

1117

FARMERS & MERCHANTS BANK
OF FOLEY, a corporation,

Complainant,

vs.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

HARRY E. MILLER, BERTHA N.
MILLER and H. H. MONTGOMERY,
Superintendent of Banks of
the State of Alabama, liqui-
dating Consolidated State Bank
of Robertsdale,

Respondents.

Comes the respondent, H. H. MONTGOMERY, as Superintend-
ent of Banks of the State of Alabama, liquidating the Consolidated
State Bank, and demurring to complainant's complaint in said cause,
says:

1. ~~There is no equity in the bill.~~

2. Without waiving the foregoing demurrer, but spe-
cially insisting upon the same, the said respondent, answering
said bill of complaint, says:

1st. He admits the allegations of Paragraph One of
said complaint.

2nd. He admits the allegations of Paragraph Two of
said complaint.

3rd. He admits the allegations of Paragraph Three of
said complaint.

4th. Answering the allegations of Paragraphs Four,
Five, Six and Seven of the said complaint, he denies all mater-
ial allegations therein made, except such as are herein specifi-
cally admitted.

And further answering the allegations of said Para-
graphs of said complaint, and said complaint as a whole, respond-
ent says that at the time of the execution and delivery of the
said mortgage to the Farmers & Merchants Bank it was agreed by

and between the said Farmers & Merchants Bank, the said Harry E. Miller and Bertha N. Miller, and the Loxley State Bank, that the said mortgage should be and was executed to the said Farmers & Merchants Bank for the benefit of said Farmers & Merchants Bank and for the benefit of the said Loxley State Bank; that the two said banks should lend to the said respondents, Harry E. Miller and Bertha N. Miller the sum of Five Thousand Dollars (\$5,000.00); the said Loxley State Bank to lend the sum of Two Thousand Dollars (\$2,000.00) and the said Farmers & Merchants Bank the remainder of said Five Thousand Dollars (\$5,000.00), or so much thereof as the said Harry E. Miller and the said Bertha N. Miller should require. That thereupon the said Loxley State Bank advanced to the said Harry E. Miller and Bertha N. Miller the sum of Two Thousand Dollars (\$2,000.00) and took their note therefor; that the said note was from time to time extended and renewed, and that the same is now still unpaid and long past due, and the said Harry E. Miller and Bertha N. Miller are indebted to this respondent as successor to the rights of the Loxley State Bank in the sum of Two Thousand Dollars (\$2,000.00), together with interest thereon, all of which is secured by the said mortgage.

That on September 10, 1926, the Cashier of the Farmers & Merchants Bank wrote to the Cashier of the Loxley State Bank a letter, copy of which is attached to the said bill of complaint, all of which was with the full knowledge and consent and at the instance and direction of the said Harry E. Miller and Bertha N. Miller. That at the time of the writing of said letter, the note of the said Harry E. Miller and Bertha N. Miller to the said Loxley State Bank was renewed by them direct to the Loxley State Bank, so that the same did not on its face appear to be secured by the said mortgage to the Farmers & Merchants Bank; and the object, purpose, intent and effect of the said letter was to identify the said note as being secured by the said mortgage.

Respondent further shows that the said note and said

mortgage provided that the said respondents, Harry E. Miller and Bertha N. Miller, would pay all cost of collecting or attempting to collect the said note, including a reasonable attorney's fee, and this respondent has incurred expenses in this suit.

Respondent further shows that the Loxley State Bank, before the filing of said complaint, sold all of its assets, including the said note, to the Farmers State Bank of Loxley; that the said Farmers State Bank of Loxley, prior to the filing of said bill of complaint, merged with the State Bank of Silverhill and with the Robertsdale State Bank under the name of the Consolidated State Bank of Robertsdale; and that prior to the filing of said bill of complaint the Consolidated State Bank failed and the same was turned over to this respondent as Superintendent of Banks of the State of Alabama for liquidation, and that this respondent, as such Superintendent of Banks of the State of Alabama, is the legal holder of the assets of said Bank, including the said note and mortgage, in trust for the creditors of the said Bank, and is entitled to defend this suit and to maintain this a cross bill of complaint.

Having fully answered, this respondent prays that this be taken as a cross bill; that the said Farmers & Merchants Bank, the said Harry E. Miller and the said Bertha N. Miller be made parties respondent hereto and by appropriate process be required to plead, answer or demur within the time required by law and the practice of this Honorable Court; that this Honorable Court will, upon a hearing of this cause, ascertain, find and decree that the said Harry E. Miller and Bertha N. Miller are indebted to this respondent, as Superintendent of Banks of the State of Alabama, liquidating the Consolidated State Bank of Robertsdale, in the sum of Two Thousand Dollars (\$2,000.00), with interest thereon, as evidenced by the said note, and that the same is secured by the said mortgage; that a reference be held under the order and direction of this court to ascertain the amount owing under the

said note, principal and interest, and a reasonable attorney's fee in the premises; that the said Harry E. Miller and Bertha N. Miller be required to pay the same to this cross complainant; that upon their failure to pay the same within the time prescribed by this court, that the aforesaid mortgage be foreclosed and the property described therein be ordered sold, and the proceeds thereof be paid to this respondent as his interest shall appear under the order and direction of this court.

