg, my partner.

Q. Are you a carpenter?

A. Well, I have been in the business to quite an extent, but claim to be a farmer, but I have been in the contract business.

Q. I wish you would examine Exhibit "A" to Mr. Knud Jensen's testimony and state if the material listed thereon went into this building on the lot owned by Mrs. Nagele.

A. That seems to check with my list.

OBJECTION: Objected to as incompetent, irrevelant, immaterial and improper redirect examination, this witness having been fully examined in chief and by cross-examination heretofore, and having answered fully as to the material in said building.

Q. Will you say that that is a list of the material that went into this building?

A. Yessir.

Q. Mr. Wiehr, I wish you would examine Exhibit "A" to Mr. J. A

Page Two.

Pilgrim's testimony and state if that list of material went into this building on Mrs. Nagele's lot?

A. That checks with my list.

OBJECTION: Objected to by Solicitor for Complainant as being incompetent, irrevelant and immaterial, and improper redirect examination.

Q. Well, would you say that this list of material there that I have just asked you about, that is Exhibit "A" to J. A? Pilgrim's testimony is the material that went into that building?

A. Well, I can not quite say. The figures there as to the amount of feet checks with my list, but the prices may vary because he made his own prices on the material as he considered was the proper price to make at that time, but the amount of material checks with my list.

OBJECTION: Objected to as incompetent, irrevelant and immaterial, and as calling for the conclusion of the witness for which no sufficient foundation has been laid.

Q. Well, will you say that this list of material went into the building?

A. Certainly.

Q. What class of material was that, Mr. Witness?

A. Well, the rough material was what we would class here as No. One, stuff, and the finished lumber was No. One. It was good material all the way through. In the rough kind of lumber we get lots of knotty material but this was No. One material right straight through, also the finished lumber was No. One.

Q. Was the house well constructed?

A. Yes, I considered it so to be. It has held its shape against storms, etc., so I guess it is all right. When I put up a building I always use my best judgment in putting it there so it will stay. It is left to the man who puts up a building to know that. If I did not I would not be much of a carpenter.

CROSS EXAMINATION BY MR. MAGNEY.

Q. Mr. Wiehr, is not this exhibit to Mr. Jensen's testimony the list of material you made up?

A. No, sir.

Q. Aren't these your figures?

A. No Sir, these are not in my writing nor my figures.

Q. These are Mr. Jensen's figures?

A. Yes.

Q. Mr. Jensen's handwriting?

A. Yes.

Q. But you gave him the information?

A. No, sir, I did not.

Q. Well, if Mr. Jensen told us that you told him how much material was in that building this was not true?

A. Well, this was the first estimation made on that building and if anybody wanted to use my figures that was up to them. I turned that over to Mr. and Mrs. Nagele, and figures that was all I had to do with it.

Q. When did you make your estimation of the material in the building?

A. I do not remember the exact date. It was sometime during the middle of the summer when Mr. and Mrs. Nagele came out there and asked for these figures, but I do not remember the date nor the month.

Q. It was before we took your testimony the other time, was it not?

A. Yes, sure.

Page Three.

Q. You were examined before on this case on the 9th day of August, in Mr. Lindoerfer's office, were you not?

A. Well, I did not keep track of the day but suppose it was about that time.

Q. You were asked this question at that first examination "Do you know at this time, Mr. Wiehr, how much lumber went into that building?" You answered that question by saying "Just by guessing, I would not like to answer that question but if you gave me time to figure I can tell you." Then you were asked the question "Do you know at this time, Mr. Wiehr, how much lumber went into that building?" Your answer was "I could not say Yes or No." That was your testimony on August 9th, was it not?

A. Yessir, correct.

Q. Before August 9th you had been making up a list of the material to turn over to Mrs. Nagele to turn over to Mr. Jensen and others setting out exactly how many feet of lumber has gone into that building, had you not?

A. Yessir, I made that statement.

REDIRECT EXAMINATION OF MR. WIEHR BY
C. L. HYBART, ESQUIRE.

Q. Mr. Witness, since you testified in this case have you gone over the figures of the amount and kind of material that went into this building and checked it up carefully?

A. Yes

Q. And do these two exhibits, that is, Exhibit "A" to Mr. Pilgrim's testimony and Exhibit "A" to Mr. Jensen's testimony, reflect the material that went into the building?

A. They do.

Q. Now, Mr. Witness, since you have made your calculation and gotten up this information and gone over it, I will ask you what did that building cost to construct?

A. I have the figures right down. The material, as nearly as I can recollect, and based on the cost of material as the price at which it was sold in general at that time, including windows, nails, screen doors, etc, is for material \$699.33 and the cost of labor was \$177.00 making a total cost of \$876.33.

OBJECTION: Objected to as having been asked and answered and as calling for the conclusion of the witness for which no sufficient foundation has been laid.

Q. Now, Mr. Witness, in your opinion, how much has that building depreciated in value since that time?

A. As near as I am able to judge, I examined the building the other day and figuring out the windows and material that has depreciated and would have to be replaced, I would be willing to take the job, buying all material, and putting it back in place, for \$90.00.

Q. Then in your judgment it has depreciated about \$90.00?

A. As near as I am able to judge to make it fair.

Q. That is your best judgment?

A. Yessir.

Page Four.

DIRECT EXAMINATION OF MR. MARTIN EHL.

Q. What is your name?

A. Martin Ehl.

Q. Where do you live?

A. Elberta.

Q. How long have you lived here?

A. About fourteen years.

Q. Are you acquainted with the value of real estate in Elberta as of April, 1930?

A. Yes, Sir.

Q. Are you acquainted with Lot Four, Block Ten in the Town of Elberta, and with the buildings on that lot?

A. Yes.

Q. What buildings and improvements by way of trees, etc., are on this lot?

A. Well, to my estimation they will be worth about \$1,000.00, or \$1200.00.

Solicitor for Complainants objects to this, and moves to strike the answer for the reason that it is not conclusive to the question.

Q. Is there a store building on lot Four?

A. Yes.

Q. Is there a garage on Lot Four?

A. Yes.

Q. Is there a pecan tree on Lot Four?

A. Yes.

Q. Are there Orange trees on Lot Four?

A. I could not say if they go across the line or not or whether they are on the lot.

Q. You say you were acquainted with values of real estate in Elberta in April, 1930. What would you say was the reasonable market value of the store building on Lot Four, Block Ten in Elberta as of that day?

A. Between four and five hundred dollars.

OBJECTION: Objected to as incompetent, irrevelant, immaterial and calling for the conclusion of the witness for which no sufficient foundation has been laid.

Q. Now what would you say was the reasonable market value of the land and improvements as of that day?

A. At least One Thousand Dollars.

OBJECTION: Objected to as incompetent, irrevelant, immaterial and calling for the conclusion of the witness for which no sufficient foundation has been laid.

NO CROSS-EXAMINATION.

EXAMINATION OF MR. LUDWIG LINDOERFER.

Q. What is your full name?

A. I think it is still Ludwig Lindoerfer.

Page Five.

Q. Q. Where do you live?
A. Elberta.

Q. How long have you lived here?
A. Too long ago to remember. It is about since 1905.

Q. What is your official position now?
A. Post Master.

Q. What position do you hold in Elberta State Bank?
A. Vice-President.

Q. What was your occupation in April, 1930?
A. Real estate and lumber.

Q. How long have you been in the real estate business in this
County?
A. Since 1914.

Q. Are you acquainted with Lot Four Block Ten in Elberta?
A. Yes.

Q. Do you know what the reasonable market value of Lot Four with
all the improvements on it was in April, 1930?
A. Well, I would say about nine hundred dollars.

OBJECTION: Objected to as incompetent, irrevelant and immaterial.

Q. I believe you say you were in the real estate business since
1914?
A. I have been.

Q. Were you acquainted with the reasonable market values of
property in Elberta and are you so acquainted since that time?
A. Yessir.

NO CROSS EXAMINATION.

EXAMINATION OF MR. ALFRED M. NEUMANN.

Q. What is your full name?
A. Alired M. Neumann.

Q. Where do you live?
A. Elberta.

Q. How long have you lived here?
A. Eight years.

Q. What is your position now?
A. Cashier of the State Bank of Elberta.

Q. How long have you been in the State Bank of Elberta as an
official?
A. Seven years.

Q. Had you had any experience in banking before that time?
A. No.

Page Six.

Q. Were you an official of the Bank of Elberta in April, 1930?

A. Yes.

Q. Do you know the reasonable market values of property and did you know the reasonable market value of real estate in Elberta? as of April, 1930?

A. Yes, I think I can say so. I have a pretty good idea of values.

Q. As Cashier of the Bank of Elberta you were frequently called on to inspect property and ascertain its market value?

A. Yes.

Q. Are you acquainted with Lot Four Block Ten of Elberta?

A. Is that the lot in litigation? Yes.

Q. What would you say was the fair, reasonable market value of the store building on Lot Four as of April, 1930?

A. Values have considerably dropped, but I should say four or five hundred dollars. It could not be built for less than that.

Q. What, in your best judgment, was the fair market value of the lot with all improvements on it as of 1930?

A. The best way to do that would be to set a valuation on the lot and add thereto the building. Well, basing it on the few sales that I know of, I would say the value of the lot would be about four hundred dollars.

Q. Well, what would you say would be the fair market value as of April, 1930, for the lot, the store building and any other improvements that were on the lot at that time?

A. At that time, I would say somewhat in excess of eight hundred dollars for the two of them. If it were mine, I would not think of selling for less than that at that time.

CROSS EXAMINATION BY LLOYD A. MAGNEY, ESQ.

Q. Is it not a fact that two lots in this same block adjoining this lot sold at or about that time for \$95.00?

A. I do not think there are any adjoining lots.

Q. They were behind that lot.

Q. (By Mr. Neumann) Where did you buy them?

A. (By Mr. Magney) At an auction sale of the Foley Bank.

Q. (By Mr. Neumann) Who bought them?

A. (By Mr. Magney) Mr. Hanselman.

A. Well, I remember now that Mr. Hanselman did buy these lots but I would certainly not put these back lots on the same basis as lots on main street.

RE*DIRECT EXAMINATION BY JOHN CHASON, ESQ.

Q. Do you know whether or not there was a clear title to these back lots or whether or not there had been a tax sale on these lots?

A. I know there were some rumors about a tax sale. I am not sure about the title, but do know there were some rumors about the validity of it.

Page Seven.

DIRECT EXAMINATION OF MR. SAMUEL DePAOLA.

Q. What is your full name?

A. Samuel DePaola.

Q. Where do you live?

A. Elberta.

Q. How long have you lived here?

A. Going on five years. Five years next May.

Q. Have you bought or sold any real estate in Elberta or known of real estate being bought or sold within the last two or three years?

A. Yes, I bought myself a little estate down below here and I have seen a lot of it change hands.

Q. In and around Elberta?

A. Yes, surrounding Elberta.

Q. Are you acquainted with Lot Four Block Ten here in Elberta?

A. I have heard of it but do not know exactly where it is located.

Q. Do you know the lot owned by Mrs. Nagele on which the store building on main street is located?

A. Yes, I know it very well.

Q. Were you acquainted with the reasonable market value of this lot and improvements as of April, 1930?

A. Yes, in 1929. In fact, I was going to move here and I wanted space for myself and wanted to rent the place. At that time she had in front a little room built for Dr. Holmes's Office and I wanted to rent from her and she said she could not very well do it.

Q. What would you say was the fair market value of Lot Four Block Ten with the improvements as of April, 1930?

A. At that time I would say around a thousand dollars or better.

OBJECTION: Objected to as incompetent, irrelevant and immaterial, calling for the conclusion of the witness for which no sufficient foundation has been laid.

Q. A thousand dollars or more was the reasonable market value of this lot and improvements as of 1930?

A. Yes, 1929 or 1930. Around 1930.

CROSS EXAMINATION BY LLOYD A. MAGNEY, ESQ.

Q. You came here late in 1929?

A. Yes.

Q. So in April, 1930, you had been here five or six months?

A. Yes, living here steadily since 1929. I had been coming here off and on for ten years for two or three months of a year.

Q. You are in the general merchandise business here in Elberta, are you not?

A. Yes.

Q. And have been since you came here in 1929?

A. Yes.

CERTIFICATE

I, Bernice S. Folmar, the commissioner named in the agreement heretofore executed between the solicitors for the parties to this cause in a case pending in the Equity side of the Circuit Court, wherein Carl Hanselman is the Complainant, and Anna H. Nagele, et al, are respondents, hereby certify that pursuant to the terms of said agreement and waiver of commission, I caused Anna H. Nagale, August Nagale and Rudolph Wiehr to appear before me at the office of L. Lindoerfer at Elberta, Alabama the 9th day of August 1933 and Rudolph Wiehr, Martin Ehl, Ludwig Lindoerfer, Alfred M. Neumann and Samuel DePaola, all Witnesses for Respondents, to appear before me at the Office of the State Bank of Elberta in Elberta on the 17th day of November at which times and places all of which said witnesses having been duly sworn, upon examination by Elliott G. Rickerby, Esq., C. L. Hybart, Esq., and John Chason, Esq., Solicitors for Respondents, and cross-examination by Lloyd A. Magney Esq., Solicitor for Complainants, testified as is hereinbefore set forth; that their answers were by me reduced to writing and copies thereof sent to counsel of both parties, the signatures of said witnesses having been waived as of agreement of counsel.

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

Given under my hand and seal as Commissioner this the 14th day of December, 1933.

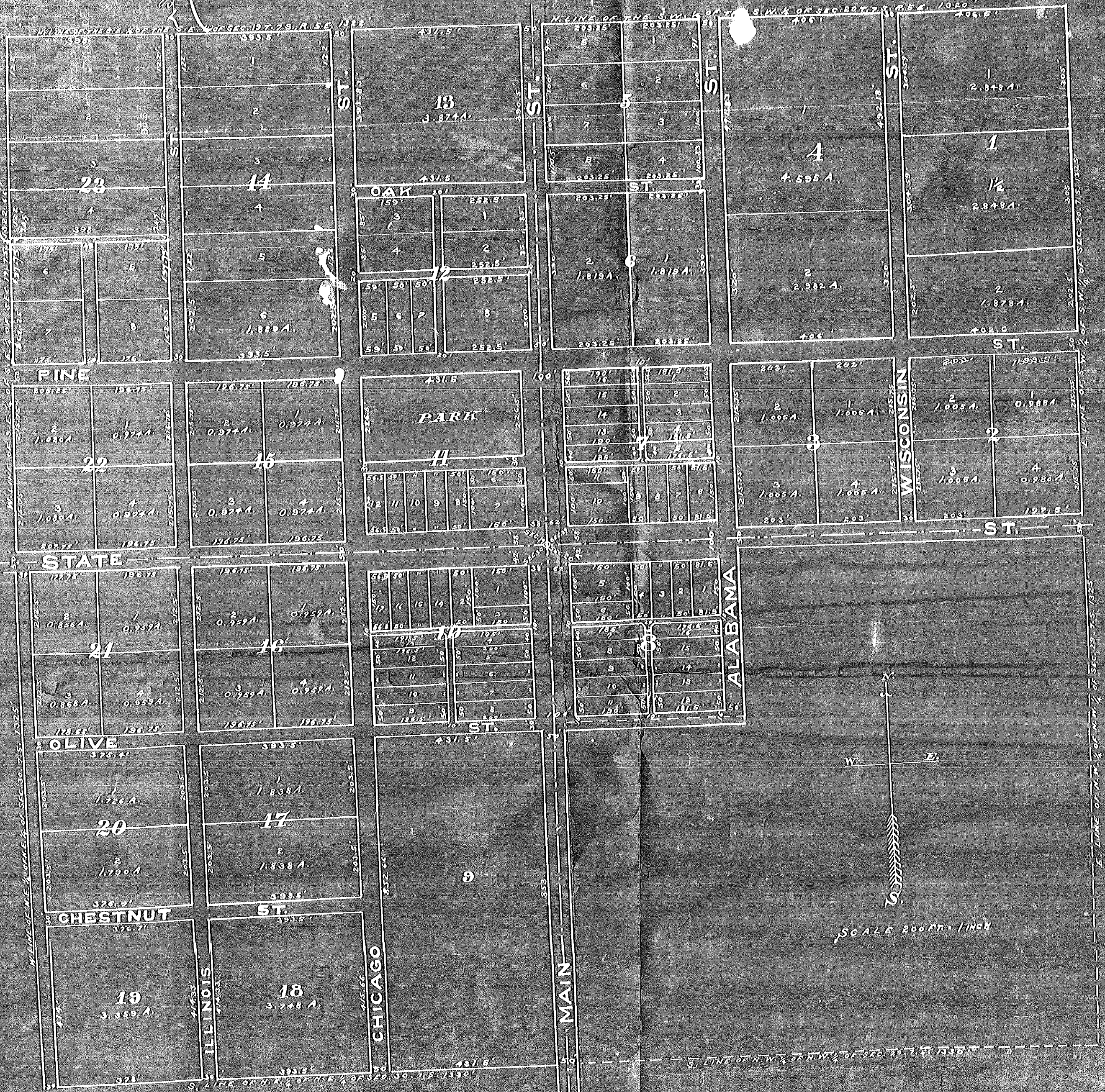
Bernice S. Folmar (SEAL)

Commissioner.

ALBERTA

Baldwin County Colonization Company OWNER

BEING A SUBDIVISION IN PARTS OF SECTIONS 19, 20,
29 AND 30 IN TOWNSHIP 7 SOUTH, RANGE 5 EAST
Baldwin County, Alabama



STATE OF ALABAMA,
BALDWIN COUNTY,
I, THEO. H. BELL, A SURVEYOR, HEREBY CERTIFY,
THAT I HAVE SURVEYED THE LAND DESCRIBED IN THE ABOVE PLAT
AND THAT THE SAME IS TRUE AND CORRECT.
THIS THE 20th DAY OF APRIL, A.D. 1900.
Theo. H. Bell,
SURVEYOR

BALDWIN COUNTY COLONIZATION CO.

ATTEST:

Henry C. Bell,
SECRETARY/TREASURER

BY: Theobald M. Bell,
PRESIDENT

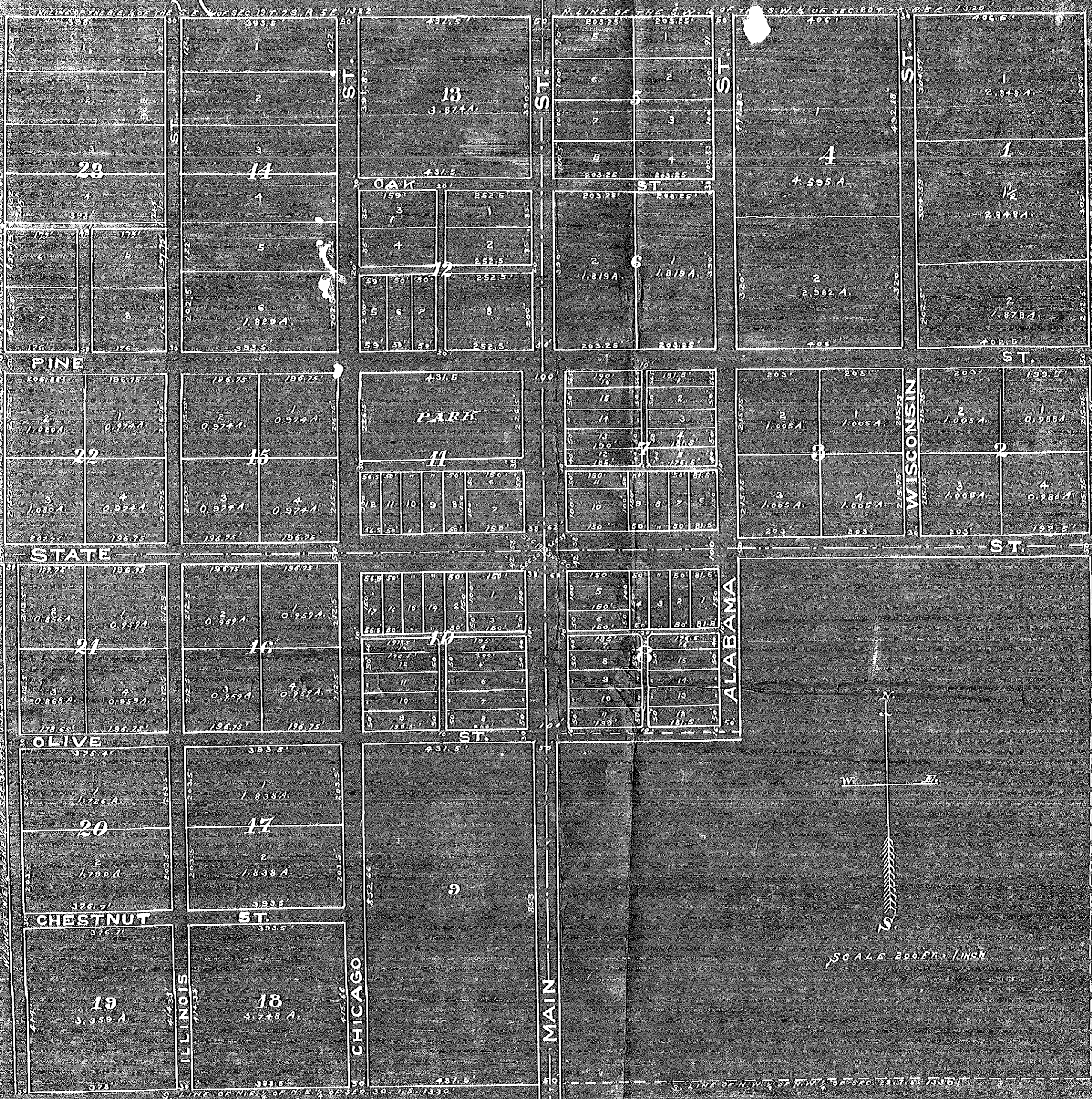
STATE OF ALABAMA,
BALDWIN COUNTY,
I, A. J. BELL, A NOTARY PUBLIC IN
AND FOR THE COUNTY OF BALDWIN, ALABAMA,
DO HEREBY CERTIFY THAT THE NAMES OF THE PERSONS WHOSE NAMES AS PRESIDENT AND SECRETARY/TREASURER
ARE RESIDENTS OF THE BALDWIN COUNTY COLONIZATION CO. ASSOCIATION, ARE
SIGNED TO THE ABOVE PLAT, AND WHO ARE KNOWN TO ME, AS BEING
LEGALLY SECE OR OTHERWISE, THAT BEING IN FULL OF THE CONTENTS OF SAID
PLAT, WHEN AT SUCH OFFICES, AND WITH FULL AUTHORITY BY EXECUTED
THE SAME, AND I HAVE SEEN AND SEAL THIS THE 20th DAY OF APRIL, A.D. 1900.
A. J. Bell,
NOTARY PUBLIC

ALBERTA

Baldwin County Colonization Company

OWNER

BEING A SUBDIVISION IN PARTS OF SECTIONS 19, 20,
29 AND 30 IN TOWNSHIP 7 SOUTH, RANGE 5 EAST
Baldwin County, Alabama



STATE OF ALABAMA
BALDWIN COUNTY

I, THEO. WIDELL, A SURVEYOR, HEREBY CERTIFY
THAT I HAVE SURVEYED THE LAND ENCOMPASSED IN THE ABOVE PLAT
AND THAT THE SAME IS TRUE AND CORRECT
THIS THE 20th DAY OF APRIL, A.D. 1906.

