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SHERILL OIL COMPANY,
a Corporation,
COMPLAINANT,

-VS-

W. D. STAPLETON, LEILA STAPLETON
AND W. D. STAPLETON, JR.,

Respondents.

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

BRIEF AND ARGUMENT OF

W. D. STAPLETON
on Demurrer.

BY:

HYBART, HEARD & CHASON,
His Attorneys.

The bill of complaint in this cause has a double aspect.

1. That it is an effort on the part of the subsequent creditor to set aside a voluntary conveyance.

2. Of a creditor to make subject to his claim of indebtedness property held in trust by a third person for the use of his debtor.

We will, therefore, take up the two propositions in the order stated, mindful at all times that pleading is to be construed against the pleader.

We contend that the Bill of Complaint is insufficient to set aside the conveyance from W. D. Stapleton to his son, for it is not charged in said bill of complaint that the said Stapleton Sr., and his son entered into an agreement to commit actual fraud on Stapleton Sr's., creditors. The distinction between existing and subsequent creditors is very broad; as to the former, the conveyance is void *per se* for the want of a valuable consideration. As to the latter because ~~xxx~~ it is infected with actual fraud.

McCrory vs. Donald,
192 Alabama, 312.

Manchuria Co., vs. Donald,
200 Alabama, 628.

Therefore, before complainant can have said deed set aside as a subsequent creditor he must allege that Stapleton Sr. executed said deed with the intention to defraud his creditors and that his son accepted said deed for the purpose of

assisting him in defrauding his father's creditors.

McCrory vs. Donald,
192 Alabama, 312.

The strongest allegation as to fraud appears in the fourth paragraph of the bill of complaint, viz:

"Said deed was a voluntary conveyance wholly without consideration for the purpose of hindering, delaying and defrauding his creditors."

It nowhere appears that the grantee was conscious of this. That when complainant alleges he (according to the rule of pleading) complainant refers to Stapleton Sr. Then again complainant does not charge a fraud, as the statement that he intended to defraud is but a conclusion of the pleader.

"A subsequent creditor can not complain of a voluntary conveyance, or have same set aside on the ground that it was made with the intent to hinder, delay, or defraud creditors unless it is alleged in the bill and the evidence sustains the allegations that a fraud was committed by the parties to the conveyance and that the creditors suffered thereby, and in charging fraud the rule is that mere conclusions that a conveyance is fraudulent, or that it was made with fraudulent intent, or made to defraud will not suffice against a proper demurrer. (We take this point by demurrer) The bill must aver particular facts showing in what the fraud complained of consists."

192 Alabama, 312.

And authorities there cited.

"A voluntary conveyance is not void as against subsequent creditors of the grantor unless it is shown, or it appears that such voluntary conveyance was made with actual fraudulent intent and also that such fraudulent intent was participated in by both parties to such voluntary conveyance and resulting in injury to the creditors."

27 C. J. 555-556-557

192 Alabama, 312,
McGrory vs. Donald,
147 Alabama, 497.

The bill of complaint fails to meet the requirements of the law in its allegations in this, that there is no allegation of actual fraudulent intent and that such intent was participated in by grantor and grantee, and that it resulted in injury to creditors at the time.

As to the second proposition, that is that Stapleton, Jr. is trustee of his father and holding said lot for him by agreement between them, the demurrer takes the point that there is no averment that said ~~trust~~ trust agreement was in writing, which the statute of fraud requires.

Chief Justice Brickell, in Patton vs. Breecher, 62 Alabama, 579, speaking for the court, said in referring to the statute:

"The plain meaning of the statute is that a trust in lands not arising by by implication or construction of law can not be created by parole; that a writing signed by the parties creating or declaring the trust is indispensable to its

existence. Fraud imposition mistakes in the original transaction may constitute the purchaser or donee a trustee. It is fraud then, and not subsequent fraud if any exist which justifies the court of equity in intervening for the relief of the parties injured by it."

Brock vs. Brock,
90 Alabama, 86.
8 Southern 11.

"But in no case will the grantee be deemed a trustee if he use no fraud or deceit in getting his title although he verbally promised to hold the land for the grantor."

153 Alabama, 516.
Brock vs. Brock, 90 Alabama, 86
8 Southern, 11.
Manning vs. Pipkin,
95 Alabama, 537
11 Southern, 56.

"On the foregoing consideration and authorities it is made clear that no perol trust can be ingrafted on the legal title which the instrument of conveyance makes absolute on its face unless its execution is procured by fraud. Fraud necessary to create a trust must be averred with precision and proved by a clear and convincing proof. In other words where a right depends upon establishing fraud, it is essential that the facts and circumstances which constitute it should be set out clearly, concisely and with sufficient particularity to apprise the opposite party of what he is called upon to answer. The reason of this rule is that a fraud is a conclusional law from the facts stated and it is a well established rule of pleading that facts and not legal conclusions are to be pleaded.

Mere general averments of fraud, or the fraudulent conduct of the party without the facts do not constitute a statement upon which the Court can pronounce a judgment."

Smith vs. Smith,
153 Alabama, 516-517.

The allegations relative to the trust relations are contained in paragraph five of the bill of complaint and are not certain as the law requires relative to any fraudulent agreement or understanding that the said Stapleton Sr. and Jr. had between themselves at the time that the deed was executed. The record discloses that the complainant in this cause is a subsequent creditor and that Stapleton, Sr. was not indebted to him at the time the deed was made, or executed, or that Stapleton, Jr. fraudulently induced the execution of said deed to him by his father and this not having existed the said Stapleton, Sr., even though there was an agreement to reconvey, or even though he attempted to reserve a benefit from said property could not enforce in a court of equity a reconveyance of the property to him, and consequently a subsequent creditor could rise to no higher height than Stapleton, Sr. See

Brock vs. Brock,
90 Alabama, 86,
8 Southern, 11.

In the last mentioned case the bill was filed to establish a trust in lands which had been conveyed absolutely on the ground that the grantee practiced fraud on

the grantor in procuring the execution of the instrument and of such sort as constituted her a trustee ex maleficio. The deed, as the original bill alleged, was executed on the verbal condition or promise that if the grantor, who proposed going abroad returned home a sober man, free from his habits of dissipation his said wife, the grantee, would return to him as his wife, and the deed in such event was to become null and void and of no force and effect. The Court held that this averment failed to impart equity to the bill, and it was amended by charging that the promises made by the grantee, which lead to the execution and delivery of the deed were false and fraudulent at the time they were made, and were made by her with the intent of never complying with them at the time they were made. This amendment, it seems imparted equity to the bill, but the complainant on the final hearing failed in his proof. The fraud which suffices to lay a foundation for such a trust is not simply the fraud which is involved in every delivery of breach of contract-----There must have been an original misrepresentation by means of which the legal title was obtained and the original intention of circumvent and get a better bargain by the confidence reposed, but in no case would the grantee be deemed a trustee if he used no fraud or deceit in getting his title although he verbally promised to hold the land for the grantor.

Smith vs. Smith,
155 Alabama, 516.

The allegations in said paragraph made on

information and belief alleging no actual fraud upon the part of Stapleton Jr. in procuring the execution and delivery of said deed, and the fact that W. D. Stapleton and his wife did execute a mortgage to Jessie M. Smith on the lot involved in this proceeding is not an allegation or inference that the said Stapleton, Jr. practiced any fraud on the grantor in securing said conveyance. That for aught appearing said lot could have been mortgaged through mistake, or by and with the consent of said Stapleton Jr., and we earnestly contend that there is no allegation contained in said bill of complaint sufficient to establish Stapleton, Jr., as being a trustee relative to the property involved exmalificio, and no reason is shown as to why the title should be divested out of him and ~~xxx~~ why he is not entitled to the rents and profits accruing from said premises.

We also call the Court's attention to the fact that said bill of complaint ^{fails to} ~~offers~~ to do equity.

Respectfully submitted,

By leave Harry H. Wilson

Solicitors for Respondents.

We hereby certify that we have this day forwarded to Hon. Leon Brooks, Attorney at Law, Brewton, postage prepaid, copy of the foregoing brief and argument.

This 10 day of August, 1934.

Ch. H. leave

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 W.D.STAPLETON, LEILA STAPLETON
AND W.D.STAPLETON, JR

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 SHERRELL OIL COMPANY, a corporation

against said W.D.STAPLETON, LEILA STAPLETON and W.D.STAPLETON, JR

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

WITNESS, T. W. Richerson, Register of said Circuit Court, this 25 day of

MAY 193 3

T. W. Richerson

Register

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

ORIGINAL

SERVE ON

Circuit Court of Baldwin County
In Equity

No. _____

SUMMONS

SHERILL OIL COMPANY,

a corporation

vs.

W.D. STAPLETON,

LEILA STAPLETON,

W.D. STAPLETON, JR.

LEON BROOKS, J.B. BLACKBURN

Solicitor for Complainant

Recorded in Vol. _____ Page _____

Mrs WDS 5/26/33
WDS 5/27/33
WDS Jr 5/27/33

RECORDED

THE STATE OF ALABAMA,
BALDWIN COUNTY

Received in office this

25th

day of

May

1933

W.R. Stuart

Sheriff.

Executed this

26th

day of

May

1933

by leaving a copy of the within Summons with

Leila Stapleton and on May
27th 1933 served W.D. Stapleton Sr
& W.D. Stapleton Jr

Defendant.