And this respondent prays for such other, further and different relief as in equity and good conscience he shall be entitled to receive. ✓

W C Beebe

Solicitor for H. E. Montgomery,
as Superintendent of Banks of
the State of Alabama, liquidating
the Consolidated State Bank of
Robertsdale.

FOOT NOTE:

The cross respondents and each of them are required to answer the allegations of the foregoing cross bill of complaint, but not under oath; oath is hereby expressly waived.

W C Beebe

Solicitor for H. E. Montgomery,
as Superintendent of Banks of
the State of Alabama, liquidating
the Consolidated State Bank of
Robertsdale.

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 H.H. MONTGOMERY, as superin-
tendent of Banks of the State of Alabama, liquidating the
Consolidated State Bank of Robertsdale

of Montgomery 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
FARMERS & MERCHANTS BANK of Foley, A corporation

against said H.H. MONTGOMERY, as Superintendent of Banks of the State
of Alabama, liquidating the Consolidated State Bank of Robertsdale
et al.,

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 11 day of
May 1933

T. W. Richerson Register

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

Docket Page 46
Original

UNCORRECTED

SERVE ON _____
Circuit Court of Baldwin County
In Equity

No. _____

SUMMONS

FARMERS & MERCHANTS BANK OF
FOLLY, a corporation

vs.

H.H. MONTGOMERY, as Superin-
tendent of Banks of the State
of Alabama, liquidating the
Consolidated State Bank of
Robertsdale, Et al.,

LLOYD A. MAGNEY

Solicitor for Complainant

Recorded in Vol. _____ Page _____

2290

THE STATE OF ALABAMA,
BALDWIN COUNTY

Received in office this 11th
day of May 1933
W.R. Stuart
Sheriff

Executed this _____ day of _____
_____ 19____
by leaving a copy of the within Summons with

Defendant

Sheriff

By _____ Deputy Sheriff

RECEIVED IN OFFICE

MAY 12 1933

Sheriff

EXECUTED BY SHERIFF
a copy of the within

H.H. Montgomery as
Sup. of Banks of State
of Alabama liquidating
the Consolidated State Bank
of Robertsdale et al.
May 12th 1933

Sam P. Stearns
Sheriff Baldwin County

J. Wallace
Deputy Sheriff

**CHANCERY EXECUTION
BILL OF COSTS**

No. 1117

Farmers + Merchants Bank of Foley
Vs.
Harry E. Miller et al

Plaintiff

Defendant

FEES OF REGISTER		Dollars	Cents	Brought Forward	\$
Filing each bill and other papers <u>4</u>	\$ 10		<u>40</u>	For Receiving, keeping and paying out or distributing money, etc.; 1st \$1,000, 1% all over \$1,000, and not over \$5,000, 3-4 of 1%; all over \$5,000 and not exceeding \$10,000, 1-2 of 1%, all over \$10,000 1-4 of 1%.	<u>4 70</u>
Issuing each subpoena	50		<u>50</u>	Receiving, keeping and paying out money paid into court, etc., 1-2 of 1% of amount received.	
Issuing each copy thereof	40		<u>20</u>	Each notice sent by mail to creditor ..	15
Entering each return thereof	15		<u>45</u>	Filing, receipting for and docketing each claim, etc.	25
For each order of publication	1 00			For all entries on subpoena docket, etc.	50
Issuing writ of injunction	1 50			For all entries on commission docket, etc.	50
For each copy thereof	50			Making final record, per 100 words ..	15
Entering each return thereof	15			Certified copy of decree	1 00
Issuing Writ of Attachment	1 00			Report of divorce to State Health Office (Acts 1915)	50
Entering each return thereof	15			Total Fees of Register	<u>6 70</u>
Docketing each case	1 00		<u>1 00</u>	FEES OF SHERIFF	
Entering each appearance	25		<u>25</u>	Serving and returning subpoena on deft. \$1	50
Issuing each decree pro confesso on per. ser.	1 00			Serving and returning subpoena for witness	65
Issuing each decree pro confesso on publica.	1 00			Levying attachment	3 00
Each order appointing guardian	1 00			Entering and returning same	25
Any other order by Register	50			Selling property attached	
Issuing commission to take testimony	50			Impaneling Jury	75
Receiving and filing	10			Executing writ of possession	2 50
Endorsing each package	10			Collecting execution for costs	1 50
Entering order submitting cause	50			Serving and returning sci. fa., each ..	65
Entering any other order of court	25			Serving and returning notice	65
Noting all testimony	50			Serving and returning writ of injunction	1 50
Abstract of cause, etc.	1 00			Serving and returning writ of exeat ..	1 50
Entering each decree	75			Taking and approving bonds, each ..	75
For every 100 words over 500	15			Collecting money on execution	
Taking account, etc.	3 00			Making deed	2 50
Taking testimony, etc.	15			Serving and returning application, etc.	1 00
Each report, 500 words or less	2 50			Serving attachment, contempt of court	1 50
For every 100 words over 500	15			Total Fees of Sheriff	<u>6 25</u>
Amount claimed less than \$500, etc.	2 00			RECAPITULATION	
Issuing each subpoena	25			Register's Fees <u>T. W. R.</u>	4 80
Witness certificate, each	25			Sheriff's Fees	6 25
Issuing execution, each	75		<u>75</u>	Commissioner's Fees	
Entering each return	15		<u>15</u>	Solicitor's Fees	
Taking and approving bond, each	1 00			Witness Fees <u>Clerk - Stone</u>	1 90
Making copy of bill, etc.	15			Guardian Ad Litem	
Each notice not otherwise provided for ..	50			Printer's Fees	
Each certificate or affidavit, with seal ..	50			Trial Tax	3 00
Each certificate or affidavit, no seal	25			Recording Decree in Probate Court ..	
Hearing and passing on application, etc.	3 00			Total	<u>15 95</u>
Each settlement with receiver, etc	3 00				
Examining each voucher of Receiver, etc.	10				
Examining each answer, etc.	3 00				
Recording resignation, etc.	75				
Entering each certificate to Supreme Court	50				
Taking questions and answers, etc.	25				
For all other ser relating to such proceedings	1 00				
For services in proceeding to relieve minors, etc. same fee as in similar cases.					
Commission on sales, etc: 1st \$100, 2 per ct.; all over \$100 and not exceeding \$1,000, 1 1-2 per ct: all over \$1,000, and not exceeding \$20,000, 1 per ct.; all over \$20,000, 1-4 of 1 per ct.					
Sub Total Carried Forward		<u>4 70</u>			