Theo. Widell
SURVEYOR

BALDWIN COUNTY COLONIZATION CO.

ATTEST:

Henry C. Mottley
SECRETARY & TREASURER

BY: *Theo. Widell*
PRESIDENT

STATE OF ALABAMA
COUNTY OF BALDWIN
I, *Anna C. Taylor*, A NOTARY PUBLIC IN
AND FOR SAID COUNTY, IN SAID STATE, HEREBY CERTIFY THAT THEO. WIDELL
AND HENRY C. MOTTLEY, WHOSE NAMES AS PRESIDENT AND SECRETARY & TREASURER
ARE IN THE FOREGOING MAP OR PLAT, AND WHO ARE KNOWN TO ME, ACHARN-
ING AND BEING OF SOUND MIND AND LEGAL AGE, HAVE SUBSCRIBED TO THE SAME
AND THAT THEY, AS SUCH OFFICERS, HAVE BEEN FULLY AUTHORIZED BY THE
BALDWIN COUNTY COLONIZATION COMPANY AND AS THE ACT OF SAID COLONIZATION
COMPANY BY HAND AND SEAL THIS THE 27th DAY OF APRIL, A.D. 1906.

Anna C. Taylor
NOTARY PUBLIC

CARL HANSELMAN

VS

A. H. NAGELE, et al.

DEPOSITIONS OF

ANNA H. NAGELE, AUGUST NAGELE,
RUDOLPH WIEHR, MARTIN EHL,
LUDWIG LINDORFER, ALFRED M.
NEUMANN, and SAMUEL DEPAOLA

Witnesses for Respondents.

*Filed May 11th 1994
M. A. Stone
Register*

*Commissioner's Fee \$15.00
not paid.*

EARL HANSELMAN, VS ANNA H. WAGLE 221
Complainant. Respondants.

IN TOUITY IN THE CIRCUIT COURT OF CAL-
WIN COUNTY, ALABAMA.

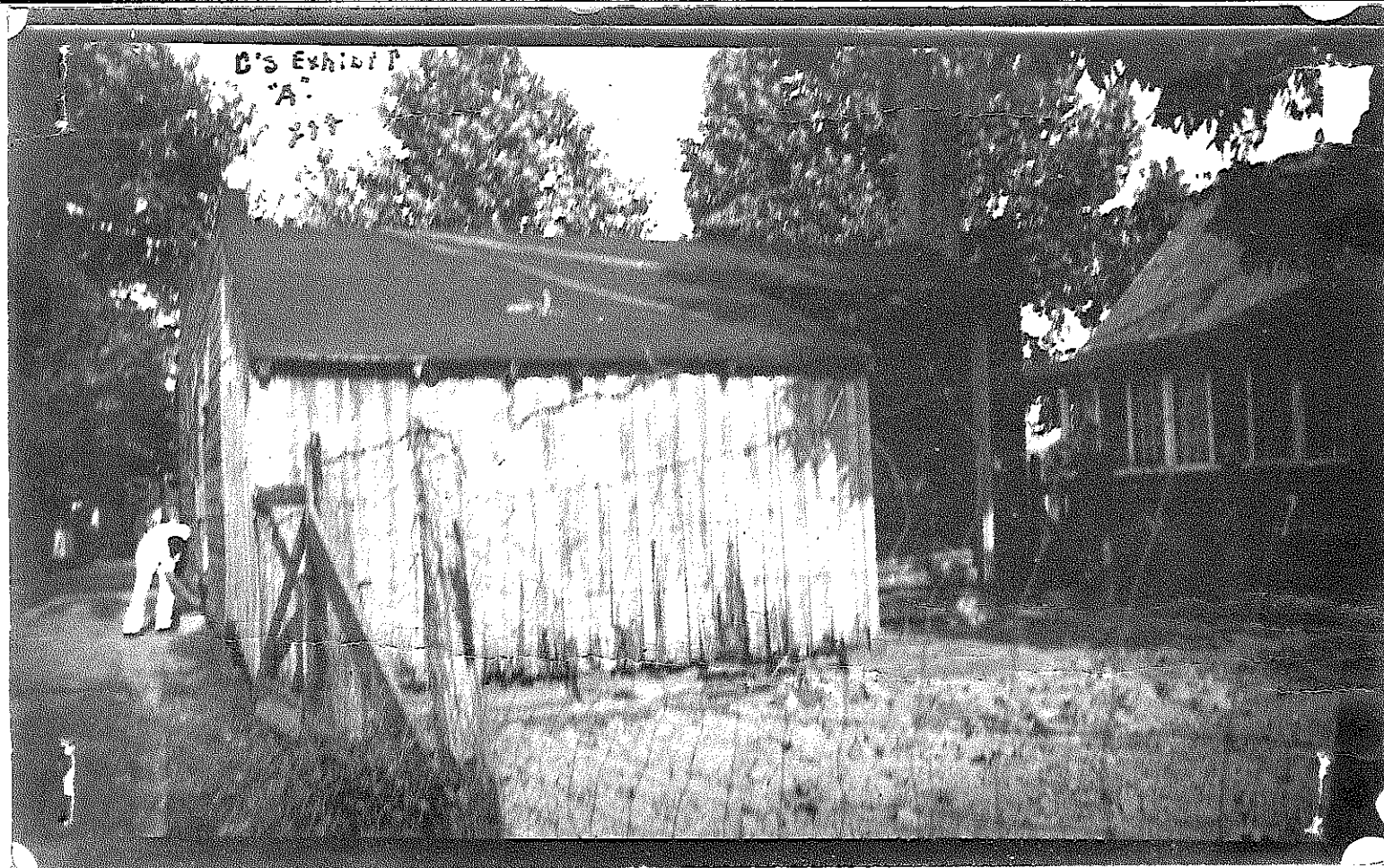
DEPOSITION OF MISS EMMA HANSELMAN,
WITNESS FOR COMPLAINANT.

Filed Sept 27th 1939
M. A. Stone
Clerk.

Mrs. M. A. Stone,

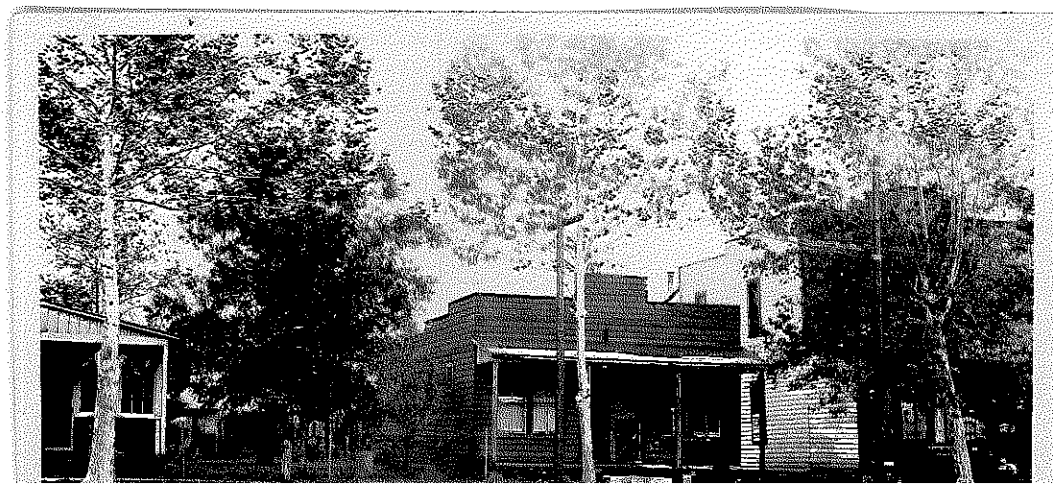
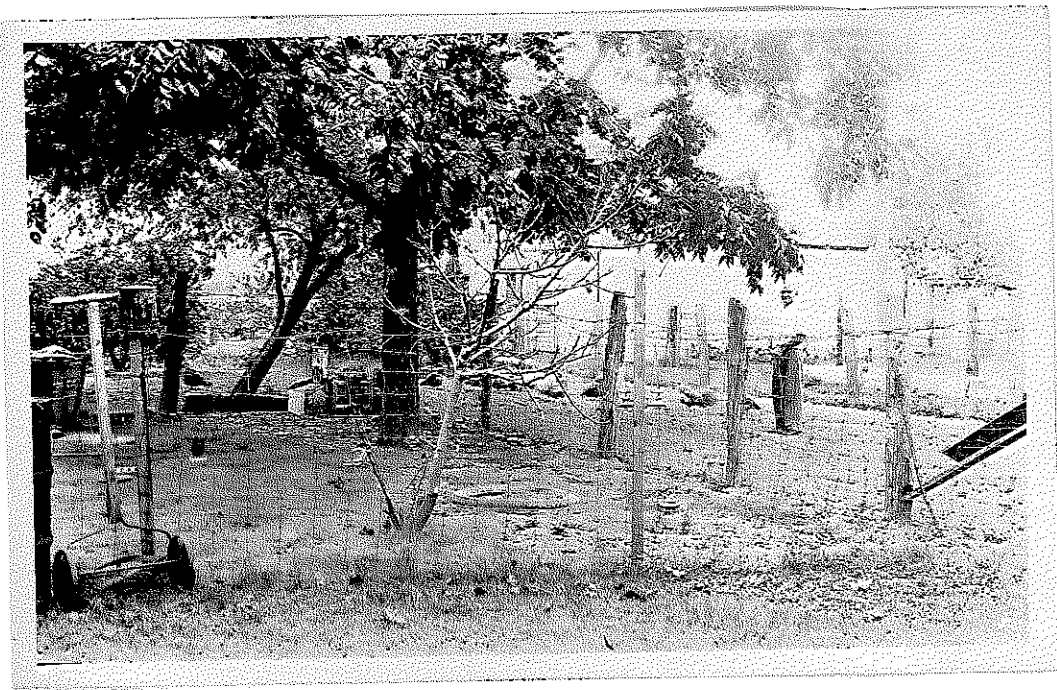
Clerk Circuit Court,

Ray, Winnetto, Alabama



C.S.
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LAW OFFICES
RICKARBY & COLEY
903-4-5 VAN ANTWERP BUILDING
MOBILE, ALA.

At Hubbs "C", D and "B"

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5
CIRCUIT COURT, BALDWIN COUNTY, ALABAMA
IN CHANCERY.

KARL HANSELMAN VS ANNA H. NAGELE, et al

DEPOSITIONS OF SUNDRY WITNESSES IN BEHALF
OF RESPONDENTS.

HELEN HECHT,
Commissioner.

After Five Days Return To

LLOYD A. MAGNEY
FOLEY, ALA.

CIRCUIT COURT, Baldwin County,
In Chancery,
Hanselman vs. Nagele, et al,
Depositions of Karl Hanselman,
Witness for Complainant and
Anna H. Nagele, witness for
Respondents. Taken, sealed
and mailed by me.

Lillian Porter
Commissioner.

Filed Feb. 14th 1934

Register



Mrs. Mary Alice Stone
Register in Chancery
Bay Minette, Alabama

FIRST NATIONAL BANK,
FALL BROOK, CALIFORNIA.

Hanselman
vs
Nagele et al.



Filed Dec. 11th 1933
W. A. Stone
Register

Mrs. Mary Alice Stone,
Register and Clerk of the
Circuit Court, Baldwin County,
Bay Minette, Alabama.

filled by Hanson
a greenment
town City
Camp & Rep.
4/10/34
Hanson

opened + unsealed
by Registrar only

Filed Nov. 22, 1932
M. D. Jones
Registrar

CARL HANSELMAN

VS

A. H. NAGELE, et al.

DEPOSITIONS OF

ANNA H. NAGELE, AUGUST NAGELE,
RUDOLPH WIEHR, MARTIN EHL,
LUDWIG LINDORFER, ALFRED M.
NEUMANN, and SAMUEL DEPAOLA

Witnesses for Respondents.

*Filed May 11th 1994
M. A. Stone
Register*

*Commissioner's Fee \$15.00
Not paid.*

KARL HANSELMAN,

Complainant,

- vs -

ANNA H. NAGELE and
AUGUST NAGELE,

Respondents.

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

REPLY BRIEF AND ARGUMENT
IN BEHALF OF COMPLAINANT.

By

Lloyd A. Magney,

Solicitor for Complainant.

KARL HANSELMAN,

Complainant,

-VS-

ANNA H. NAGELE and
AUGUST NAGELE,

Respondents.

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

REPLY BRIEF AND ARGUMENT
IN BEHALF OF COMPLAINANT.

By

LLOYD A. MAGNEY,

Solicitor for Complainant.

In reply to the briefs in behalf of the Respondents, dealing as they do exclusively with legal propositions advanced against the case of the complainant, a general observation as to the case as a whole seems called for by the nature of the briefs filed.

I had been under the impression that the real questions for decision in this case were as to matters of fact, and devoted the original brief on submission largely to a discussion of the evidence in an attempt to demonstrate to the Court that the facts of the case are with the complainant. But it now seems, from Respondent's briefs, that so much is practically conceded and that all that is left in the case for the Court to decide is whether or not the complainant is legally entitled, on the facts proved, to the relief claimed.

Instead of relying upon the testimony adduced by their witnesses to prove the case alleged by their answer, that the contract sued on was not the contract they made but was a different contract which was obtained from them by misrepresentations, Respondents have abandoned everything except legal technicalities and objections which they contend are weaknesses in complainant's case, and that because of the legal and technical weakness of complainant's case, rather than any equity or strength of their own, relief should be denied.

This should relieve the Court considerably in arriving at the merits of the controversy and I again assert, as in my original brief, that the testimony establishes the case made by the Bill and wholly fails to establish the case made by the answer.

Now if there be indeed, fatal legal or technical deficiencies in the case of the complainant, the result must be a denial of the relief he seeks and a decree in favor of respondents and this in spite of the facts of the case as disclosed by the record. But a careful reading of the authorities cited in behalf of the Respondents, and the proper application of the settled law to the facts of this case, will conclusively demonstrate the soundness of the Complainant's case on the law as well as on the facts.

The technical, legal questions raised by the briefs of Respondents are several. Mr. Rickarby, in his brief, raises only one while Mr. Hybart states his as two in number. Mr. Hybart's second point is the same as Mr. Rickarby's one, however, and so there are two main legal objections raised to the case of Complainant. But Mr. Hybart's first point is really several different legal propositions each touching some phase of the law relating to the specific performance of contracts. He cites numerous authorities as to each but a careful reading of these authorities discloses no case which is on a par with this on either the facts or the law. For more convenient answer, let us divide his First Point into the three parts of which it is composed. Mr. Hybart argues that the law is:

FIRST POINT

- (A). Specific performance is a matter of discretion, not right.
- (B). Equity will not enforce performance of a contract which is oppressive and unjust.
- (C). Equity will only enforce performance of a contract

which is fair, reasonable and reasonably certain in respect to the subject matter.

Now it seems to me that it may safely be admitted that all of the above are correct statements of abstract law, without in the least militating against the case of the Complainant, and the application of these principles to the case made here but further fortifies the right of the Complainant to the relief he seeks.

(A). Let us examine a little more closely Point A, that specific performance is a matter of discretion, not of right. Of course it is, but there are qualifications to the rule, one of which is that the discretion of the Chancellor is to be exercised in accordance with settled principles of equity. Let me quote from the first authority cited by Mr. Hybart, Cudd vs. Wood, 205 Ala. 682, 89 So. 52, which was a case to compel a purchaser of land to perform his contract over his protest that the title was faulty. The Supreme Court said:

"Specific performance is not a matter of absolute right, but rests in judicial discretion to be exercised according to the settled principles of equity. It will not be compelled if, under all the circumstances, it would be inequitable to do so, and as said by this court in Boylan vs. Wilson, 202 Ala. 26, 79 South. 364:

'A contract for the sale and purchase of land will not be compelled where the state of the title is the subject of reasonable doubt, or where it is reasonable to anticipate that the purchaser (respondent) will be exposed to litigation with respect thereto.'"

There can be no quarrel with that statement of the law, but wherein is the case helpful in determining whether this Complainant is entitled to have the performance of his contract

compelled? There is no such similarity of facts as to make the law announced pertinent or applicable in this case. Mr. Hybart's next authority, *Boyland vs. Wilson*, 202 Ala. 26, cited above, was another case in which the defense raised was the faulty title of the land, purchase of which was sought to be compelled; it affords no assistance. The next citation is *Ala. Cent. R.R. Co. vs. Long*, 158 Ala. 301, 48 So. 363, and this was a case seeking to compel the conveyance of land which was resisted on the ground that the land was insufficiently described in the contract, but specific performance was decreed and the case points no reason why, either in fact or in law, a similar decree should not be entered in this case. The next citation, *Am. Laundry Co. vs. E. & W. Dry C. Co.*, 139 Ala. 161 (should be 154), 74 So. 58, was a case in which the contract sought to be enforced was held by the court to be void as in restraint of trade. The language quoted by Mr. Hybart was used by the Court in that case, it was apropos in that case and, in fact, in any case of specific performance, but does it disclose any reason, legal or equitable, why this Complainant should not have his contract enforced by the decree of this Court? Certainly specific performance must always rest in the discretion of the Court but unless the case presents some reason why it would be inequitable to grant it and compel the performance of the contract involved, that discretion must be exercised to compel performance not to excuse it.

(B). Some of the reasons why a Court of equity will exercise its discretion to refuse specific performance are set out and mentioned in the next authorities cited by Mr. Hybart. One

reason for refusing performance is that the contract sought to be enforced is oppressive and will work great injustice but the case he cites in support of this proposition, Homan vs. Stewart, 103 Ala. 652 (it should be 644), 16 So. 35, holds that a contract is not oppressive and unjust merely because after the contract was made there was a very large depreciation in the value of the property contracted to be bought, and this even though the seller had charged twice as much for the property as he had paid for it. And so performance was compelled notwithstanding the rule of law announced.

It takes something of real and substantial importance to make a contract so oppressive as to be unenforceable; there is some burden, necessarily, about performing any contract. An instance of a case of an oppressive contract, a fair example of what it takes to constitute too great a burden and hardship to be enforced by a court of equity, is afforded by the next authority from which Mr. Hybart quotes, Sanders vs. Newton, 140 Ala. 338, 37 So. 340.

It was a case in which the Respondent had contracted to buy some machinery, paid a substantial part of the price in cash, made further payments upon notes, and also gave a contract to convey land as a part payment. The seller, rightfully, re-took possession of the machinery and then sued to enforce the contract to convey the land. The Court said:

"On these facts it is clear that a case is presented, where a Complainant has been reimbursed his entire debt, and yet seeks to have a contract to convey land for a part of the purchase price

these trifling considerations are to afford an excuse for the refusal to perform a valid contract would be to wipe the remedy of specific performance out of our jurisprudence for it would be an unusual case in which weightier burdens than these could not be shown to be imposed by a decree for specific performance. No; if the Court is to refuse the Complainant his relief in this case, it will have to be upon some other ground than that the contract is unduly oppressive or burdensome or unjust.

