

Alabama, a letter addressed to W. J. Chidgey and C. J. Chidgey, Robertsdale, Alabama, properly stamped, of which this is a true copy marked Exhibit

On June 18, 1936, I deposited in the U. S. mail at Brewton, Alabama, a letter addressed to W. J. Chidgey and C. J. Chidgey, Robertsdale, Alabama, properly stamped of which this is a true copy marked Exhibit

On July 10, 1936, I deposited in the U. S. mail at Brewton, Alabama, a letter addressed to W. J. Chidgey and C. J. Chidgey, Robertsdale, Alabama, properly stamped, of which this is a true copy marked Exhibit

DIRECT EXAMINATION OF H. C. RANKIN,
By Mr. E. G. Rickarby.

Q. Were those letters in envelopes bearing your return?

A. Yes.

CROSS EXAMINATION OF Mr. H. C. Rankin
By Mr. H. M. Hall.

Q. Mr. Rankin, who mailed those letters?

A. I did.

Q. Personally?

A. Personally.

Q. Did you write them yourself?

A. I wrote them, dictated some of them I might have written myself.

RE-DIRECT EXAMINATION OF MR. CHIDGEY
By Mr. H. M. Hall.

Q. You are, of course, acquainted with this property in question involved in this suit?

A. Yes.

Q. Are you acquainted with the rental value of the property in the Town of Robertsdale?

A. Rentals have gone down considerably.

Q. What has been a fair rental per month from January 1, 1936, to date as the property stands?

A. I have paid a fair rental of \$15.00 per month.

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EXAMINATION OF MR. CHIDGEY,
By Mr. E. G. Rickarby.

Q. Mr. Chidgey, in the several conversations that Mr. Sweat and I had, and I had with you individually, in which we were asking for that statement, did you ~~me~~ say anything at all about having purchased this property, to either Mrs. Sweat, Mr. Sweat, Mrs. Floyd or myself, was down with Mr. Smith, what language did you use to Mr. Sweat and Mrs. Sweat?

A. I told Mr. Sweat at the beginning that the price----- he said that he had bought the property and was willing----- and I ~~said~~ told him that it doesn't look as though two of us could buy it.

Q. When was that conversation had?

A. Probably was in September, 1935. It must have been.

Q. Was that before or after Mr. Sweat had purchased the property?

A. I don't know. Must have been after she had agreed to buy it because he said he bought it.

Q. You don't remember what month that was?

A. No. It was after he agreed to buy the property, and not before. I told him I had already bought it.

Q. You told Mr. Sweat that you had already bought it and that was before the 9th day of December, 1935?

A. Must have been because it was before the final day, it was on August 29th, I finally agreed to buy the property.

Q. You told that to Mr. Sweat?

A. I didn't tell him anything of the kind. That we couldn't both buy it. I had already bought it.

Q. You don't remember when that was said?

A. No.

Q. Before the 9th of December?

A. I don't know. I couldn't tell you.

Q. Thereafter you said nothing to Mr. Sweat, Mrs. Sweat or to me about having ~~made~~ a purchase?

A. No.

MR. RANKIN.

Q. Mr. Chidgey, in the testimony ~~xxxxx~~ given by you in the Circuit Court with reference to the ^{lease} ~~letter~~ in that testimony; the letter as introduced in evidence, that was the ^{lease} ~~letter~~ referred to?

lease

A. That was the only lease, yes.

Q. Talking about in the Circuit Court?

A. Yes.

RE-DIRECT EXAMINATION OF MR. CHIDGEY,
By Mr. H. M. Hall.

Q. Was your testimony that you were holding at that time, or that you held under lease the time you purchased until August 29, 1935, and since that time you have claimed the property under your purchase from Mr. Smith?

A. Yes, sir.

Q. You are not holding under this lease now?

A. No.

Q. All conversations with Mr. Rickarby that he has outlined were subsequent to the time you told Mr. Smith you _____ all his terms and that you were waiting for the deeds and papers to be sent down?

A. That's right.

Q. And you were waiting for the deeds?

A. That's right.

DIRECT EXAMINATION OF MRS. CHIDGEY,
By Mr. H. M. Hall.

Q. This Mrs. Chidgey?

A. Yes sir.

Q. You are the wife of Mr. W. J. Chidgey, complainant in this case?

A. Yes.

Q. You are acquainted with the property here involved, where your shop is located?

A. Yes.

Q. You know Mr. T. S. Smith?

A. Yes sir.

Q. Sometime in 1935 did you see Mr. Smith and discuss with him the purchase of property?

A. Yes, I did.

Q. Remember about what time that was?

A. He came and asked us if we would consider that property, it had been _____ and his aunt didn't have enough to pay her laundry bill, to please think over the place, and it was in such a filthy condition, if Mrs. Floyd would be willing to fix it up. He

B

said _____ I would like for you to buy the property, have it fixed up and keep back so much until you decide what to do.

Q. Did you enter the ^{building} ~~purchase~~ under the agreement.

A. Not at that time. Later on.

Q. Did you make payments to Mrs. Floyd?

A. Yes.

Q. _____ actions of Mr. Smith?

A. Yes. Later on Mr. Smith came down and wanted to sell it.

Q. Can you give us that?

A. I know that he offered for \$650.00, for just the lot and it was then we needed the back. My husband told him he would consider it. He didn't know then that it was just the lot. Little while after Mr. Smith came back and said Mrs. Floyd said it was just the building, that the full size lot would be \$1,000.00.

Q. What was the agreed price?

A. \$1,000.00.

Q. You know whether or not your husband accepted that?

A. He asked him to give a little while to consider that, soon after that we talked the matter over and suggested that ^{me} ~~the~~ and my son went up to Brewton to see Mr. Smith.-----

Q. Accept \$1,000.00 ~~xxx~~ offer?

A. Yes.

Q. Since that time you have been occupying the building?

A. Yes.

Q. Up until that time you had expended money on improvements?

A. Yes.

Q. Any agreement in the event of purchase? about what was left over?

A. That was going on the purchase price.

Q. Already paid that?

A. Yes.

Q. Mr. Smith left you in _____?

A. Yes.

Q. Part of the purchase price was paid?

A. Yes.

Q. Did you continue from the date of your acceptance of the contract to purchase? Have you remained in possession of the property?

A. Yes.

Q. You are not holding now under the original lease?

A. No sir, holding under the purchase contract.

Q. Mr. Smith has at all times represented Mrs. Floyd in this transaction?

A. Yes.

Q. Mrs. Floyd has confirmed Mr. Smith in so far as accepting the money orders.

A. I sent them through to Mrs. Floyd for a long time.

Q. Did you send money to Mrs. Floyd after the agreement to buy the place?

A. I tell you how that was. Mr. Smith told us that his aunty I would send money along because it wont be long.

Q. She accepted one or two moneyx orders.

A. Until January, 1936, yes.

Q. You, at that time were sending how much.

A. \$10.00 directed to Mrs. Floyd under this agreement.

Q. You have from timeto time demanded deed and papers from Mr. Smith?

A. Yes.

Q. Have you always stood willing and ready to deliver money upon delivery of the papers?

A. Yes. But Mr. Smith must have understood that he was to let us know a day or two before. He said he would get it all ready. It was delayed some and someone - - - - - We were waiting expecting him to come.

EXAMINATION OF MRS. CHIDGEY,
By Mr. H. C. Rankin.

Q. Mrs. Chidgey, your lease which has been introduced in evidence dated November 16, 1933, is the only lease agreement?

A. All but the agreement to buy. That's the last we have.

Q. This is the only lease agreement?

A. Yes, we were in possession of that building right along.

Q. Commencing approximately thirty days after November 16, 1933 you paid Mrs. Floyd \$10.00 per month rent and reserved \$5.00 to apply on repairs?

A. That's correct.

Q. You continued that arrangement of payment through 1934,

1935 up to say August 25th or 29th, -- when you say?

A. Must have been.

Q. You went in possession of your purchase contract then?

A. Yes.

Q. The two or three payments you say you made after that were also \$10.00 per month?

A. Yes sir.

Q. And who was to buy that property, you or your husband?

A. My husband was to buy it.

Q. Didn't you say, "We went into possession."

A. I may have said "we" I helped my husband about all the time.

Q. He was to have the title in his name?

A. No, I was.

Q. A Friend was going to loan to him?

A. I had already let my husband have that much money.

Q. The deed was to be made to you and be your property?

A. Well.

Q. Since that August, 1935, you have been holding that property under your purchase contract?

A. No, I haven't, because I considered it was my husband's property.

Q. Didn't you say the title was to be yours? Claiming it as yours?

A. No, I am not claiming it as mine. Of course, the deed would be in my name.

Q. You have been holding that property ever since August, 1935, under that agreement to purchase the property for the deed to be made in your name?