The State of Alabama, {

No. 1117

Baldwin County.

Circuit Court, In Equity

Aug Term, 1934

To Any Sheriff of the State of Alabama—GREETING:

You are hereby commanded, That of the goods and chattels, lands and tenements of

Farmers + Merchants Bank of Foley Pff — Defendant

you cause to be made the sum of cause dismissed Dollars,

which Harry E. Miller et al Dct Plaintiff

recovered of _____ on the 22 day of Aug 1934

by the judgment of our Circuit Court, held for the county of Baldwin, besides the sum of

Fifteen and 95/100 Dollars,

costs of suit, and have the same to render to the said M. A. Stone and make return of this Writ and the execution thereof, according to law.

Interest from _____ 193_____ to date of collection.

Witness my hand, this 11 day of Sept 1934

M. A. Stone, Register.

Copey
No. 1117

The State of Alabama,
Baldwin County.

Circuit Court, In Equity.

*Farmers & Merchants
Bank of Foley*

vs.

*Harry E. Markew
et al*

CHANCERY EXECUTION
Fi. Fa.

\$ _____

Total *\$15.75*

Fee Book *3* Page _____
Execution Docket *1* Page _____

Lloyd A. Magney
Complainant's Solicitor.

The State of Alabama,
Baldwin County.

ha duly waived right
to the exemption of personal property as to
the collection of the debt for which this execu-
tion is issued.

Register.

Received in office this _____

day of _____ 193 . . .

Sheriff

Execution Docket Page

The State of Alabama, }
Baldwin County.

By virtue of the within execution I have levied _____

FARMERS & MERCHANTS BANK OF
FOLEY, a Corporation,

Complainant

vs.

HARRY E. MILLER, et al,

Respondents

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Now come the respondents, Harry E. Miller and Bertha

N. Miller, each separately and severally, and demur to the bill of complaint as filed in this cause, and assign the following grounds therefor:

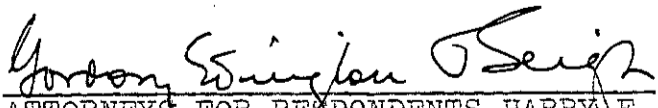
1. There is no equity in the said bill.
2. That the complainant has a full, adequate and complete remedy at law.

Respondents, each separately and severally, demur to paragraph 5 of the said bill upon the following grounds:

(a) That it is not averred or shown in said bill that these respondents had any written agreement with the Loxley State Bank whereby their debt was to be secured by the mortgage in question.

(b). Because there are no averments in said paragraph to show any authority on the part of the complainant to bind these respondents as to any agreement with the Loxley State Bank.

(c). Because said paragraph fails to contain any averment showing that there was a written agreement between these respondents and the Loxley State Bank executed by said respondents in writing or showing any consideration for said alleged agreement, wherefore, said agreement, if such existed, would be violative of the statute of fraud.


ATTORNEYS FOR RESPONDENTS HARRY E.
MILLER and BERTHA N. MILLER

1117 equity

Dawson & Merchants
Bank
vs
Harry E Miller

Filed May 21/1933
J. M. McManus
Clerk

[Faint signature]

FARMERS & MERCHANTS BANK
OF FOLEY, a corporation,

Complainant,

vs.

HARRY E. MILLER, BERTHA N.
MILLER and H. H. MONTGOMERY,
Superintendent of Banks of
the State of Alabama, liqui-
dating Consolidated State Bank
of Robertsdale,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Comes the respondent, H. H. MONTGOMERY, as Superintend-
ent of Banks of the State of Alabama, liquidating the Consolidated
State Bank, and demurring to complainant's complaint in said cause,
says:

1. There is no equity in the bill.

2. Without waiving the foregoing demurrer, but spe-
cially insisting upon the same, the said respondent, answering
said bill of complaint, says:

1st. He admits the allegations of Paragraph One of
said complaint.