(C). Various and sundry grounds on which the Court may refuse to compel performance are set out by Mr. Hybart in his citations of authority on pages 8 and 9 of his brief and we admit that these citations correctly state the law. We admit that the contract must be just, fair and reasonable and reasonably certain as to subject matter and founded on a valuable consideration; that it must not be ambiguous or uncertain; that a contract entered into by mistake as to the land to be conveyed will not be enforced; that it must be proved and none of its terms left in doubt or uncertainty; that its terms must be distinctly alleged and proved. All of these things, we admit, must characterize a contract to bring it within that class of contracts which the Court will enforce by its decree, but wherein does this contract lack in meeting any one or more of these specifications? Is it unjust, unfair or unreasonable? Certainly not; it merely calls for the conveyance of land for a price which the proof establishes is reasonable; there are no peculiar or unusual burdens attached to it; the only question raised as to its justness, fairness or reasonableness

(leaving aside, for the moment, respondent's contention that the contract was not binding on her at all) is the assertion that it was sold too cheap but on this point the proof is all against Respondent.

Is it ambiguous or uncertain? Certainly not; no one doubts or disputes what the contract is, the only controversy being whether or not there ever was a valid contract at all. Admitting that the written contract is a contract there can be no doubt about what it calls for, particularly when considered in connection with Respondent's answer in which she admits that she owns no other property in Elberta which could be confused with the property mentioned in the contract.

Was it entered into by mistake as to the land to be conveyed? No one has ever yet claimed that it was. Everyone connected with the case knows exactly what land is involved and there is no claim as to any mistake about that. Has it been proved; are any of its terms left in doubt or uncertainty? Now as to whether it has been proved or not there seems to be some controversy but as to that we contend that it has been proved and that the record establishes it, but certainly, none of its terms are left in doubt or uncertainty. If there is any contract at all, everyone knows exactly what it is. And so all of the specifications are met by this contract and if it be valid contract at all, it is entitled to the Court's decree to compel its performance.

SECOND POINT

Mr. Hybart's second point and Mr. Rickarby's one, are the same, viz.; that the contract of which specific performance

is sought, is not executed so as to be a valid and binding obligation which can be enforced. Of course, if there is no binding contract, as a matter of law, there is nothing to enforce but it is the Complainant's contention that all of the legal essentials are present and the contract valid and binding.

The only objection raised to the contract is that the signature of Mr. Nagele appears at the left hand side of the paper under the appellation "Witness" and it is contended that such execution by him is not sufficient to meet the requirements of our statute governing the alienation of her land by a married woman.

The pertinent statute (Sec. 8269, Code 1923) does not, by its terms, apply to an executory contract by a married woman but it has long been settled law in this state that by implication the statute does apply to executory contracts and that the assent and concurrence of the husband must be manifested in writing. (Rooney vs. Micheal, 84 Ala. 585, 4 So. 421.)

However, there is no "Mode prescribed by law" for the execution of executory contracts to sell land and thus it is that it is held that a deed which is inoperative and void as a conveyance, because the assent and concurrence of the husband is not properly manifested by his joining in the deed, may yet be perfectly good as a contract to convey, performance of which may be compelled, and this for the reason that, lacking any legal prescription for its execution, such a contract is valid whenever it is in writing and signed by the party to be charged.

In the case of Rushton vs. Davis (Supra) it was said:

"This brings us to a consideration of the legal effect of the instrument purporting to be a deed executed by F. E. Peterson and her husband to W. H. Davis and others. It may be conceded, and is, for that matter, beyond the pale of controversy, that as a conveyance of the legal title to the land, it is inoperative, for the obvious reason that the name of R. S. Peterson, the husband, does not appear as a grantor in the body of the instrument. Davidson v. Cox, 112 Ala. 510, 20 So. 500; Johnson v. Goff, 116 Ala. 648, 22 So. 995. For the same reason it may be said that it did not assign or transfer the legal title to this money. But is it not a good contract to convey? If it is, then unquestionably the grantees in the instrument, purporting to be made for a valuable consideration, could enforce the specific performance of it in a court of equity. This being true, of necessity the grantees named in the instrument acquired an equitable title to the land, and an equitable assignment of the money.

"In Murphy v. Green, 120 Ala. 112, 22 So. 112, in the deed made by Mary E. Travis to Green the name of Mary E. Travis alone appeared as a grantor in the body of the deed, and it was signed by her and attested by two witnesses. After her signature there appeared this statement: "This is to certify that the above grantor is my wife and that she has my unqualified permission to make above grant and sale of the above named lands. This 15th day of July, 1892. (Signed) J. C. Travis." The Court, through Justice McClellan, said: "The original deed from Mrs. Travis to complainant (Green) though void as a conveyance, was valid as a contract to convey, having been signed by her with the assent and concurrence of her husband thereon expressed in writing."

"The instrument in this case is unlike the one in the Murphy Case, in that the name of Peterson is simply signed under the name of his wife and acknowledged by him as one of the grantors in the conveyance, no writing appearing upon it signed by him, expressing his assent or concurrence to her executing it. But this is a matter of no consequence. The mere signing by Peterson of the deed was sufficient compliance with sections 2346, 2348, Code 1886. As said in Sheldon v. Carter, 90 Ala. 380, 8 So. 63, 'Signing the

Keeping in mind then the legal distinction between a conveyance and a contract to convey, we find that the authorities cited by Mr. Hybart are not pertinent (with one exception) because they deal with conveyances and the legal requirements for the execution of conveyances rather than with contracts to convey. The one case which Mr. Hybart cites which deals with a contract to convey is Morris vs. Marshall, 185 Ala. 179, 64 So. 312 and this was the case in which it was attempted to enforce a verbal contract of the wife to convey land and the Court, very properly, refused performance and laid down the rule that the husband must join with the wife in an appropriate instrument in writing.

But in this case we have an appropriate instrument in writing signed by both husband and wife and the only fault that is found with it lies in the fact that the husband's signature appears under the title "witness". However, the only necessity for the husband's signature to the contract is to ^{manifest} ~~mean~~ his assent and concurrence to his wife's contract, and if that be expressed in writing the contract is valid.

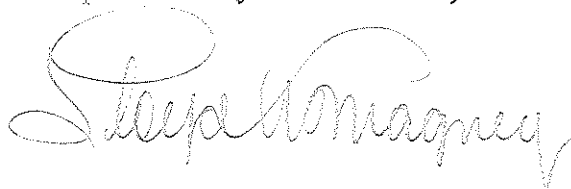
There are several cases in Alabama in which the Supreme Court held valid as a contract to convey land an instrument not properly executed by the husband and so void as a conveyance, but in which the instrument did bear his signature and so manifested his assent and concurrence to his wife's contract.

Rushton vs. Davis 127 Ala. 279, 28 So. 476.
 Shows vs. Davis 127 Ala. 279, 28 So. 476.
 Murphy vs. Green 120 Ala. 112, 22 So. 112.
 Sheldon vs. Carter 90 Ala. 380, 6 So. 63.
 Wood vs. Lett 195 Ala. 601, 71 So. 177.

thing by it; that he said "it is alright with me" but signed his name intending to express something different.

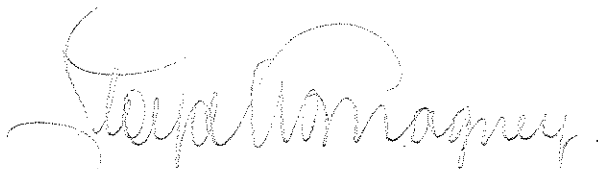
The argument that he did do so is specious but finds no foundation in the record nor in the normal reactions of human nature as we all know them; it is contrary to experience that under these circumstances this husband would have affixed his signature to his wife's contract meaning thereby to withhold his assent to it. He did not so intend, but, instead, intended to express his consent and concurrence and if he did the contract is good and by every criterion of right, fairness and elemental justice, it ought to be performed.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Stepe Romagney". The signature is fluid and elegant, with a large initial 'S'.

Solicitor for Complainant.

I hereby certify that a copy of this brief was served upon the Solicitors for the Respondents, Hybart, Heard & Chason and E. G. Rickarby, by mailing such copy to them this 23rd day of November, 1934.

A handwritten signature in cursive script, reading "Stepe Romagney". The signature is fluid and elegant, with a large initial 'S'.

Solicitor for Complainant.

in so many words; he was agreeing to his wife's contract, he was assenting to it and concurring with her act, he was merely validating her signature to her contract concerning her own property, and he was doing so by writing down his signature on her contract and as a witness thereto; witnessing and attesting not only the fact of her signature but his own lack of objection thereto, his consent and concurrence therein.

Mr. Hybart says (page 12 brief) "it might be that a husband would sign an agreement of this kind as a witness when he would not be in accord with the transaction and would not be willing that the conveyance be made and the property conveyed," but such conduct is so at variance with the natural reaction of an objecting husband as to be most improbable to say the least. It presupposes such a precise knowledge of the legal effect of his signature as to be unbelievable. Did Mr. Nagele, could he, have reasoned "I will say that this is alright with me, I will sign my name to this paper to make Hanselman believe that it is alright with me, and that I am joining with my wife in her contract, but I will put my name on the left hand side of the paper, under the word 'witness' which will not bind me and the contract will be void?" I don't believe it.

He said it was alright with him, he signed his name to show that it was alright with him, and he has never yet said or claimed that it was not his intention to join with his wife in her contract. He is the one person who knows what his intention was when he signed his name to this contract, but he does not tell us that he did not intend to express his assent and concurrence. If he will not make the statement how can it be argued that he had the intent to sign but not to mean any-

Now in arriving at a clear solution of the question of what was one's intent in doing a certain thing, all of the circumstances surrounding the act must be considered and given their proper effect. In this case we find four people (we can leave out of consideration Mrs. Zimmerman and Mrs. Hanselman, each of whose presence at the signing has been disputed) sitting down to sign a contract. They are laymen and have no knowledge of the niceties of the law but there is apparent, or at least discernible, a sense if not a knowledge, of the necessity for a husband to join with his wife in charging her separate property. Mrs. Nagele had no objection ~~in~~ signing a contract to sell her property and for the purpose of this discussion, the question of the precise legal effect to be accorded her husband's signature on the contract, it would seem to make no difference that later a dispute arose as to the contents or the legal effect of the paper signed. She was prepared to sign a contract agreeing to sell some of her property. She was very careful to have it definitely understood that it was her property, owned by her before her marriage, and that her husband had no interest, title, or ownership in the property. But according to the undisputed testimony she took the contract, and handed it to her husband, and said: "Gus, what have you to say about this"; and he said, "it is alright with me if it is alright with you", and then she signed it and he signed it.

Now what could have been Mr. Nagele's purpose, his intention, in affixing his signature to this paper? Why it is just as clear, just as certain, as if he had declared that intention

note and mortgage with his wife was a full compliance with the statute by Sheldon, the husband. It was certainly a written expression of his concurrence. Under those provisions of the Code the wife had full capacity to contract in writing as if she were a feme sole, with the assent or concurrence of the husband expressed in writing. The signing of the deed by Peterson, the husband, was an expression by him of his assent in writing in order to make it a valid contract to convey the lands to the Davises." Rush-ton v. Davis et al. Shows v. Same. 127 Ala. 279, 28 So. 476.

In the case of Wood vs. Lett (Supra) it was said:

"This instrument was signed at the foot by the husbands of the respective owners. But their names did not appear in the body of the instrument, nor did they sign as contracting parties; the only purpose of their signatures being to witness their assent to and concurrence in the agreement on the part of their respective wives, for which purpose their mere signatures would have been sufficient had the wife been otherwise bound." Wood vs. Lett, 195 Ala. 601, 71 So. 177.

In the case of Gindrat vs. Montgomery Gas-Light Co. 82

Ala. 596, 2 So. 327, it was said:

"The law looks at the substance of things, rather than at forms or shadows. It is said, in full accord with this view, by Mr. Perry: 'Where the required consent must be in writing any writing signed by the party, implying his consent, will be sufficient, whether it is a deed or mortgage or other paper by which his consent is given or implied.' 2. Perry Trusts, #784."

And so this case comes down to the question of whether or not the consent of the husband has been expressed in writing, to his wife's contract. It is familiar and settled law that the place, the location of his signature on the paper is not significant and the whole question is as to his intention in affixing it. (58 C. J. 724-725)

Filed, Nov. 24th 1994
W. A. Stone
Clerk

KARL HANSELMAN,

Plaintiff,

-vs-

ANNA H. NAGELE, et al,

Defendant.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

BRIEF OF COMPLAINANT ON SUBMISSION

By

Lloyd A. Magney.

KARL HANSELMAN,

Plaintiff,

-vs-

ANNA H. NAGELE, et al,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

BRIEF OF COMPLAINANT ON
SUBMISSION

The pleadings in this case present a very simple and clearly drawn issue of fact although that issue has been somewhat obscured by a great deal of testimony which does not bear directly upon the issue but is found in the record in an attempt, on both sides, to fortify the contradicted testimony of the witnesses, concerning the execution of the contract, by facts and circumstances believed to throw some light upon the subject.

The bill of complaint asserts a written contract by which, by its terms (aided by the admissions of the answer) the respondent Anna H. Nagele agreed to sell to complainant a certain building and lot of ground for the sum of \$500.00. It is admitted that \$400.00 has been paid and that the balance has been tendered and refused by the respondent and the bill asks for the specific performance of this contract.

The answer admits the execution of the contract, admits and makes certain the property involved and contemplated by the contract, but seeks to avoid the contract on the ground that her signature was obtained by the fraud and misrepresentation of the complainant as to the contents of the signed agreement. It is the respondent's contention that she did not agree to sell the building and ground for \$500.00, but only agreed to sell the building

for that amount.

The first question that presents itself under the pleadings is whether or not the written contract set out in the bill was validly executed. Purely legal phases have been disposed of by the court by the rulings on demurrers so that the only question is whether or not the admitted signing of the contract by the respondent was induced by such fraud as to entitle her to avoid the contract.

As to the circumstances surrounding the actual execution of the contract by the parties there is an irreconcilable conflict in the testimony, three witnesses for the complainant testifying to one state of fact and three witnesses for the respondent testifying to something entirely different. Usually in cases of conflict in testimony it is possible to so reconcile the differences, on the theory that someone has been mistaken or has misunderstood, as to relieve the witnesses from the suspicion of deliberate perjury in spite of the conflict, but even that would seem to be impossible in this case and the conclusion is almost inescapable that the witnesses on one side or the other are deliberately falsifying.

On the part of the complainant the testimony shows:

That the property owned and occupied by him in the Town of Elberta adjoins the property of the defendant which he claims to have bought, separated from it only by a ten foot alley. Plaintiff's garage is built upon his lot line at the rear of the lot owned by him and opens upon this ten foot alley. In this garage he keeps both his automobile and his truck and because of the narrow alley,

only ten feet in width, he had for some time prior to the purchase of the property encountered much difficulty in getting his truck out of the garage without backing into the fence of the defendant along the south line of the alley. Upon one occasion, shortly before the date of the contract, plaintiff's son in attempting to back the truck out of the garage, backed it into and against the fence of the defendant. Both plaintiff and defendant were present or near by and the plaintiff apologized to the defendant for backing into her fence and inquired if she would be willing to rent him the property, which was vacant and unused, so that he might move the fence back in front of his garage and leave room to back the truck out of the garage.

To this proposition the defendant, after offering to rent the property for \$5.00 a month, countered with a proposition that plaintiff buy the property from her stating that she wished to dispose of all of her property and go to California with her mother. Plaintiff inquired the price and was told by the defendant that she would sell the property for \$500.00. It should be borne in mind that the situation which led up to any discussion of a purchase and sale was the narrow alley and the difficulty in getting the truck out since this situation has a decided bearing on the question of whether or not it was merely the building and not any ground, that was the subject matter of the contract. Plaintiff had no particular use for the building, has never used it for anything according to the undisputed testimony except to store some feed, and was primarily concerned in getting more room, more ground, on which to get his truck out of the garage.

Several days elapsed during which time the plaintiff considered the purchasing of the property and during that time an incident occurred concerning which there is no dispute in the testimony. Such a situation is so rare in this case as to be deserving of special consideration. It is testified by both plaintiff and his son that on one occasion, just before the contract was signed, the son was sweeping the sidewalk in front of the store and the plaintiff and defendant had a conversation in front of the building which defendant admits she sold. According to both plaintiff and his son, and not a word of this is denied by the defendant or any of her witnesses, the plaintiff inquired of the defendant as to the width of the lot and she stated to him that she did not know exactly because a part of the alley had come off of the lot but that she thought it was about forty or forty-two feet in width by one hundred and eighty feet in length and pointed out to the complainant a small tree which she stated grew upon the lot line and plaintiff called his son and pointed out to him the tree and line of the lot.

As previously stated this conversation is not denied; it is positively testified to by the complainant and his son; it stands out as one of the few undisputed facts in the case on which a decision can be based and it is utterly inconsistent with the theory of the defendant that she sold only the building, since the lot line would be of no interest to either party if the contract contemplated only the sale of the building.

After several days discussion with the members of his family plaintiff decided to buy the property for \$500.00 and sent

his wife to the defendant to so notify her and to pay \$20.00 to bind the trade. A day or two later and on the 29th day of April, 1930, the plaintiff, his son, and his wife, according to their testimony, went to the residence of the defendant to complete the transaction. As to what transpired that morning there is no point mentioned on which the witnesses agree. The time of the day, the persons who were present, and every detail of what transpired are in hopeless conflict according to the testimony of the witnesses. Plaintiff and his two witnesses, his wife and son, state that they went early in the morning about eight o'clock; defendant and her two witnesses, her husband and mother, say that it was at ten o'clock, just as the mail came into the Elberta post office which the defendant conducted. Plaintiff's witnesses say that they were all three present and that Mr. and Mrs. Nagele were alone. Defendant's witnesses say that Mrs. Hanselman was not there at all but that Mrs. Zimmerman, the defendant's mother, was. Plaintiff's witnesses say that the contract was written in the defendant's home, by the plaintiff's son, on paper furnished by the defendant and after some discussion between the parties; that after it was written the contract was read over aloud by plaintiff's son while the defendant stood beside him and followed the reading; that thereupon she took the paper and handed it to her husband and asked him what he thought of it and he replied that it was alright with him if it was alright with her. Defendant stated that the property was hers, owned by her before her marriage, and that her husband could not sign as a seller but merely as a witness to show his agreement to the sale. Whereupon both defendants signed the paper, plaintiff signed, then paid Mrs. Nagele \$80.00 in money for which she gave him the receipt Exhibit E.

All of this is denied by the defendant and her witnesses. They say that the Hanselmans, father and son, but not the mother, came in at the time when they were busy distributing the mail which had just arrived, the hour being ten o'clock instead of eight; that Mrs. Hanselman was not present; that no contract was written at the time for the reason that plaintiff's son had with him, already written, the paper which was signed; that the only conversation was that plaintiff's son stated that he had prepared a temporary contract which he wanted them to sign and that without any more discussion, without reading the document and without any inquiry or knowledge as to the contents of it defendant and her husband signed it. That no money was paid her then but the \$80.00 she receipted for on that date was received later that same day in plaintiff's store.

So far as testimony of the witnesses on each side is concerned, as to this part of the case, (that is, those witnesses who claim to have been there,) it is evenly balanced and defendant is able to produce no witness to corroborate the story told by herself, her husband and her mother.

Plaintiff is somewhat better off; he is able to and does produce one additional witness who has some knowledge of what transpired that morning. This is his daughter Emma Hanselman, who testified that on the morning in question her father, brother and mother did leave their store at about eight o'clock and go to defendant's residence. She says that at that time Mrs. Zimmerman was living on her farm and not at her daughter's house; that she did not see her there that day; that her father did take \$80.00

in money from the store with him. She also swears that no contract was drawn up before they left but that they did come back with the signed contract which is set out in the bill. To the extent of the testimony of this witness, the evidence of the plaintiff preponderates.

In various other ways, however, plaintiff's version of the matter is corroborated whereas that of the defendant is not: For instance, four witnesses including the plaintiff himself, testify that on the same day the contract was signed the fence around the lot and in front of the garage of the plaintiff, was moved back by the plaintiff so that he might more easily get his truck out of the garage; that on the morning the contract was signed his son Arthur, was waiting with the post hole digger and posts and went to work immediately upon the closing of the trade to move the fence back; that it was then moved back and is so moved back today. Now if this be true it is certainly very persuasive that plaintiff bought something more than merely the building, as defendant would have us believe he did, because his purchase of the building alone would have given him no rights over the fence some 70 or 100 feet away from the building. Furthermore, this fact, if it be a fact, bears out plaintiff's statement that his real interest in acquiring the property at all was to give him more ground in front of his garage.

It is undisputed that the fence was moved by the plaintiff, the only dispute being as to when and under what circumstances it was moved.

The defendant, Mrs. Nagele, says it was moved sometime after the sale, "in the fall," upon plaintiff's request.

and her consent. But on this precise point the defendant is hopelessly in the minority, indeed, her testimony stands alone and unsupported since not even her husband was interrogated on this point and no other witness for the respondent even mentions it, while for the plaintiff, including himself, four witnesses testified positively that the fence was moved the same day the contract was signed and as a matter of right, without either consent or objection from the defendant. Why? Because at that time she knew she had sold the property and that it was the plaintiff's right to move the fence.