W.R. Stuart

Sheriff.

By

M.H. Wilkins

Deputy Sheriff.

The State of Alabama, {
Baldwin County

IN JUSTICE COURT OF

J. M. FRANKLIN.

TO ANY LAWFUL OFFICER OF SAID COUNTY, GREETINGS:

WHEREAS, W. D. Stapleton Jr.,having complained on oath before me, J. M. Franklin,a Justice of the Peace in and for Precinct No. 4, Baldwin County, Alabama, thatSherrill Oil Company, a Corporation,is justly indented to him in the sum of Eighty Dollars (\$80.00)

() Dollars, and has made affidavit and given bond as required by law; you are

hereby commanded to attach so much of the estate of Sherrill Oil Company, aCorporation,

as will be of value sufficient to satisfy the complaint and costs; and such estate, unless replevied, you will so secure that the same may be liable to further proceedings thereon, to be had before me on the

29th day of June, 19 32, at my office at
Bay Minette, Alabama, when and where you

must make return how you have executed this writ.

Witness my hand this the 18th day of June 1932.J. M. Franklin
MP&O Justice of Peace,Precinct 4 Baldwin County, Ala.

Original **RECORDED**

WRIT OF ATTACHMENT

W. D. STAPLETON JR.,

Plaintiff

VS.

SHERRILL OIL COMPANY,
A Corporation,

Defendant

IN THE JUSTICE COURT OF

J. M. FRANKLIN

at

BAY MINETTE,

Alabama.

Issued _____ day of _____

19__

Filed July 2/1932

J. W. Keenan
clerk

Justice of Peace.

Moore Printing Co. :::: Bay Minette, Ala.

Executed June
28th 1932 *by*
Attaching one
Storage Tank
the property of
Sherrill Oil Co.

W. R. Starn
Sheriff

APPEAL BOND.

STATE OF ALABAMA

BALDWIN COUNTY

We, Sherrill Oil Company, a Corporation, as Principal, and Fidelity and Deposit Company, of Maryland, as surety, are held firmly bound unto W. D. Stapleton, Jr., in the sum of One Hundred Eighty-five Dollars (\$185.00), for the payment of which the said Principal and Surety bind themselves, their successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated the 1st day of July, 1932.

The condition of the above obligation is such that, on the 29th day of June, 1932, T. W. Gilmer, as special Justice of Peace, acting under and by virtue of Section 8571 of the 1923 Code of Alabama, in place of the regular Justice, J. M. Franklin, who, was disqualified in said cause by Section 8570 of the 1923 Code of Alabama, rendered a judgment in favor of W. D. Stapleton, Jr., and against the Sherrill Oil Company, a Corporation, for the sum of Eighty Dollars (\$80.00) debt and Eleven and 55/100 Dollars (\$11.55) costs, from which judgment the said Sherrill Oil Company has applied for and obtained an appeal to the Circuit Court of Baldwin County, Alabama; if the said Sherrill Oil Company, a Corporation, shall prosecute said appeal to effect or if it fails in said appeal shall pay such judgment, both as to debt and costs as may be rendered against it by the said Circuit Court of Baldwin County, Alabama, then in either of said events this obligation to be void, otherwise to remain in full force and effect.

SHERRILL OIL COMPANY, a Corporation,
(Seal).

By

J. B. Blachurn
As its Attorney.

Fidelity and Deposit Company of Maryland,

By Henry G. Bunk
Attorney-in-Fact.

(SEAL)

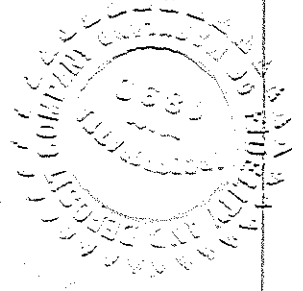
Surety.

(SEAL)

Taken and approved on this the 2nd
day of July, 1932.

Walter G. Miller

Special Justice of Peace.



APPEAL BOND.

W. D. STAPLETON, JR.,
Plaintiff,
Vs.

SHERILL OIL COMPANY,
a Corporation,
Defendant.

IN THE JUSTICE COURT OF
J. M. FRANKLIN, BAY
MINETTE, ALABAMA.

Filed on this the 2nd day of
July, 1932.

Edw. Bailey
Sp. J.P.
J. M. Grantham
N.P. & J.P.

7
in Circuit Court.
Filed July 2nd 1932
D. H. Reichenow
Clerk

W. D. STAPLETON, JR.,)	
PLAINTIFF,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA.
SHERRILL OIL COMPANY, A)	
CORPORATION,)	
DEFENDANT.)	

Comes the defendant and moves the court to transfer this cause from the law to the equity side of the court, for that an equitable question, the decision of which should dispose of the cause and which cannot be disposed of in the law side of the court, depends upon the assertion of an equitable right or defense by the defendant, the substance of said equitable right or defense being as follows:

On February 29, 1924, W. D. Stapleton and wife, Leila Stapleton, the father and mother respectively of the plaintiff in this suit, entered into a written agreement with the defendant, whereby they, as lessors, leased unto the defendant, as lessee, a certain tract of real estate situated in the Town of Bay Minette, Baldwin County, Alabama, described as Lot No. One (1), in Block No. Twenty-seven (27) in the Hand Land Company's Addition to said town, for a term of five years from April 1, 1924, at a monthly rental of \$25.00; that on March 9, 1929, which was just prior to the expiration of the term of said lease, by mutual agreement between W. D. Stapleton and the defendant, said lease was extended for an additional five years as provided by its terms, but at a rental of Forty Dollars (\$40.00) a month, said rental being payable each month in advance, that under said lease the defendant has held and occupied said premises and has regularly paid the monthly rental thereon until a short time before the filing of this suit in the Justice Court of J. M. Franklin, when it discontinued the payment thereof because of the matters and facts hereinafter alleged, all of said payments having been made by check payable to W. D. Stapleton,

and so far as the defendant knows or believes, said checks were cashed by or the proceeds thereof used by W. D. Stapleton.

On the 27th day of May, 1929, without the knowledge of the defendant except the constructive notice given by the record, the said W. D. Stapleton and wife, Leila Stapleton, conveyed to their son, W. D. Stapleton, Jr., the plaintiff herein, said Lot No. One (1) in Block No. Twenty-seven (27) in the Hand Land Company's Addition to the said Town of Bay Minette, Alabama, by a deed recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 47 NS, page 162-3, which said deed was a voluntary conveyance and wholly without any consideration. There was at the time of the execution of said deed, and prior thereto, an existing written agreement between the defendant on the one part and the said W. D. Stapleton and Henry D. Moorner on the other part, whereby the said Stapleton and Moorner became agents for the defendant in the handling and distribution of petroleum products of the defendant in and around the Town of Bay Minette, Alabama. On account of this relationship and for the furtherance of the mutual interests of the parties in the sale of petroleum products, the defendant made advancements and loans to the said W. D. Stapleton and Henry D. Moorner and disregarding other obligations and indebtedness the defendant avers that on March 31, 1931 W. D. Stapleton became indebted to it in the principal sum of Thirteen Hundred Twenty-nine and 53/100 Dollars (\$1329.53), payable by monthly installments of Eighteen Dollars (\$18.00), with a provision that failure to pay any one of said installments should mature the entire balance, and there being a failure to pay more than one monthly installment, said balance has long since become due; that on June 21, 1931 the said W. D. Stapleton became indebted to the defendant in the

principal sum of One Thousand Dollars (\$1,000.00), evidenced by his promissory note dated the same day and payable June 21, 1932, with interest from date; and that in addition to said amount the said W. D. Stapleton became individually indebted to the defendant, exclusive of other obligations, on open account in the principal sum of Four Hundred Twenty-seven and 85/100 Dollars (\$427. 85). All of said sums of money, besides other indebtedness and obligations not herein described, are still due and owing by the said W. D. Stapleton to the defendant.

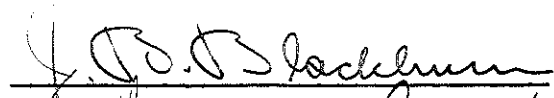
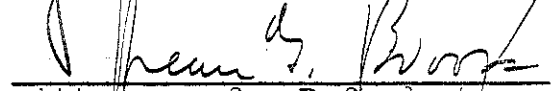
The defendant alleges that the deed from W. D. Stapleton and wife to W. D. Stapleton, Jr., referred to above, was a deed of gift and that in truth and in fact it was made in trust for the use of W. D. Stapleton, or that by a secret agreement between him and the grantee he reserved a benefit from said property and has received and appropriated the same to his own use since the date of said conveyance. The defendant alleges on information and belief that subsequent to the execution of the deed to his son the said W. D. Stapleton collected and used the monthly rental paid by the defendant, these constituting benefits reserved by him through an understanding with the grantee; and the defendant alleges that after the execution of said deed and on, to-wit: January 23, 1932, the said W. D. Stapleton and wife did execute and deliver to Jesse M. Smith a mortgage on said lot, together with Lot No. Two (2) in said Block No. Twenty-seven (27), to secure an indebtedness of Four Thousand Dollars (\$4,000.00), which said mortgage was filed for record on February 3, 1932 in the office of the Judge of Probate of Baldwin County, Alabama and recorded in Mortgage Book 39, page 426, whereby the said W. D. Stapleton secured for himself substantial benefits from said property and gave conclusive evidence that his conveyance to his said son was only nominal and that in truth and in fact said property continued to belong to and to be under the exclusive control of the said W. D. Stapleton

as evidenced by his borrowing money and securing the payment of the same by a mortgage on said lot.