2nd. He admits the allegations of Paragraph Two of
said complaint.

3rd. He admits the allegations of Paragraph Three of
said complaint.

4th. Answering the allegations of Paragraphs Four,
Five, Six and Seven of the said complaint, he denies all mater-
ial allegations therein made, except such as are herein specifi-
cally admitted.

And further answering the allegations of said Para-
graphs of said complaint, and said complaint as a whole, respond-
ent says that at the time of the execution and delivery of the
said mortgage to the Farmers & Merchants Bank it was agreed by

and between the said Farmers & Merchants Bank, the said Harry E. Miller and Bertha N. Miller, and the Loxley State Bank, that the said mortgage should be and was executed to the said Farmers & Merchants Bank for the benefit of said Farmers & Merchants Bank and for the benefit of the said Loxley State Bank; that the two said banks should lend to the said respondents, Harry E. Miller and Bertha N. Miller the sum of Five Thousand Dollars (\$5,000.00); the said Loxley State Bank to lend the sum of Two Thousand Dollars (\$2,000.00) and the said Farmers & Merchants Bank the remainder of said Five Thousand Dollars (\$5,000.00), or so much thereof as the said Harry E. Miller and the said Bertha N. Miller should require. That thereupon the said Loxley State Bank advanced to the said Harry E. Miller and Bertha N. Miller the sum of Two Thousand Dollars (\$2,000.00) and took their note therefor; that the said note was from time to time extended and renewed, and that the same is now still unpaid and long past due, and the said Harry E. Miller and Bertha N. Miller are indebted to this respondent as successor to the rights of the Loxley State Bank in the sum of Two Thousand Dollars (\$2,000.00), together with interest thereon, all of which is secured by the said mortgage.

That on September 10, 1926, the Cashier of the Farmers & Merchants Bank wrote to the Cashier of the Loxley State Bank a letter, copy of which is attached to the said bill of complaint, all of which was with the full knowledge and consent and at the instance and direction of the said Harry E. Miller and Bertha N. Miller. That at the time of the writing of said letter, the note of the said Harry E. Miller and Bertha N. Miller to the said Loxley State Bank was renewed by them direct to the Loxley State Bank, so that the same did not on its face appear to be secured by the said mortgage to the Farmers & Merchants Bank; and the object, purpose, intent and effect of the said letter was to identify the said note as being secured by the said mortgage.

Respondent further shows that the said note and said

mortgage provided that the said respondents, Harry E. Miller and Bertha N. Miller, would pay all cost of collecting or attempting to collect the said note, including a reasonable attorney's fee, and this respondent has incurred expenses in this suit.

Respondent further shows that the Loxley State Bank, before the filing of said complaint, sold all of its assets, including the said note, to the Farmers State Bank of Loxley; that the said Farmers State Bank of Loxley, prior to the filing of said bill of complaint, merged with the State Bank of Silverhill and with the Robertsdale State Bank under the name of the Consolidated State Bank of Robertsdale; and that prior to the filing of said bill of complaint the Consolidated State Bank failed and the same was turned over to this respondent as Superintendent of Banks of the State of Alabama for liquidation, and that this respondent, as such Superintendent of Banks of the State of Alabama, is the legal holder of the assets of said Bank, including the said note and mortgage, in trust for the creditors of the said Bank, and is entitled to defend this suit and to maintain this a cross bill of complaint.

Having fully answered, this respondent prays that this be taken as a cross bill; that the said Farmers & Merchants Bank, the said Harry E. Miller and the said Bertha N. Miller be made parties respondent hereto and by appropriate process be required to plead, answer or demur within the time required by law and the practice of this Honorable Court; that this Honorable Court will, upon a hearing of this cause, ascertain, find and decree that the said Harry E. Miller and Bertha N. Miller are indebted to this respondent, as Superintendent of Banks of the State of Alabama, liquidating the Consolidated State Bank of Robertsdale, in the sum of Two Thousand Dollars (\$2,000.00), with interest thereon, as evidenced by the said note, and that the same is secured by the said mortgage; that a reference be held under the order and direction of this court to ascertain the amount owing under the

said note, principal and interest, and a reasonable attorney's fee in the premises; that the said Harry E. Miller and Bertha W. Miller be required to pay the same to this cross complainant; that upon their failure to pay the same within the time prescribed by this court, that the aforesaid mortgage be foreclosed and the property described therein be ordered sold, and the proceeds thereof be paid to this respondent as his interest shall appear under the order and direction of this court.

And this respondent prays for such other, further and different relief as in equity and good conscience he shall be entitled to receive.

W. E. Beebe

Solicitor for H. H. Montgomery,
as Superintendent of Banks of
the State of Alabama, liquidating
the Consolidated State Bank of
Robertsdale.

FOOT NOTE:

The cross respondents and each of them are required to answer the allegations of the foregoing cross bill of complaint, but not under oath; oath is hereby expressly waived.

W. E. Beebe

Solicitor for H. H. Montgomery,
as Superintendent of Banks of
the State of Alabama, liquidating
the Consolidated State Bank of
Robertsdale.