Now the writer contends that this point is proved by a preponderance of the evidence in favor of the plaintiff. While it is true that mere number of witnesses is not decisive, certainly, by no possible stretch of the imagination can the defendants' claim that the fence was moved later and by permission, be said to be proved and, when, on a disputed point, the evidence preponderates four witnesses to one, the court is almost forced to the conclusion that the point is proved by the preponderance of the evidence. If this point is indeed proved to the satisfaction of the court, defendant's whole defense is shattered since the removal of this fence by plaintiff is in direct conflict with her whole theory that she was selling and the plaintiff was buying, no ground but only a building. Defendant obviously was not willing to remove her fence so long as she owned the property. Had she been so willing the matter could have been easily adjusted without any purchase of the property or any part of it by the plaintiff and when the fence was moved, immediately upon the signing of the contract, it is

certain that it was done by the plaintiff and permitted by the defendant because she felt, indeed knew, that by signing the contract and paying his money plaintiff had acquired an actual right to move the fence, a right which would not have accrued to him at all merely from the purchase of a building some distance removed from the fence and ground in front of plaintiff's garage.

Again: Plaintiff would seem to be further corroborated in his version of the transaction by the sheer improbability of the story of Mrs. Nagele. It appears without conflict or dispute from the record that plaintiff is a prosperous business man; he owns three farms and a general merchandise store and the property on which it and his residence stands. Having accumulated so much it is reasonably to be inferred that he enjoys at least fair, average business intelligence. His testimony reads like that of a man of intelligence and it is a fair inference from the testimony in the case that he is a man of at least fair, average business ability and judgment. He owned no land in Alberta to which he could have moved this house and yet defendant's story, if believed, would force us to the conclusion that such a man would buy a house or building without the ground on which it stood, without even owning a place to put it or even inquiring about when he would have to move it off. No one, in exercise of the least bit of common sense, would consciously go into such a deal. No reason is advanced as to why the plaintiff should have done so except Mrs. Nagele's statement in her rebuttal testimony, to the effect that nothing was said about moving the house because Mrs. Hanselman, (not the plaintiff nor, by any showing in the record the plaintiff's agent), had promised to buy all her property and she expected the

plaintiff to buy the land under this house later. But all of the Hanselmans, four in number, expressly testify that when Mrs. Nagele wanted the plaintiff to consider buying her other property as well as this, (because she was anxious to dispose of everything she had so as to be free to go to California with her mother) he refused to even consider it stating that he was interested only in the one piece he was negotiating for and later bought.

It can not be argued that there was no contract, no meeting of the minds, a misunderstanding between these parties since their agreement does not rest in parol but has been reduced to writing and incorporated into a written contract which expressly states that defendant was selling and plaintiff was buying a "store and lot". Such a contract is not subject to reformation or rescission for mistake unless the mistake be mutual which cannot be said in this case even if we concede, which we do not, that Mrs. Nagele honestly believed she was only selling the house and not the ground which it stood upon. Lacking mutuality of mistake it requires a mistake on one side and fraud on the other to avoid a written contract and we submit there is no fraud on the part of the plaintiff shown by this record, a point, however, which will be demonstrated later in this brief.

Again: To further corroborate his oath that he would never have bought this little shack for \$500.00 without also buying the lot on which it stood, plaintiff conceived the idea that if he proved to the court that the building alone was not worth \$500.00 and that the ground and building together were only reasonably worth \$500.00, such proof would be of material assistance to the

court in determining whether he or the defendant was telling the truth about the matter but, as with practically every other question in the case, the testimony on this question of value immediately piles up into a mass of contradictions and since, by volume, the greater part of the testimony in the case is with reference to this question of value, it seems necessary to analyze it and reconcile the apparent conflict if possible.

Fortunately, on this phase of the case, the conflict is more apparent than real; the disinterested witnesses who have testified as to values, (at least), are all honest men and by carefully considering their testimony, their means of knowledge, their opportunities to know the facts, and allowing for honest differences of opinion and disregarding the incompetent testimony, it is possible to arrive at a clear cut conclusion on this question of value.

On this question the plaintiff offers the testimony of six witnesses:

1. August Noltensmier has lived in Elberta for the past eighteen years. He is sixty-four years old and has had much experience in building and construction of houses and is familiar with real estate and real estate values in and around Elberta, Alabama. At the request of the plaintiff he made a detailed examination of this building which he has known ever since it was erected. He actually went to the building, measured it up, drew a sketch of it and wrote down all of the lumber which it contained which he states is 9,309 board feet of lumber. He testifies

positively as to the cost of every item to duplicate the building on this same lot, of all new material and without making any allowance for the natural depreciation, because of its age, in the building which Mr. Hanselman bought. He fixes this amount at \$525.70 allowing \$300.00 for the value of the lot and the balance of \$225.70 for material and labor to duplicate the building all new.

He further states, what everyone must know, that the old building is worth less than the new duplicate would be to the extent of any depreciation which has occurred.

He identifies the three photographs, exhibits A, B and C which are attached to the depositions.

If his testimony is to be believed, and there would seem to be no reason to disbelieve it, it is obvious that the plaintiff did not buy the property, lot and house, for anything less than its fair value and that if he agreed to pay \$500.00 for the house alone he was badly beaten on the deal.

2. The witness Max Neumann has lived in Elberta since 1920. He too is experienced in real estate and knows property values in Elberta. He knows this particular property and has known it ever since he came to Elberta in 1920 as the building was erected before that time. He too, before testifying as to the value of this property, went and made a personal inspection of it both inside and out. He does not attempt to give the exact details and items of the cost of duplicating the building as Mr. Noltensmier does, but does say that taking into consideration the cost to replace it, which he places at the sum of \$275.00 and taking into consideration

the value of the lot on which it stands which he places at \$250.00, the fair market value of the entire property, as of the date of this contract, was \$525.00.

If we believe the testimony of this witness, and there would seem to be no reason to disbelieve it, it is certain that the plaintiff did not buy the property he claims to have bought, both lot and building, for anything substantially less than its real value; but that if he bought only what the defendants claim he bought, the house alone, he did pay almost twice its real value even if the building were new which, of course, it is not.

3. John Werner is a carpenter, contractor and builder and has been engaged in that business practically all of his life. He was 48 years old when his testimony was taken and at that time had lived in south Baldwin County, within a few miles of Elberta, since the year 1911. He has known this particular property in a general way ever since it was built. Shortly before his testimony was taken he was asked by Mr. Hanselman to make an examination of this building and did so. He tells us that he made a careful examination and tested the joists and sills and that the building has deteriorated badly and that much of the lumber is rotten, and for the purpose of moving the building off of the ground on which it stood he says that it would cost so much to put it in condition to stand moving that it would not pay to move it and that if the building had to be moved he would not consider it of any value at all for the reason that he could build it new, with all new material, for but little more than the cost of putting it in condition to stand moving. He tells us that he would gladly take a contract to furnish all the material and labor to construct a duplicate of the

building, of all new material, for between \$250.00 and \$300.00 and that this building, even on the basis of leaving it where it stands, has suffered damage by deterioration to the extent of at least three-quarters of its value.

This witness does not claim any familiarity with land values and so expresses no opinion as to the value of this lot but certainly, if we are to believe his testimony, and there would seem to be no reason for disbelieving it, Mr. Hanselman was badly imposed upon if he was, as a matter of fact, induced to purchase this building alone for \$500.00.

4. Mr. E. S. Hugger, plaintiff's next witness, is a comparative new-comer to Baldwin County but for forty-four years he was engaged, in the city of Montgomery, Alabama, as a member of the firm of Hugger Brothers, in the general contracting business and he is thoroughly familiar with the erection and construction of buildings and houses of all kinds.

At the request of the plaintiff, shortly before giving his testimony, he too went to the building and made a personal inspection and examination of it. He tells us that he did not make this examination with the express idea of moving the building in mind but that he found the sills to be rotten and that it would require considerable work and expense to put the building in such condition that it would stand moving.

He tells us that the building is in bad shape, that the roof is bad and leaking, that much of the siding is in bad shape, that the sills are rotten, that the porch roof is gone and the porch floor is in very bad condition.

which it would take to replace this building of all new material.

He is not testifying as to abstractions nor with reference to any hypothetical building, because he too made a personal inspection of this building before he attempted to give any testimony concerning it.

He tells us that the building can be replaced, duplicated, of all new material for \$285.00. He too describes the rotted and deteriorated condition of this building, as contrasted with a new one, and tells us that this building, in its actual condition, is worth \$75.00 if it has a place to stand but nothing if it has to be moved off.

If we believe this witness, and there would seem to be no reason for disbelieving him, Mr. Hanselman made a very poor trade if he agreed to pay \$500.00 for this building without any ground for it to stand upon, so poor a bargain, in fact, that it is almost incredible that a man of his apparent intelligence could have been led into such a foolish contract.

6. Frank W. Walker, at the time of giving his testimony, had lived in Foley for seventeen years. His business life, both before coming to Alabama and since, had been largely with real estate and the construction of houses and buildings and he has had considerable experience in the moving of buildings.

As the general agent for the Baldwin Mutual Insurance Company, he is required to inspect and appraise and value buildings of all kinds. He has a knowledge, based upon his years of experience, of the value of buildings.

He tells us that if this building were braced and cross

Naturally, a building in this shape is worth much less than a new building of the same dimensions and material and yet Mr. Hugger tells us that he would be willing to contract to duplicate this building with all new materials of the same quality for the contract price of \$239.00. His testimony was given sometime after the date of this contract and he states that as of the date of the contract the contract price would have been from four to six percent greater which would make the contract price for the duplication of this building, all new, on the date of this contract, a little less than \$250.00.

Mr. Hugger tells us that the building has no value at all for removal purposes because the cost of fixing it so that it would stand moving would be so great that it would be wiser to abandon the old building and build a new one.

Mr. Hugger also tells us that the building was a good many years of age, that it was very cheaply constructed and of very cheap material when it was built and that it has depreciated at least fifty percent of its original value.

If we believe this witness, and there would seem to be no reason for disbelieving him, it is certain that if Mr. Hanselman bought this building for \$500.00, in its depreciated condition and with the uncertainty that without any ground under it, it would have to be moved, he entered into a contract so improvident as to be almost unbelievable.

5. Robert Bruhn has lived in Elberta, Alabama, since 1920 and has operated a saw mill during all that time and has done considerable building and construction work. He knows the cost of lumber and building materials and the cost and amount of labor

loaded that it would carry itself and if the west end of the building were removed entirely it would be possible to move it off from the lot where it stands. That after a new foundation had been constructed and the building placed upon it, it would not then have a value of more than somewhere between \$200.00 and \$250.00 but that to value the building as it stands, with the intent and purpose of moving it, it does not have a value of more than \$50.00.

This witness is testifying to the concrete facts within his knowledge; he is not answering hypothetical questions about a building he has no personal knowledge of; he is eminently practical about this building and if we believe his testimony, and there would seem to be no reason for disbelieving it, it is certain that anyone who agreed to pay \$500.00 for this building without any ground for it to stand upon, would be paying far in excess of, at least twice, its real value.

Let it be remembered that each and all of these witnesses had, very shortly before testifying, gone to and made an examination of this building so that they were testifying to facts within their own knowledge; that each and all of them are men of wide experience in matters of this kind, selected by the plaintiff because of this knowledge and each without any possible interest in the outcome of this litigation.

When we read the testimony of the defendant's witnesses on this question of values a very different situation at once makes itself apparent.

The first witness for the defendants on this question of

value was one Rudolph Wiehr. He was examined twice, the first time by Mr. Rickarby on August 9th, 1933 and the second time by Mr. Hybart and Mr. Chason on November 17th, 1933. We wish to ask the court to read carefully the testimony of Mr. Wiehr as it seems to the writer to be so full of inaccuracies and contradictions as to be of very little probative value.

Without dispute, Mr. Wiehr built this building. His business is farming but before he started farming he was for three years in the carpentering and contracting business. His experience is necessarily limited. He does not know when the building was erected but thinks it was six or seven years before he gave his testimony which would be sometime during the year 1925 or 1926. The defendant Mrs. Nagele states that the building was erected in 1921 and at least two of the witnesses for the plaintiff place it before that, Mr. Noltensmier saying it was built in about 1918 and Mr. Neumann saying that it was erected when he came to Elberta in 1920. Mr. Wiehr does not remember any better about what went into this building than he does about when he built it for he states in his first examination:

"Q. What is your recollection as to the number of feet in the building?

"A. Well, that is a question I hate to answer just that way because I am not very good on remembering.

"Q. Do you know at this time, Mr. Wiehr, how much lumber went into that building?

"A. Just by guessing, I would not like to answer that question but if you gave me time to figure I can tell you.

"Q. The question is, do you know at this time, Mr. Wiehr, how much lumber went into that building?

A. No I could not say yes or no."

And yet this witness, basing his answer, of course, on his admittedly faulty recollection tells us that the building cost when he built it, about \$600.00. Of course, the cost of the building in 1921 or earlier, whenever it was built, is not material in determining the value of it on April 29, 1930.

Mr. Wiehr tells us that in arriving at this figure he used as a basis certain prices on lumber, to-wit: rough lumber \$30.00 to \$35.00 per thousand and dressed lumber \$40.00 to \$46.00 per thousand and yet it appears from the undisputed testimony of plaintiff's witnesses that in 1930 such lumber as was used in this building was worth \$12.00 to \$14.00 per thousand.

Mr. Wiehr tells us that,

"Q. Mr. Wiehr, what do you figure the rate of depreciation on a frame building such as this was?

A. Ten percent per year.

Q. If this building were built in 1921 then it would be 90% depreciated in 1930, would it not?

A. Yes, according to that.

Q. Its value then in 1930 would be less than its cost by ten percent each year after it was built?

A. Yes, that would be it."

Mr. Wiehr, at the time he gave this testimony, had already testified on direct examination:

"Q. Have you had occasion or been over to look at it any time lately?

A. No, I had no occasion to. Nobody asked me to and I saw no reason to do so."

And yet upon re-direct examination, immediately after his testimony as to depreciation just quoted he says that this particular building has not depreciated three percent all told because it was covered with tar paper and water cannot get to it and immediately after that, on re-cross examination he said:

"Q. Mr. Wiehr, you do not know whether the water has got under this tar paper and hurt the wood at all, do you?

A. No sir."

There would not seem to be any fact with reference to this controversy which can be said to have been proved by this testimony except the fact that Mr. Wiehr built this building, he doesn't know when, and that he has no present knowledge about it.

But on his second examination he again assumes to tell us about the building. In spite of the fact that he stated on his first examination that he had not made any recent examination of the building he now tells us that he had.

"Q. When did you make your estimation of the material in the building?

A. I do not remember the exact date. It was sometime during the middle of the summer when Mr. and Mrs. Nagele came out there and asked for these figures, but I do not remember the date nor the month.

Q. It was before we took your testimony the other time, was it not?

A. Yes, sure."

And yet on this later date, basing his answer upon the same information he had when he gave his testimony the first time

when he said he didn't know and could tell how much lumber was in the building "just by guessing", he assumes to tell us that a list of materials, appearing in the record as exhibit A. to Mr. Knud Jensen's testimony, is the material that went into the building and that another list of materials appearing as exhibit A to the witness J. A. Pilgrim's testimony, is also the material that went into the building.

He had made the only examination which he did make before August 9th when he was examined the first time and yet on that date he tells us that he can not say how much lumber went into the building except, "just by guessing," and yet three months later, without any further examination of the building he is able to vouch for the correctness of a complete list of all of the material in the building.

Also there is a great deal in this testimony of the witness Wiehr which is incompetent and immaterial testimony which, of course, the court will not consider, and when we take this illegal testimony out and consider the manifest contradictions of what is left there would seem to be very little of probative value in the testimony of this witness.

With reference to the testimony of the witness Knud Jensen we find no such contradictions nor any such willingness to say whatever the exigencies of the situation seem to require but it is submitted that there is no competent testimony at all advanced by this witness.

Mr. Jensen is a man of some small experience in construction work and probably was competent to give an opinion as to the value of the building had that been asked of him but this question was

not asked of him but, instead, he was asked to prepare a list of the material and the cost of the material and labor which went into the building.

Now it is submitted that this is no way to prove values but even so Mr. Jensen's testimony might have some weight if he had to the building, measured it up, seen what material was in it and then told us what it was and what it cost or would have cost in April, 1930.

But Mr. Jensen did not do this. Instead all of the information he had about the building he got from Mr. Wiehr, the same Mr. Wiehr who was so unable to tell us himself what material was used in the building, who could do so, "just by guessing".

According to Mr. Jensen's testimony he did not go into the building to figure it himself nor did he make any measurements of the building from the outside but all of these figures were given him by Mr. Wiehr.

From this information (purely hearsay) he drew up a list of materials which he believes would go into a building of the kind and such as was described to him by Mr. Wiehr and opposite the items of the list of material he gives the figures as to the cost of each, based on the value of lumber in 1930 and his total comes out as \$797.16. This, of course, would not tell us anything about the value of this building on April 29, 1930, even if Mr. Jensen's method of computation was correct and he tells us nothing about the value of this old building in its depreciated condition and, indeed, knows nothing about it and we submit that there is no competent testimony offered by this witness of any value in deciding this case.

The defendant's next witness Mr. J. A. Pilgrim, had apparently even less to base his opinion on than did Mr. Jensen. He tells us:

"Q. Mr. Pilgrim, have you ever gone over the building in controversy here?

A. No sir.

Q. Do you know what building is in controversy?

A. I believe I do, I am not sure.

Q. You have no personal knowledge about that building, what material is in it, what kind of material it is, when the building was built, what its condition was in 1930, what its condition is now, what class of construction went into it or any of those matters, do you?

A. No sir."

Mr. Pilgrim did not even make up his own list from what someone told him about the building, as Mr. Jensen did, but he was furnished, all prepared for him, a list of materials. By whom? By the defendant, Mrs. Nagele and all Mr. Pilgrim did was to take this list of material, this self-serving declaration of the part of this defendant and opposite the various items in the list set down the price of the material there given as of the year 1930. According to him the material was worth \$560.19.

Now it is submitted that the whole of the testimony of Mr. Pilgrim, and this without any reflection at all upon Mr. Pilgrim who, it is conceded, is strictly honest, is utterly incompetent and illegal and should be entirely disregarded by the court.

The same applies, we believe, to the testimony of Mr.

Albert Riebe, the next witness for the defendants. His testimony simply is that sometime before the date of this contract he was willing to buy this building from Mrs. Nagele, without any ground because he owned his own lot nearby to which he intended to move the building, for the price of \$500.00 but that Mrs. Nagele would not sell it to him for that price, but demanded instead \$700.00.

Certainly, what one man who had a place to put it was willing to pay for a building the year before this contract was made can have no bearing upon the question of what this testimony as to value was supposed to help decide, that is, what was the actual value of this building on April 29th, 1930.

The other four witnesses examined in behalf of the defendant had made no pretense of examining this property nor did any of them attempt to go into any detail with reference to it. They simply testified to a familiarity with real estate values in the Town of Elberta on which they gave an opinion as to the value of the property as a whole, in the case of Mr. Martin Ehl, of \$1000.00, in the case of Mr. Samuel DePaola, of \$1000.00, in the case of Mr. Ludwig Lindoerfer, of \$900.00 and in the case of Mr. Alfred M. Neumann, of \$800.00.

Now, as before stated, the writer contends that the evidence for the plaintiff on this question of value is much more positive and convincing than that for the defendant when we take into consideration the opportunities of the witnesses to know the facts and when we eliminate the illegal testimony; and we contend that it is proven by a preponderance of the evidence that this property, including both house and lot, was not reasonably worth substantially more than the \$500.00 plaintiff bought it for but

that the house alone without any lot is worth a great deal less than \$500.00. The plaintiff advances this proof as to value in corroboration of his statement that he agreed to buy and Mrs. Nagele agreed to sell the house and lot and not the house alone.

It seems reasonable to believe that at the time the contract was made the defendant was anxious to dispose of all of her property so that she could go to California with her mother, (indeed this much is without controversy) and that as a consequence she was willing to accept a fair rather than a top price for this property and that the price of \$500.00 was a fair price for the whole property. Very often the wish of the seller to be rid of a piece of property for private reasons has a decisive effect upon the price asked quite aside from the real or potential value and it would seem to be a fair inference from all of the testimony that if the plaintiff had tendered Mrs. Nagele the full \$500.00 on that 29th day of April, 1930, she and her husband would have executed a deed to lot four in block ten in the town of Elberta without the slightest hesitancy.

Now all of this testimony really focuses (or at least it should) upon one precise and narrow point which is the only real question in the case that is, was the written contract so executed as to be binding on the defendant? If it was the contract speaks for itself as to what was sold and that question is settled; if it was not so executed and is not binding upon the defendant then the basis for the plaintiff's suit is gone and the case at an end.

The defendants seek to avoid this signed agreement on the theory that their signatures were obtained thereto by fraud; the whole of defendant's evidence is directed to this proposition.

It is elementary law that the burden is upon one who seeks to avoid the effect of a written instrument, admittedly signed by him, on the ground of fraud, to prove the fraud by evidence which is clear, satisfactory and convincing.