The defendant further avers that since the institution of this suit the plaintiff has brought another suit in the Justice Court of J. M. Franklin at Bay Minette, Alabama seeking to recover two monthly installments of Forty Dollars (\$40.00) each due on said rent since the institution of the present suit and that the defendant believes that the plaintiff will from time to time continue to bring suits for the monthly rental as it accrues, thus causing a multiplicity of suits between the plaintiff and the defendant growing out of the same transaction and involving the same subject matter.

The defendant asserts its right in equity and good conscience to set off against said rent enough of the indebtedness of W. D. Stapleton to it as above described to equal the full amount due and to become due under said lease agreement and charges that said conveyance from W. D. Stapleton to the plaintiff was a device adopted by W. D. Stapleton for the purpose of hindering, delaying or defrauding the defendant and preventing it from obtaining a set off against said rent of the indebtedness of W. D. Stapleton to it.

Wherefore the defendant moves that this cause may be transferred to the equity side of the docket in order that the equitable defenses and rights above set forth may be availed of by the defendant and that the court may take jurisdiction of this cause for the full determination of the rights and liabilities of the parties affected thereby.



Attorneys for Defendant.

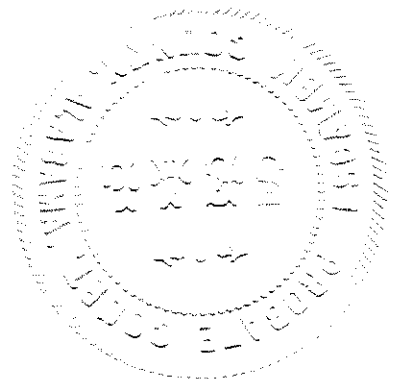
THE STATE OF ALABAMA, :
:
ESCAMBIA COUNTY. :

Before the undersigned authority this day personally appeared Leon G. Brooks, who, being duly sworn, deposes and says that he is one of the attorneys for the Sherrill Oil Company, a corporation, the defendant in the above-styled cause, that he has knowledge of the facts set forth in the foregoing motion and that the same are true according to the best of his knowledge, information and belief.

Leon G. Brooks

Sworn to and subscribed before me this the 11th day of August, 1932.

Claude Hardy
~~Notary Public~~
Judge of Probate.



SHERILL OIL COMPANY,
a Corporation,

Complainant,

VS.

W. D. STAPLETON, LEILA
STAPLETON, and W. D.
STAPLETON, JR.,

Respondents.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.

IN EQUITY.

Now comes W. D. Stapleton, Leila Stapleton and
W. D. Stapleton, Jr., and files their demurrer separately and
severally to the bill of complaint filed in this cause and
assigns as grounds therefor:-

1. That said bill of complaint does not contain
equity.
2. That it affirmatively appears that the Sherill
Oil Company was not a creditor of W. D. Stapleton on, to-wit,
the 27th day of May, 1925.
3. That from aught appearing from the bill of
complaint, complainant has no just reason to complain of the
conveyance executed by W. D. Stapleton and wife, Leila Staple-
ton, to their son, W. D. Stapleton, Jr.
4. That it is a matter of no concern to the
Complainant as to whether the said W. D. Stapleton Jr., purchas-
ed said property from his grantor, or whether the same was a
gift to him.
5. That it is no concern of the complainant as to
whether said lot was included in the mortgage of W. D. Stapleton
and wife, to Jessie M. Smith.
6. From aught appearing, the said W. D. Staple-
ton, Jr., may have authorized the said W. D. Stapleton and his
wife to execute a mortgage on his said lot.

7. The bill of complaint affirmatively shows that the said Sheriff Oil Company had due notice of said conveyance at the time that the said W. D. Stapleton became indebted to it.

8. That the said complainant has not parted with anything of value without knowledge as to the status of the title to said lot.

9 That the allegations of the complaint are insufficient to establish the creation of a trust.

10. That the allegations of the complaint are but mere conclusions.

12. That W. D. Stapleton, Jr., is holding said property in trust for the said W. D. Stapleton.

13. That from aught appearing, the said W. D. Stapleton had a right to convey said property in trust at the time that he did to the said W. D. Stapleton, Jr.

14. That from aught appearing, the said W. D. Stapleton accounted to the said W. D. Stapleton, Jr., for the rents collected on said lot from the said complainants.

15. It is not ~~alleged~~ clear from said bill of complaint as to what the nature of the two suits filed in the Justice Court of J. M. Franklin were, or what connection they had with this transaction.

16. It affirmatively appears that complainant is not seeking to do equity in the case by offering to do so.

17. No reason is shown by the complainant as to why the respondent, W. D. Stapleton, Jr. should be subjected to the payment of W. D. Stapleton's debts.

18. No reason is shown why the conveyance from W. D. Stapleton and wife to W. D. Stapleton, Jr., should be set aside in favor of the complainant in this cause.

19. No reason is shown as to why Complainant should be permitted to off set its demand against W. D. Stapleton against the demand of W. D. Stapleton, Jr., for the rents of his premises.

20. That so far as this complaint is concerned, W. D. Stapleton had a perfect right to do as he pleased with the property on the day that it is alleged that he and his wife conveyed the same to their son, W. D. Stapleton, Jr.

21. That the complainant is in no position to complain of the transaction between W. D. Stapleton and his wife, Leila Stapleton and W. D. Stapleton, Jr., as to the conveyance to the latter of said lot.

22. It is not averred that the agreement between W. D. Stapleton and W. D. Stapleton, Jr., to hold said lot in trust for him was in writing.

23. That any averments as to fraud on the part of any of the defendants are but conclusions of the pleader.

Hyatt Head & Chasov
Solicitors for Respondents.

THE STATE OF ALABAMA,
BALDWIN COUNTY.

TO ANY LAWFUL OFFICER OF THE COUNTY OF BALDWIN:-

Summon Sherrill Oil Company, a Corporation, to appear before me, on the 29th day of June, next, at my office, Bay Minette, Alabama, to answer the complaint of W. D. Stapleton Jr., and there make return of this summons.

Witness my hand, this, the 18th day of June, 1932.

J. M. Gausman
Justice of the Peace.

COMPLAINT.

W. D. STAPLETON JR.,
Plaintiff,
-vs-
SHERRILL OIL COMPANY,
A Corporation,
Defendant.

IN THE JUSTICE COURT OF J. M.
FRANKLIN, BAY MINETTE, ALABAMA.

COUNT 1: The Plaintiff claims of the Defendant Eighty Dollars (\$80.00), due from it by account on, to-wit, the 1st day of June, 1932.

COUNT 2: The Plaintiff claims of the Defendant Eighty Dollars (\$80.00), due from it by account stated between the Plaintiff and Defendant on, to-wit, the 1st day of June, 1932.

COUNT 3: The Plaintiff claims of the Defendant Eighty Dollars (\$80.00), due from it for rent for the months of June ~~April~~ and May, 1932, on the following described property, viz:-

Lot 1, Block 27, Hand Land Company's Addition to the Town of Bay Minette, Alabama, as per Plat thereof on file in the Office of the Judge of Probate of Baldwin County, Alabama;

all of which sums of money, together with interest thereon, are still due and unpaid.

H. J. Taylor, David C. Mason
Attorneys for Plaintiff.

THE STATE OF ALABAMA,)
BALDWIN COUNTY.)

IN THE JUSTICE COURT OF J. M.
FRANKLIN, BAY MINETTE, ALABAMA.

KNOW ALL MEN BY THESE PRESENTS: That we, W. D. Stapleton Jr., as principal, and the undersigned, as Sureties, of the County of Baldwin, State of Alabama, are held and firmly bound unto Sherrill Oil Company, a Corporation, in the sum of One Hundred Seventy-five Dollars (\$175.00) to be paid to the said Sherrill Oil Company, a Corporation, its heirs, executors, administrators or assigns, for which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

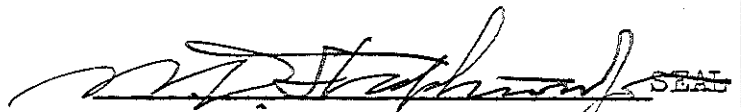


Sealed with our seals and dated the 17th day of June, 1932.

THE CONDITION OF THIS OBLIGATION IS SUCH: That Whereas, the above bounden W. D. Stapleton Jr., has, on the day of the date hereof, prayed an Attachment at the suit of W. D. Stapleton Jr., against the estate of above named Sherrill Oil Company, a Corporation, for the sum of ~~Eighty & No/100-----~~ Dollars (\$80.00), and hath obtained the same returnable to the Justice Court of J. M. Franklin, Bay Minette, Alabama;


Now, if the said W. D. Stapleton Jr., should prosecute said Attachment to effect, and pay the said Defendant all such damages as it may sustain by the wrongful or vexatious suing out said Attachment, then the above obligation to be void, otherwise to remain in full force and effect.

And we and each of us hereby waive all rights of claims of exemption we or either of us have now, or may hereafter have, under the Constitution and Laws of the State of Alabama.