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 HARRY E. MILLER & BERTHA N.
MILLER, Loxley, Ala

of BALDWIN COUNTY 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 FARMERS & MERCHANTS BANK OF FOLEY, a corporation

against said HARRY E. MILLER & BERTHA N. MILLER

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 11 day of

May 1933

Register

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

SERVE ON ~~BOOKED~~

Circuit Court of Baldwin County
In Equity

No. _____

SUMMONS

FARMERS & MERCHANTS BANK OF
FOLEY, a corporation
vs.

HARRY E. MILLER and

BERTHA N. MILLER,

(Foley, Ala.)

Lloyd A. Magney

Solicitor for Complainant

Recorded in Vol. _____ Page _____

THE STATE OF ALABAMA,
BALDWIN COUNTY

Received in office this _____

day of _____ 19 _____

Sheriff

Executed this ~~12th Sept~~ day of

May 1933 19 _____

by leaving a copy of the within Summons with

Harry E Miller &
Bertha N Miller

Defendant.

W. R. Straub

Sheriff

By _____
Deputy Sheriff

RECORDED AND INDEXED
MAY 10 1933
BY _____

THIS IS TO CERTIFY THAT THE ABOVE NAMED DEFENDANT HAS BEEN SERVED WITH A COPY OF THE WITHIN SUMMONS BY MEANS OF _____
_____ Sheriff of Baldwin County Alabama this _____ day of _____ 19 _____

FARMERS & MERCHANTS BANK
OF FOLEY, a Corporation,

Complainant

vs.

HARRY E. MILLER, BERTHA N.
MILLER AND H. H. MONTGOMERY,
Superintendent of Banks of
The State of Alabama, liqui-
dating Consolidated State
Bank of Robertsedale,

Respondents

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Now come the respondents, Harry E. Miller and Bertha N. Miller, and demur to the cross-bill as herein filed by H. H. Montgomery, as Superintendent of Banks of the State of Alabama, and as grounds for such demurrer, assign the following:

1. Because there is no equity in the said cross-bill.

2. Because said cross-bill shows upon its face that it is seeking to vary the terms of a written instrument by parol testimony.

3. Because said cross-bill shows on its face that it is violative of the statute of fraud in that there was no written agreement expressing any consideration for the alleged agreement to include the cross-complainant in said mortgage.

4. Because it is not averred or shown that the alleged agreement to include the cross-complainant within the terms of said mortgage was in writing or that said oral agreement was made at the time of the execution of said mortgage.

The respondents further demur to that part of said cross-bill, which is in words and figures as follows: "And further answering the allegations of said paragraphs of said complaint and said complaint as a whole, respondents say that at the time of the execution and delivery of said mortgage to the Farmers & Merchants Bank, it was agreed by and between the said Farmers & Merchants Bank and said Harry E. Miller and Bertha N. Miller and the Loxley State Bank that the said mortgage should be and was executed to the said Farmers & Merchants Bank for the benefit of the said Loxley State Bank; that the two said banks should lend to the said respondents, Harry E. Miller and Bertha N. Miller, the sum of Five Thousand

(\$5,000.00) Dollars, the said Loxley State Bank to lend a sum of Two Thousand (\$2,000.00) Dollars and the said Farmers & Merchants Bank the remainder of the Five Thousand (\$5,000.00) Dollars, or so much thereof as the said Harry E. Miller and Bertha N. Miller should require. That thereupon the said Loxley State Bank advanced to the said Harry E. Miller and Bertha N. Miller the sum of Two Thousand (\$2,000.00) Dollars and took their note therefor;" upon the following grounds:

1. Because the mortgage referred to, and which was made a part of said original bill of complaint, and which was admitted by this cross-complainant to be true and correct, specifically avers that only one note for Five Thousand (\$5,000.00) Dollars was made, and which was executed on the 14th day of June, 1926, and further provides and stipulates that upon said note being paid by the said Harry E. Miller and Bertha N. Miller such mortgage should be null and void. That said original bill further shows that the said Millers paid all sums due under said mortgage, while the cross-bill alleges that the said Millers executed to cross-complainant another and additional note for Two Thousand (\$2,000.00) Dollars, and that said note was from time to time extended and renewed, wherefore, the said cross-bill shows that cross-complainant is seeking to change or vary the terms of a written instrument by parol testimony.

2. Because it is not averred or shown in said portion of said cross-bill that there was any legal agreement executed by either Harry E. Miller or Bertha N. Miller, agreeing to the above said matters.

3. Because said portion of the cross-bill shows that the cross-complainant extended and renewed said note or said indebtedness and there is no averment that there was any further agreement, either expressed or implied, that said note should be secured by said mortgage.

The said respondents further demur to that portion of said cross-bill, in words and figures as follows: "That on September 10, 1926, the cashier of the Farmers & Merchants Bank wrote to the cashier of the Loxley State Bank a letter, a copy of which is attached to the said cross-bill, all of which was with the full knowledge and consent and at the instance and direction of said Harry E. Miller and Bertha N. Miller; that at the time of the writing of said letter, the note of the said Harry E. Miller and Bertha N. Miller to the said Loxley State Bank was renewed by them direct to the Loxley State Bank so that the same would not on its face appear to be secured by said note to the Farmers & Merchants Bank, and the objection, purpose, intent and effect of said letter was to identify the said note as being secured by the said mortgage," upon the following grounds:

1. Because it is not averred or shown in said averments that it was ever agreed by and between these respondents and the cross-complainant that such renewal note was to be secured by said mortgage.