"The burden is on one who seeks to set aside a conveyance of real estate, because of a fraudulent misrepresentation that induced the signature without a knowledge of its contents, to show such false and fraudulent inducement. The measure of proof required in such cases is that the evidence be 'clear and convincing,' or 'the strongest possible,' or 'clear, exact and satisfactory.' 2 Pom. Eg. Jur. #858; Guilmartin vs Urquhart, 82 Ala. 570, 1 So. 897. If the proof is uncertain in any material respect, it will be held insufficient, though the court may feel that a great wrong has been done; the court cannot grant the relief by reason of uncertainty. Hertzler vs. Stevens. 119 Ala. 333, 24 So. 521; Alexander vs. Caldwell, 55 Ala. 517; " Berry vs Sowell, 72 Ala. 17; 7 Mayf. dig. 189. (Woody vs Matthews, 194 Ala. 390, 69 So, 607.)

"And in Harrell v. Mitchell, 61 Ala. 270, it is said that fraud 'must be proved by clear and satisfactory evidence, and when a transaction is susceptible fairly of two constructions the one which will support and free it from the imputation of impurity of intention will be adapted.'" Allen vs Riddle, 141 Ala. 621, 37 So. 689; Henderson vs. Gilliland, 187 Ala. 268, 65 So. 793; Wallace vs. Crosthwait, 196 Ala. 356, 71 So. 666.

An analogous situation is presented in a case where a party asks the aid of a court of equity in reforming a contract on the ground that mistake or fraud had induced him to sign a contract which he did not intend to sign. While Mrs. Nagele does not specifically ask the court to reform this contract to make it conform to what she says she understood she was contracting to do, she does ask the court to relieve her from the consequences of her signature appearing upon the written contract and the legal effect

as to the plaintiff is the same as though she asked a reformation. Certainly the same measure of proof ought to be required of her as would be if she were asking for a reformation of, instead of to be relieved from, her contract; and that measure of proof has been many times prescribed by the Supreme Court of Alabama.

"It is important for the proper determination of the cause, to make reference to the well-established principles governing the reformation of contracts on account of alleged mistakes in their execution.

"In *Campbell vs. Hatchett*, 55 Ala. 551, it was said: "The court in the exercise of its jurisdiction (to reform written instruments on account of mistake or fraud in their execution) proceeds with the utmost caution, as it involves the invasion of a salutary rule of evidence prevailing at law and in equity. In all cases, unless the mistake is admitted, it must be proved by clear, exact, and satisfactory evidence, that the mistake exists,—that the writing deviates from the intention and understanding of both parties at the time of its execution,—or the court will decline to interfere." *Ohlander v. Dexter*, 97 Ala. 476, 12 South. 51.

"In *Guilmartin v. Urquhart*, 82 Ala. 571, 1 South. 897, the court said: 'To authorize the reformation of a contract which has been reduced to writing and signed, the proof must be clear, exact and satisfactory. First, that the writing does not express the intention of the parties—that on which their two minds had agreed; and second, what it was the parties intended the writing should express.'

"The burden in such cases is always on the complainant to show by evidence that is clear, exact, convincing and satisfactory, that the written contract does not express the true agreement between the parties. *Moore v. Tate*, 114 Ala. 582, 21 South. 820. If the proof 'is uncertain in any material respect, it will be held insufficient; and while the courts may feel a great wrong has been done, they can grant no relief by reason of uncertainty.' *Alexander v. Caldwell*, 55 Ala. 522; *Berry v. Sowell*, 72 Ala. 17.

"The authorities,' says Mr. Pomeroy, 'all require that the parol evidence of the mistake and of the alleged modification, must be most clear and convincing,* * * * or else the mistake must be admitted by the opposite party; the resulting proof must be established beyond a reasonable doubt. Courts of equity do not grant the high remedy of reformation

upon a probability, nor even upon a mere preponderance of the evidence, but only upon a certainty of the error.' 2 Pom. Eg. Jur #859.

"Until beyond reasonable controversy, the mistake is made to appear, the writing must remain the sole expositor of the intent and agreement of the parties.' Hinton v. Insurance Co., 63 Ala. 488; Smith v. Allen, 102 Ala. 406, 14 South. 760."

Hertzler v. Stephens, 119 Ala. 333, 24 So. 522.

Now while every word of Mrs. Nagele's story is contradicted and while as has been pointed out heretofore, the evidence preponderates in favor of the plaintiff's version rather than Mrs. Nagele's and while certainly she has not proved her story by that clear, satisfactory and convincing proof that the law requires, nevertheless her story is that she had entered into a verbal contract with the wife of the plaintiff to sell to plaintiff this house but not any land at all for the sum of \$500.00. That having so agreed and having accepted \$20.00 to bind the trade she was on April 29th, 1930 approached by plaintiff and his son in her home at a time when she was busy with her duties as postmistress and asked to sign a written contract and according to her testimony this is what happened:

"I saw right away what they had and I called Mr. Nagele out, as we had no right to leave the mail and Carl says 'I have a temporary agreement drawn up as we can not tell what may happen to dad.' He had the piece of paper in his hand. I never saw it and did not read it and we said 'We'll take your word to be honest about the deal' and I signed it and Mr. Nagele signed as a witness, also Carl Hanselman signed as a witness." (Page three, deposition of Anna H. Nagele)

In this testimony she is corroborated by her husband, the other defendant and her mother, Mrs. Zimmerman True, their story of the transaction is categorically denied by plaintiff's witness and plaintiff's testimony as has been before pointed out but if we accept this story as the literal truth (which we can not do) it

But suppose she did, what then? No one told her what was in it and she positively testifies that it was not read aloud to her by anyone; that the only representation made by anyone was the statement by Carl Hanselman that it was a "temporary agreement". Mrs. Nagele's testimony as to words used takes three different forms. On page three of her deposition she states it thus:

"and Carl says 'I have a temporary agreement drawn up as we cannot tell what may happen to dad.'"

On page four of her deposition she states it thus:

"he said 'this is a temporary agreement until we get other papers drawn up.'"

On page eleven, on cross examination, she answered the question:

"And Carl said to you 'I have a temporary agreement I would like to have you sign as my father is sick and he wants something to show for it?', by answering 'yes, a temporary agreement'".

Obviously there was no misrepresentation as to the contents of this paper made to Mrs. Nagele because no representation of any kind was made; she knew not then nor until much later, she says, what it contained but she signed it and said "we'll take your word to be honest about the deal." Be honest, how? By telling her honestly what was in the paper? No, because she didn't ask that and Carl didn't volunteer anything about the contract or its contents and she could not have been relying on anything he said was in it because all he said was that it was a "temporary agreement". He did not assume to tell her what the temporary agreement contained and she didn't ask him.

Neither she nor any of her witnesses even pretend that there was any effort to prevent her from reading it, any trick, ruse or artifice to induce her not to read it. She admits it was

is all that there is in the entire case which even pretends to establish any fraud on the part of plaintiff. The question is, does it do so?

Now the contract itself is in evidence attached to plaintiff's deposition and is before the court for inspection. It is written on only one side of one piece of paper in a clear and legible handwriting. It contains, counting the date, place of execution and the signatures (allowing one word to each signature) fifty-eight words all told. It is so brief and so clearly written that it would seem almost a physical impossibility for anyone able to read at all to look at it long enough to affix a signature to it without becoming cognizant of its whole contents. This defendant is an experienced business woman; for twenty years she has operated a retail store and performed the duties of postmistress in the village of Elberta; she has been educated in the English language she states and her clear, legible, well-written signature indicates it. It is incredible that such a woman could have signed this little contract without knowing what was in it.

The figures in the contract "45" and "185" leap to the eye upon the first glance at the contract because they are slanting and not written upon the line. They force themselves upon the observation and the consciousness of anyone who even looks at this paper; they must have been seen and to anyone who thought he was signing a contract that related only to a building and not to any ground, they would be particularly noticeable since they could not have any place in a contract concerning the store alone.

It is impossible for the writer to believe that Mrs. Nagele could have signed this paper without knowing what was in it.

laid upon the table while she and her husband signed it and during that time at least it was entirely in her own manual possession and she could have read it had she so desired. She was not entitled to rely upon any one's version of what was in the contract because nothing was said except that it was a "temporary agreement" which undeniably it was whether it was a correct though temporary statement of her understanding of the agreement or not.

The Supreme Court of Alabama has laid down the rule by which we must be governed in any case where one party claims to have signed a paper without reading it, although he might have done so, as follows:

"For one to misrepresent to another the contents of a writing which both can read, which both have an opportunity to read, which the one does not fraudulently prevent the other's reading, and which both sign, is not a vitiating misrepresentation, and is not, in legal sense, a fraud".
Dunham Lumber Company v. Holt. 123 Ala. 336, 26 So, 663.

This authority goes further than is necessary for the court to go in this case since it assumes a positive misrepresentation as to the contents of the paper, a phase of the case which is entirely lacking here. Defendant's whole theory of fraud rests in inference, the inference being that since she believed (or so she claims) that she had only agreed to sell the building and not the land, when Carl Hanselman said to her, in effect, "This is a temporary agreement," he misrepresented by presenting a contract which called for something different than her understanding even though he honestly believed the paper did express their bargain since it certainly stated his understanding of it. But this falls far short of such actionable fraud as a court can or will relieve against. True it is that fraud will vitiate any contract and true it is that the court ought not to enforce a contract procured by

fraud; but fraud means more than a mistake and the law requires of anyone who seeks relief on account of fraud that he show by clear and convincing testimony, a positive misrepresentation or an active concealment. And the law will not impute fraud to one who tenders a paper which he states is a temporary agreement and which, as a matter of fact, does correctly state the agreement at least so far as he understands it. That is not fraud under the law and the defendants' case falls far short of that clear, satisfactory and convincing proof of fraud that the law requires of her before she is entitled to relief.

The very most that can be said for defendant's theory of the case, admitting the exact truth of everything she has testified to (which we cannot do), is that the defendant intended to sell only the store and not the lot; that plaintiff intended to buy both and not the store alone and that each was honestly mistaken as to what their contract was when they come to the point of reducing it to writing. Certainly there is nothing to indicate that plaintiff ever intended to buy the building without any land.

The situation then is that defendant was mistaken in thinking that ~~expressed his agreement~~ *but the plaintiff was not sure the contract* the contract ^{as written} expressed his idea of the bargain exactly.

In this situation the contract as written must govern since under the law and the evidence there was no actionable fraud committed by plaintiff inducing her to sign the contract and a mistake on one side is not sufficient to avoid a written contract.

One of three things must be true. First, as thus stated, there must have been a mistake on Mrs. Nagele's part but not on the part of the plaintiff. In such a case the contract must stand as written. Another alternative is that there was no mistake on

anyone's part at the time the contract was written but that Mrs. Nagele is not trying to avoid a contract which suited her when it was made but which now has become unsatisfactory to her, by claiming mistake and fraud at the time it was executed; while the third alternative is that there was no mistake at all at the time the contract was written but the plaintiff is fraudulently trying to enforce against Mrs. Nagele a contract which she never made.

If the first alternative is the actual fact the court can not aid Mrs. Nagele. It is not reasonable to suppose that the third alternative, as stated, is the fact as it involves too many suppositions. For Mr. Hanselman to have deliberately tried to cheat Mrs. Nagele and secure from her something which she never agreed to sell it is necessary that he should have conceived the idea of so doing at the very start of the whole transaction. He must have had prepared, in advance, a contract which would effectuate his fraudulent purpose without Mrs. Nagele's knowledge and must have induced Mrs. Nagele to sign it. He could not have supposed when he went to her house to procure a written contract that she would be so careless as to sign anything he placed before her without even looking at it and if he intended to defraud her he certainly would have so drawn the contract as to cover up his intention instead of so drawing it as to make the fact of the conveyance of the land stand out as the first thing to be seen on a glance at the contract. It is ridiculous to suppose that he had any such fraudulent purpose on the day the contract was signed and he must have had it then, if at all.

On the other hand it is entirely consistent with the facts as the record makes them plain that in April, 1930, Mrs.

Nagele was anxious to sell her property; she wanted to go to California with her mother and wanted to get rid of all of her property and so was glad of the chance to sell to Mr. Hanselman, for a reasonable price, this piece of property. But matters did not so develop so that she could go to California; after the contract was signed and as the time to make a deed approached, difficulties began to present themselves to her mind; she remembered that her septic tank for both houses was on this piece of ground; she remembered that a part of her garage extended over on this piece of ground and she began to foresee difficulties in case she deeded this lot away. At the time she signed the contract it may be that she really did expect to sell her adjoining property to the plaintiff in which case these things would not matter but such sale did not materialize. She is a shrewd, experienced woman; she knew the little paper she had signed was at best an informal document and that in all probability she could, by denying that she had sold anything but the building, force a better settlement and a better price out of Mr. Hanselman. All this, of course, rests in deduction from the facts in the case as they appear on the record and yet it seems much more reasonable to believe than that the plaintiff conceived a fraudulent scheme to acquire Mrs. Nagele's property without her consent, initiated it on the day the contract was signed, and has carried it through to this point; and if there was any fraud, on either side, one of these two alternatives must be true.

The writer contends that the defendants have wholly failed to produce any testimony or proof, which is clear and convincing, that any fraud was committed by the plaintiff and have

wholly failed to sustain the burden upon them to prove such fraud as will relieve them from their signed contract, and that the contract is a binding, valid and enforceable one. No reason why the same should not be specifically enforced is advanced by the defendants except the issue of fraud/^{and} as a consequence the court's decree should be entered specifically enforcing this contract.

Up to this point in this brief the writer feels that all of the points of controversy between these parties, as disclosed by the record, have been covered except one, that one being the question of who has had possession of this lot of ground.

Except as this point would tend to corroborate one or the other of the parties in their version of the transaction it would not seem to be material. If the contract was not fraudulently procured and is valid and binding on the defendants no possession of the ground is necessary to ^{the plaintiff's} their case.

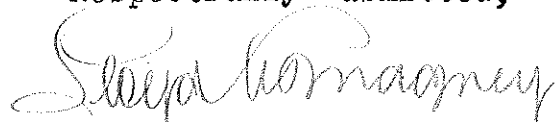
However, as on every other point, the parties are hopelessly at odds as to this question of possession. The plaintiff and his witnesses testify that plaintiff took possession of the lot as well as the building on the day the contract was signed; that on that day he moved the fence back in front of his garage; that ever since he has used as much of the lot as he needed as a wood yard on which he has ^{stored} sorted and cut his fire wood; that he has permitted the defendants to keep some chickens on a part of the yard but that this was by permission only; that he has permitted the defendants to use the garage which stands partly upon this lot and partly upon the adjoining lot because he had no use for it.

On the other hand defendant contends that plaintiff has never hadn any possession of any part of the lot except by her permission; that the fence was moved by her permission and the wood stored and cut upon the lot by the plaintiff with her permission and that she has kept her chickens on the lot and used the garage, not by virtue of any permission from plaintiff but because she had a right to.

The testimony of this phase of the case would seem to be so evenly balanced that it is difficult if not impossible to say which side has sustained the burden of proof but, as before stated, the question would seem to be only indirectly material and the case can be decided for either party without coming to any definite conclusion on this precise point.

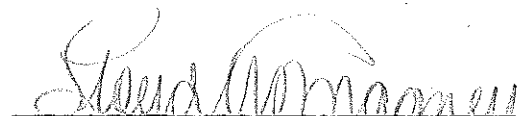
Taking the record as a whole the writer is convinced that the plaintiff has proved his case by a preponderance of the evidence; that the defendants have failed to sustain their plea of fraud by that clear, satisfactory and convincing evidence which the law requires of them and that the plaintiff should have relief as prayed in his bill of complaint.

Respectfully Submitted,



Solicitor for Complainant.

I hereby certify that a copy of this brief was served upon Honorable E. G. Rickarby and upon Messrs. Hybart, Heard & Chason, the solicitors for the respondents, by mailing to each a copy of said brief on the 7 day of March, 1934.



Solicitor for Complainant.

No.

VS.

PLAINTIFF

DEFENDANT

BILL OF COSTS

Received payment this _____ day of _____ 193_____

Register.

Filed March 30 1894
Wm. A. Stone
Clerk.

Circuit Court, Baldwin County, Ala.
In Equity.

10524

No.

Hanselman

vs.

Nagile

Cost Bill

Paid _____, 193

Register

Moore Ptg. Co.

KARL HANSELMAN,

Complainant,

-vs-

ANNA NAGELE and AUGUST
NAGELE,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN CHANCERY.

D E C R E E.

This cause coming on to be heard on the pleadings and the testimony for Complainant and Respondents, as noted by the Register, and Briefs of the Solicitors for the parties, ^{and was} ~~were~~ submitted to the Court, and being fully advised in the premises, the Court finds:-

That the Contract set out in the Bill of Complaint, the specific performance of which is sought in this action, was properly and legally executed by the Respondents, Anna Nagele and August Nagele, and is a valid and enforceable contract, and one which can be enforced by this Court if specific performance is justified by the evidence.

The Court further finds that the allegations of the Complainant's Bill of Complaint are sustained by the evidence and are true, and that the allegations of the Respondent's Answer are not sustained by the evidence, and that the Complainant is entitled to relief as prayed, and that the Contract which is set out in the Bill of Complaint should be specifically performed by the Respondents.

The Court further finds that there is a balance of the purchase price due from the Complainant to the Respondents of One Hundred Dollars (\$100.00), and that the Respondents are entitled to interest upon said sum in the amount of Twenty-six & 50/100 Dollars (\$26.50), and that upon the payment of the sum of One Hundred Twenty-six & 50/100 Dollars (\$126.50) by the Complainant to the Register of this Court for the benefit of the Respondents, a conveyance from the Respondents to the Complainant for the lands set out and described in said Contract and Bill of Complaint, to-

wit:-

Lot Four (4) in Block Ten (10) in the Village
of Elberta;

should be executed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that with-
in thirty days from this date the Complainant pay to the Register
of this Court for the benefit of the Respondents, the sum of
One Hundred Twenty-six & 50/100 Dollars (\$126.50), and that the
Respondents make and execute to the Complainant a good and suffi-
cient Deed of conveyance, conveying to the Complainant Lot 4 in
Block 10 in the Village of Elberta in Baldwin County, Alabama,
and that in the event of the failure of the Respondents to execute
such deed of conveyance that this Decree shall operate as a deed
to convey said Lot 4 in Block 10 in the Village of Elberta in
Baldwin County, Alabama, to the Complainant, without any conveyance
being executed by the Respondents; that if a deed of conveyance is
not deposited with the Register as herein provided that the Re-
gister shall record in the Office of the Judge of Probate of Bald-
win County, Alabama, a certified copy of this Decree, which shall
stand in the place of the Deed.

Dated this 6th day of February, 1935.

J. W. Thare
Judge of the 21st Judicial Circuit.

1054
Equity
DECREE.

RECORDED
Quick

KARL HANSELMAN,

Complainant,

-vs-

ANNA NAGELE and AUGUST
NAGELE,

Respondents.

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

Rendered February 6, 1935

F. W. Hare
Judge.

Robert S. Duck
Register

KARL HANSELMAN,
Complainant.

VS

ANNA H. NAGELE, et al
Respondents.

EQUITY.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Come ANNA H. NAGELE and AUGUST NAGELE and for answer to
the Bill of Complaint, respectfully show:

First: They admit the allegations of the first and second
paragraphs of the bill as to the residence in Baldwin County and
majority of all of the parties to the cause.

SECOND: Respondents admit that on April 29th, 1932,
Anna H. Nagele was, and still is, the owner of Lot Four in Block
Ten of the Town of Elberta. That they signed the instrument set
out in Paragraph Three, relying upon Complainant's positive re-
presentation that it embodied the terms of a verbal agreement made
between Mrs. Nagele and Complainant some days before and which
agreement Respondents are, and have always been, ready and willing
to perform. Respondents aver that the paper signed does not set out
the terms of the sale agreed upon.

THIRD: In answer to the 4th paragraph of the Bill, Respond-
ents admit that upon signing the alleged contract, Complainant paid
to them \$20.00 of the purchase price, and later paid THREE HUNDRED
AND EIGHTY DOLLARS more. Respondents aver that in compliance with
the terms of the actual agreement hereinafter set out, they placed
Complainant in possession and occupancy of the building purchased by
him, in which he has since been undisturbed, but specifically deny
that Complainant has ever been in possession of the remainder of Lot
Four, of which, on the contrary, they themselves are now and have been
for ten years or more in actual physical possession, having same under
fence, cultivation and daily use; that on said Lot are respondent's

wood house, chicken yard and garage, solely and adversely used by Respondent's daily. Respondents admit that they own no other property of the description set out in the bill but deny as aforesaid that they have placed Complainant in possession of any portion of said lot other than to the building thereon. Respondents admit the offer of one Hundred Dollars and interest as the balance of the purchase price, the demand that they convey the whole of Lot Four in Block Ten, in consideration thereof, and their refusal of said proposition, but aver on the contrary that they are now and always have been ready and willing to convey to Complainant the building upon said lot and to authorize him to remove same, said building alone being the property contemplated in the original transaction between the parties. FIFTH: Respondents aver that they reside on a lot on the west side of Main street in the City of Alberta, that the Post Office of Alberta is in the front room of their dwelling house; that Lot Number Four, in controversy here, lies next north of Respondents' residence and is a lot with forty feet of frontage on Main Street and a depth with equal width westwardly of two hundred feet, in the northeast corner of which is a large frame building formerly used as a store. Next north of Lot Four is a narrow alley and along said alley on the North on a lot also facing Main Street is a store operated by Complainant, who utilizes his entire lot. In 1930 Complainant's wife approached Respondents to purchase Lot Number Four but was told it was not for sale and after some discussion the building on said lot was agreed to be sold for the sum of Five Hundred Dollars with the privilege of using same until the lot was needed and removing the house at Complainant's convenience. At the time of said negotiations, when Complainant was several times told that this lot was not for sale, Mrs. Karl Hanselman, wife of Complainant, stated that they only wanted the building as a storage room as they were crowded in the store. With this understanding, the trade was closed for the purchase of the building only. Some days later, on

April 29th, 1930, Complainant and his son came over to Respondent's residence and the Post Office just as the mail carrier arrived with the forenoon mail, 10:00 A. M. Complainant had in his hand a small scratch pad with something written thereon in pencil which he asked Respondent Anna H. Nagele to sign, stating that it embodied the temporary agreement for the sale of the building next door and that he wanted to pay some money and bind the trade for a few days when a proper deed could be drawn. Respondent Anna H. Nagele, relying on Complainant's statement that it embodied the terms of the previous conversation, without reading it signed same and Respondent August Nagele and the son of Complainant attached their names as witnesses to the signatures of Complainant and Anna H. Nagele.