A. If you look at it in that light, I suppose it must be.

Q. Who owns the stuff in the place, all of the stock of goods?

A. You will have to ask my husband. I don't know. All the property is his.

Q. Didn't you make some additional improvements which were extra and in addition to those agreed upon amounting to \$150.00, and didn't you take that out of the rent?

A. No sir.

Q. You took \$7.50 per month from some of your payments?

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A. That was when some roofing--- and we wrote and asked Mr. Smith about that.

Q. I am just asking if you didn't take out \$7.50 for some months?

A. It was the roof.

Q. You did take it out?

A. I think that's right.

Q. You remember when that was?

A. I can tell by the money orders.

Q. Before August?

A. Before we purchased it of course.

Q. When you and your son came up to see Mr. Smith, was that when you closed the trade?

A. No, my husband wrote back when I got back I told my husband and he wrote that letter you have already read.

Q. It was still an open proposition when you left him?

A. It wasn't. He knew we were going to buy it. We hadn't gotten the deed and abstract.

Q. The trade for the place, the purchase of the property, had been definitely closed before your husband wrote that letter of August 29, 1935 which is in evidence?

A. I told Mr. Smith that my husband would write him.

Q. It hadn't been closed before he wrote the letter?

A. No.

RE-DIRECT EXAMINATION OF MRS. CHIDGEY,
By Mr. H. M. Hall.

Q. Mrs. Chidgey, this contract was entered into between your husband the purchaser and Mr. Smith, as Agent for Mrs. Floyd?

A. Yes.

Q. You didn't enter into it? Bought through Mr. Chidgey and not you?

A. Yes.

Q. All of the property there so far as you know belongs to him?

A. Yes.

DIRECT EXAMINATION OF T. S. SMITH, (Witness for Res.)
By Mr. H. C. Rankin.

WARRANTY DEED

STATE OF ALABAMA, }
BALDWIN COUNTY. }

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the sum of Fifteen Hundred Dollars (\$1,500.00) Dollars

to me in hand paid by Elsie Sweat

the receipt whereof is hereby acknowledged Alice Floyd (A Widow)

Prattville Alabama

, do grant, bargain, sell and convey unto the said

Elsie Sweat Of Robertsdale Alabama

the following described lands situated in Baldwin County, Alabama, to-wit:

Lots ~~Sixteen, Seventeen, And Eighteen~~, (16.17.18) in Block number Sixteen (16) ^{of the First Addition to} ~~in~~ the town of Robertsdale Baldwin County Alabama. as per plat on file in the office of the Judge of Probate of Baldwin County Alabama Together with all buildings and appurtenances thereunto

TO HAVE AND TO HOLD to the said Elsie Sweat

heirs and assigns forever.

And I do covenant with the said Elsie Sweat

that I am seized in fee of the above described premises; that I have the right to sell and convey the same, that the said premises are free from all encumbrances; and that I will and My heirs, executors and administrators shall forever WARRANT AND DEFEND the same to the said

ELSIE SWEAT

heirs and assigns, against the lawful claims of all persons whomsoever.

WITNESS my hand and seal this 6th day of November, 1935.

WITNESS:

Wm Smith
L. B. Smith

Alice Floyd L. S.
L. S.
L. S.

Q. Who was that tenant?

A. Gulf Refining Company.

Q. Did you or not close any contract with the Gulf Refining Company for the rent of that property when you were able to make delivery?

A. I did.

Q. Agreement in writing?

A. It was.

Q. What was the amount of monthly rental under this agreement?

A. 30 to 60 feet of the front of the building \$25.00 per month guaranteed with 1¢ per gallon all sold over 2500 gallons per month.

Q. Was this the agreement that they tendered to you to go into effect at that time?

A. It is.

Exhibit offered.

Q. Did you have any opportunity to rent the remainder of those lots?

A. I have had the opportunity to but I didn't, there has been no deal made, no.

Q. What then, would be the reasonable value of the remainder?

A. \$15.00 per month.

Deed offered in evidence.

CROSS-EXAMINATION OF C. D. SWEAT
By H. M. Hall.

Q. Mr. Sweat, you said you had a renter down there. It was contemplated that you would remodel the building? Would be a great deal of expense?

A. No sir. Just cut the front of the building off.

Q. You were going to make a drive in only?

A. Yes.

Q. Before the building could be rented to your prospective tenant?

A. Yes.

Q. What do you estimate it would cost you?

A. Three hundred dollars.

Q. Have the roof looked over?

A. I didn't have the roof looked over, the boy told me that he would rebuild the front. . . .

Q. \$45.00 for that building? When was that?

A. No sir.

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Alabama, a letter addressed to W. J. Chidgey and C. J. Chidgey, Robertsdale, Alabama, properly stamped, of which this is a true copy marked Exhibit 5

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By Mr. E. G. Rickarby.

Q. Were those letters in envelopes bearing your return?

A. Yes.

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By Mr. H. M. Hall.

Q. Mr. Rankin, who mailed those letters?

A. I did.

Q. Personally?

A. Personally.

Q. Did you write them yourself?

A. I wrote them, dictated some of them I might have written myself.

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Q. You are, of course, acquainted with this property in question involved in this suit?

A. Yes.

Q. Are you acquainted with the rental value of the property in the Town of Robertsdale?

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Q. What has been a fair rental per month from January 1, 1936, to date as the property stands?

A. I have paid a fair rental of \$15.00 per month.

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A. The bank closed and caught me in there.

Q. Did you have a written lease?

A. I went into Robertsdale Hardware Company, when I got out of there_____.

Q. Mr. Sweat, taking that building in its present condition, what's a fair and reasonable monthly rent for it?

A. Mr. Hall, it is worth, as it stands now \$25.00 or \$30.00 per month.

Q. What has been a reasonable value since January 1st, 1936?

A. I wouldn't say it would be any less than \$25.00 per month because other property has rented for that and more.

Q. This building is not in a very good condition; state or repair?

A. ~~Yes~~, I agree with you.

Q. Bad?

A. No sir, nothing bad about it but the roof.

Q. The front is rather broken?

A. Yes.

Q. All will have to be repaired before it becomes tenable?

A. Yes.

Q. When you bought this property, Mr. Sweat, your purchase included three or four lots?

A. Three lots.

Q. ~~Consisting of what?~~ Consideration was what?

A. \$1500.00.

RE-DIRECT EXAMINATION OF C. D. SWEAT
By Mr. E. G. Rickarby.

Q. This letter that you put in possession demanding possession
----possession has never been delivered?

A. No.

Q. Paid you any rent since January 1, 1936?

A. No.

RE-EXAMINATION OF T. S. SMITH
By Mr. H. C. Rankin.

Q. Mr. Smith, after you answered Mr. Chidgey's letter dated September 25, 1935, did you ever have any further communication with him at all in regard to that property?

A. Never.

Q. Never had heard anything from him? Never had heard that he was claiming?

A. No sir.

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Q. When was the first time that you knew after that that he was claiming?

A. Last term of court.

Q. Filed suit August, 1936?

A. Yes sir.

RE-CROSS EXAMINATION OF T. S. SMITH
By Mr. H. M. Hall.

Q. Didn't he tell you about the law suit at Robertsdale?

A. They told me they had trouble getting him out.

Q. You knew he was in there?

A. Yes, claiming they hadn't given him proper notice.

Q. At the time you sold to Mrs. Sweat you knew Chidgey was in there and you knew he was claiming something?

A. No contract for rent. He's got it there in writing that he was to pay so much rent and take out \$5.00 per month.

Q. Then a later agreement, any money involved in that at all?

A. Later agreement in August, 1935, partial agreement in regard to the purchase price never executed. We figured all that; we have done gone in that. I don't know anything about suing for possession until last Court and I am still suing.

TESTIMONY OF H. C. RANKIN.

My name is H. C. Rankin. On January 22, 1936, I wrote a letter to Mr. C. H. Chidgey, Robertsdale, Alabama, and addressed it properly and stamped it to said addressee and mailed the same at Brewton, Alabama for transmission in United States mail to said addressee, of which I hand you a copy marked Exhibit 1

Also on February 13, 1936, I wrote and deposited in the U. S. mail properly stamped and addressed to W. J. Chidgey and C. J. Chidgey, Robertsdale, Alabama, a letter, of which this is a true copy marked Exhibit 2

On March 4, 1936, I deposited in the U. S. mail at Brewton, Alabama a letter addressed to W. J. Chidgey and C. J. Chidgey, Robertsdale, Alabama, properly stamped, of which this is a true copy marked Exhibit " 3

On April 18, 1936, I deposited in the U. S. mail at Brewton Alabama a letter addressed to W. J. Chidgey, Robertsdale, Alabama, properly stamped, of which this is a true copy marked Exhibit " 4

On May 6, 1936, I deposited in the U. S. mail at Brewton,

DEMURRERS OF RESPONDENT ALICE FLOYD.