2. Because there is no averment showing any written authority in H. L. McCain, cashier, to bind these respondents by such letter.

3. Because there is no averment showing that H. L. McCain had any authority on behalf of the Farmers & Merchants Bank to address and send such letter.

4. Because there is no averment in said portion of said cross-bill showing that H. L. McCain was cashier of said Bank.

5. Because the letter shows on its face no authority on the part of the writer to bind these respondents nor does it aver any such authority.

6. Because there is no averment showing any consideration for the alleged agreement between the respondents, as evidenced by said letter, and the cross-complainant.

7. Because said cross-bill shows that the alleged letter was written several months subsequent to the execution of the mortgage, and there is no averment that there was any consideration for such new agreement.

Gordon Edwin Leigh
ATTORNEYS FOR RESPONDENTS, HARRY
E. MILLER AND BERTHA N. MILLER

Case No 1117

Thames Thruway
Bank

vs
H H Montgomery

Demure

Filed June 24th 1933
D O F Keenan
Registrar

Copy Given
Walter Hacc June 24/33

FARMERS & MERCHANTS BANK
OF FOLEY, A CORPORATION,

COMPLAINANT,

VS

HARRY E. MILLER, BERTHA N.
MILLER, and H. H. MONT-
GOMERY, SUPERINTENDENTS OF
BANKS OF THE STATE OF ALA*
BAMA LIQUIDATING CONSOLIDATED
STATE BANK OF ROBERTSDALE,

RESPONDENTS.

)
(IN THE CIRCUIT COURT OF
(BALDWIN COUNTY, ALABAMA
(IN EQUITY
(

BILL OF COMPLAINT

TO THE HON. F. W. HARE, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA, IN CHANCERY SITTING:--

PART ONE

Comes now Farmers & Merchants Bank of Foley, a corporation, and exhibits this its Bill of Complaint against Harry E. Miller, Bertha N. Miller and H. H. Montgomery, Superintendent of Banks of the State of Alabama liquidating Consolidated State Bank of Robertsdale and shows to the Court that the said Farmers & Merchants Bank of Foley is a corporation organized and existing under and by virtue of the laws of the State of Alabama with its principal place of business at Foley; that Respondent Harry E. Miller is over the age of twenty-one years and is a resident of Loxley, Baldwin County, Alabama; that Respondent Bertha N. Miller is over the age of twenty-one years and a resident of Loxley, Baldwin County, Alabama; that H. H. Montgomery, Superintendent of Banks of the State of Alabama, is over the age of twenty-one years and resides in Montgomery, Montgomery, County, Alabama.

PART TWO

And humbly complaining against the Respondents Complainant avers:

1. That on or about the 18th day of June, 1926 the Respondent Harry E. Miller and Respondent Bertha N. Miller who is the wife of the said Harry E. Miller, made, executed and delivered to this Complainant the certain real estate mortgage, a copy of which, marked Exhibit "A" and attached hereto, is by reference made a part hereof, as fully as though set out herein.

2. That said mortgage was given for the recited consideration of FIVE THOUSAND & 00/100 (\$5,000.00) DOLLARS and conveyed from the said Respondents to this Complainant the following described real estate in Baldwin County, Alabama:-

The northeast quarter (NE $\frac{1}{4}$) of the northwest quarter (NW $\frac{1}{4}$) of Section twenty-four (24), Township five (5) South of Range three (3) East. Also the southwest quarter of the northeast quarter (NE $\frac{1}{2}$) of Section Twenty-four (24), Township five (5) South of Range three (3) East. Also the southwest quarter (SW $\frac{1}{4}$) of the southwest quarter (SW $\frac{1}{2}$) of Section eighteen (18), Township five (5) South of Range four (4) East, subject to a mortgage of SIX THOUSAND & 00/100 (\$6,000.00) DOLLARS to First Joint Stock Land Bank of Montgomery, Alabama.....

3. That said mortgage was duly recorded in the office of the Judge of Probate of Baldwin County, Alabama on August 7, 1926 in Book No. 36 of Mortgages at Page 539 and that said mortgage still remains unreleased of record.

4. That Complainant advanced various sums of money to the Respondents Harry E. and Bertha N. Miller upon the security of said mortgage but states that all of said sums have now been paid by said Respondent and there is nothing due upon said mortgage from said Respondents to this Complainant.

5. Complainant further avers, however, that it did not at any time advance to the said Respondents the full amount of FIVE THOUSAND & 00/100 (\$5,000.00) DOLLARS but ^{Complainant} is informed and believes that Loxley State Bank, under an agreement and arrangement with the Respondents that the money so advanced by said Loxley State Bank should be secured by the said mortgage to this Complainant, advanced and paid to the Respondents the sum of TWO THOUSAND & 00/100 (\$2,000.00) DOLLARS and took from the said Respondents their promissory note for said sum of TWO THOUSAND & 00/100 (\$2,000.00) DOLLARS and that said sum of money has never been repaid by the Respondents. That on September 10, 1926 this Complainant gave to the said Loxley State Bank a written statement to the effect that it, the Complainant, held said mortgage above described, to the extent of TWO THOUSAND & 00/100 (\$2,000.00) DOLLARS, for the use and benefit of said Loxley State Bank, a copy of such statement being attached

hereto, marked Exhibit "B" and by reference made a part hereof.