Signed, Sealed and delivered the date above written.

 SEAL
 SEAL
 SEAL

Approved this 18th day
of June, 1932.


Justice of the Peace.

THE STATE OF ALABAMA,
BALDWIN COUNTY.

IN THE JUSTICE COURT OF J. M.
FRANKLIN, BAY MINETTE, ALABAMA.

Before me, John P. Herson, a Notary Public
in and for said County, personally appeared W. D. Stapleton Jr.,
who, being duly sworn, on oath saith that Sherrill Oil Company,
a Corporation, is justly indebted to W. D. Stapleton Jr., in the
sum of Eighty Dollars (\$80.00), which said amount is justly due
after allowing all just offsets and discounts, and that the said
Sherrill Oil Company, a Corporation, is due the said W. D. Staple-
ton Jr., the above amount for rent due him by it on the following
described property, viz:-

Lot 1, Block 27, Hand Land Company's Addition
to the Town of Bay Minette, Alabama, as per Plat
thereof on file in the Office of the Judge of Pro-
bate of Baldwin County, Alabama;

for the months of April and May, 1932; and that this Attachment
is not sued out for the purpose of vexing or harassing the Defend-
ant, or other improper motive.

Subscribed and sworn to before me this 17th day of

June, 1932.

John P. Herson
Notary Public, Baldwin County,
State of Alabama.

W. D. STAPLETON.

Plaintiff,

-vs-

SHERILL OIL COMPANY,
A Corporation,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Now comes the Plaintiff in the aforesaid cause and files this, his Demurrer to the Petition or Motion to transfer this cause from the Law Side of the Court to the Equity Side, and for grounds therefor says:-

FIRST:

That said Motion is not verified as required by law.

SECOND:

That said Motion sets up no reason why said cause should be transferred from the Law Side of said Court.

THIRD:

That the matters complained of therein as material can be availed of on the Law Side of said Court.

FOURTH:

That the matters set up therein show no cause for intervention of the Equity Court.

FIFTH:

That the extension of said alleged lease is not averred to have been in writing.

SIXTH:

That it is not averred that the said W. D. Stapleton Sr., is insolvent.

Respectfully Submitted
Attorneys for W. D. Stapleton
Jr., Plaintiff.

RECORDED

W. D. Stapleton, Jr
Shurill Oil Co, a corp.

Filed March 7, 1933.

D. W. Richardson,
Clerk.

SHERILL OIL COMPANY, INC.,

Complainant,

-vs-

W. D. STAPLETON ET AL,

Respondents.

IN THE CIRCUIT COURT-EQUITY SIDE

STATE OF ALABAMA

BALDWIN COUNTY.

This matter coming on to be heard, is submitted on
Demurrer, and the same being understood by the Court;

It is ORDERED, ADJUDGED AND DECREED that said Demurrers
be overruled, and that the Respondents be given twenty days in
which to file their answer.

Dated this 6th day of February, 1935.

J. M. Lane
Judge.

DECREE ON DEMURRERS.

SHERRILL OIL COMPANY, INC.,

Complainant,

--VS--

W. D. STAPLETON ET AL,

Respondents.

IN THE CIRCUIT COURT-IN EQUITY

STATE OF ALABAMA

BALDWIN COUNTY.

Issued February 6th, 1935

NOTICE OF APPEAL.

W. D. STAPLETON, JR.,

Plaintiff,

VS.

SHERRILL OIL COMPANY,
a Corporation,

Defendant.

IN THE JUSTICE COURT

OF J. M. FRANKLIN,

RAY MINETTE, ALABAMA.

TO W. D. STAPLETON, JR., PLAINTIFF IN SAID CAUSE:

You are hereby notified that the Sherrill Oil Company, a Corporation, the Defendant in the above entitled cause, has prayed an appeal from the judgment rendered therein by me and, having complied with the requirements of law in such cases, the same has been granted to the Circuit Court of Baldwin County, Alabama.

Given under my hand this 2nd day of July, 1932.



Special Justice of Peace.

*We hereby accept service of the
Within notice and waive further
Notice of same.
7/2/32*

*Hypert, Heard & Sherson
By Sherson
as atty for Plaintiff.*

Original

Motion of Appeal
W. H. Stapleton vs.
Pl.

vs.

Shumill Oil Co, a
corp.

N.Y.

Dated July 2, 1932

Filed in Office of
Circuit Clerk
July 2nd 1932
D. W. Richmond
Clerk

SHERILL OIL COMPANY,
a Corporation,

Complainant,

vs.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.

W. D. Stapleton, Plaintiff,
Stapleton, and W. D.
Stapleton, Jr.,

Defendants.

Respondents.

Now comes W. D. Stapleton, Leila Stapleton and
W. D. Stapleton, Jr., and files their answers separately and
severally to the bill of complaint filed in this cause and
assigns as grounds therefor:-

1. That said bill of complaint does not contain
equity.
2. That it affirmatively appears that the Sherill
Oil Company was not a creditor of W. D. Stapleton on, to-wit,
the 27th day of May, 1925.
3. That from aught appearing from the bill of
complaint, complainant has no just reason to complain of the
conveyance executed by W. D. Stapleton and wife, Leila Staple-
ton, to their son, W. D. Stapleton, Jr.
4. That it is a matter of no concern to the
Complainant as to whether the said W. D. Stapleton Jr., purchas-
ed said property from his grantor, or whether the same was a
gift to him.
5. That it is no concern of the complainant as to
whether said lot was included in the mortgage of W. D. Stapleton
and wife, to Jessie M. Smith.
6. From aught appearing, the said W. D. Staple-
ton, Jr., may have authorized the said W. D. Stapleton and his
wife to execute a mortgage on his said lot.

7. The bill of complaint affirmatively shows that the said Sheriff Oil Company had due notice of said conveyance at the time that the said W. D. Stapleton became indebted to it.

8. That the said complainant has not parted with anything of value without knowledge as to the status of the title to said lot.

9. That the allegations of the complaint are insufficient to establish the creation of a trust.

10. That the allegations of the complaint are but mere conclusions.

11. That W. D. Stapleton, Jr., is holding said property in trust for the said W. D. Stapleton.

12. That from aught appearing, the said W. D. Stapleton had a right to convey said property in trust at the time that he did to the said W. D. Stapleton, Jr.

13. That from aught appearing, the said W. D. Stapleton accounted to the said W. D. Stapleton, Jr., for the rents collected on said lot from the said complainants.

14. It is not ~~stated~~ clear from said bill of complaint as to what the nature of the two suits filed in the Justice Court of J. M. Franklin were, or what connection they had with this transaction.

15. It affirmatively appears that complainant is not seeking to do equity in the case by offering to do so.

16. No reason is shown by the complainant as to why the respondent, W. D. Stapleton, Jr. should be subjected to the payment of W. D. Stapleton's debts.

17. No reason is shown why the conveyance from W. D. Stapleton and wife to W. D. Stapleton, Jr., should be set aside in favor of the complainant in this cause.

18. No reason is shown as to why Complainant should be permitted to off set its demand against W. D. Stapleton against the demand of W. D. Stapleton, Jr., for the rents of his premises.

20. That so far as this complaint is concerned, W. B. Stapleton had a perfect right to do as he pleased with the property on the day that it is alleged that he and his wife conveyed the same to their son, W. B. Stapleton, Jr.

21. That the complainant is in no position to complain of the transaction between W. B. Stapleton and his wife, Lella Stapleton and W. B. Stapleton, Jr., as to the conveyance to the latter of said lot.

22. It is not averred that the agreement between W. B. Stapleton and W. B. Stapleton, Jr., to hold said lot in trust for him was in writing.

*That any agreement or trust
based on that fact or any of the
defendants' and bank's conduct
is then pleaded.*

Solicitors for Respondents.

SHERRILL OIL COMPANY, INC.,)

Complainant,)

-vs-)

W. D. STAPLETON ET AL,)

Respondent.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Now comes W. D. Stapleton and Mrs. Leila Stapleton, and for Answer to the Bill of Complaint in this cause say as follows:-

They admit paragraphs one and two of the same.

In answer to paragraph three of said Bill of Complaint the said W. D. Stapleton and Mrs. Leila Stapleton admit that they entered into a written contract with the Sherrill Oil Company, Inc., as lessors, and leased to it that certain tract of real estate described in said Bill of Complaint for a term of five years from April 1st, 1924, at a monthly rental of \$25.00, and they admit that on, to-wit, March 9th, 1929, that there was an agreement between W. D. Stapleton whereby the Sherrill Oil Company was to have the said lease extended for an additional five years, but at a rental of \$40.00 per month, said rent being paid each month in advance, and that under said lease the Sherrill Oil Company has held and occupied and is still occupying the said premises under said lease, and that it regularly paid the rental thereon until a short time before the filing of the first suit in the Justice Court of J. M. Franklin, and that it discontinued the payment thereof.