W. J. CHIDGEY,) IN THE CIRCUIT COURT OF
) BALDWIN COUNTY,
) ALABAMA.
) IN EQUITY.
ALICE FLOYD AND)
ELSIE SWEAT,)
) RESPONDENTS.)

Comes the respondent, Alice Floyd, in the above styled cause and demurs to the bill of complaint filed against her in said cause and to each paragraph thereof, separately and severally, and for grounds of demurrer alleges the following separately and severally, to-wit:

1. There is no equity in the bill.
2. The allegations of said bill are fatally vague and indefinite.
3. The allegations are too general and do not sufficiently inform this respondent of the issues which she is called upon to meet.
4. This respondent is not sufficiently advised as to the time when it is alleged that said contract was made on her part.
5. The said bill fails to inform this respondent of the time and place of making of said alleged contract.
6. The bill fails to allege or set out the amount of the purchase money which was therein alleged to have been paid and when the complainant was put into possession of said property.
7. It is not shown in and by said bill to whom said alleged money, or a part thereof was paid.
8. It does not appear in said bill as to when complainant was put into possession of said property, nor by whom said possession was given to the complainant.
9. No valid contract of sale is set out in said bill.

H. Parker
Attorney for Respondent,
Alice Floyd.

Messrs. Beebe, Hall & Beebe
Solicitors for W. J. Chidgey
Bay Minette, Alabama

Gentlemen:

Please take notice that in the case of W. J. Chidgey versus Alice Floyd, et al, Number 248 in Equity in the Circuit Court of Baldwin County, the Respondent, Alice Floyd, will submit on January 21, 1937, for decree the demurrers to the bill filed by her on September 28, 1936, under the provisions of Chancery Rule 74.

H. B. Ransford
William B. Ransford
Solicitors for Respondent.

W. J. CHIDGEY,

Complainant.

vs

ALICE FLOYD and ELSIE SWEAT,

Respondents.

E Q U I T Y

CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

Comes ELSIE SWEAT, Respondent in the above styled cause and for answer to the bill of complaint says:

FIRST: She admits the allegations of the first and second paragraph of the bill.


SECOND: She denies the averments of the third paragraph.

THIRD: To the fourth paragraph she knows nothing of the facts therein alleged and demands strict proof thereof.

FOURTH: To the fifth paragraph Respondent admits that the property above described was purchased by her but denies knowledge of any rights of Complainant therein.

FIFTH: To the sixth paragraph Respondent knows nothing of the verity thereof and neither admits nor denies same but demands strict proof thereof.

Having thus fully answered Respondent prays that said bill be dismissed and that she be permitted to go hence with her reasonable costs in this behalf expended.


Solicitor for Respondent, Elsie Sweat

RECORDED
INDEXED
6-480

EQUITY

W. J. CHIDSEY,

Complainant.

vs

ALICE FLOYD and ELSIE SWEAT,

Respondents.

ANSWER OF ELSIE SWEAT.

Elsie Sweat, et al 1934
Richard Reynolds

WILLIAM G. REIDSBY,

Declarant

RECORDED

EQUITY 248

Book 7-6

W. J. CHIDCEY

VS

ALICE FLOYD, et al

NOTICE OF SUBMISSION

*Filed for 9/19/39
B. Williams
D. Williams*

1-12-1939

By *W. J. Chidcey* Clerk of said Court

A. M. Hall

M. S. Williams Sheriff

B. Williams Deputy Sheriff

RECORDED
INDEXED
2-26-5

Review
containing comments
to file of Campbell

Done April 2/1957
C. A. [unclear]
[unclear]

RECORDED
Sue B.
7-127

W. J. CHIDGEEY,

Complainant,

VS.

ALICE FLOYD and
ELSIE SWEAT,

Respondents.

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

AMENDED BILL

Filed April 28, 1937.
R. S. Suck, Register.

"A"
~~LEASE~~

THIS AGREEMENT, Made this sixteenth day of November, 1933.
Between Mrs. J. T. FLOYD party of the first part, and W. J. CHIDGBY
party of the second part.

Witnessed, that the said party of the first part does hereby
lease to the said party of the second part, the following described
property situated in the town of Robertsdale, Alabama: The Garage
Brick Building located on the Southeast corner of Pennsylvania and
Milwaukee Streets and same being lot number 18 in Block 16. For a
term of year to year beginning December 1st 1933.

And the party of the second part agrees to pay as rent for said
premises, the sum of Fifteen Dollars per month and for each month
during said term.

It is further agreed by the party of the first part that the lease
is to run until full payment and the party of the second part is re-
imbursed for improvements previously agreed upon by both parties and
the amount of Five Dollars per month is to be deducted from the
monthly rent by the party of the second part until said debt is paid.

In Witness Whereof, the parties have hereunto set their hands
and seals, the day and year first above written.

Witness

L. L. L...

J. A. Baldwin

Mrs. J. T. Floyd
J. S. Smith (Agent)

W. J. Chidguy

W. J. CHIDGEY,
Complainant

Vs

ALICE FLOYD and
ELSIE SWEAT,

Respondents.

E Q U I T Y
IN THE CIRCUIT COURT OF
BALDWIN COUNTY,
ALABAMA

IT IS HEREBY AGREED among the parties acting by and through their solicitors of record that the testimony in this cause shall be taken this day before Robert S. Duck, as register, upon oral examination, that the evidence adduced shall be taken down by a competent stenographer designated by the Register and when transcribed shall be filed in the cause without the signature of the respective witnesses, such signing being hereby waived.

~~IT IS FURTHER AGREED that copies of documents offered in evidence shall be filed in lieu of the originals subject to any objections that can properly be interposed to said originals and shall have the same legal affect as the original documents.~~

IN WITNESS WHEREOF, the parties have hereto set their hands on the 5th day of August, 1937.

Robert S. Duck
Solicitors for Complainant.

H. Crank
Solicitor for Respondent,
Alice Floyd.

William G. Rinkley
Solicitor for Respondent and
Cross-Complainant Elsie Sweat.

W. J. CHIDGEY,

Complainant,

VS.

ALICE FLOYD and
ELSIE SWEAT,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. _____.

EXAMINATION OF DR. AMOS GARRET
By H. M. Hall.

Q. This is Dr. Garrett?

A. Yes.

Q. Dr. Garrett, you live at Robertsdale, in Baldwin County?

A. Yes.

Q. Are you acquainted with what is known as Lot 18 Block 16 of the First Addition to the Town of Robertsdale, in Baldwin County, Alabama? That is, the lot on which the Hub Motors building is located?

A. Yes.

Q. That building is now occupied by Mr. W. J. Chidgey?

A. Yes.

Q. Do you know how long Mr. Chidgey has been in the building?

A. No sir, I don't. About six years - - quite a length of time.

Q. Do you know Mr. T. S. Smith?

A. I met him; yes.

Q. Where did you meet him?

A. At Robertsdale.

Q. In your office?

A. Yes.

Q. Did you have a conversation with Mr. Smith relative to this property we've been discussing?

A. Yes.

Q. Anything mentioned about a sale of the property?

A. I tried to buy it. He told me he was Mrs. Floyd's agent.

Q. He say anything about his authority...?

A. He told me he had power to sell it.

Q. Offered it at what price?

A. Yes.

Q. See if that is the lease. (document produced)

A. Yes sir. The papers were signed Mrs. J. T. Floyd by T. S. Smith, Agent.

Document offered as Exhibit "A"

Q. Did you go into possession?

A. I was already in possession.

VB

Hub Motors
Robertsdale, Ala.
August 29/1935.

Mr. T. S. Smith
Brewton, Ala.

Dear Sir:

We have decided to buy the above property with full size lot for \$1,000 cash on terms agreed upon when my Wife and Son were up to see you. Please have deed made out in my Wifes name Mary, M. Chidgey.

Please let us know if you receive this, and advise us when deed and abstract is ready so that we may have cash on hand to make payment.

And oblige
Yours truly

W. J. Chidgey
W. J. Chidgey

See other side of paper.

Q. That was the lease put into writing?

A. Yes.

Q. You occupy that under that lease for awhile?

A. Yes.

Q. Did Mr. Smith then come down to Robertsdale with reference to a sale of the property?

A. Yes.

Q. You talk with him?

A. Yes.

Q. Did you and Mr. Smith in the conversation discuss as to the authority of executing papers?

A. _____ when he first rented the property he said he was acting as agent for his aunt who was incapable of tending to business.

Q. Later on, did he say _____?

A. He was the only man I ever had any dealings with. I guess he had been to Dr. Garrett and Dr. Garrett didn't buy it.

Q. At that time did you agree on a price?

A. He said he had to get rid of it and said he would take \$650.00, then he came back again and said that it was just the building. I said I can't do anything with just the building. He said it was \$1,000.00.