6. That the said Loxley State Bank has been reorganized and merged with other banks to form Consolidated State Bank of Robertsdale and that said Consolidated State Bank is now the same legal entity as said Loxley State Bank and is the owner of all the rights and subject to all the duties and liabilities of said Loxley State Bank; that said Consolidated State Bank is now in the hands of Respondent H. H. Montgomery, Superintendent of Banks of the State of Alabama, for liquidation.

7. That the Respondents Harry E. and Bertha N. Miller have filed with this Complainant a written demand that this Complainant release and discharge of record the mortgage hereinabove referred to and have notified Your Complainant that they will bring suit against Your Complainant to recover the penalty provided by law in the event that Your Complainant fails or refuses to release said mortgage of record. That upon receipt of such notice from the Respondent Millers this Complainant took up with the Respondent Montgomery, as Superintendent of Banks of the State of Alabama, through W. J. Osborn, the Liquidating Agent in charge of the affairs of said Consolidated State Bank, the question of releasing said mortgage and said Respondent, the Superintendent of Banks of the State of Alabama, has notified Your Complainant that he holds the note of the Respondent Millers given as aforesaid, that the same is legally secured by the mortgage held by Your Complainant as aforesaid and that if Your Complainant releases said mortgage as demanded by the Respondent Millers, that he, the said Respondent Montgomery, Superintendent of Banks of the State of Alabama, will bring suit against Your Complainant to recover said sum of TWO THOUSAND & 00/100 (\$2,000.00) DOLLARS as damages for releasing said mortgage of record.

That Your Complainant has no interest in the matter and so far as it is concerned is willing to release said mortgage and stands as a mere stakeholder between the Respondents and is liable to legal prosecution by the Respondent Montgomery if it releases said mort-

the statutory penalty by the Respondents Miller if it fails and refuses to comply with their demand; that Your Complainant is willing to do whatever should be done in the premises and has offered to assign the said mortgage to Respondent Montgomery so that the rights of all of the Respondents in and to said mortgage could be settled and adjusted between themselves but the Respondents Millers refuse to permit such assignment and insist that Your Complainant must release said mortgage and so incur the suit of Respondent Montgomery or that, the Respondents Millers, will proceed at once to suit for the statutory penalty.

9. Complainant avers that it ^{not}ought/to be compelled at its peril to decide the rights of the various Respondents and avers that the said Respondents should be required to settle their controversy between themselves and without risk to this Complainant.

Complainant submits itself to the jurisdiction of the Court and tenders unto the Court the said mortgage to be dealt with as the Court may see fit and offers to do whatever the Court may deem necessary to make the decree which Complainant seeks just and equitable to the other parties to this cause.

PRAYER FOR PROCESS

Wherefore, this Complainant prays that Your Honor will grant to it the writ of summons of the State of Alabama directing to the Respondents Harry E. Miller, Bertha N. Miller and H. H. Montgomery, Superintendent of Banks of the State of Alabama, requesting them and each of them to personally appear and plead before this Honorable Court within thirty (30) days from the service of said writ and to abide such orders or decrees in the premises as to this Honorable Court shall seem meet, and Your Complainant shall ever pray, etc.

PRAYER FOR RELIEF


And Your Complainant further prays that the Respondents Harry E. Miller, Bertha N. Miller and H. H. Montgomery, Superintendent of Banks of the State of Alabama, be required to propound their various

decree may be entered by the Court settling and determining the rights of the various Respondents and relieving this Complainant from any and all liability to any of said Respondents and if Complainant has not asked for the proper relief he prays for such other, different and further relief as may be just and equitable in the premises; and this Complainant shall ever pray, etc.


Solicitor for Complainant.

FOOT NOTE

The Respondents Harry E. Miller, Bertah N. Miller and H. H. Montgomery, Superintendent of Banks of the State of Alabama, are each required to answer all of the allegations of this bill of complaint from Paragraph No.1 of Part Two hereof to Paragraph No. 10. of Part Two hereof, inclusive, but not under oath, oath to such answer being hereby expressly waived.


Solicitor for Complainant.

(SEAL)

THE STATE OF ALABAMA,)
 Baldwin County.)