SIXTH: That Complainant was then put into possession of the building on Lot 4 and has used it continuously since. He was also allowed the use of a small space back of the building to store wood, by the express permission of Respondents, who remained in actual possession of the remainder of the lot, using the south side of the front for a lawn and the rear as a chicken yard and garden and the outbuildings for a wood shed and for a garage exclusively, and without question or objection on the part of Complainant.

SEVENTH: Respondents aver that no claim was raised by Complainant or his family to the entire lot until the spring of 1932, when the matter of payment of the remainder of One Hundred Dollars of the purchase price was suggested.

EIGHTH: Respondent, Anna Nagele, further avers that some months before negotiations were instituted by Complainant she was offered and refused Two Thousand Dollars for the house and Lot and hence had no intention of selling same for Five Hundred Dollars as claimed by Complainant. Said lot, even with the depressed condition of the market for real estate is worth today between twelve and fifteen hundred dollars. Respondents aver that they have been and are ready and willing to carry out the contract with Complainant originally

made by them, to allow Complainant to remove the building on the premises purchased by him at any time or to continue to use same in its present location as a store room as he is now doing until Respondents have occasion to use the front of their said lot. Respondent Anna Nagele is willing, if Complainant is unsatisfied with this transaction, to release him from further obligation, crediting him with the total amount paid and charging against this a reasonable rent for the use of the building since May 1st, 1930.

Having thus fully answered, Respondents pray that this bill be dismissed and they be permitted to go hence with their reasonable costs in this behalf expended.

William S. Rindley
Solicitor for Respondents

KARL HANSELMAN,
Complainant,

-vs-

ANNA H. NABELE, et al.,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

DEPOSITIONS OF SUNDRY WITNESSES IN BEHALF OF RESPONDENT.

The deposition of Knud T. Jensen, J. A. Pilgrim and Albert Riebe, witnesses for Respondent, examined before Helen Hecht, Commissioner acting by authority of agreement herewith attached.

The said witnesses appeared before the Commissioner at the State Bank of Elberta building on November 10, 1938. Present, Elliot G. Rickarby, Esq., Chas. T. Hybart, Esq., and John Chason, Esq., Solicitors for Respondent and Lloyd A. Magney, Esq., Solicitor for Complainant.

The said witnesses being first duly sworn upon examination by the solicitors of the parties, testified as follows:

KNUD T. JENSEN

(Examined by Mr. Elliot G. Rickarby)

Q. Mr. Jensen, what is your full name?

A. Knud T. Jensen.

Q. How long

A. Twenty-eight years lived in Elberta?

Q. Have you had any

Jensen? If so, what?

experience in building and contracting, Mr.

A. No sir. Some but very little.

Q. Have you built buildings of any kind in this community?

A. I have.

serviced buildings constructed

Q. From your experience in work of this kind do you know the value and cost of construction of small dwellings and small buildings?

(Objection by Mr. L. A. Magney)

Objected to as calling for a conclusion of the witness for which no sufficient foundation has been laid; Opinion evidence from a witness who has stated that he has had no experience along this line.

A. I have had some experience.

Q. From that experience, could you give a definite opinion as to the value of a small one story building?

(Objection by Mr. L. A. Magney)

KARL HANSELMAN,

Complainant,

-vs-

ANNA H. NABELE, et al.,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
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The said witnesses being first duly sworn upon examination by the solicitors of the parties, testified as follows:

KNUD T. JENSEN

(Examined by Mr. Elliot G. Rickarby)

Q. Mr. Jensen, what is your full name?

A. Knud T. Jensen.

Q. How long have you lived in Elberta?

A. Twenty-eight years.

Q. Have you had any experience in building and contracting, Mr. Jensen? If so, what?

A. No sir. Some but very little.

Q. Have you built buildings or supervised buildings constructed in this community?

A. I have.

Q. From your experience in work of this kind do you know the value and cost of construction of small dwellings and small buildings?

(Objection by Mr. L. A. Magney)

Objected to as calling for a conclusion of the witness for which no sufficient foundation has been laid; Opinion evidence from a witness who has stated that he has had no experience along this line.

A. I have had some experience.

Q. From that experience, could you give a definite opinion as to the value of a small one story building?

(Objection by Mr. L. A. Magney)

Objected to as calling for a conclusion of the witness for which no sufficient foundation has been laid; Opinion evidence from a witness who has stated that he had no experience along this line.

A. Yes.

Q. Would you know the structure building that is located between the Hanselman store and the Nagele residence on Main Street in Elberta?

A. I have seen it from the outside.

Q. Have you at any time been in that building?

A. Yes, I have.

Q. What in your opinion was the reasonable value of that building in the Spring of 1930?

(Objected to by Mr. L. A. Magney)

Objected to as incomplete, irrevelant and immaterial, calling for the conclusion of the witness for which no sufficient foundation has been laid and as calling for opinion evidence in a matter in which the witness has stated that he has had no experience.

A. The only experience I had about it was I was called on to check on how much lumber was in the building and the value lumber was at market price at the time.

(Objection by Mr. L. A. Magney)

Plaintiff moves to strike answer as it is not responsive to the question.

Q. What was the value of the building at that time as you find by examining it and checking over the amount of lumber and material used?

(Objected to by Mr. L. A. Magney)

Plaintiff objects fully to this line of questioning to the witness for the reason that opinion evidence is called for for which no sufficient foundation has been laid and because the questions call for the conclusion of the witness and not the statement of facts.

A. The lumber was put in that building and carpenter work, all included, porches, screens, screen doors, all came to \$797.16, based on the value of lumber in 1930.

Q. In giving that figure, is that not based on a careful computation of what is in the building?

A. We did not go into the building to figure it ourselves but the carpenter went with us and knew the size and everything.

Q. Had you been furnished with a list of the lumber and material that was put in the building?

A. No sir. We figured it out ourselves.

Q. Did you make the actual measurements of the building from the outside?

A. No sir. The carpenter gave us these measurements.

Q. Who was the carpenter?

A. Mr. Wiehr.

Q. In the last six or eight years, about how many buildings have you had built for you?

A. Five or six.

Q. Were you familiar with the labor conditions and the prices of lumber and material in the Spring of 1930?

A. Yes sir, to some extent around here.

Q. Did you have any buildings yourself built in 1929 or 1930?

A. Yes, I did.

Q. In giving the contract for those buildings and in having the work done, did you know the value of labor and material at that time in order to have that work done properly?

A. I did.

(Cross-Examination by Mr. Magney)

Q. Mr. Jensen, I understand that you arrived at the price or value of this building which you gave us by sitting down and talking with Mr. Wiehr, who told you what went into the building and that you did not yourself make any measurements or examination to see what kind of material or what class of construction went into the building but that instead you fixed this price of \$797.16 from what Mr. Wiehr told you about the size of the building, etc.

A. I did not arrive at the price on account of Mr. Wiehr but on the price of lumber at that date.

Q. But what I mean, Mr. Jensen, is all you know about this building and what went into it is what Mr. Wiehr told you.

A. Yes.

(Motion by Mr. L. A. Magney)

At this point in the testimony of this witness, plaintiff moves to strike the whole of the testimony of the witness and to exclude the same for the reason that it now appears that the testimony is based upon hearsay and not upon any facts known to the witness.

Q. Now the figures you gave, \$797.16, of course, would have been upon a new building?

A. Yes sir.

Q. You have not taken into consideration the age of this building in the Spring of 1930, have you?

A. No sir.

Q. These small frame buildings put up in this country out of rough lumber and built as this building was, depreciate fairly rapidly, do they not?

A. Some of them. Not all of them.

Q. And if this building were nine or ten years old in the Spring of 1930 it would be worth considerably less than the new building which you say could have been built for \$797.16?

A. That would depend upon how the building had been kept up.

Q. You did not know how this building was built or what it was built out of, do you?

A. No sir.

(Questioned by Mr. Hybart)

Q. These papers that you were considering as you testified, does that show the values upon which you based your figures?

A. Yes sir.

Q. Do you know who made up the figures on that paper?

A. Mr. Lawrenz and I made these up.

Q. Was that after you had come and checked up the building together?

A. I did not check over the building. Mr. Wiehr furnished us the figures for the building.

Q. These figures were made up by you and Mr. Lawrenz together?

A. Yes.

Q. Mr. Jensen, who furnished you with the items of material that appear on the list?

A. Mr. Wiehr furnished us with size and what is in the building, dimensions of the building and how it was ceiled.

Q. Did he tell you the class of material he used?

A. Yes.

Q. Did you make out this list from the information that you received from Mr. Wiehr, the carpenter, as to the material that went into the building?

A. Yes sir.

Q. And you put down on this paper what Mr. Wiehr told you?

A. I put down the dimensions and the information as to the necessary material.

Q. What business is Mr. Lawrenz engaged in?

A. Now in the Hardware business. Then he was in the Sawmill Business.

Q. What business was Mr. Lawrenz engaged in in 1930?

A. The sawmill business.

Q. Were you associated with him then?

A. Yes.

Q. How long have you been associated with him?

A. About twelve years.

Q. Have you been engaged in the Hardware business?

A. No sir.

Q. Is Mr. Lawrenz engaged in the Hardware business?

A. Yes sir.

Q. How long has he been engaged in the Hardware business?

A. About two years.

Q. I ask you to attach to your testimony the two sheets of paper which contains your estimate as to the cost of this building in 1930, based upon the information that was given to you by the man that constructed the building and mark the same as Exhibit "A" in the testimony.

Plaintiff objects to the receipt of evidence of the estimate sheets offered as Exhibit "A" for the reason that the same are incompetent, irrelevant and immaterial, are hearsay testimony and do not tend to prove or disprove any of the issues of this case.

Q. Mr. Jensen, is or is not that building covered on the outside with tarpaper?

A. It is covered with tarpaper shingles.

Q. Will a building that is protected from the weather in that way depreciate as rapidly as one that is open and exposed to the weather?

A. No sir.

MR. J. A. PILGRIM

Q. Mr. Pilgrim, how long have you been living in this community?

A. Twenty-one years.

Q. How long have you been living in the vicinity of Elberta?

A. Twenty-one years.

Q. What is your business?

A. Dealing in lumber and building materials and building supplies.

Q. How long have you been in that business?

A. I have been in the lumber business fourteen years.

Q. Are you familiar then with the values of lumber and building materials, not only now but as they were in 1930?

A. Yes.

Q. Will you look at this list of materials that is furnished you and give us your opinion as to the cost of it in 1930?

Plaintiff objects to this line of questioning for the reason that it is incompetent, irrelevant and immaterial. It appears that witness is being asked to give the value or price of a list of building materials, which list is entirely disconnected from the building the value of which is in controversy and there being nothing to lead us to believe that the materials listed are the materials included in said building. Plaintiff objects to this line of questioning for the further reason that this witness has shown no knowledge concerning this particular building. The amount of material in it or anything else connected with it and his testimony that a certain list of building materials had a certain value according to the prices of 1930, is not evidence which tends to prove or disprove any of the issues in this case.

A. The prices I have extended here are figured for the year 1920. This list of materials would amount to \$560.19 which is based on the prices in the year 1929.

Q. Are the extensions on this list the facts put down by you as the 1929 values?

A. They are.

Q. Are all these figures on the last page yours, if not which are yours?

A. The total carried at the top of the page and the following five lines are mine together with the grand total but not the four lines of figures commencing with the number \$9.36.

Q. Where did you get this list that was handed you?

A. From Mrs. Nagele.

Plaintiff moves to strike the testimony of this witness for the reason that it appears that the same is a mere self-serving declaration, the list of material having been prepared by the defendant and the prices of such materials extended and totaled by this witness without any knowledge on the part of the witness as to whether or not or any part of such material is actually included in the building. For the further reason that the testimony is incompetent, irrelevant and immaterial.

Q. What differences in values, if any, existed between those that you figure in 1929 and the values of the same items in the early part of 1930?

A. I could hardly say just how much. There was a tendency to decrease in value.

Q. To about what per cent?

A. From ten to fifteen per cent.

Respondent offers and extends as Exhibit "A" to testimony of J. A. Pilgrim the list referred to by said witness in his testimony.

Plaintiff objects to Exhibit "A" for the reason that it is incompetent, irrelevant and immaterial, a self-serving declaration on the part of the defendant and for the reason that it does not tend to prove or disprove any of the assertions of this case.

(Cross-Examination by Mr. Hagney)

Q. Mr. Pilgrim, have you ever gone over the building in controversy here?

A. No sir.

Q. Do you know what building is in controversy?

A. I believe I do, I am not sure.

Q. You have no personal knowledge about that building, what material is in it, what kind of material it is, when the building was built, what its condition was in 1930, what its condition is now, what class of construction went into it or any of those matters, do you?

A. No sir.

ALBERT RIEBE

Q. What is your name?

A. Albert Riebe.

Q. Where do you live?

A. About a quarter of a mile out of town.

Q. Do you know this building here that Mrs. Nagele is said to have sold to Mr. Carl Hanselman?

A. Yes sir.

Q. What street is it located on?

A. Main Street in the town of Elberta.

Q. How long have you known that building?

A. Since 1921.

Q. In the early part of the year 1930 did you offer to buy this building from Mrs. Nagele?

Objected to as incompetent, irrevelant and immaterial.

A. I did in 1929.

Q. Was that in the winter of 1929?

A. In the Fall of 1929.

Q. Do you recall about what month in the Fall or how long before Christmas?

A. About three months.

Q. Was anyone associated with you in the transaction?

A. Mr. Ed. Erdman.

Q. What did you offer Mrs. Nagele for this building?

Objected to as incompetent, irrevelant and immaterial.

A. \$500.00.

Q. What did you propose to do with the building?

A. To put in a sausage factory.

Q. You mean on this particular lot or some other?

A. I was going to put the business in where it was for a while and then I was going to move the building to my lot here in the town of Elberta.

Q. What did Mrs. Magele say that she wanted for the building?

Objected to as incompetent, irrevelant and immaterial.

A. \$700.00.

Q. You all did not make the trade?

A. I figured it was too much.

Q. But you figured it was worth five hundred dollars and were willing to pay that price, and were you able to pay that price for it at that time and were able to get the money if she would have taken it at that time?

A. Yes sir.

Q. That was just for the building by itself?

A. Just for the building.

Q. It did not include any land?

A. We were expecting to move it over on our lot.

Q. Where was your lot located in the town of Elberta?

A. The second block from the corner and across the street from building, one lot away.

Q. In the immediate neighborhood?

A. Yes, on the same side of the street across the lot.

Q. Do you know how many lots between Mrs. Nagele's and your place?

A. No.

Q. You were living in the next block from her?

A. My lot was in the next block from Mrs. Nagele on the same side of the street. I do not mean to say that I was living on the lot that I proposed to buy the building on.

It is agreed between the Solicitors in this case that Miss Helen Hecht act as Commissioner in taking the testimony of Knud T. Jensen, J. A. Pilgrim and Alfred Riebe, with the formal name of Commissioner. It is further agreed that the testimony of the said witnesses be taken down in shorthand, reduced to writing by the Commissioner and upon approval of counsel be submitted with the signature of the witnesses, said signatures being hereby waived.

Solicitor for Complainant.

Solicitor for Respondent.

CERTIFICATE OF COMMISSIONER

STATE OF ALABAMA)

BALDWIN COUNTY)

I, Helen Hecht, Commissioner to take testimony in the above entitled cause by virtue of the foregoing agreement do hereby certify that the witnesses, Knud T. Jensen, J. A. Pilgrim and Albert Riebe personally appeared before me in Elberta, Alabama on the 10th day of November, 1933; that I have personal knowledge of the identity of said witnesses; that I am not of counsel or of kin to any of the parties to the cause or in any manner interested in the result thereof; that the testimony of said witnesses was taken down by me in shorthand and later reduced to typewriting and the signature of the witnesses thereto was waived by agreement.

IN WITNESS WHEREOF I have hereunto set my hand this 22nd day of November, 1933.

Helen Hecht
Commissioner.

Commissioner's Fee, \$5.00

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

KARL HANSELMAN,

Complainant,

vs

ANNA H. NAGELE, et al.,

Respondent.

DEPOSITIONS ON BEHALF OF
RESPONDENTS

Helen Hecht,
Commissioner.

1 KARL HANSELMAN,
2 Complainant)
3 VS)
4 ANNA H. NAGELE, et al)
5 RESPONDENTS.)

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

6 INTERROGATORIES PROPOUNDED TO MRS. EMMA ZIMMERMAN,
7 A NON-RESIDENT WITNESS FOR RESPONDENT.

8 I, C. A. STEVES, of Fallbrook, San Diego County, California,
9 hereby certify that on the 6th day of December, 1933, I propounded
10 the following interrogatories to Mrs. Emma Zimmerman, a resident
11 of Fallbrook, San Diego County, California. The answers to said
12 as made by the said Emma Zimmerman
interrogatories/follow each interrogatory as written.

13

14 Question 1. What relation are you to Mrs. Anna H. Nagele of
15 Elberta?

16 Answer. She is my daughter.

17 Q. 2. Where were you staying in the month of April, 1930?

18 A. In Elberta, Alabama, at the home of Anna H. Nagele.

19 Q. 3. Were you in Mrs. Nagele's residence in Elberta on the
20 morning of April 29, 1930? If so, were you present when Mr. Karl
21 Hanselman and his son came to the Nagele house?

22 A. Yes. Yes.

23 Q. 4. If you say you were present at this interview, please
24 state at what time it was when these gentlemen came over?

25 A. About 10:00 o'clock in the morning. This I remember be-
26 cause the mail had just come in.

27 Q. 5. Did either have with him a paper?

28 A. Yes. Mr. Karl Hanselman, Jr., had a paper.

29 Q. 6. Did you hear the entire conversation that took place on
30 this occasion?

31 A. Yes. The conversation was in German and English.

32 Q. 7. Please state in detail what took place on this occasion.

A. I called Mrs. Nagele from the post office where she was

1
2 7. A. (contd.) ...
3 busy with the mail. Karl Hanselman, Jr., had a paper folded in
4 his hand, saying he had written a temporary agreement concerning
5 the sale of the store building which belonged to Mrs. Nagele and
6 that later he would have other papers made out to prove the sale
7 of the store building in case something happened to his father.

8 Q. 8. If you have not already done so state whether or not Mrs.
9 Nagele read over the paper that she signed on that occasion, also
10 what Mr. Carl Hanselman told her was in the paper.

11 A. Mrs. Nagele told Carl Hanselman, Jr., that it would be
12 all right because she believed in him, and she signed the papers
13 saying if a person is honest his word is as good as a piece of
14 paper, ~~but~~ he insisted on her signing. She did not read it but
15 she signed it, believing that it was a temporary agreement and had
16 nothing to do with the sale of property at all.

17 Q. 9. Did Mrs. Hanselman come over with her husband and son?

18 A. No, she did not.

19 Q. 10. State how long the two Messrs. Hanselman were present
20 and whether or not they sat down at any time on this occasion.

21 A. They were there about ten minutes and neither of them sat
22 down during this time.

23 Q. 11. Did Mrs. Hanselman bring any money to Mrs. Nagele's house
24 at any time while you were staying there?

25 A. Not to my knowledge, but later on this same day Mrs. Nagele
26 went to Mrs. Hanselman's house and received eighty dollars, which
27 she showed me.

28 Q. 12. Was any money handed to Mrs. Nagele by either of the two
29 Messrs. Hanselman at the time they brought the paper to sign?

30 A. No.
31
32

The State of Alabama, {
Baldwin County

CIRCUIT COURT

To Mr. C. A. Steves,

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 Emma Zimmerman,

as witnesses in behalf of Respondent in a cause pending in our Circuit Court of Baldwin County, of said State, wherein Karl Hanselman

is Complainant
and Anna H. Nagele, et al

are Defendant, s

on oath to be by you administered, upon Emma Zimmerman
to take and certify the deposition... of the witness... and return the same to our Court, with all convenient speed, under your hand.