In answer to the fourth paragraph of said Complaint Respondents W. D. Stapleton and Mrs. Leila Stapleton say that they knew of no reason on the 27th day of May, 1929, as to why they should have notified the Sherrill Oil Company, Inc., or anyone else, as to the fact that on that day they conveyed to their son, W. D. Stapleton Jr., said Lot No. 1 in Block No. 27 in the Hand Land Company's Addition to the Town of Bay Minette. Respondents most emphatically deny that said conveyance was for the purpose of hindering, delaying or defrauding his creditors. Respondents allege that they had a right to make this conveyance to their said son, and that the said Sherrill Oil Company, Inc.,

had no cause to complain thereof. That they were not indebted to the Sherrill Oil Company at the time of said conveyance, or, if they were indebted to the Sherrill Oil Company at that time said indebtedness has long since been paid. Respondents deny paragraph four of said Bill of Complaint, except as herein expressly admitted, and call for strict proof of the same.

In answer to paragraph five Respondents emphatically deny that said deed of conveyance from them to the said W. D. Stapleton Jr., was a trust for the use of W. D. Stapleton, and that by a secret agreement between the said W. D. Stapleton and W. D. Stapleton Jr., the said W. D. Stapleton reserved a benefit from said property and that the said W. D. Stapleton has received and appropriated the same to his own use since the date of the said conveyance, and Respondents state the fact to be that ever since said deed of conveyance was executed by them to their son, W. D. Stapleton Jr., the said W. D. Stapleton Jr., has been enjoying the use of and benefits from said property. That immediately upon the receipt of a check for the rent of said premises from the Sherrill Oil Company, payable to W. D. Stapleton, the said W. D. Stapleton endorsed said check and turned the same over to the said W. D. Stapleton Jr., who cashed said check and used and appropriated its proceeds as he saw fit to do, and that at no time have Respondents received any benefits, nor has there ever been an understanding that they would receive any benefits, in any manner or form, out of said property from the date that they delivered their deed to said property to said W. D. Stapleton Jr., which delivery occurred at the time mentioned in said Bill of Complaint.

Respondents further show that in making up a list of the property to be included in the mortgage executed by them on January 23rd, 1932, to Jesse M. Smith, through inadvertence said lot was included with other securities therein mentioned, but in any event the title to said Lot No. 1 in Block No. 27 in said addition to the Town of Bay Minette, Alabama, had passed out of Respondents and was vested in W. D. Stapleton Jr., ever since they executed their deed to him, and it was the property at that time, and during the (page two)

(page three)

time of the occupancy of the said Sherrill Oil Company, of W. D. Stapleton Jr., who was and is entitled to the benefits and rents flowing therefrom, together with the control of said property.

Having answered said Bill of Complaint Respondents respectfully ask that they be dismissed with their costs.

Hyatt Kend & Chason
Solicitors for Respondents.

1108
ANSWER.

SIDERRILL OIL COMPANY, INC.,

Complainant,

-VS-

W. D. STAPLETON ET AL,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Filed February 23, 1935

Ratner Duck
Register.

*Answer accepted
Feb. 23, 1935
Siderrill Oil Co.
By J. B. Stapleton
att'y.*

SHERRILL OIL COMPANY, INC.,

Complainant,

-vs-

W. D. STAPLETON ET AL,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Now comes W. D. Stapleton Jr., and by way of Answer and cross-bill shows unto your Honor as follows:-

FIRST:

He admits paragraph one of the Bill of Complaint.

SECOND:

He admits that he brought an action against Complainant in the Justice Court of J. M. Franklin, a Notary Public and Ex-officio Justice of the Peace in and for Baldwin County, Alabama, on, to-wit, June 18th, 1932; that the said Franklin recused himself and that said cause was tried before T. W. Gilmer by agreement acting as a special Justice of the Peace on, to-wit, June 29th, 1932, and that judgment was rendered for him, and that said cause was appealed by the Sherrill Oil Company, Inc., to the Circuit Court of Baldwin County, Alabama, and that after said appeal to the Circuit Court of said County that the Sherrill Oil Company filed a Motion in said Court to move said cause from the Law Side to the Equity Side of the Circuit Court, which said Motion was granted and an order made transferring said cause to the Equity Side of said Court, and that on, to-wit, July 9th, 1932, he commenced another suit against the Sherrill Oil Company, Inc., on his demand for rent in said Justice Court of J. M. Franklin, which has not been disposed of.

THIRD:

That he is not advised of any written agreement alleged to have been entered into on February 29th, 1924, between W. D. Stapleton and his wife, Mrs. Leila Stapleton, whereby they leased unto the Sherrill Oil Company Lot No. 1 in Block No. 27 in the Hand Land Company's Addition to said Town for a term of five years, at a monthly rental of \$25.00. Respondent and

Cross-Complainant, W. D. Stapleton Jr., admits that on, to-wit, March 9th, 1929, that the Sherrill Oil Company, Inc., leased said lot for five years at a rental of \$40.00 per month, said rental being payable each month in advance. That under said lease the Sherrill Oil Company held and occupied, and was still occupying the said premises, up until, and since the filing of this Bill of Complaint, and that they regularly paid the rent thereupon at \$40.00 per month, until a short time before the filing of the first suit in the Justice Court of J. M. Franklin; that he admits that it discontinued the payment of said rent, and that said rent was paid by check to W. D. Stapleton, but after your Cross-Complainant became the owner of said lot said rental checks were endorsed by W. D. Stapleton, turned over to your Cross-Complainant, and used by him for his sole benefit, as he had a right to do.

FOURTH:

Answering the fourth paragraph of said Bill of Complaint your Cross-Complainant is not advised as to whether the Sherrill

Oil Company had knowledge that on, to-wit, the 27th day of May, 1929, that the said W. D. Stapleton and his wife, Lella Stapleton, conveyed to him the said Lot No. 1 in Block 27 in the Hand Land

Company's Addition to the Town of Bay Minette; that the said W. D. Stapleton and his said wife had a right to convey to him said property at said time, which they did, and that your Cross-Complainant had said deed of conveyance recorded in the Office of the Judge

of Probate of Baldwin County, Alabama, where it is still of record, where he had a right to have the same recorded. Your Cross-Com-

plainant most emphatically denies that said conveyance was made for the purpose of hindering, delaying or defrauding the creditors of W. D. Stapleton Sr., or anyone else. Cross-Complainant is not advised as to any existing written agreement between the Sherrill

Oil Company on the one part, and the said W. D. Stapleton and

Henry D. Moore on the other part, whereby the said Stapleton and

Moore became agents for the Sherrill Oil Company in the handling

and distribution of petroleum products in and around Bay Minette,

(page three)

Alabama, and Cross-Complainant is not advised as to whether the said W. D. Stapleton and H. D. Moorner secured advances and loans from said Oil Company, but Cross-Complainant alleges the facts to be that the said W. D. Stapleton and H. D. Moorner were not indebted to the said Sherrill Oil Company on the day that said Deed was executed to him by the said W. D. Stapleton and his wife, Mrs. Leila Stapleton; if they were so indebted Cross-Complainant says that such indebtedness has since been paid, and that if they were indebted on that date to the said Sherrill Oil Company it was largely disproportionate to the value and worth of the property of the said W. D. Stapleton and the said H. D. Moorner. Cross-Complainant is not advised nor interested in the extent of the indebtedness of the said W. D. Stapleton and H. D. Moorner to the Sherrill Oil Company on, to-wit, March 31st, 1931, Cross-Complainant having long since acquired the property involved in this suit, being the owner of the same and collecting the profits of said property and using them, as aforesaid, entirely for his own use and benefit, nor is Cross-Complainant interested as to the extent of the indebtedness of the said W. D. Stapleton to the Sherrill Oil Company on June 21st, 1931, as this indebtedness, if such existed, was long after the execution and delivery to him of said Deed of conveyance, to said property by the said W. D. and Mrs. Leila Stapleton, and consequently he is not advised as to the amount of indebtedness due by the said W. D. Stapleton or H. D. Moorner to the Sherrill Oil Company on March 31st, 1931, or June 21st, 1931, or what interest might be due thereon, and whether the same is due and remains unpaid, or what amount the said W. D. Stapleton might have become indebted to the Sherrill Oil Company on open account.

FIFTH:

In answer to the fifth paragraph of said Bill of Complaint, Respondent and Cross-Complainant denies unequivocally that said conveyance to him by the said W. D. Stapleton and Mrs. Leila Stapleton was made in trust for the use of W. D. Stapleton, or that there was a secret agreement between him and said W. D.

(page three)

Stapleton or Mrs. Lella Stapleton, or anyone else, whereby W. D. Stapleton, or any one else, reserved a benefit from said property, and most unequivocally denies that anyone other than himself has received any of the rents since the date of the said conveyance to him, and also denies that W. D. Stapleton or Mrs. Lella Stapleton has received and appropriated to his or her own use any of the proceeds of said property since the date of said conveyance, but, as stated heretofore, that when the check for the rent of said premises was forwarded to W. D. Stapleton by the Sherrill Oil Company, the said W. D. Stapleton endorsed the same and turned said rent checks over to your Cross-Complainant, and he used the same in his own way, for his own benefit, as he has seen fit to do. That no understanding as to the control of said property or the proceeds thereof has ever been entered into between your Cross-Complainant and anyone; that no trust has been created out of said property or the proceeds thereof. Cross-Complainant explicitly denies that the said W. D. Stapleton collected or used the rental paid by the Sherrill Oil Company after said Deed of conveyance was executed to him. Cross-Complainant respectfully shows unto your Honor that he had no knowledge of the execution of a Mortgage by W. D. Stapleton and wife to Jesse M. Smith, which included as to securities said Lot No. 1 in Block No. 27, until said Bill of Complaint informed him of this fact. That at said time, that is, the date of the execution of said Mortgage, Cross-Complainant was the absolute owner of said lot described in said Complaint, claiming to own the same, had a Deed to the same, and said property is his property, and he is entitled to the rents accruing from said property, or any other benefits connected therewith, and that the said Jesse M. Smith, or the Sherrill Oil Company, Inc., have no right to subject his property to any alleged demands that they might have against W. D. Stapleton, H. D. Moore or anyone else. Your Respondent and Cross-Complainant further shows unto your Honor that if said property is included

in said mortgage of Jesse M. Smith, he feels sure that his father, W. D. Stapleton, placed the same therein through mistake, but whether or no, he did not agree to the same being done, as he had no notice of any mortgage on his property until he received a copy of the Bill of Complaint in this cause.