Q. Did you communicate with Mr. Smith with reference to the \$1,000.00?

A. I wrote him.

That is the original of which I have a copy. *Ex B*

Q. You mail this to Mr. Smith at Brewton?

A. Yes.

Q. Subsequent to that did you see Mr. Smith or get any reply?

A. Yes, he turned it over in the post office and wrote on the back of it.

Q. Get it through the mail?

A. Yes.

Q. Did you get any writing from him?

A. Yes.

Q. That his writing?

A. Yes.

The Respondent admits that Mr. Smith wrote the note shown as Exhibit "C".

Brewton Ala
9-11-35

Mr Chidgry:-

I received letter inclosing P.O. money order for Mrs Floyd yesterday. I am having a Lawyer to get up the Abstract and just as soon as he has it ready. I will have deed made out and signed by Mrs Floyd.

I dont know just how long it will take, but I saw the Lawyer yesterday and it seems from what he said was he had to send to some firm in Chicago that fixed up the Chart for Robertsdale and that is what he is waiting for.

Thanking you
& am

Very Cordially

J. B. Smith

6

Q. After getting this approval or confirmation did you take possession of the property under that?

A. We were already under it.

Q. Prior to that time had there been anything said as to the way the purchase price would be paid or how, or when?

A. I asked Mr. Smith what about the money that had been overpaid on improvements. He said that would be deducted from the purchase price and would be considered as part payment.

Q. You took possession under your contract of sale and purchase

A. Quite so.

Q. Sometime in September; about September 11, 1935, did you get a letter from Mr. Smith with reference to this property, Mr. Chidgey?

A. Yes sir, that letter was written by Mr. Smith. *by "S"*

Q. Subsequent to receiving this word from Mr. Smith acknowledging receipt of your offer and that he would have deeds and papers made, have you attempted to carry out; pay the balance on the contract; offered to pay it?

A. Yes.

Q. Has it been refused?

A. Yes, it has been refused.

Q. Repeatedly?

A. Yes.

Q. What was the amount of that bill, Mr. Chidgey?

A. For the repairs? I think my wife has a note of that.

Q. Have you complied with your contract in every particular with exception of the payment of the money?

A. Yes sir. In fact I had the money waiting for him, expecting him to come down. \$50.42.

Q. That was after giving full credits for the time you had been in there under the lease?

A. That's right.

Q. Mr. Chidgey, when is the first you heard of Mrs. Sweat; Mrs. Elsie Sweat, owning that property.

A. Mr. Sweat came in one morning just at the time I was expecting Mr. Smith to come down with the deed and abstract and said he had bought this property and would give me the chance of first lease. I said, "That so? They can't sell it to two of us. I already bought it."

79
Brewton, Alabama Decer 9, 1935.

Mr C. J. Chidgey,
Robertsdale, Ala,

Dear Sir:

This is to advise you that Mrs Alice Floyd of Prtville has sold the property in Robertsdale occpied by you as a filling station to Mrs Elsie Sweat of your place and any further arrangement as to occupancy should be made with her.

Very truly yours,

J. S. Smith

203
December 10, 1935

Mr C. J. Chidgey
Robertsdale
Alabama

Dear Sir:

As you will see by the enclosed letter from Mr. Smith, I have purchased and have deed from Mrs. Mary Alice Floyd, widow of the late T. J. Floyd, for the three lots at the southeast corner of Milwaukee and Pennsylvania Streets on the northern most of which you are occupying the building. Mrs. Floyd has requested me to pay to you the balance due for repairs to the building made by you, which, as you remember, my husband offered to do some time ago and which offer I now confirm and am ready to pay at any time that you will give me a statement.

As the owner of the property I take this means of notifying you that your present verbal lease has necessarily expired and ask that you surrender possession at the expiration of your current month.

My husband, Mr. C. D. Sweat, of the Robertsdale Hardware Company would be glad to discuss with you all matters relative to the balance due you and the termination of your tenancy.

Very truly yours,

Elsie Sweat

Brewton, Alabama,
January 22, 1936.

Mr. C. J. Chidgey,
Robertsdale, Alabama.

Dear Sir:

I am writing you in the interest of Mr. T. S. Smith, of Brewton, Alabama. You have been previously advised of the fact that the building and three lots in Robertsdale, Alabama, occupied by you were sold to Mr. C. Downing Sweat and wife, in November of last year. Mr. Smith requests me to state to you that he is very much surprised to learn that you have continued in your refusal to surrender possession of said premises to Mr. and Mrs. Sweat, the present owners. Mr. Sweat is complaining that he and his wife are very seriously inconvenienced and are suffering substantial damage by reason of your refusal to vacate the premises.

In view of the situation, and the fact that it appears that you have no right to continue to hold said premises, demand is hereby again made upon you to immediately vacate said premises and deliver possession of the same to the said Mr. C. Downing Sweat and wife. This demand for possession is made at the specific request and by direction of Mr. T. S. Smith.

Very truly yours,

H. C. RANKIN.

HCR:mlz

9

A. I knew she owned the property but Mr. Smith said he was her agent and appeared to have a free hand. The very fact that he wanted to sell to me shows that.

Q. Mr. Glendenning came to you to negotiate with the sale of the lot?

A. No he didn't.

Q. Mr. Glendenning was also Mrs. Floy's agent?

A. I don't know a thing about that. He didn't tell me. Never had any dealings with him at all.

Q. When were you put into possession of the property? Give the exact date under the last purchase agreement?

A. The last purchase agreement. That's the last purchase agreement.

Q. When did you go into possession? You were already in possession?

A. Yes.

Q. Continued in possession?

A. Quite so: expecting a deed and abstract.

(Mr. Rankin to Mr. Hall)

(Mr. Hall, do you have a notice addressed to C. J. Chidgey, dated December 9, 1935?) No sir.

(Have you the original of a notice dated December 10, 1935, signed by Eslie Sweat, addressed to C. J. Chidgey, or W. J. Chidgey, one or the other? I have a letter like that addressed to C. J. Chidgey.)

TO MR. CHIDGEY.

Q. Was that letter, together with a letter of which this is a copy, delivered to you on December 10th, in your place of business by William Gwaltney?

A. If it had I would have had it now.

Q. Was it delivered to you?

A. No.

Q. By William Gwaltney?

A. No.

Q. (Mr. Rankin to Mr. Hall)

Mr. Hall have you got the original of the letter written by H. C. Rankin to Mr. C. J. Chidgey dated January 22? No sir.

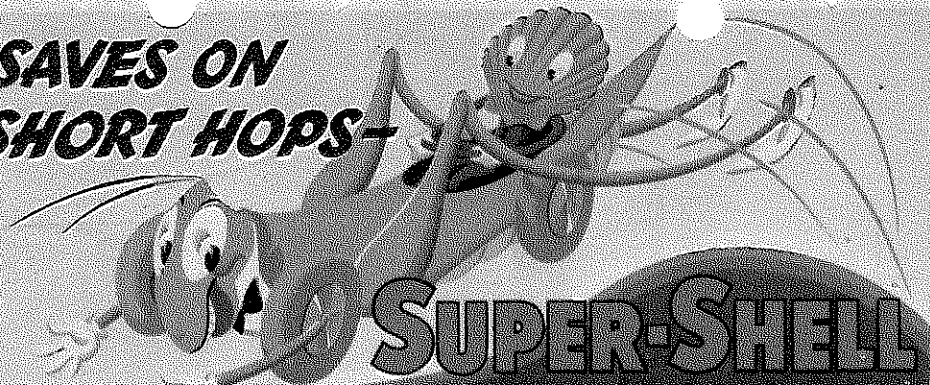
Q. Mr. Chidgey, did you get a letter from me dated January 22, 1936, addressed to C. J. Chidgey, Robertsdale, Alabama?

A. I don't recall having received any.

Q. Of which this is a copy?

A. No sir, Mr. Hall would have it.

**SAVES ON
SHORT HOPS-**



SUPER-SHELL

80% OF YOUR DRIVING IS STOP AND GO

Chidgey & Son

General Auto Repairs

Batteries - Tires - Welding

Telephone 2510

Robertsdale Alabama

Mr Chidgey. Robertsdale Ala

I will have abstract and
deeds looked into and will
keep you informed just
where they will be ready.

Yours cordially
T. D. Smith

P.S. Am retaining this on the
P.O. just after receiving it.
T. D. S.

13

Hub Motors
Robertsdale, Ala.
August 29/1935.

Mr. T.S. Smith
Brewton, Ala.

Dear Sir:

We have decided to buy the above property with full size lot for \$1.000 cash on terms agreed upon when my Wife and Son were up to see you. Please have deed made out in my Wifes name Mary, M. Chidgey.