Witness 27th day of November 19 33

COMMISSIONER'S FEE, \$ 5.00

REGISTER

WITNESS' FEES, \$ _____

Q. 13. Did you at any time prior to the interview referred to above hear a conversation between Mrs. Hanselman and Mrs. Nagele in the latter's yard relative to the store building?

A. Yes.

Q. 14. Please state as near as you can recollect what was said then by both of these ladies as to the purchase of the store building.

A. One morning prior to April 29, 1930 Mrs. Nagele, Mrs. Hanselman and myself were picking mulberries in Mrs. Nagele's back yard. Mrs. Hanselman said they did not care anything about the lot but all they wanted was the building so as to have a place to store up their grain, etc. Mrs. Nagele told Mrs. Hanselman that she (Mrs. Nagele) could not sell the lot because her cesspool and half of her barn were located on it.


C. A. Steves.

Witness
David Rosick

The State of Alabama, {
Baldwin County

CIRCUIT COURT

To Mr. C. A. Steves,

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 Emma Zimmerman,

as witnesses in behalf of Respondent in a cause pending in our Circuit Court of Baldwin County, of said State, wherein Karl Hanselman

is Complainant
and Anna H. Nagele, et al

are Defendant,^s

on oath to be by you administered, upon Emma Zimmerman
to take and certify the deposition... of the witness... and return the same to our Court, with all convenient speed, under your hand.

Witness 27th day of November 19 33

M. A. Stone
REGISTER

COMMISSIONER'S FEE, \$

WITNESS' FEES, \$

NO. 1054

The State of Alabama
BALDWIN COUNTY
CIRCUIT COURT

KARL HANSELMAN

Complainant

vs.

ANNA H. NAGELLE, et al

Defendant

COMMISSION TO TAKE DEPOSITION

COMMISSIONER:

Mr. C. A. Steves,

WITNESSES:

Emma Simmerman,

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 Anna H. Nagele and August Nagele,

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 Karl Henselman,

against said Anna H. Nagele and August Nagele,

and further ~~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 14th day of June, 1932.

T. W. Richerson Register.

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

Original

~~RECORDED~~
check

Serve on _____

Circuit Court of Baldwin County
In Equity.

No. 1054

SUMMONS

Karl Hanselman,

vs.

Anna H. Nagele and August
Nagele,

Especially

Lloyd A. Magney,

Solicitor for Complainant.

Recorded in Vol. _____ Page _____

The State of Alabama,
BALDWIN COUNTY.

Received in office this _____

day of _____ 193 _____

Sheriff.

Executed this 17th day of

June
~~RECORDED~~
193 2

by leaving a copy of the within Summons with

August Nagele &

Anna H. Nagele

Defendant.

W. R. Stuart

Sheriff.

By *M. H. Wilkins*

Deputy Sheriff.

KARL HANSELMAN
Complainant.

VS

ANNA H. NAGELE, et al
Respondents.

IN EQUITY.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

REPLY BRIEF OF RESPONDENTS ON DEMURRERS.

FOREWORD: In view of the Court's dictum when these demurrers were first presented that it would be very reluctant to set aside a conveyance where four-fifths of the purchase price has been paid, we feel it due to our clients to say that the Court seems to be under a serious misapprehension of the merits of this cause, and as to our clients' honesty of intention, so will ask that the question here presented be considered free from the natural bias that arises at the idea that a technical defense is being raised to work an injury.

The able brief of Complainant at first reading is very persuasive of his contention that because the husband signed the agreement to convey executed by his wife that this constituted an assent thereto sufficient to make the papers binding on both parties. A careful reading of the cases cited by him, however, shows that none of these cover the instant case. In all of these the husband signed the agreement in question in such a way that no other conclusion could be reached but that it was intended to express assent. In the present case the husband simply witnessed his wife's signature and the only part of the writing signed by him was that he signed as a witness only. To state otherwise is to draw a conclusion other than that actually expressed.

Taking Complainant's cases seriatim, let us analyze them:

In Knox vs. Childersberg Land Company, 86 Alabama, 180, 5 So. 579, the husband joined in the execution of the contract in a formal manner and under those conditions there sprang into existence a contract that could then be enforced.

In Murphy Vs Green, 120 Alabama 112, 22 So. 112, the husband in so many words gave his consent and his signature to this was duly witnessed.

The case of Rushton vs Davis, 127 Alabama 279, 28 So. 480

would, at first reading, appear to sustain Complainant's contention that Mr. Nagele, by signing as a witness, had expressed his concurrence. But a careful reading of the opinion in this case and in that of Wood vs Lett, 195 Ala. 601, 71 So. 177, cited by us both, shows that in each of these cases the husband either joined in the deed or in the acknowledgement or did some other affirmative act from which no conclusion, other than that of assent, could be drawn. Take for example the opinion in Wood vs Lett, quoted by Complainant. There the instrument was signed at the foot of the instrument though the husbands were not named as parties. The court properly said that the only purpose of the signature was to express concurrence. In the instant case, the husband was named in the instrument as a party, thus obviously indicating where he should sign, if he was to do so as a party, but he does not sign there and does sign under the word "Witness" as did another witness-- obviously to witness the signature only. It is entirely possible that he was willing that his wife should sell the building as he made no effort to stop her, but it is equally obvious that he did not express his consent by signing in the place where he should for that purpose and to say otherwise would be to read into a writing-- one word, it is true, but a writing nevertheless-- a meaning utterly foreign to its universally accepted one. Such an interpretation would be utterly at variance with the opinion in Morris vs Marshall heretofore quoted and of the further expression in that opinion "In either case the husband must join in the execution of an appropriate instrument of writing." Is the word "Witness" an appropriate instrument? Its universally accepted significance is that the person signing under it does so to indicate that the signature of some other person or persons is genuine and affixed in his presence. For what other purpose did C. Hanselman sign right under Mr. Nagele? There can be no other conclusion but that as far as the agreement is concerned, Nagele is a witness only.

To comply with the spirit of the statute the assent and concurrence must affirmatively and not just inferentially appear.

Equity will not force an inference when there is an obvious one to the contrary.

The demurrers should be sustained.

Respectfully submitted,

William S. Rinsley

Solicitor for Respondents.

KARL HANSELMAN

Complainant

EQUITY

vs.

CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

ANNA H. NAGALE et al

Respondent

IT IS AGREED between the parties to this cause that all
depositions filed now or later may be published without further
notice or order of Court.

Shirley H. Hargrave

Solicitor for Complainant.

William B. Rice, Esq.

Solicitor for Respondent

1037

RECORDED
Duck

KARL HANSELMAN

Complainant

vs

ANNA H. NAGALE et al.

Respondent

AGREEMENT AS TO PUBLICATION OF
TESTIMONY

Filed - M. A. Stone

KARL HANSELMAN,

Complainant,

-vs-

ANNA H. NAGELE, et al,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

STIPULATION

It is hereby stipulated by and between the parties hereto, by their respective solicitors, that complainant's exhibits A, B, C, D and E shall be considered by the Court as offered in evidence in behalf of the complainant, subject to all such objections as to competency, relevancy or materiality as may be raised to such exhibits by the respondent in the brief of respondent on submission of the cause.

Dated this 14th day of February, 1934.

John D. [Signature]

Solicitor for Complainant.

Celliott & Rinkley

Hybert, Heard & Haran

Solicitors for Respondent.

105-~~EXHIBIT~~
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

KARL HANSELMAN,

Complainant,

-VS-

ANNA H. NAGELE, et al,

Respondents.

STIPULATION

Filed & Entered 3rd 1994
By: D. Stone
Att. Gen.

Lloyd A. Magney,
Attorney at Law,
Foley, Alabama.

KARL HANSELMAN

Complainant.

VS

ANNA H. NAGELE, ET AL

Respondents.

IN EQUITY.

IN BBY MINETTE, ALABAMA.

IT IS UNDERSTOOD between the parties to this cause, acting by their respective solicitors, that Mr. Hanselman may replace the fence heretofore running diagonally southwest from the south side of the alley lying between the property of Hanselman and the lot now in dispute, and across the latter, at Mr. Hanselman's expense and upon the identical location from which it was removed recently by Mr. Nagele, without expense to the latter.

IT IS FURTHER UNDERSTOOD AND AGREED that this restoration of the fence to its former location is done without prejudice to the rights of either party in the pending litigation.

Executed in duplicate this the 23rd day of July, 1932.

Edward H. Magnay
Solicitor for Complainants.

Elliot B. Rist
Solicitor for Respondents.

1654

Equity

KARL HANSELMAN,

Complainant,

-vs-

ANNA H. NAGELE, et al,

Respondents.

STIPULATION

*Filed March 3rd 1934
Wm. C. Stone
Register*

Lloyd A. Magney,
Attorney at Law,
Foley, Alabama.

8581 NOTE OF TESTIMONY

Karl Hanselman

vs.

Anna H. Nagele et al

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN EQUITY,
CIRCUIT COURT OF BALDWIN COUNTY.

This cause is submitted in behalf of Complainant upon the original Bill of Complaint,.....
Original Answer, Decree of Court on demurrers to bill, Deposition of
August Noltenmier, Deposition of Max Neumann, Deposition of John
Werner, Deposition of E. S. Eagger, Deposition of Robert Bruhn, Deposition
of Frank W. Walker, Partial Deposition of Karl Hanselman taken Dec. 12, 1932,
Partial deposition of Karl Hanselman, taken April 17, 1933,
Deposition of Carl Hanselman, Deposition of Emma (Mrs Karl) Hanselman,
Deposition of Emma (Miss) Hanselman, Deposition of Karl Hanselman, in
Rebuttal, taken Jan 2, 1934. Stipulation dated January 14, 1934, and
filed March 3rd, 1934, Stipulation dated July 23rd, 1932, and filed March
3rd, 1934. Objections to interrogatories of Emily Zimmerman.

and in behalf of Defendant upon Their answer, depositions of Anna H. Nagele,
August Nagele, Rudolph Wier, Knud Jensen, Herman Lorenz, Alfred M.
Numann, Samuel depaola, Martin Ehl, Mrs. Anna H. Nagele, J. A.
Pilgrim, Albert Riebe, and depositions of Mrs. Emma Zimmerman and
exhibits thereto.

M. W. Stone

Register.

RECORDED INDEXED
RECORDED INDEXED

No. 1054

THE STATE OF ALABAMA
BALDWIN COUNTY

IN EQUITY,
CIRCUIT COURT OF BALDWIN COUNTY.

Karl Hanselman

Anna H. Magele et al.

NOTE OF TESTIMONY

Filed in Open Court this 3rd
day of March 1923

Register

T. W. RICHESON

REGISTER AND CLERK OF THE CIRCUIT COURT
BALDWIN COUNTY

BAY MINETTE, ALA.

Sept 15th, 1932.

Hon. F. W. Hare
Monroeville Ala.
Dear Judge:-

Enclosed find papers with Mr. Rickarbys brief
in Haselman vs Nagel case, I have written Mr. Magney
to mail you his brief if he has not already done so.
Yours truly.

T. W. Richeson

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

August 30, 1933

Hon. M. A. Stone,
Registrar in Chancery,
Bay Minette, Alabama

Dear Mrs. Stone:

I enclose herewith objections to interrogatories filed by the respondents in the case of Hanselman vs Nagele et al which you will please file.

I have served copy of these objections on Mr. Rickarby solicitor for the respondents.

Very truly yours,

LAM:LP

Lloyd A. Magney

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

September 6, 1932.

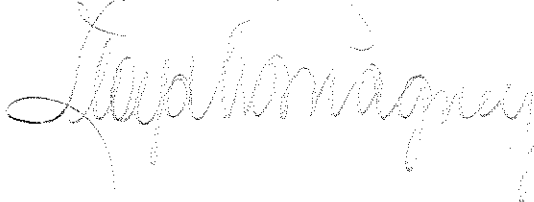
Hon. F. W. Hare,
Judge of Circuit Court,
Monroeville, Ala.

Dear Judge:-

I enclose herewith Brief of Complainant on the Demurrers to the Bill in the specific performance case of Hanselman vs Nagele. I have served a copy of this Brief on Mr. Rickarby. I understand that Mr. Rickarby has arranged with Mr. Richerson to send the file to you.

I am sorry we didn't get to see you again before you went home but hope you will be able to spend some time with us during the week of the 12th.

Very truly yours,



1 encl.
lam/lif

KARL HANSELMAN,
Complainant,

-VS-

ANNA H. NAGELE, et al,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

DEPOSITION OF COMPLAINANT.

STIPULATION

It is hereby agreed by and between the parties hereto by their respective solicitors that the testimony in rebuttal of Karl Hanselman, for the complainant, may be taken before Lillian L. Porter as commissioner; that the testimony of the witnesses may be taken in shorthand and later reduced to writing by the commissioner and that the signatures of the witnesses to the testimony be waived. It is further stipulated that the testimony be taken by question and answer rather than in narrative form and so transcribed.

Dated this 7th day of February, 1934.

[Signature]
Solicitor for Complainant.

[Signature]

[Signature]
Solicitors for Respondent.

TESTIMONY OF KARL HANSELMAN

(Examination by Mr. Magney)

- Q. Mr. Hanselman, since you were examined before in this case Mrs. Nagele has given her testimony and in that testimony she stated that she did not sell you the store building and the lot on which it stands, but that she sold you only the building and not the land. Now at the time that you had your conference with Mrs. Nagele and the contract which you have testified to was signed, did you have any conversation with Mrs. Nagele about when this house would have to be moved off from the lot?
- A. No sir. No such conversation at all.
- Q. I will ask you whether or not at that time in April 29th, 1930, you owned any ground in Elberta to which you could have moved this house?
- A. No sir. I have farms six miles away, three miles away and so on.
- Q. You would have us understand then, Mr. Hanselman, that there was no conversation between you and Mrs. Nagele about moving this building off at all and further that you didn't have any ground that you could have moved it to?
- A. That is right.

Q. Would you have purchased a building but not the ground on which it stood without knowing when you had to move it off from that ground?

(Objection, Mr. Rickarby)

Respondent objects to the question as calling for a mental conclusion of the witness.

A. No sir.

Q. You say then, Mr. Hanselman, that the matter of moving the building was never discussed between you and Mrs. Nagele?

A. No sir.

Q. Would you have purchased this building from Mrs. Nagele without any ground to go with it for the sum of \$500.00?

(Objection, Mr. Rickarby)

Same objection as to the previous question.

A. No sir, never, I should say not, an old shack like that.

CROSS-EXAMINATION BY MR. RICKARBY.

Q. Did you not heretofore testify that all of the earlier negotiations for the purchase of this property leading up to this period took place with your wife?

A. No sir.

Q. Have not you a farm a little less than a mile from where your store is?

A. Six, three and about a half mile from Elberta.

Q. Did you own all of these farms, particularly this place half mile away, at the time when you made this trade?

A. I was the owner of the farm.

CERTIFICATE OF COMMISSION

STATE OF ALABAMA)
BALDWIN COUNTY)

I, Lillian L. Porter, do hereby certify that in accordance with the foregoing stipulation I did on the 7th day of February, 1934, cause to come before me the within named Karl Hanselman, who had previously testified and been sworn in this cause; that I have personal knowledge of the identity of the witness and that the testimony of the witness was taken by me in shorthand and later reduced to typewriting; that I am not of counsel or of kin to any of the parties to this cause and have no interest in the result of the same.

IN WITNESS WHEREOF I have hereunto set my hand this 7th day of February, 1934.

Lillian L. Porter
Commissioner.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

KARL HANSELMAN,

Complainant,

-VS-

ANNA H. NAGELE, et al,

Respondent.

DEPOSITION OF COMPLAINANT

KARL HANSELMAN,
Complainant,

-vs-

ANNA H. NAGELE, et al,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

DEPOSITION OF RESPONDENT

STIPULATION

It is hereby agreed by and between the parties hereto by their respective solicitors that the testimony in rebuttal of Mrs. Anna Nagele, for the respondent, may be taken before Lillian L. Porter as commissioner, without formal commission; that the testimony of the witnesses may be taken in shorthand and later reduced to writing by the commissioner and that the signatures of the witnesses to the testimony be waived. It is further stipulated that the testimony be taken by question and answer rather than in narrative form and so transcribed.

Dated this 7th day of February, 1934.

Stuart K. Harrison
Solicitor for Complainant.

Clifford A. Rinsley

Hybart, Heard & Rason
Solicitors for Respondent.

TESTIMONY OF MRS. ANNA H. NAGELE, WITNESS FOR RESPONDENT.

(Examination by Mr. Hybart)

- Q. Mrs. Nagele, at the time of having the conversations that you testified about with Mr. Hanselman, was anything said in those conversations about them purchasing your land from you?
- A. Certainly, that was the understanding, because I wanted to make sure that it was surely understood that they would buy the rest of the property later on and intended to sell some of their farms to do that. That was a promise from Mrs. Hanselman and that was the understanding.
- Q. That she was to buy the land on which the store and the house where you are living is on?
- A. Yes, later on they wanted to sell their farm so that they could do that. There was nothing said about moving the store building because they made me that promise and it was understood, otherwise I would never have let them have that store building at all.

CERTIFICATE OF COMMISSION

STATE OF ALABAMA)
(
BALDWIN COUNTY)

I, Lillian L. Porter, do hereby certify that in accordance with the foregoing stipulation I did on the 7th day of February, 1934, cause to come before me the within named Anna H. Nagele, who had previously testified and been sworn in this cause; that I have personal knowledge of the identity of the witness and that the testimony of the witness was taken by me in shorthand and later reduced to typewriting; that I am not of counsel or of kin to any of the parties to this cause and have no interest in the result of the same.

IN WITNESS WHEREOF I have hereunto set my hand this 7th day of February, 1934.

Lillian L. Porter
Commissioner.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

KARL HANSELMAN,
Complainant,

-VS-

ANNA H. NAGELE, et al,
Respondent.

DEPOSITION OF RESPONDENT

LAW OFFICES
ELLIOTT G. RICKARBY
ROBERTSDALE, ALA.

November 25th, 1933.

Mrs. Mary A. Stone,
Register Circuit Court,
Bay Minette, Ala.

Dear Mrs. Stone:

HANSELMAN VS NAGALE. With this I am handing you some interrogatories addressed to a non-resident witness and which opposing counsel does not desire to cross. Please issue commission to take this testimony to C. A. Steves of Fall Brook, Cal. and mail to that gentleman at that address. This is the paper that Mr. John Chason was unable to locate in the file and which by agreement was to be rewritten. It may now be sent forward without further delay.

Very truly yours,

Elliott G. Rickarby

EGR/EW

CLARENCE A. STEVES, PRESIDENT

O. A. ANDERSON, VICE-PRESIDENT

RUSSELL B. COOK, CASHIER

90-591

The First National Bank
OF FALLBROOK

CAPITAL \$25,000.00

FALLBROOK, CALIFORNIA

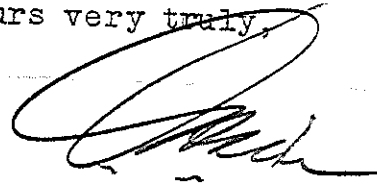
December 7, 1933.

Mrs. Mary Alice Stone,
Register and Clerk of the
Circuit Court, Baldwin County,
Bay Minette, Alabama.

Dear Madam:

I return herewith your enclosures of
November 27th, together with list of questions and
answers as regards Mrs. Emma Zimmerman.

Yours very truly,



C. A. Steves, President.

CAS EB

KARL HANSELMAN,
Complainant.

VS

ANNA H. NAGELE, et al
RESPONDENTS.

IN EQUITY.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

INTERROGATORIES PROPOUNDED TO MRS. EMMA GIMMERMAN,
A NON-RESIDENT WITNESS FOR RESPONDENT.

1. What relation are you to Mrs. Anna H. Nagele of Elberta?
2. Where were you staying in the month of April, 1930?
3. Were you in Mrs. Nagele's residence in Elberta on the morning of April 28th, 1930? If so, were you present when Mr. Karl Hanselman and his son came to the Nagele house?
4. If you say you were present at this interview, please state at what time it was when these gentlemen came over?
5. Did either have with him a paper?
6. Did you hear the entire conversation that took place on this occasion?
7. Please state in detail what took place on this occasion.
8. If you have not already done so state whether or not Mrs. Nagele read over the paper that she signed on that occasion, also what Mr. Carl Hanselman told her was in the paper.
9. Did Mrs. Hanselman come over with her husband and son?
10. State how long the two Messrs. Hanselman were present and whether or not they sat down at any time on this occasion.
11. Did Mrs. Hanselman bring any money to Mrs. Nagele's house at any time while you were staying there?
12. Was any money handed to Mrs. Nagele by either of the two Messrs. Hanselman at the time they brought the paper to sign?
13. Did you at any time prior to the interview referred to above hear a conversation between Mrs. Hanselman and Mrs. Nagele in the latter's yard relative to the store building?
14. Please state as near as you can recollect what was said then by both of these ladies as to the purchase of the store building.

Page Two.

Respondent suggests the name of C. A. Steves as a suitable person to act as commissioner in the foregoing cause. The said Commissioner and the witness both reside in Fall Brook, California.

William B. Rinsley
Solicitor for Respondent.

Received a copy of the foregoing interrogatories this 28th day of August, 1935.