SIXTH:

Cross-Complainant shows unto your Honor that the Sherrell Oil Company, by this proceedings in this Court, has held up the collection of the installments of rent which were due him under its said lease on said premises, in which it agreed to pay the sum of Forty Dollars (\$40.00) per month for the use of said premises; that many installments of rental remain due to him by said Sherrell Oil Company, Inc., together with the interest thereon. Cross-Complainant further shows unto your Honor that the said Sherrell Oil Company is indebted to him in the sum of One Thousand Dollars (\$1000.00), together with the interest thereon, for rent on said Lot No. 1, Block 27, Hand Land Company's Addition to the Town of Bay Minette, Alabama, which the Sherrell Oil Company, Inc., should be required to pay.

PRAYER FOR PROCESS.

To the end that equity may be had in the premises, Respondent and Cross-Complainant prays that this answer be taken and treated as an answer and Cross-Bill, and that your Honor will cause the usual writ of process to issue to the said Sherrell Oil Company, Inc., making it a party defendant to the same, and requiring it to plead, answer or demur to the same within the time as provided by law.

PRAYER FOR RELIEF.

The premises considered, your Respondent and Cross-Complainant prays that on a final hearing of this cause that your Honor will decree that the said Sherrell Oil Company is justly indebted to your Respondent and Cross-Complainant in said amount alleged to be due, and that your Honor will enter up a decree or judgment in his favor to that effect. Your Respondent and

(page six)

Cross-Complainant prays for such other, further, different and general relief as in equity may seem just and meet.

Hy Bart Neust & Chason
Solicitors for Respondent and
Cross-Complainant.

FOOT NOTE:-

Cross-Respondent is required to answer Paragraphs "First" to "Sixth", inclusive, of the foregoing Answer and Cross-Bill, but answer under oath is hereby expressly waived.

Hy Bart Neust & Chason
Solicitors for Respondent and
Cross-Complainant.

Service accepted

Feb. 23, 1935

Sherill Oil Co.

vs. W. D. Stapleton et al.

W. D. Stapleton et al.

RECORDED
Duck 1935

ANSWER AND CROSS-BILL.

SHERILL OIL COMPANY, INC.,
Complainant,

VS.

W. D. STAPLETON ET AL,
Respondents.

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

Filed February 23, 1935

Ruby L. Duck
Register.

SHERRILL OIL COMPANY, INC.,

Complainant,

VS.

W. D. STAPLETON, et al,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. ____.

ANSWER TO CROSS BILL.

Now comes the Complainant and Cross Respondent, Sherrill Oil Company, Inc., and for answer to the Cross Bill filed by W. D. Stapleton, Jr., in said cause, says:

1. It denies that it has held up the collection of the installments of rent which were due W. D. Stapleton under its said lease with him dated on to-wit, March 9, 1929, and further denies that it is indebted to the said W. D. Stapleton, Jr., in any way or manner as the amount due by it for rent has been credited by it on the amount due it by W. D. Stapleton, as it had a right to do.

2. This Complainant and Cross Respondent further says that any other matters in said Cross Bill necessary for it to make answer unto which are not herein well and sufficiently answered are hereby denied, all of which matters this Complainant and Cross Respondent is willing to maintain and prove as this Honorable Court shall direct.

Leon M. Brooks

J. T. Blackburn

Solicitors for Complainant and
Cross Respondent.

W. D. STAPLETON, JR.,

Plaintiff,

VS.

SHERRILL OIL COMPANY,
a Corporation,

Defendant.

IN THE JUSTICE COURT OF J. M.

FRANKLIN, BAY MINETTE, ALABAMA.

Comes the Defendant in the above entitled cause by its attorneys and for answer to the complaint and to each and every count thereof separately and severally says: That the allegations of the complaint are untrue.

J. B. Blackman
Leon G. Brooks

Attorneys for Defendant.

PLEAS.

W. D. STAPLETON, JR.,
Plaintiff,

VS.

SHERRILL OIL COMPANY,
a Corporation,
Defendant.

IN THE JUSTICE COURT OF
J. M. FRANKLIN, BAY
MINETTE, ALABAMA.

June 29th 1932

*Filed July 2/1932
D. W. Rimmer*

W. D. STAPLETON, JR.,

Plaintiff,

VS.

SHERRILL OIL COMPANY,
a Corporation,

Defendant.

IN THE JUSTICE COURT

OF J. M. FRANKLIN,

BAY MINETTE, ALABAMA.

Comes the Defendant in the above entitled cause by its attorneys and moves J. M. Franklin, the Justice before whom the above entitled cause has been commenced, to recuse himself for the following separate and several reasons, to-wit:

First: Because he is disqualified to try the said case by Section 8570 of the 1923 Code of Alabama.

Second: Because he is related to the Plaintiff in the said cause within the fourth degree.

J. B. Blackburn
Sam S. Brooks

Attorneys for Defendant.

MOTION.

W. D. STAPLETON, JR.,
Plaintiff,

VS.

SHERILL OIL COMPANY,
a Corporation,
Defendant.

IN THE JUSTICE COURT
OF J. M. FRANKLIN,
BAY MINETTE, ALABAMA.

June 29th 1932

*Filed July 2/93 2
D. M. McNamee
Clerk*

SHERRILL OIL COMPANY,
A CORPORATION,

COMPLAINANT,

VS.

W. D. STAPLETON, ET AL.,

RESPONDENTS.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY.

BRIEF AND ARGUMENT OF SOLICITORS FOR THE RESPONDENTS
ON THE SUBMISSION BY THE RESPONDENTS ON DEMURRER TO
THE BILL OF COMPLAINT.

In the beginning, in perfect frankness, we wish to say the bill was drawn not with the idea that it should be considered in a double aspect but rather that its allegations when taken together would present a case under Section 8032 of the Code of 1923.

The brief of the respondents treats the bill in two aspects. We will concede, for the purpose of this argument, that the bill would be bad as an attempt on the part of a subsequent creditor to set aside the conveyance from Stapleton, Sr., to Stapleton, Jr. However, the demurrer of the respondents is addressed to the bill as a whole and not to separate portions of it, so that if any part of the bill is good the demurrer should be overruled.

The argument for the respondents under their second proposition is fallacious in that it ignores the statute (Section 8032) and the numerous decisions under it. The cases cited in their brief discuss constructive trusts when attacked or sought to be established by parties to conveyances or their heirs. Quite a different rule prevails with regard to a conveyance by a debtor in trust for himself or under which he reserves a benefit. Section 8032, bringing forward the statute in its original text from the time Alabama became a state and merely codifying the common law doctrine, declares that where a debtor conveys his property with the reservation, openly or secretly, of a trust or benefit to himself, such a conveyance is void as to creditors, either existing or subsequent, of the grantor. We think it hardly necessary to

elaborate upon the general subject as it is one of frequent discussion and concerning which the fundamental principles are well known to the court, yet to refresh the recollection of the court we point out the following rules of law developed in Alabama in construing the section of the code under which this suit was filed:

1. This section, while speaking only of goods, chattels, and things in action, is nevertheless applicable alike to realty. There never was a time when a debtor could convey his property directly or in secret trust for his own benefit or for the use of his family and thereby defeat his creditors of their lawful demands.

Sandlin vs. Robbins, 62 Ala. 477.

2. A conveyance absolute in form but reserving secret benefits is fraudulent as to creditors without reference to actual intent.

Hill vs. Rutledge, 83 Ala. 162;
4 So. 135.

3. Where the conveyance itself does not contain reservations in its face it will be held to be either presumptively or conclusively fraudulent as to grantors where it is accompanied by a secret agreement between the parties which reserves an interest, benefit or advantage to the grantor, his family or others inconsistent with the terms of the conveyance.

Birmingham Co. vs. Roden,
110 Ala. 516; 18 So. 135.

Sims vs. Gaines, 64 Ala. 392.

Smith vs. Hall, 105 Ala. 235;
15 So. 525.

Fellows vs. Lewis, 65 Ala. 343.

The argument of the respondents seems to deny that the complainant would have a case unless the alleged trust or reservation of benefits were expressed in the conveyance itself. Such a rule would nullify the remedy given by the statute and furnish a shield to debtors seeking to conceal their assets from their creditors. It is not the law in

Alabama.