Please let us know if you receive this, and advise us when deed and abstract is ready so that we may have cash on hand to make payment.

And oblige
Yours truly

W. J. Chidgey
W. J. Chidgey

See other side for reply.

Q. That was the lease put into writing?

A. Yes.

Q. You occupy that under that lease for awhile?

A. Yes.

Q. Did Mr. Smith then come down to Robertsdale with reference to a sale of the property?

A. Yes.

Q. You talk with him?

A. Yes.

Q. Did you and Mr. Smith in the conversation discuss as to the authority of executing papers?

A. _____ when he first rented the property he said he was acting as agent for his aunt who was incapable of tending to business.

Q. Later on, did he say _____?

A. He was the only man I ever had any dealings with. I guess he had been to Dr. Garrett and Dr. Garrett didn't buy it.

Q. At that time did you agree on a price?

A. He said he had to get rid of it and said he would take \$650.00, then he came back again and said that it was just the building. I said I can't do anything with just the building. He said it was \$1,000.00.

Q. Did you communicate with Mr. Smith with reference to the \$1,000.00?

A. I wrote him.

That is the original of which I have a copy. *Ex B*

Q. You mail this to Mr. Smith at Brewton?

A. Yes.

Q. Subsequent to that did you see Mr. Smith or get any reply?

A. Yes, he turned it over in the post office and wrote on the back of it.

Q. Get it through the mail?

A. Yes.

Q. Did you get any writing from him?

A. Yes.

Q. That his writing?

A. Yes.

The Respondent admits that Mr. Smith wrote the note shown as Exhibit "C".

Brewton, Ala.,
Feb. 13, 1936.

Mr. W. J. Chidgey,
Mr. C. J. Chidgey,
Robertsdale, Ala.

Dear Sir:-

At the request of Mr. T. S. Smith is am returning to you herewith United States Postal Money Order, Office No. 39206, Serial No. 112260, issued at Robertsdale, Alabama, Feb. 3, 1936, payable to Mrs. J. T. Floyd in the sum of Ten (\$10.00) Dollars. It appears that W. J. Chidgey is the remitter of said money order.

You have been several times notified and advised that Mrs. Floyd has heretofore conveyed the premises occupied by you, to Mr. C. Downing Sweat and his wife, and that you are holding said property adversely to the interests of said grantees.

Very truly yours,

H. C. RANKIN

Brewton, Alabama,
April 18, 1936.

Mr. W. J. Chidgey,
Robertsdale, Alabama.

Dear Sir:

At the request of Mr. T. S. Smith, I am returning to you herewith U. S. Postal Money Order, Office No. 39206, Serial No. 113946, issued at Robertsdale, Alabama, dated April 1, 1936, payable to Mrs. J. T. Floyd in the sum of \$10.00. The said money order shows that W. J. Chidgey is the remitter.

You know, of course, that Mrs. J. T. Floyd has no right to accept this order. You have been previously advised many times that Mrs. J. T. Floyd conveyed the property occupied by you in Robertsdale, to Mrs. Elsie Sweat, in December of last year. The title of said property has been vested in Mrs. Sweat since the delivery of said deed last December, and she is entitled to all rents and damages for the use and occupation of said property by you.

Very truly yours,

H. C. RANKIN.

HCR:z

Brewton, Alabama,
May 8, 1936.

Mr. W. J. Chidgey and
Mr. C. J. Chidgey,
Robertsdale, Alabama.

Dear Sirs:

At the request of Mr. T. S. Smith, I am returning to you herewith United States Postal money order, Serial No. 114688, issued at Robertsdale, Alabama, dated May 1, 1936, and payable to Mrs. J. T. Floyd in the sum of \$10.00. Said money order shows on its face that W. J. Chidgey is the remitter.

You have been advised several times heretofore that Mrs. Mary Alice Floyd conveyed the lot occupied by you in Robertsdale to Mrs. Elsie Sweat in December, 1935, and that from the date of said conveyance the said Mrs. Elsie Sweat has been the owner of the said property. Mrs. Alice Floyd (Mary Alice Floyd) has had no title to the property since the said conveyance to Mrs. Sweat.

It appears from the memorandum accompanying said money order that this was sent to Mrs. J. T. Floyd as rent for April, 1936. Of course, Mrs. Floyd is not claiming said land and the said money order is herewith returned to you.

Very truly yours,

H. C. RANKIN.

NCR:mis
1 enclosure.

Brewton, Alabama,
June 18, 1936.

7

Mr. W. J. Chidgey, &
Mr. C. J. Chidgey,
Robertsdale, Alabama.

Dear Sirs:

At the request of Mr. T. S. Smith, I am returning to you herewith U. S. Postal Money Order No. 115820 issued at Robertsdale, Alabama, dated June 1, 1936, payable to Mrs. J. T. Floyd, in the sum of \$10.00. The said money order shows that W. J. Chidgey is the remitter.

This money order is returned to you for reasons already explained to you. Mrs. Mary Alice Floyd having last year conveyed the property occupied by you, to Mrs. Elsie Sweat, you understand, of course, that Mrs. Floyd has no right to accept from you any rent for said property.

Very truly yours,

H. C. HANKIN.

HCR:z

Brewton, Alabama,
July 10, 1936.

Mr. W. J. Chidgey,
Mr. C. J. Chidgey,
Robertsdale, Alabama.

Gentlemen:

Mr. T. S. Smith, who is acting in the behalf of Mrs. Mary Alice Floyd, has brought to me a postal money order with the request that I return the same to you. This money order is number 117012, issued at Robertsdale, Alabama, dated July 1, 1936, payable to Mrs. J. T. Floyd, in the sum of ten dollars. It appears that W. J. Chidgey is the remitter named in said money order. I am accordingly returning herewith the said money order, for reasons expressed in previous letters to you. You have been previously advised several times that Mrs. Floyd conveyed the property occupied by you to Mrs. Elsie Sweet. This conveyance was made during the latter part of 1935, and since the date of said sale Mrs. Sweet is entitled to all rentals accruing thereon.

Very truly yours,

H. C. RANKIN.

HCR/r

Q. You didn't receive it?

A. No sir.

(Mr. Hall did you receive a letter from H. C. Rankin addressed to W. J. Chidgey and C. J. Chidgey dated February 13, 1936? I don't find it.

Letter from H. C. Rankin to W. J. Chidgey and C. J. Chidgey dated April 18, 1936? No.

Dated May 8, or May 6, 1936? No.

From H. C. Rankin addressed to W. J. Chidgey dated June 18, 1936? No.

Letter from H. C. Rankin to W. J. Chidgey dated July 10, 1936. Yes.

Only one you have? Yes.

Q. Mr. Chidgey, did you write that letter?

A. My wife wrote that and sent the money order I believe.

Q. You knew about it?

A. Sure.

Q. Was that money order returned to you?

A. Not only that one but others.

Q. But that one?

A. I don't know but I have the stubs.

Q. Did you write this letter or your wife for you?

A. February 29, yes, my wife did.

Q. Was that money order mentioned in that letter returned to you?

A. A bunch of them were returned. I couldn't say how many. I have the stubs.

Q. This letter written by you or at your request?

A. Yes.

Q. Was that money order returned?

A. I guess it was. I don't have the stubs with me.

Q. May 1st, sent and returned?

A. Yes.

Q. Letter of June 1, 1936, to Mrs. J. T. Floyd?

A. Yes.

Q. Returned?

A. ~~Yes~~. Sure.

Q. July 1st, letter to Mrs. Floyd returned?

A. -----

We introduce all of these as Exhibits.

12
Q. Didn't he ask you the question? "The lot that is described here?" And you answered, "Yes sir"?

A. I probably did.

Q. Did he ask you the question: "Through whom did you rent that property?" And did you not answer, "Through Mr. T. S. Smith"?

A. Sure I never had any dealings with anyone else.

Q. Did he not ask you this question: "Was that a written instrument executed--"? And was not this your answer: "Yes, at Mr. Smith's suggestion."?

A. _____

Q. Mr. Farish was taking down the testimony? Don't you remember that answer?

A. I don't remember.

Q. Did he ask you this question: "You remember how that instrument was signed, Mr. Chidgey?" Answer: "I said that was made out and sent to Mr. T. S. Smith for his approval?"

A. Yes.

Q. Did he not ask you this question: "It came back to you executed that way?" And you answered, "Yes sir."

A. Yes.

Q. Did he not ask you this question: "Did you go into possession of the premises under that instrument?" And you answered: "I did."

A. Yes.

Q. Did he not ~~xx~~ repeat the question: "Did you go into possession under that?" And you answered: "Yes sir."

A. Yes.

Q. Did he ask you this question: "Who put you in possession?"

~~Mr. T. S. Smith.~~

Q. He asked you to whom payable, and you answered: ~~to Mrs. Floyd.~~

A. Yes.

Q. Did he ask you the question: "Ever come back to you" and you answered: "No sir."

A. I probably did.

Q. Did he ask you this question: "The letters in which the money order was sent never came back to you." And you answered: "No sir."