Raymond
Solicitor for Complainant.

284
RECORDED

KARL HANSELMAN
Complainant.

VS

ANNA H. NACHEL, et al
Respondents.

INTERROGATORIES TO
EMMA ZIMMERMAN, WITNESS
FOR RESPONDENT.

*Filed Nov. 27th 1993
M. A. Stone
Register*

KARL HANSELMAN,
COMPLAINANT,

-VS-

ANNA H. NAGELE et al,
RESPONDENTS.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

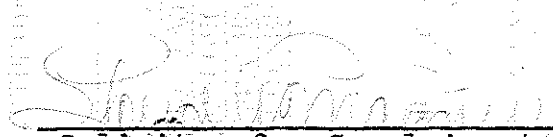
IN CHANCERY

OBJECTIONS OF COMPLAINANT TO INTERROGATORIES PROPOUNDED
TO MRS EMILY ZIMMERMAN, A NON-RESIDENT WITNESS FOR
RESPONDENTS.


Comes now the plaintiff, this being his first opportunity so to do, and objects to certain of the interrogatories propounded by the respondents to Mrs. Emily Zimmerman, as follows:

Complainant objects to interrogatory numbered 13 for the reason that said interrogatory calls for incompetent and illegal testimony in this, that the conversation between Mrs. Nagele and Mrs. Hanselman, not shown to have been in the presence of the complainant Karl Hanselman, is hearsay.

Plaintiff objects to interrogatory numbered 14 for the reason that said interrogatory calls for incompetent, illegal and hearsay testimony in that, it calls for a conversation between the respondents and Mrs. Hanselman, who is not a party to this cause, and said conversation is not shown to have been in the presence of the complainant and consequently is not binding upon him.


Solicitor for Complainant.

I hereby certify that a true copy of the foregoing objections to interrogatories was by me served upon Hon. E. G. Rickarby, solicitor for respondents this 30th day of August, 1933.


Solicitor for Plaintiff.

RECORDED

County 1054

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

KARL HANSELMAN,
COMPLAINANT,

-VS-

ANNA H. NAGELE et al,
RESPONDENTS.

IN CHANCERY
OBJECTIONS OF COMPLAINANT TO
INTERROGATORIES PROPOUNDED
TO MRS. EMILY ZIMMERMAN, A
NON-RESIDENT WITNESS FOR
RESPONDENTS.

Filed Aug. 21, 1923
m. a. [signature]
Register

Lloyd A. Magney
Attorney at Law
Foley, Alabama

Record & file

LLOYD A. MAGNEY
LAWYER
FOLEY, ALABAMA

November 23, 1934.

Mrs. Mary Alice Stone,
Register in Chancery,
Bay Minette, Alabama.

RE: HANSELMAN VS. NAGELE

Dear Mrs. Stone:-

On March 2nd last, I wrote you a letter in this case, but it has been so long that I am afraid that it may have been mislaid, and so I enclose a copy herewith.

I also enclose my reply brief and with this the entire case is now ready for submission to Judge Hare.

I will appreciate it if you will prepare the note of testimony in accordance with the instructions of the enclosed letter, and send the complete file and the briefs to Judge Hare, for submission.

Very truly yours,

Lloyd A. Magney

LAM:P
Encl.

700-1054

Equity

Hanselman

VS

Wagels

VERONICA CYOGLI
JUDGE
MARIAN VILLOR

Mrs. M. A. Stone - page 2 -

If you will be sure that all of these items are included in the note of testimony, I will appreciate it.

Very truly yours,

LAM:LP

Encl. 3

C O P Y

March 2, 1934

Hon. M. A. Stone,
Clerk of Circuit Court,
Bay Minette, Alabama.

RE: Hanselman vs. Nagele.

Dear Mrs. Stone:

The testimony is completed in his case and both sides respondents. have served upon the solicitors for the

Upon the coming in of the brief of the respondents it may be that I will want to file a reply brief but I cannot know as to that until after receiving the respondents' brief.

In any event, before the case is submitted to the court it will be necessary for you to prepare and certify a note of the testimony and when you come to that point I desire that you list in the note of testimony for the complainant the following:

1. Original Bill of Complaint.
2. Original Answer.
3. Decree of court on demurrers to bill.
4. Deposition of August Noltensmier.
5. Deposition of Max Neumann.
6. Deposition of John Werner.
7. Deposition of E. S. Hugger.
8. Deposition of Robert Bruhn.
9. Deposition of Frank W. Walker.
10. Partial deposition of Karl Hanselman taken December 12th, 1932.
11. Partial deposition of Karl Hanselman taken April 17th, 1933.
12. Deposition of Carl Hanselman.
13. Deposition of Emma (Mrs. Karl) Hanselman.
14. Deposition of Emma (Miss) Hanselman.
15. Deposition of Karl Hanselman, in rebuttal, taken January 2, 1934.
16. Stipulation dated January 14th, 1934 and filed March 3rd, 1934.
17. Stipulation dated July 23rd, 1932 and filed March 3rd, 1934.
18. Objections to interrogatories to Emily Zimmerman.

The two stipulations mentioned as items 16 and 17 I enclose herewith for filing.

KARL HANSELMAN,
COMPLAINANT

VS

ANNA H. NAGELE AND AUGUST
NAGELE,

RESPONDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

BILL OF COMPLAINT

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

Comes now Your Complainant and exhibits this his Bill of Complaint
against Anna H. Nagele and August Nagele, and humbly complaining shows
unto Your Honor and unto this Honorable Court as follows:-

FIRST

That Your Complainant is over the age of twenty-one years and is
a bona fide resident of Baldwin County, Alabama, residing at Elberta,
therein.

SECOND

That the Respondents Anna H. Nagele and August Nagele are each
also over the age of twenty-one years and are residents of Baldwin
County, Alabama, residing at Elberta therein.

THIRD

That heretofore and on, to-wit: April 29, 1930 the Respondent
Anna H. Nagele was the owner of the following described real estate
in Baldwin County, Alabama, to-wit:

Lot No. Four (4) in Block No. Ten (10)
in the Town of Elberta.....

and on said date the said Respondents entered into a written con-
tract with Your Complainant by the terms of which they agreed to sell
said real estate to Your Complainant, which said written contract was
and is in the words and figures following, to-wit:

April 29, 1930
Elberta, Ala.

In consideration between Mrs. & Mr. Nagelee
party of first part and Carl Hanselman party
of second part.

Party of first part agrees to sell to party
of 2nd part store and lot 45 ft. wide & 185
ft. long, for the sum of \$500.00

Down payment \$20.00

Witness

August Nagele

Anna H. Nagele

C. Hanselman

Karl Hanselman

FOURTH

That on said 29th day of April, 1930 and immediately after the signing of said contract Your Complainant paid to the Respondents a part of the purchase price named in said contract and the Respondents did then place Your Complainant in possession of said property and premises and the Complainant has been in the possession thereof at all times since and Your Complainant alleges that the Respondents owned no other property in the Town of Elberta, Baldwin County, Alabama of the description set out in said contract and that by placing Your Complainant in the possession thereof Respondents have made definite and certain the land intended to be conveyed by said contract.

FIFTH.

Your Complainant further avers that he has paid to the Respondents upon said purchase price of FIVE HUNDRED & 00/100 (\$500.00) DOLLARS the sum of FOUR HUNDRED & 00/100 (\$400.00) DOLLARS and that he has offered to Respondents and to their attorney to pay the balance of said purchase price together with all legal interest thereon but that the Respondents fail and refuse to convey said real estate to Your Complainant. That Your Complainant does hereby offer to pay unto Court for the use and benefits of the Respondents the sum of ONE HUNDRED & 00/100 (\$100.00) DOLLARS together with interest at the rate of eight per cent. per annum thereon from July 1, 1931.

SIXTH

And Your Complainant submits himself to the jurisdiction of the Court and offers to do whatever the Court may consider necessary to be done on his part towards making the decree which he seeks just and equitable with regards to the Respondents.

PRAYER FOR PROCESS AND RELIEF.

Wherefore, the premises considered, Your Complainant prays that the said Anna H. Nagele and August Nagele may be made parties Defendant to this Bill of Complaint and required to appear and plead,

answer or demur, within the time required by law and the rules of this Court.

That upon the final hearing of this cause this Honorable Court will enter its decree commanding and requiring the Respondents to Make, execute and deliver to Your Complainant, upon the payment by him of the said sum of ONE HUNDRED & 00/100 (\$100.00) DOLLARS plus interest at eight per cent. per annum from the 1st day of July, 1931, their warranty deed conveying to Your Complainant the said Lot Four (4) in Block ten (10) in the Town of Elberta, Baldwin County, Alabama, and that this Honorable Court will make and enter its decree for the specific performance of the contract hereinbefore set forth.

And that Your Honor will grant unto Your Complainant such other, further and different relief as to Your Honor may seem right, just, meet and proper in the premises.

And, as in duty bound, Your Complainant will ever pray, etc.

[Signature]
Complainant.

[Signature]
Solicitor for Complainant.

FOOT NOTE

The Respondents, separately and severally, are required to answer each and every paragraph of the foregoing Bill of Complaint from First to Sixth, both inclusive, but answer under oath his hereby expressly waived.

[Signature]
Solicitor for Complainant.

STATE OF ALABAMA)
 (
BALDWIN COUNTY.)

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

That his name is Karl Hanselman; that he is the same person whose name is signed as Complainant to the foregoing and annexed Bill of Complaint; that he is acquainted with all of the matters and facts therein alleged, and that the same are true.

Subscribed in my presence and sworn to before me this ____ day of June, 1932.

Notary Public.

W. H. Hanselman
Filed June 14, 1932
Approved for Complainant
Fred V. McQuinn

BILL OF COMPLAINT

RESPONDENTS

MARGIE,
VINNY H. MARGIE AND AUGUST

as

COMPLAINANT

KARL HANSELMAN

IN CHANCERY
BALDWIN COUNTY, ALABAMA
IN THE CIRCUIT COURT OF

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

KARL HANSELMAN,
COMPLAINANT

VS

ANNA H. NAGELE AND AUGUST
NAGELE,
RESPONDENTS

BILL OF COMPLAINT

Lloyd A. Magney
Attorney for Complainant

Filed June 14th 1932.
W. R. Register
Register

of June, 1932.

Subscribed in my presence and sworn to before me this 14th day of June, 1932.

Notary Public

and recite therein alleged; and that the same are true.
Bill of Complaint; that he is acquainted with all of the matters
whose name is signed as Complainant to the foregoing and answered
that his name is Karl Hanselman; that he is the same person

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

RECORDED

KARL HANSELMAN,

COMPLAINANT

VS

ANNA H. NAGELE AND AUGUST
NAGELE,

RESPONDENTS

copy
BILL OF COMPLAINT

Lloyd A. Magney
Attorney for Complainant

Filed June 14th 1932.
W. R. Register
Register

of June, 1932.

NOVELA EPTIC.

Exhibited in my presence and known to before me this 14th day of June, 1932.

and wrote therein alleged, and that the same are true.

Bill of Complaint; that he is acquainted with all of the matters
above named as signed as Complainant to the foregoing and answered
before me and signed as Respondent; that he is the same person

that his name is Karl Hanselman; that he is the same person

T. W. RICHESON

Register and Clerk of the Circuit
Court, Baldwin County

BAY MINETTE, ALA.

ONE PAGE AND A HALF OF INTERROGATORIES

SENT TO MR. C. A. STEVES,

FALL BROOK, CALIFORNIA.

KARL HANSELMAN,
COMPLAINANT

VS

ANNA H. NAGELE AND AUGUST
NAGELE,

RESPONDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

BILL OF COMPLAINT

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

Comes now Your Complainant and exhibits this his Bill of Complaint
against Anna H. Nagele and August Nagele, and humbly complaining shows
unto Your Honor and unto this Honorable Court as follows:-

FIRST

That Your Complainant is over the age of twenty-one years and is
a bona fide resident of Baldwin County, Alabama, residing at Elberta,
therein.

SECOND

That the Respondents Anna H. Nagele and August Nagele are each
also over the age of twenty-one years and are residents of Baldwin
County, Alabama, residing at Elberta therein.

THIRD

That heretofore and on, to-wit: April 29, 1930 the Respondent
Anna H. Nagele was the owner of the following described real estate
in Baldwin County, Alabama, to-wit:

Lot No. Four (4) in Block No. Ten (10)
in the Town of Elberta.....

and on said date the said Respondents entered into a written con-
tract with Your Complainant by the terms of which they agreed to sell
said real estate to Your Complainant, which said written contract was
and is in the words and figures following, to-wit:

April 29, 1930
Elberta, Ala.

In consideration between Mrs. & Mr. Nagelee
party of first part and Carl Hanselman party
of second part.

Party of first part agrees to sell to party
of 2nd part store and lot 45 ft. wide & 185
ft. long, for the sum of \$500.00

Down payment \$20.00

Witness

August Nagele

Anna H. Nagele

C. Hanselman

Karl Hanselman

FOURTH

That on said 29th day of April, 1930 and immediately after the signing of said contract Your Complainant paid to the Respondents a part of the purchase price named in said contract and the Respondents did then place Your Complainant in possession of said property and premises and the Complainant has been in the possession thereof at all times since and Your Complainant alleges that the Respondents owned no other property in the Town of Elberta, Baldwin County, Alabama of the description set out in said contract and that by placing Your Complainant in the possession thereof Respondents have made definite and certain the land intended to be conveyed by said contract.

FIFTH.

Your Complainant further avers that he has paid to the Respondents upon said purchase price of FIVE HUNDRED & 00/100 (\$500.00) DOLLARS the sum of FOUR HUNDRED & 00/100 (\$400.00) DOLLARS and that he has offered to Respondents and to their attorney to pay the balance of said purchase price together with all legal interest thereon but that the Respondents fail and refuse to convey said real estate to Your Complainant. That Your Complainant does hereby offer to pay unto Court for the use and benefits of the Respondents the sum of ONE HUNDRED & 00/100 (\$100.00) DOLLARS together with interest at the rate of eight per cent. per annum thereon from July 1, 1931.

SIXTH

And Your Complainant submits himself to the jurisdiction of the Court and offers to do whatever the Court may consider necessary to be done on his part towards making the decree which he seeks just and equitable with regards to the Respondents.

PRAYER FOR PROCESS AND RELIEF.

Wherefore, the premises considered, Your Complainant prays that the said Anna H. Nagele and August Nagele may be made parties Defendant to this Bill of Complaint and required to appear and plead,

answer or demur, within the time required by law and the rules of this Court.

That upon the final hearing of this cause this Honorable Court will enter its decree commanding and requiring the Respondents to Make, execute and deliver to Your Complainant, upon the payment by him of the said sum of ONE HUNDRED & 00/100 (\$100.00) DOLLARS plus interest at eight per cent. per annum from the 1st day of July, 1931, their warranty deed conveying to Your Complainant the said Lot Four (4) in Block ten (10) in the Town of Elberta, Baldwin County, Alabama, and that this Honorable Court will make and enter its decree for the specific performance of the contract hereinbefore set forth.

And that Your Honor will grant unto Your Complainant such other, further and different relief as to Your Honor may seem right, just, meet and proper in the premises.

And, as in duty bound, Your Complainant will ever pray, etc.

Karl Hanselman
Complainant.

Stuart Williams
Solicitor for Complainant.

FOOT NOTE

The Respondents, separately and severally, are required to answer each and every paragraph of the foregoing Bill of Complaint from First to Sixth, both inclusive, but answer under oath his hereby expressly waived.

Stuart Williams
Solicitor for Complainant.

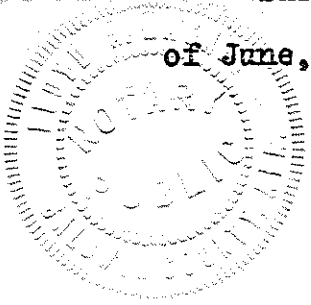
STATE OF ALABAMA)
BALDWIN COUNTY.)

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

That his name is Karl Hanselman; that he is the same person whose name is signed as Complainant to the foregoing and annexed Bill of Complaint; that he is acquainted with all of the matters and facts therein alleged, and that the same are true.

Karl Hanselman

Subscribed in my presence and sworn to before me this 13 day of June, 1932.



Stuart W. Manning
Notary Public.

KARL HANSELMAN.

Complainant.

VS

ANNA H. NAGELE, et al

Respondents.

IN EQUITY.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Comes ANNA H. NAGELE, a Respondent in this cause, and
for demurrer to the bill of complaint, says:

THERE IS NO EQUITY IN THE BILL.

In support of said demurrer, she shows:

FIRST: The alleged contract set out in paragraph Three
of the bill purports to be between Respondent and one CARL HANSEL-
MAN, who, however, is not a party complainant nor a party to said
instrument and did not execute same.

TWO: Said contract purports to be an agreement by a wife
to convey real property belonging to her but the husband does not
join in said contract nor does he obligate himself to join in
conveying the property and without the consent and signature of
said husband any agreement made by the wife would be a nullity, and
hence void for want of mutuality.

THREE: The contract upon which this bill is based is
on its face an unenforcable one and the courts will not order the
execution of a void instrument, such as would be a deed by the wife
alone.

Elliott S. Ring

Solicitor for Respondent Anna H. Nagele.

*Copy mailed to
L. A. Mangum June 29/20.*

RECORDED

KARL HANSELMAN,
Complainant.

VS

ANNA H. NAGELE, et al
Respondents.

DEMURRER OF ANNA H.
NAGELE TO BILL.

Filed June 29/93
D. W. Dickinson
Clerk

Is to, NAGELE, et al

RECORDED

RECORDED

KARL HANSELMAN,

Complainant.

VS

ANNA H. NAGELE, et al

Respondents.

IN EQUITY.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

Comes AUGUST NAGELE one of the respondents in this cause, and for demurrer to the bill of Complaint filed in this cause in so far as same applies to him, says:

THERE IS NO EQUITY IN THE BILL.

In support of said demurrer, he sets out the following grounds:

ONE: Because the bill in no place shows that AUGUST NAGELE was a party to the alleged transaction which the Complainant seeks to have enforced.

TWO: Because the written instrument set out in Paragraph Third shows on its face that the transaction sought to be enforced was one between Mrs. Anna H. Nagele and Carl Hanselman and did not bind or purport to bind this Respondent by its terms.

Clifford B. Rinsley
Solicitor for Respondent August Nagele.

*Copy made from complaint and
Solicitor's answer 29. 1934.*

RECORDED

KARL HANSELMAN
Complainant.

vs

ANNA H. NAGELE, et al
Respondents.

DEMURRER OF AUGUST
NAGELE TO BILL.

Filed June 29/932
T W Rice
Chas

...elected through this process for notaries

KARL HANSELMAN,

COMPLAINANT

VS

ANNA H. NAGELE, et al

RESPONDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

STIPULATION

It is hereby stipulated by and between the parties hereto, by their respective Solicitors, that L. F. Farrell of Foley, Alabama be appointed Commissioner to take the testimony of the following witnesses on behalf of the Complainant: Karl Hanselman, Mrs. Karl Hanselman, Carl Hanselman, Robert Bruhn, Frank W. Walker, E. S. Hugger, August Noltensmier, Max Neumann and John Werner.

It is further stipulated that said depositions may be taken orally and at a time and place to be fixed by mutual agreement.

Dated this 28th day of November, 1932.

John W. Moseley
Solicitor for Complainant

Elliott G. Rinehart
Solicitor for Respondents

RECORDED

Filed Dec 8th 1932

T. W. Risenman

Agent

Stipulation

KARL HANSELMAN,

Complainant,

VS.

ANNA H. NAGELE AND
AUGUST NAGELE,

Respondents.

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

This cause is submitted on the separate demurrer of August Nagele and Anna H. Nagele to the bill of complaint. The principal ground of demurrer, and the only one insisted upon, is that it appears affirmatively from the bill that the contract sought to be enforced is void under Section 8269 of the Code, because the contract is that of the wife without the assent and concurrence of the husband. It is apparent that Mr. Nagele intended to be a party to the contract. He is named in the body of the contract as one of the contracting parties, although his name is signed under the word "witness", and not at the foot of the contract. It cannot be denied that under our law a wife can make a binding, enforceable executory contract for the sale of her lands. Knox vs. Childersburg Land Company, 86 Ala. 180; 5 South. 579. The contract in this case is quite similar to that of Irwin vs. Shoemaker, 205 Ala. 13; 88 South. 129. Under these authorities the place of the signature of the husband is immaterial if in fact he intended to sign as a principal, but ~~by~~ inadvertence signed in the place of a witness. 36 CYC 451. It appears to me that any question as to this would be one of fact and not of law under the allegations of the bill and the wording of the contract itself.

The Register will enroll the following

D E C R E E:

This cause coming on to be heard is submitted for decree on the separate demurrer of Anna H. Nagele and August Nagele, and the same being understood by the Court, the Court is of the opinion that said demurrers are not well taken. It is therefore, ordered, adjudged and decreed by the Court that each of said demurrers be,

and the same hereby are, overruled.

Respondents are allowed thirty days from this date in which to file answer.

This the 16th., day of September, 1932.

F. W. Hare
Judge.

Filed
29
Sept
1932

RECORDED

Recreation Kennel

Filed Aug 17th 1932
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Register