27 C.J. page 600.

The allegations of the bill are sufficient to make a case under the statute. After setting forth the fact that the respondents, Stapleton, Sr., and his wife, conveyed the real estate to Stapleton, Jr., on May 27, 1929, the bill relates how the complainant thereafter became a creditor of Stapleton, Sr., and in what amounts. It then describes the deed which is attacked and avers:

"That the deed was a deed of gift and that in truth and fact it was made in trust for the use of W. D. Stapleton and/or that by a secret agreement between him and the grantee, W. D. Stapleton, Jr., he reserved a benefit from the said property and has received and appropriated the same to his own use since the date of the said conveyance. Your orator alleges on information and belief that subsequent to the execution of the deed to his son, W. D. Stapleton, Jr., the said W. D. Stapleton collected and used the monthly rental paid by your orator; these constituting benefits reserved by him through the understanding with the said grantee; your orator alleges that after the execution of the said deed and on, to-wit, January 23, 1932, the said W. D. Stapleton and wife did execute and deliver to Jesse M. Smith a mortgage on the said lot numbered 1 in Block numbered 27, together with other property in Baldwin County, Alabama, to secure an indebtedness of \$4,000.00, which said mortgage was filed for record on February 3, 1932 in the office of the Judge of Probate of Baldwin County, Alabama and recorded in Book No. 39, of Mortgages, at page 426, whereby the said W. D. Stapleton secured for himself substantial benefits from the said property and gave conclusive evidence that his conveyance to his said son was only nominal and that

in truth and fact the said property continued to belong to and be under the exclusive control of the said W. D. Stapleton, as evidenced by his borrowing money and securing the payment of same by mortgage on said lot."

Either the continuous collection of rents by the grantor or his use of the property as security for an indebtedness, as evidenced by his giving a mortgage on it, would be a sufficient reservation of benefits and advantages to bring the deed within the terms of the statute. For good measure these acts are alleged as parts of a related plan for the handling and management of the property and must surely state a case. If the receipt of rents on real estate and the right to mortgage the same as security for money borrowed by the grantor in the original deed are not genuine benefits to that grantor, effectively excluding the grantee from participation in the profitable enjoyment of the property, then it is most difficult to imagine a state of facts to which the statute would be applicable.

It is further declared to be a principle of the law relating to fraudulent conveyances that it is immaterial that the interest or benefit reserved to the grantor is not of great value, it being sufficient if it is a substantial interest. It is said that the law cannot enter upon a calculation of the value of the benefit the debtor has reserved.

27 C.J., page 607.

Sims vs. Gaines, 64 Ala. 392.

Let us quote the following from the case of Sims vs. Gaines:

"It can make no difference that because of the depression in the value of the lands when this transaction occurred the equity of redemption and the use and occupation of the lands were of but little value. A real substantial interest was secretly reserved to the debtor which might, when the causes then depressing the market value of real estate were removed, become more valuable than the amount of the debt of Sims. The law must condemn the transaction and cannot enter into nice calculations of the value of the benefit the debtor has reserved."

The bill seems to us to be perfectly good as one drawn under the statute and not subject to any of the grounds

of annulment introduced by the bill.

of demurrer interposed against it.

Respectfully submitted,

J. B. Blackburn
Henry G. Work
Solicitors for Complainant

Brief of
Sherrill Oil Co

Filed Oct 17th 1994
M. A. Stone
Register

Transcript of Civil Cases from Justice's Court of
J. M. Franklin, Baldwin County, Ala.

ATTORNEYS	NAMES OF PARTIES	CAUSE OF ACTION	ITEMIZED BILL OF COSTS	
Hybart Heard and Chason	W.D. Slaphten, Jr Plaintiff	For rent on Lat 1 Block 27 Due and unpaid.	JUSTICE'S FEES	
J.B. Blaehum and Leon G. Brooks	Sherrill Oil Co A Corporation Defendants		Issuing Summons.....	\$ 50
			Issuing..... Alias Summons.....	50
			Issuing..... Subpoena..... for each witness..	15
			Issuing..... Execution and Taxing Cost.....	50
			Issuing..... Summons to Garnishee and taking answer	50
			Issuing..... Attachment Writ	50
			Attachment Bond and Affidavit.....	1 50
			Garnishment Bond and Affidavit	50
			..... Appeal or Certiorari, including Bond.....	1 00
			..... Bond	50
			Administering Oath and Certifying Same	25
			..... Certificate not otherwise provided for....	25
			Docketing Cause	10
			Judgment on Forthcoming Stay or Replevin Bond	50
			Judgment on Summary Proceeding	75
			Issuing..... Venire Facias	50
			Transcript of Proceeding	50
			Attending Trial or Right of Property.....	1 00
			..... Sci. Fa. or notice in nature thereof.....	50
			Making Return of Certiorari	50
			..... Notice to Defendant	15
			Release.....	25
			GENERAL FEES	
			Serving..... Summons.....	1 00
			Serving..... Summons on Each Witness	25
			Serving..... Garnishment	25
			Levying Attachment under \$50.00.....	1 00
			Levying Execution under \$50.00	1 00
			Making Money, 3 per cent, not less than	75
			Serving..... Notice, etc., on each party therein	25
			Serving Sci. Fa. or other like Notice.....	50
			Taking Bail or other Bond	50
			Keeping Property Levied on	
			WITNESS' FEES	
			..... Witness..... Days	50
			Garnishee's Fee	
			Total	
				11 50
DATES	DISPOSITION OF CASE			
Trial had June 29th 1932.	Bond and Affidavit Filed. June 17th 1932, Summons and Complaint Issued ret. June 18th 1932, Ret. executed by Serving Copy on Leon Coustock as agent for Sherrill Oil Company June 18th 1932. J.M. Grouther Jr Esq. & J.P. Reused himself of sitting in this case account of being related to Plaintiff within the fourth degree. On agreement of Counsel for Plaintiff and defendant Hon. Thos. W. Gilman was appointed Special Justice of the Peace to hear this case. Judgement rendered for Plaintiff in the sum of \$80.00 and Cost. Defendant gave Notice of appeal and filed appeal bond. Within five days from date date of trial. Attorney for Plaintiff accepted service of notice of appeal.			
appeal taken bond filed July 2nd 1932.				

The State of Alabama, {
Baldwin County

IN JUSTICE COURT OF

J. M. Grawlin

To the Clerk of the Circuit Court of Baldwin County:

I hereby certify that the foregoing is a full, complete, and exact transcript from my docket of the judgment and proceedings in the above cause, and I herewith send to the Clerk of the Circuit Court of Baldwin County, Alabama, all the original and other papers pertaining to said cause.

Given under my hand this 2nd day of July 1932

J. M. Grawlin
MPE-0-

Justice of the Peace.

Circuit Court, Baldwin County, Ala.,

IN EQUITY.

11108 Shull out Co

M D Stapleton

VS.

et al

PLAINTIFF

DEFENDANT

BILL OF COST

Fees of Register

Dollars Cts.

AMOUNT BROUGHT FORWARD

\$ Cts.

Filing each bill and other papers \$ 10
 Issuing each Subpoena 50
 Issuing each copy thereof 50
 Entering each return thereof 15
 For each Order of Publication 1 00
 Issuing Writ of Injunction 1 50
 For each Copy thereof 50
 Entering each return thereof 15
 Issuing Writ of Attachment 1 00
 Entering each return thereof 15
 Docketing each case 1 00
 Entering each Appearance 25
 Issuing each Decree Pro Confesso on personal service 1 00
 Issuing each Decree Pro Confesso on publication 1 00
 Each Order Appointing Guardian 1 00
 Any other order by Register 50
 Issuing Commission to Take Testimony 50
 Receiving and Filing 10
 Endorsing each package 10
 Entering Order Submitting Cause 50
 Entering any other Order of Court 25
 Noting all Testimony 50
 Abstract of Cause, etc. 1 00
 Entering each Decree 75
 For Every Hundred Words Over Five Hundred 15
 Taking Account on Reference 3 00
 Taking Testimony, etc. 15
 Each Report, Five Hundred Words or less 2 50
 For every Hundred Words Over Five Hundred 15
 Amount Claimed, Less than Five Hundred Dollars, etc. 2 00
 Issuing each Subpoena 25
 Witness Certificate, each 25
 Issuing Execution, each 75
 Entering each Return 15
 Taking and Approving Bond, each 1 00
 Making Copy of Bill, etc. 15
 Each notice not otherwise provided for 50
 Each Certificate or Affidavit, with Seal 50
 Each Certificate or Affidavit, no Seal 25
 Hearing and passing on application for Receiver or Trustee 3 00
 Each Settlement with Receiver or Trustee 3 00
 Examining each Voucher of Receiver or Trustee 10
 Examining each Answer on Exception 3 00
 Recording Resignation or Suggestion of Death of Trustee 75
 Entering each Certificate to Supreme Court 50
 Taking Questions and Answers, etc. 25
 For all other service relating to such proceedings 1 00
 For service in proceeding to relieve minors, etc.
 same fee as in similar cases.