A. They didn't I guess.

Q. Did he ask you the question: "You know whether she cashed them or not?" And you answered: "At first, yes sir."

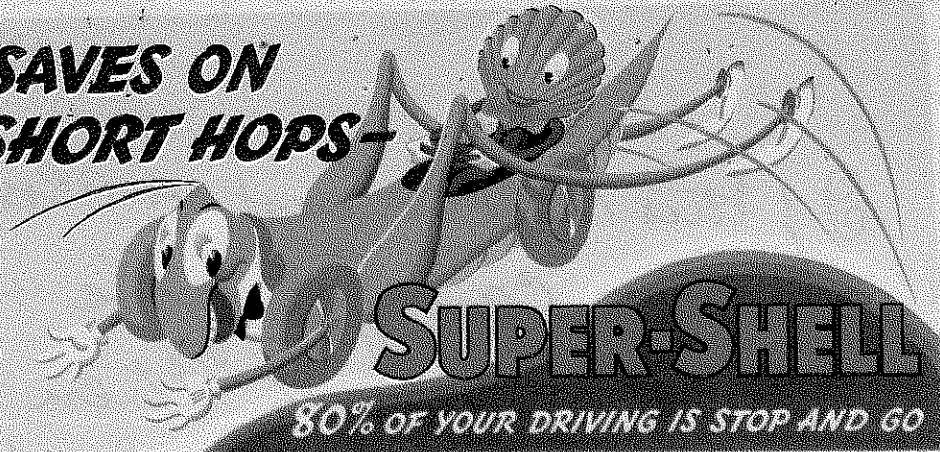
A. Yes.

Q. Did he ask you the question: "Right on up until suit was begun?" And you answered: "Yes sir."

A. Yes.

Q. Did he not ask you this question: "Now under that lease what was the amount of the rent?" And you answered: "\$15.00."

47"
**SAVES ON
SHORT HOPS-**



Chidgey & Son

General Auto Repairs

Batteries - Tires - Welding

Telephone 2510

Robertsdale Alabama

Sep 25 / 35

Mrs. S. Smith. Brewton Ala

Dear Sir - Just received the enclosed P.C. from Mrs. Floyd. Now we want to know by return mail what your intentions are regarding this building. We told you we were ready to buy for cash as soon as you have abstract and deed ready, have heard since saw you you can get plat of Robertsdale at the Municipal building here. Please let us know what you intend to do as there are other plans we can make if we cannot buy this building. W. J. Chidgey.

15
Q. That was before January 1st?

A. I don't remember the date.

Q. About that?

A. I couldn't say.

Q. You never have paid Mrs. Elsie Sweat at all?

A. No sir.

Q. Never have tendered her any rent?

A. Certainly not.

Q. Did Mrs. Elsie Sweat or anybody for her come to you at anytime after December 9, 1935, and ask you to give them a statement or furnish Mrs. Elsie Sweat a statement of the amount claimed by you for balance on repairs?

A. Mr. Rickarby did.

Q. When was that?

A. I don't know when it was. I refused to make any statement. I wasn't dealing with him at all.

Q. You didn't consider that Mrs. Sweat had me write for a statement from you?

A. Certainly not.

Q. Didn't Mr. Rickarby tell you they were ready to pay?

A. Quite so, any money over paid was supposed to be ~~part~~ part of the purchase price.

Q. You said they offered to pay whatever was due.

A. Mr. Rickarby said that if I would give the amount he was prepared to pay them up. I didn't consider it was Mr. Rickarby's or anybody else's business. I was dealing solely with Mr. Smith.

Q. Following this letter of September 25, 1935, identified as Exhibit "7" to your testimony, did you receive any letter from Mr. Smith in answer to that letter? Didn't Mr. Smith write you in substance: "Replying to your letter that since you were getting impatient and rather than you miss your deal to call everything off?"

A. I don't remember anything like that.

Q. Have you stated all the negotiations you have had in regard to the purchase price of this property?

A. Yes sir.

Q. Everything that has passed between you and him?

A. I believe so.

Beebe, Hall & Beebe
LAWYERS
Bay Minette, Alabama

W. C. Beebe
H. M. Hall
J. P. Beebe.

FEBRUARY 14, 1938.

Mr. Elliott G. Rickarby,
Fairhope, Alabama.

Dear Mr. Rickarby:-

I have your letter relative to the lease in the Sweat-Gulf Refining Company matter.

It is perfectly agreeable with me that you withdraw the original lease from the file. I am only too glad to do this if it will in any way accommodate you and Mr. Sweat.

Yours very truly,

Hubert M. Haas

HMH/J

Cc - Mr. C. D. Sweat,
Robertsdale, Alabama.

W. J. CHIDGEY,
Complainant,

VS.

ALICE FLOYD and
ELSIE SWEAT,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

IN EQUITY.

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

Comes your Complainant, W. J. CHIDGEY, and humbly complaining against the Respondents, ALICE FLOYD and ELSIE SWEAT, respectfully represents and shows unto your Honor and this Honorable Court as follows:

FIRST:

That your Complainant is a bona fide resident of Baldwin County, Alabama, over twenty-one years of age.

SECOND:

That the Respondent, ALICE FLOYD, is over twenty-one years of age and a resident of Prattville, Autauga County, Alabama; that the Respondent, ELSIE SWEAT, is over twenty-one years of age and a resident of Robertsdale, in Baldwin County, Alabama.

THIRD:

That, on to-wit, in 1935, the Complainant and Respondent entered into a contract whereby the Complainant was to purchase and the Respondent, ALICE FLOYD, sell for and at the price of One Thousand (\$1,000.00) Dollars the following described land in Baldwin County, Alabama, to-wit:

Lot 18, Block 16 of the First Addition to the Town of Robertsdale, Baldwin County, Alabama, as per plat on file in the office of the Judge of Probate of Baldwin County, Alabama;

that a part of the purchase money was paid and the Complainant put in possession of the said property.

FOURTH:

That the Complainant has at all times been able, ready

and willing to comply, and has complied, with the contract, and although he has demanded of the Respondent, ALICE FLOYD, a compliance on her part with the said contract the said Respondent has failed or refused and continues to refuse to comply therewith.

FIFTH:

That, on November 6th, 1935, the Respondent, ALICE FLOYD, conveyed the above described property, with other property, to the Respondent, ELSIE SWEAT; that the Complainant was in the possession of the said property at the time the said conveyance was executed and the Respondent, ELSIE SWEAT, with notice of the rights of the Complainant purchased the said property from the Respondent, ALICE FLOYD.

SIXTH:

That the Complainant now stands ready, able and willing to comply with the terms of the said contract and to abide the orders and decrees of this Honorable Court.

WHEREFORE, the premises considered, Complainant prays that your Honor will, by proper process, make the said ALICE FLOYD and ELSIE SWEAT party respondents to this Bill of Complaint, requiring them to plead, answer or demur to the same within the time and under the penalties prescribed by law and the practice of this Honorable Court; that your Honor will order a reference to determine the balance, if any, due by the Complainant to the Respondent, ALICE FLOYD;

Complainant further prays upon a final hearing of this cause your Honor will enter an order and decree requiring the Respondent, ALICE FLOYD and ELSIE SWEAT, upon the payment of the amount found upon reference to be due by the Complainant to the Respondent, to convey the said property to the Complainant, in accordance with the terms and conditions of the original contract.

Complainant prays for such other, further, different or general relief as he may be in equity and good conscience entitled to receive and as in duty bound he will ever pray.

Bear & Warr
Solicitors for Complainant.

FOOT NOTE:

The Respondents, ALICE FLOYD and ELSIE SWEAT, are required to answer each and every allegation contained in the foregoing Bill of Complaint, in paragraphs FIRST to SIXTH, inclusive, but not under oath, oath being hereby expressly waived.

Beebe & Dace
Solicitors for Complainant.

The State of Alabama, }
Baldwin County } Circuit Court of Baldwin County, In Equity

To Any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon ALICE FLOYD, Prattville, Autauga
County, Alabama, and ELSIE SWEAT, Robertsdale, Alabama

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

W. J. CHIDGEY

against said ALICE FLOYD and ELSIE SWEAT

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

WITNESS, Robert S. Duck, Register of said Circuit Court, this 4th day
of AUGUST 1936

Robert S. Duck. Register

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

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 ALICE FLOYD of Prattville, Autauga
County, Alabama, and ELSIE SWEAT, Robertsdale, Alabama

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

W. J. CHIDGEY

against said ALICE FLOYD and ELSIE SWEAT

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

WITNESS, Robert S. Duck, Register of said Circuit Court, this 4th day
of AUGUST 1936

Robert S. Duck Register

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

Wells
RECORDED
6-480

BILL OF COMPLAINT.