KNOW ALL MEN BY THESE PRESENTS, That Harry E. Miller and Bertha N. Miller, his wife in consideration of the sum of Five thousand, and No/100-----Dollars to them in hand paid, by the Farmers & Merchants Bank a Corporation of Foley, Ala. the receipt whereof is hereby acknowledged, do grant, bargain, sell and convey unto said Farmers & Merchants Bank a corporation, its Successors and assigns forever, ALL of the real estate described as follows: North-east quarter (N.E. $\frac{1}{4}$) of the North-west quarter (N.W. $\frac{1}{4}$) of Section twenty-four (24) Township five (5) South of Range three (3) East. Also South-west quarter (S.W. $\frac{1}{4}$) of the North-east quarter (N.E. $\frac{1}{4}$) of Section twenty-four (24) Township five (5) South of Range three (3) East. Also South-west quarter (S.W. $\frac{1}{4}$) of the South-west quarter (S.W. $\frac{1}{4}$) of Section eighteen (18) Township five (5) South of Range four (4) East. All being in Baldwin County, Alabama. Subject to mortgage of \$6,000.00 to First Joint Stock Land Bank of Montgomery, Ala. TO HAVE AND TO HOLD, the above granted and described premises with the appurtenances unto the said Farmers & Merchants Bank, a Corporation and to its Successors and assigns, and to their sole and only proper use, benefit and behoof forever, PROVIDED ALWAYS, and these Presents are upon the express condition, that if the said Harry E. Miller and Bertha N. Miller his wife shall well and truly pay to the said Farmers & Merchants Bank a corporation the sum of Five Thousand dollars as evidenced by one promisory note of even tenor and date due and payable

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

AND the said Harry E. Miller & Bertha N. Miller do hereby vest the said Farmers & Merchants Bank its successors or assigns, with full power and authority upon the happening of a default in the payment of the note above described, to sell their interest in said real property at public sale for cash, giving thirty days notice in a newspaper published at Bay Minette, Baldwin County, Alabama and the proceeds to apply first, to the payment of the amount due on said note with interest on same; second, to the payment of the costs of sale, including a reasonable attorney's fee, and if there shall be a surplus, then the balance to be paid over to Harry E. & Bertha N. Miller And they do authorize the said Farmers & Merchants Bank or its Agent or Attorney to conduct the sale, and to make Deed to the purchaser, and the title so made they hereby agree to defend against all persons. It is agreed that the mortgagee herein may bid at said sale as if he were a stranger to this instrument.

GIVEN under our Hand and Seal this 14th. day of June in the year of our Lord one thousand nine hundred and Twenty-six.

SIGNED, SEALED AND DELIVERED IN PRESENCE
 OF

<u>R. G. Pearson</u>	<u>Harry E. Miller</u> (SEAL)
<u>N. E. Anderson</u>	<u>Bertha N. Miller</u> (SEAL)

On the back of said mortgage appears the following:-

THE STATE OF ALABAMA,)
 Baldwin County. (I R. G. Pearson, a Notary Public in and for said County and State hereby certify that Harry E. Miller and Bertha N. Miller, His wife whose names are signed to the foregoing conveyance and who are known to me, acknowledged before me, on this day, that being informed of the contents of the conveyance they executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal this 18th day of June A.D. 1926.

R. G. Pearson.

And I do further certify that on the 18th day of June 1926 came before me the above named Bertha N. Miller known to me to be the wife of the above named Harry E. Miller who being examined by me separate and apart from her husband touching her signature to the above instrument, acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of her husband.

In witness whereof, I have hereunto set my hand and seal this 18th day of June 1926.

R. G. Pearson
Notary Public, Baldwin County,
Ala., My Commission Expires Feb.
9th, 1927.

Endorsed on the back of said mortgage are the following endorsements:-

I hereby certify that the mortgage or privilege Tax on within instrument was paid by the lender or creditor. (See general acts of the Legislature of 1919, on Page 20)

Farmers and Merchants Bank

Foley, Ala.

STATE OF ALABAMA.)

BALDWIN COUNTY. (I W. D. STAPLETON, Judge of Probate, for said county, hereby certify that the following privilege tax has been paid on the within instrument as required by acts 1902 and 1908 viz: \$7
cts 50

W. D. Stapleton
Judge of Probate.

by J. L. Kessler
Clerk.

THE STATE OF ALABAMA) Office of the Judge of
BALDWIN COUNTY. (the Probate Court.

I, W. D. Stapleton, Judge of said Court in and for said County, do hereby certify that the within instrument was filed in this office for record on the 7th day of Aug. 1926 at 2 o'clock P. M. and I further certify that the same is duly recorded in Record Book No. 36 Mtgs. Page 539 and duly examined.

Witness my hand this 9th day of Aug. 1926.

W. D. STAPLETON
Judge of Probate Court.

September 10, 1926.

Mr. Carl Schlich, Cashier,
Loxley State Bank,
Loxley, Ala.

Dear Mr. Schlich:

This is to advise you that we hold as
as security a mortgage of Harry E. Miller executed to this
bank, on the following property in which you are to parti-
cipate to the extent of \$2000.00;

Northesat quarter (N.E. $\frac{1}{4}$) of the North-
West quarter (N.W. $\frac{1}{4}$) of Sec. twenty four (24) Township
Five (5) South of Range three (3) East. Also South-west
quarter (S.W. $\frac{1}{4}$) of the NorthEast quarter (N.E. $\frac{1}{4}$) of Sec.
twenty four (24) Township five (5) South of Range three
(3) East. Also South-west quarter of (S.W. $\frac{1}{4}$) of the
South-west quarter of Sec. eighteen (18) Township five
(5) South of Range four (4) East. All being in Baldwin
County Alabama. Subject to mortgage of \$6000.00 to
First Stock Joint Land Bank, Montgomery, Ala.

Very truly yours,

H. L. McCain

Cashier.