For receiving, keeping and paying out or distributing money, etc. 1st \$1,000 1 per ct.; all over \$1,000 and not over \$5,000, 3-4 of 1 per ct.; all over \$5,000 and not exceeding \$10,000, 1-2 of 1 per ct.; all over \$10,000, 1-4 of 1 per ct.
 Receiving, keeping and paying out money paid into court, etc., 1-2 of 1 per ct. of amount received.
 Each Notice Sent by Mail to Creditors 15
 Filing, Receipting for and Docketing each Claim, etc 25
 For all entries on Subpoena Docket, etc. 50
 For all entries on Commission Docket, etc. 50
 Making Final Record, per hundred words 15
 Certified Copy of Decree 1 00
 Report of Divorce to State Health Office Acts 1915 50

Total Fees of Register

FEES OF SHERIFF

Serving and Returning Subpoena on Defendant \$1 50
 Serving and Returning Subpoena for Witness 65
 Levying Attachment 3 00
 Entering and Returning same 25
 Entering and Returning Execution 25
 Selling Property Attached 25
 Impaneling Jury 75
 Executing Writ of Possession 2 50
 Collecting Execution for Costs 1 50
 Serving and Returning Sci. Fa., each 65
 Serving and Returning Notice 65
 Serving and Returning Writ of Injunction 1 50
 Serving and Returning Writ of Execut. 1 50
 Taking and Approving Bonds, each 1 00
 Collecting Money on Execution 2 50
 Making Deed 1 00
 Serving and Returning Application 1 50
 Serving Attachment, Contempt of Court 1 50

TOTAL FEES OF SHERIFF

Recapitulation

Register's Fees *1580 00*
 Sheriff's Fees *1350 00*
 Commissioner's Fees
 Solicitor's Fees
 Witness Fees
 Guardian Ad Litem
 Printer's Fees
 Trial Tax
 Recording Decree in Probate Court 3 00
 Total *1153 00*

Sub Total Carried Forward

5 20
8 00
13 20
6 00
1 00
13 50
6 00
11 53
3075
3 00
22 53

Received payment this _____ day of _____ 193____

NOTE: Unless the above costs in this cause are paid within ten days of the present date, execution will be issued and placed in the hands of Sheriff for collection, creating more costs.

Register.

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

Your Orator, the Sherrill Oil Company, a Corporation, brings this its Bill of Complaint against W. D. Stapleton, Leila Stapleton and W. D. Stapleton, Jr., and thereupon your Orator complains and shows unto the Court as follows:

1. Your Orator is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Pensacola, Florida; the Respondents W. D. Stapleton, Leila Stapleton and W. D. Stapleton, Jr., are each over the age of twenty-one years and reside in Bay Minette, Baldwin County, Alabama.

2. Your Orator was the Defendant in that certain cause commenced by W. D. Stapleton, Jr., against it in the Justice Court of J. M. Franklin, a Notary Public and Ex Officio Justice of Peace in and for Baldwin County, Alabama, on to-wit, June 18, 1932; that the said Justice recused himself and that the said cause was tried before T.W. Gilmer, a special Justice of Peace on to-wit, June 29, 1932, and a judgment rendered for the Plaintiff whereupon the said cause was appealed by your Orator, the Defendant, to the Circuit Court of Baldwin County, Alabama; that after the said appeal to the Circuit Court of Baldwin County, Alabama, your Orator filed a motion in the said Circuit Court to remove that said cause from the law side to the equity side of the Circuit Court, which motion was duly granted by the Circuit Court of Baldwin County, Alabama, and an order made transferring the said cause to the equity side of the said Circuit Court; that on to-wit, July 9, 1932, another suit was commenced by W. D. Stapleton, Jr., against your Orator in the said Justice Court of J. M. Franklin, which is still pending there.

3. On to-wit, February 29, 1924, W. D. Stapleton and wife, Leila Stapleton, the father and mother respectively of W. D. Stapleton, Jr., entered into a written agreement with your orator,

whereby they, as Lessors, leased unto your Orator, as Lessee, that certain tract of real estate situated in the Town of Bay Minette, Baldwin County, Alabama, described as Lot Numbered 1 in Block Numbered 27 in the Hand Land Company's Addition to the said Town, for a term of five years from April 1, 1924, at a monthly rental of \$25.00; that on to-wit, March 9, 1929, which was just prior to the expiration of the term of the said lease, by mutual agreement between W. D. Stapleton and your Orator, the said lease was extended for an additional five years as provided by its terms, but at a rental of \$40.00 per month, said rental being payable each month in advance; that under said lease your Orator has held and occupied and is still occupying the said premises according to the said lease and has regularly paid the rental thereupon until a short time before the filing of the first suit in the Justice Court of J. M. Franklin, when it discontinued the payment thereof because of the matters and facts hereinafter alleged, all of the said payments having been made by check payable to W. D. Stapleton and so far as your Orator knows or believes said checks were cashed and the proceeds thereof used by W. D. Stapleton.

4. On to-wit, the 27th day of May, 1929, without the knowledge of your Orator except the constructive notice given by the record, the said W. D. Stapleton and wife, Leila Stapleton, conveyed to their son W. D. Stapleton, Jr., the said Lot Numbered 1 in Block Numbered 27 in the Hand Land Company's Addition to the Town of Bay Minette, by a deed recorded in the office of the Judge of Probate of Baldwin County, Alabama, in deed Book 47 N. S. at pages 162-63 which said deed was a voluntary conveyance and wholly without consideration for the purpose of hindering, delaying or defrauding his creditors. There was at the time of the execution of the said deed and prior thereto an existing written agreement between your Orator on the one part and the said W. D. Stapleton and Henry D. Moorcrer on the other part, whereby the said Stapleton and Moorcrer became agents for your

Circuit Court, Baldwin County, Ala.
In Equity.

No. 1108

Sherrill A. A.

VS.

W. D. Stapleton

Cost Bill

Paid

July 12

, 1933

Robert S. Duck

Register.

Orator in the handling and distribution of petroleum products of your Orator in and around Bay Minette, Alabama. On account of this relationship and for the furtherance of the mutual interest of the parties in the sale of petroleum products, your Orator made advances and loans to the said W. D. Stapleton and H. D. Moorer and disregarding other obligations and indebtedness your Orator avers that on to-wit, March 31, 1931, W. D. Stapleton became indebted to it in the principal sum of \$1329.53 payable by monthly installments of \$18.00 with a provision that failure to pay any one of said installments should mature the entire balance and there being a failure to pay more than one monthly installment the said balance has long since become due which sum of money together with the interest thereon is still due and unpaid; that on to-wit, June 21, 1931, the said W. D. Stapleton became indebted to your Orator in the principal sum of \$1,000.00, as evidenced by his promissory note dated June 21, 1931, and payable June 21, 1932, with interest from date, which sum of money together with the interest thereon is still due and unpaid; that in addition to the said amounts the said W. D. Stapleton became individually indebted to your Orator, exclusive of other obligations, on open account in the principal sum of \$427.85, which said sum of money together with the interest thereon remains due and unpaid.

5. Your Orator alleges that the deed from W. D. Stapleton and wife, Leila Stapleton, to W. D. Stapleton, Jr., hereinabove referred to was a deed of gift and that in truth and fact it was made in trust for the use of W. D. Stapleton and/or that by a secret agreement between him and the Grantee, W. D. Stapleton, Jr., he reserved a benefit from the said property and has received and appropriated the same to his own use since the date of the said conveyance. Your Orator alleges on information and belief that subsequent to the execution of the deed to his son, W. D. Stapleton, Jr., the said W. D. Stapleton collected and used the monthly rental paid by your Orator;

these constituting benefits reserved by him through the understanding with the said Grantee; your Orator alleges that after the execution of the said deed and on to-wit, January 23, 1932, the said W. D. Stapleton and wife did execute and deliver to Jesse M. Smith a mortgage on the said Lot Numbered 1 in Block Numbered 27, together with other property in Baldwin County, Alabama, to secure an indebtedness of \$4,000.00, which said mortgage was filed for record on February 3, 1932, in the office of the Judge of Probate of Baldwin County, Alabama, and recorded in Book Number 39 of Mortgages at page 426 whereby the said W. D. Stapleton secured for himself substantial benefits from the said property and gave conclusive evidence that his conveyance to his said son was only nominal and that in truth and fact the said property continued to belong to and be under the exclusive control of the said W. D. Stapleton as evidenced by his borrowing money and securing the payment of same by mortgage on said lot.

THE PREMISES CONSIDERED, your Orator respectfully prays the Court as follows:

PRAYER FOR PROCESS.

Your Orator prays that the said W. D. Stapleton, Leila Stapleton and W. D. Stapleton, Jr., be made parties respondents to this Bill of Complaint and that the usual process of this Honorable Court do forthwith issue to them and each of them requiring them and each of them to answer the charges herein made in all things as required by the rules and practice of this Court.

PRAYER FOR RELIEF.

Your Orator prays that upon the hearing of this cause your Honor will make and enter a proper judgment and/or decree fixing the entire amount now due your Orator by the said W. D. Stapleton and the amount that is and will be due by your Orator on the lease agreement hereinabove referred to; that the said conveyance from W. D.

Stapleton and wife to W. D. Stapleton, Jr., be set aside as against your Orator and that your Orator be permitted to set off against said rent enough of the indebtedness due it by W. D. Stapleton to equal the full amount due under the said lease agreement.

Your Orator further prays for such other, further and general relief as it may be equitably entitled to, the premises considered.

Leon H. Brooks

J. B. Blackman

Solicitors for Complainant.

FOOT NOTE: Each of the Respondents is required to answer each paragraph of the foregoing Bill of Complaint numbered 1 to 5 both inclusive, but not under oath, the benefit whereof is hereby expressly waived.

Leon H. Brooks

J. B. Blackman

Solicitors for Complainant.