W. J. CHIDDEY,

Complainant,

VS.

ALICE FLOYD and
RISIE SWART,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY.

Filed Aug. 4, 1936
Robert J. Decker,
Registrar

C

Quebe
RECORDED
6-8-79

Alice Floyd, Guntville, Ala.

THE STATE OF ALABAMA,

Circuit Court of Baldwin County

BALDWIN COUNTY

IN EQUITY

No. 248

SUMMONS

W. J. CHIDGEE,

Complainant,

vs.

ALICE FLOYD and ELSIE SWEAT,

Respondents.

Received in office this 11/19 day of July, 1936

Walter Gibson
SHERIFF

Executed this 16 day of August, 1936
by leaving a copy of the within Summons with
Alice F. Floyd

Alice Sternant
Defendant
Sheriff

By *E. A. Spradlin*
Deputy Sheriff

BREWER & HALL
Solicitor for Complainant

Recorded in Vol. _____ Page _____

R. Baker

RECORDED
2-4-79

Serve on *Elvie Sweet, Robert Talbot*

Circuit Court of Baldwin County
IN EQUITY

No. 248

S U M M O N S

W. J. CHIDGEE,

Complainant,

vs.

ALICE FLOYD and ELVIE SWEAT,
Respondents.

THE STATE OF ALABAMA,

BALDWIN COUNTY

Received in office this 4th

day of Aug, 1934

M. H. Albright

SHERIFF

Executed this 4th day of

Aug 1934

by leaving a copy of the within Summons with

Elvie Sweet

Defendant

M. H. Albright

Sheriff

By _____
Deputy Sheriff

BEEBE & HALL
Solicitor for Complainant

Recorded in Vol. _____ Page _____

ORDER OF REGISTER.

W. J. CHIDGEY,)
)
 COMPLAINANT.) IN THE CIRCUIT COURT OF
)
 VS.) BALDWIN COUNTY,
)
 ALICE FLOYD and) ALABAMA.
 ELSIE SWEAT,)
) IN EQUITY.
 RESPONDENTS.)
),

The respondent, Alice Floyd, having filed her answer to the bill of complaint as last amended, and having also propounded and filed interrogatories to the complainant and called upon him to answer the same, it is hereby ordered and directed that the complainant make and file his answer to said interrogatories on or before the 12th day of June, 1937.

It is further ordered that a copy of this order, together with a copy of said interrogatories, be served upon said complainant, or his solicitor, not less than thirty days before said June 12, 1937.

Done in office at Bay Minette, Alabama, this 11th day of May, 1937.

R. L. Duck
 Register.

RETURN OF SHERIFF.

STATE OF ALABAMA, BALDWIN COUNTY.

I hereby certify that I have served the foregoing order by delivering a copy of said order, together with a copy of said interrogatories, ~~by the following copy~~ to _____, one of the solicitors of record for the complainant on this the _____ day of May, 1937.

Witness my hand, this _____ day of May, 1937.

 Sheriff.

| | | |
|-----------------|---|-------------------------|
| W. J. CHIDGEY, |) | |
| COMPLAINANT. |) | IN THE CIRCUIT COURT OF |
| VS. |) | BALDWIN COUNTY, |
| ALICE FLOYD and |) | ALABAMA |
| ELSIE SWEAT, |) | IN EQUITY. |
| RESPONDENTS. |) | |

Comes Alice Floyd, respondent in the above styled cause and for answer to the bill of complaint therein as last amended, says:

1. She admits as true the allegations of the first paragraph of the amended bill.
2. She admits as true the allegations of the second paragraph of said amended bill.
3. The third paragraph as last amended, fails to set out with sufficient definiteness the date of the alleged contract of sale and does not show that the complainant was put in possession of the property under said alleged contract. The respondent excepts to the allegations of said paragraph as amended as being irrelevant, immaterial, impertinent and insufficient, and demurs to the same on said grounds. Without waiving the insufficiency and imperfection of said paragraph, respondent says that the said paragraph as amended fails to show a valid contract and that said pretended contract is in violation of the statute of frauds as contained in Section 8034 and Subdivision 5 thereof, of the Code of Alabama of 1923, which provides that every contract for the sale of land must be in writing, the consideration expressed therein, and subscribed by parties to be charged therewith or by some other person by him thereunto authorized in writing, unless the purchase money, or a portion thereof be paid and the purchaser be put in possession of the land by the seller. And this respondent claims the benefits of said statute of frauds and pleads the same in bar of this suit.
4. Further answering the said third paragraph of the bill as last amended, the respondent denies each and every allegation contained therein, and demands strict proof of the same.

W. J. CHIDGEY,) IN THE CIRCUIT COURT OF
)
COMPLAINANT.) BALDWIN COUNTY,
)
VS.) ALABAMA.
)
ALICE FLOYD AND) IN EQUITY.
ELSI E SWEAT,)
)
RESPONDENTS.)

ON SUBMISSION TO HONORABLE F. W. HARE, JUDGE OF
SAID COURT, ON DEMURRERS TO THE BILL OF COMPLAINT,
FILED BY RESPONDENT, ALICE FLOYD.

BRIEF OF H. C. RANKIN, SOLICITOR FOR THE RESPONDENT.

This cause is submitted on the demurrers of the respondent, Alice Floyd, which challenge the sufficiency of the bill of complaint. In addition to a general demurrer, she sets up several special grounds pointing out the various defects of the bill. Generally speaking, the demurrers attack the bill on the grounds that it is too vague and indefinite as to its material allegations. It is contended that the bill is defective in that it fails to set out a proper contract upon which a suit for specific performance may be based; that the terms of said contract are not stated; that the time of the making of the alleged contract is not definitely shown; that there is the complete want of details as to said contract; and that sufficient facts are not alleged to show the necessary performance or part performance on the part of the complainant. Upon these questions we submit the following authorities:

TERMS OF CONTRACT.

"The plaintiff's pleading must show what the contract is which is to be performed (Cit. Cox v. Cox, 59 Ala. 591). It must state accurately, clearly, and precisely all its essential terms (Cit. Hume v. Kirkwood, 216 Ala. 534, 113 So. 613; Hodge v. Alabama Water Co., 205 Ala. 472, 88 So. 585; Adams v. Powell, 202 Ala. 91, 87 So. 346; Penney v. Norton, 202 Ala. 690, 81 So. 666; Pepper v. Horn, 197 Ala. 395, 73 So. 46; Mitchell v. Wright, 155 Ala. 458, 46 So. 473; Iron Age Pub. Co., v. Western Union Tel. Co., 83 Ala. 498, 3 So. 449, 3 AmSR 758.), so as to leave none of them in doubt or uncertainty. * * * * * The bill or complaint must not show a contract which appears vague, uncertain, or ambiguous; it must show a contract the essential terms of which are certain, definite, and clear. The terms of the contract must be set forth with such particularity that specific performance may be decreed. The contract may be set out according to its legal effect or in haec verba, (Cit. Martin v. Baines, 217 Ala. 326, 116 So. 341) but in the latter case if the contract set out is uncertain and ambiguous the pleading must put some definite construction on it by averment."

16 C. J. 1156-1157.

"To justify specific performance of a contract, the contract must be just, fair, and reasonable, reasonably certain in respect to the subject-matter, terms, and stipulations, and must be founded on a valuable consideration."

Alabama Cent. R. Co., v Long,
48 So. 363, 158 Ala. 301.

in this case. We have seen that the general allegations "that the complainant has all times been able, ready and willing to comply, and has complied, with the contract," is not sufficient in a bill for specific performance (Hart et al. v. McClellan, Id.).

It may be pertinent to here state that, if and when this case is finally heard, the undisputed evidence will show that the complainant went into the possession of said real estate on or about December 1, 1933, under a lease contract, and that he has held possession of said premises continuously from that time up to the present. We may well assume that the complainant will contend that there was a transition from said tenancy possession to a possession under a contract of purchase. In support of such contention, his bare statement that "he was put in possession" becomes glaringly indefinite.

The bill may be fairly construed as a declaration on an oral contract, and necessary facts are not alleged with sufficient particularity to take it from under the statute of frauds.

"Great accuracy of averment is required in bills for specific performance" (Roquemore and Hall v. Mitchell Bros. Id.)

Respectfully submitted,

A C Rankin,
Solicitor for Alice Floyd,
Respondent.

Copy of the foregoing brief has this day been forwarded by mail to Messrs Beebe & Hall, Attorneys and Solicitors for the Complainant.

Witness my hand at Brewton, Alabama, this 6th day of March, 1937.

A C Rankin

"Courts cannot, under guise of specific performance do violence to contract itself, and make contract for parties."

City of Andalusia, v. Ala. Utilities Co.,
133 So. 899, 222 Ala. 689.

"In order to warrant the specific performance of a contract, it must be definite, certain, and so clearly prudent as to satisfy the Court that it constitutes the actual agreement between the parties."

Citronnelle Turpentine Co. v. Buhlig,
63 So. 951, 184 Ala. 404.

"Allegation of bill for enforcement of contract for sale of land, made by defendant after it brought ejectment against complainant, that complainant was in possession when the ejectment suit was brought, and is now in possession, does not show that defendant put complainant in possession under the contract, or that, then being in possession, he was continued in possession, so as to bring the case within the exception to the statute of frauds (Code 1896, #2152 Subd. 5), where there is part payment, and the purchaser is put in possession by the seller."

Robinson v. Driver, 31 So. 495, 132 Ala. 169.

"Time is essential, in a parol contract for the sale of land in respect to the specific performance of it by a Court of Equity."

Goodwin v. Lyon, 4 Port. 297.

A general allegation in a bill that the plaintiff has "offered and has always been ready and willing to comply with his contract," is not sufficient in a bill for specific performance, but the facts constituting the offer should be alleged.

Hart v. McClellan, 41 Ala. 251.

Great accuracy of averment is required in bills for specific performance.

Roquemore and Hall v. Mitchell Bros.,
52 So. 423, 167 Ala. 475, 140 Am.St.Rep. 52.

Bills for specific performance of contract to convey land require precision and certainty both as to terms of contract of sale and of the land to be conveyed.

Penney v. Norton, 81 So. 666, 202 Ala. 690.

Clear and definite averments of fact, not mere conclusions, are required in specific performance cases.

Chandler v. Bodeker, 122 So. 435, 219 Ala. 357.

In suits for the specific performance of parcel contracts respecting the sale of lands, the rules of equity pleading require that the contract shall be distinctly, definitely, and precisely averred, so that the court may not be left to inference, or in uncertainty as to its terms, or as to the rights of the parties. In no other class of cases is correspondence between the allegations of the bill and the proof produced to establish them more rigidly exacted. (Cit. Allen v. Young, 88 Ala. 340, 6 So. 747; Brown v. Weaver, 113 Ala. 228, 231, 20 So. 964; Whisenant v. Gordon, 101 Ala. 250, 13 So. 914; Westbrook v. Hayes, 137 Ala. 572, 34 So. 622, among many others.)

Pepper v. Horn et al, 73 So. 46, 197 Ala. 395.

Bill for specific performance of contract must show valid contract, terms thereof, performance by complainant, or excuse for non-performance, and complainant's ability and willingness to perform.

Chandler v. Bodeker, 122 So. 435, 219 Ala. 357.

A bill alleged that complainant employed respondent to purchase a certain lot and house, and that subsequently respondent informed him that he had closed the deal, taking the deed in his own name, and that he was ready to make a deed to complainant therefor, whereupon complainant paid him \$6.10 in merchandise in part payment of the consideration of \$65, and was by respondent placed in possession, respondent agreeing to deed him the property and he agreeing to pay the balance of the purchase price during the following week; that complainant has demanded a deed, proposing to pay the balance of the purchase price, but that respondent has refused to execute the deed and accept the balance of the purchase price; that complainant is ready and willing to pay, and submits himself to the jurisdiction of the court as to the payment of the purchase price. HELD, that the bill was insufficient as a bill for specific performance of the contract, as it failed to set out its terms with sufficient particularity and clearness.

Mitchell v. Wright, 46 So. 473, 155 Ala. 458.

A bill for specific performance which merely alleges generally complainants' offer to perform, but does not allege an offer to perform which will comply with the terms of the contract is insufficient. *Roquemore & Hall v. Mitchell Bros.*, 52 So. 423, 167 Ala. 475, 140 Am.St.Rep. 52.

Equity will not aid in enforcing specific performance of a parol contract for the purchase of land, where the purchaser seeks to take it from the operation of the statute of frauds by alleging part payment, unless the contract is definitely alleged and the proof clearly establishes the particular contract set up in the bill.

Allen v. Young, 6 So. 747, 88 Ala. 338.

In a suit for specific performance of a verbal contract for the sale of land, the complainant must establish the terms, conditions and consideration pleaded in the bill by clear and satisfactory proof.

Burt v. Moses, 99 So. 106, 211 Ala. 47.

In purchaser's suit for specific performance of verbal agreement to convey land, evidence HELD not to sustain the averments of the bill as to the terms, the consideration, the conditions, and the property sold, by the clear and satisfactory proof required in such cases.

Burt v. Moses, 99 So. 106, 211 Ala. 47.

In an action for specific performance of a parol contract for the sale of land, the terms of the contract must be definitely alleged, and established as alleged by clear and satisfactory proof.

Jones v. Jones, 47 So. 80, 155 Ala. 644.

"A contract that is incomplete, uncertain, or indefinite in its material terms will not be specifically enforced in equity. Following the general rules of equity, there is required a greater degree of certainty and definiteness for specific performance than to obtain damage at law. For specific performance is required that degree of certainty and definiteness which leaves in the mind of the chancellor or court no reasonable doubt as to what the parties intended, and no reasonable doubt of the specific thing equity is to compel done." (Cit. *Stay v. Tennille*, 159 Ala. 514, 49 So.238, 239.)

Michie's Digest 11, p. 971-972.

COMMENTS.

In the light of the foregoing authorities, it is clear that the bill of complaint is not sufficiently specific in its material averments to warrant the relief sought. The allegation reciting that the contract of purchase was made in 1935, with no more definite date shown, is obviously deficient in this respect. The respondent should be advised more definitely as to the time of the making of said alleged contract. The terms of said contract are not set out other than the general statement that the purchase price was \$1000.00. The time for the payment of the said money does not appear, and for aught that is shown the complainant may have been in default with respect to said payment to such an extent as would bar the relief sought. The mere statement "that a part of the purchase money was paid" is too general to meet the requirements of proper pleading in such cases. The same criticism applies to the further general statement, "and the complainant put in possession of the said property". If the two clauses last above quoted were incorporated in the bill for the purpose of meeting the exceptions set out in the statute of frauds, the said averments are fatally vague and indefinite. The bill does not disclose how much of the purchase money was paid, when it was paid, where, by and to whom payment was made. It is not shown when complainant was put in possession of the property nor under what circumstances he was given such possession. It does not appear that possession was given to the complainant under the terms of the contract of purchase. For aught that appears to the contrary in the bill, the respondent, Alice Floyd, had a legal right to convey the property to Elsie Sweat on November 6, 1935. The allegation that "the complainant was in the possession of the said property at the time the said conveyance was executed" does not amount to an averment that the said possession was held by virtue of the purchase agreement which is a requisite condition

"In bills for specific performance great accuracy of averment is required. (Cit. Danile v. Collins & Co., 57 Ala. 625; Johnston v. Jones, 85 Ala. 286, 4 So. 748) (Cit. Roquemore v. Mitchell Bros., 167 Ala. 475, 52 So. 423.)

Michie's Digest 11, p. 994.

On bill for specific performance of a contract for the sale of land, brought by the vendee, against the vendor, the bill must allege a tender of the purchase money when it became due, and a continued readiness to pay it since, and offer to bring the same into court. (Cit. Bass v. Gilliland's Heirs, 5 Ala. 761.)

Michie's Digest 11, p. 994.

The general allegation of the bill, that he has "offered, and has always been ready and willing to comply with his contract," is not sufficient in a bill for specific performance. The facts constituting the offer should have been given, so that the court might judge of the correctness of the conclusion stated, and determine whether the appellee had taken all proper steps towards performance on his own part, and had been ready, desirous, and prompt to perform. (Citing, Bell v. Thompson, 34 Ala. 633, Billingsley's Heirs v. Billingsley, 37 Ala. 425; Cox v. Boyd, 38 Ala. 42; Gentry v. Rogers, at January term, 1867 (40 Ala. 442.)

41 Ala. 251-253. Hart et al. v. McClellan.

The terms of the contract must be definitely alleged and must be established as alleged by clear and satisfactory proof; and if any of the terms are left in doubt and uncertainty, or there is a variance between the Allegations and the proof as to any of the terms, a specific performance will not be decreed. (Carlisle v. Carlisle, 77 Ala. 339, Derrick v. Monette, 73 Ala. 75.)

Michie's Digest 11, p. 1000.

In bills for specific performance in regard to the sale of real estate the contract laid must be clear and definite as to the description of the land, the amount of the purchase money, and the time of payment. * * * *. If part performance is relied on to take the case out from under the statute of frauds the facts indicating such part performance should be expressly stated in the bill.

28 R. C. L. 380-331.