

E. G. CALDWELL,

Complainant,

VS.

SUNNY SOUTH DEVELOPMENT
COMPANY, a Corporation;
FARMERS AND MERCHANTS BANK,
a Corporation, as Trustee,
et als,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 286.

Now comes E. G. Caldwell, the Complainant and Cross-Respondent in the above entitled cause, and for answer to the Cross Bill filed in said cause says:

1. He denies that the title to the property described in the Bill of Complaint as amended is in the Sunny South Developing Company and denies each and all of the other allegations of paragraph Numbered Third of the Cross Bill.

2. He admits that the title to all of the lands described in his Bill of Complaint as last amended was in the Sunny South Development Company up to the time the said lands sold to the State of Alabama on May 28, 1928 for unpaid taxes for the year 1927, but denies each and all of the other allegations of paragraph Numbered Fourth of the Cross Bill.

3. He denies that the Sunny South Developing Company is in possession of the said lands or any part thereof and alleges that he is in possession of all of the said lands.

4. Complainant and Cross-Respondent claims title to all of the lands involved in this suit under a tax title arising out of a tax sale held on May 28, 1928, at which sale all of the said lands were sold to the State of Alabama.

The South Half of Section 21, Township 8 South Range 5 East in Baldwin County, Alabama, was conveyed by the State Tax Commission of Alabama to Complainant and Cross-Respondent by deed dated July 24, 1934, and recorded in Deed Book Number 51 N. S. at page 117, Baldwin County Records, a copy of which is hereto attached, marked Exhibit "A" and by reference made a part hereof as though fully incorporated herein.

The South Half of the Northeast Quarter and the East Half of the Northwest Quarter of Section 21, Township 8 South Range 5 East, Baldwin County, Alabama, was conveyed by the State Tax Commission of Alabama to Complainant and Cross-Respondent by deed dated May 16, 1935, and recorded in Deed Book Number 57 N. S. at pages 114-15, Baldwin County Records, a copy of which is hereto attached, marked Exhibit "B" and by reference made a part hereof as though fully incorporated herein.

Lot 40 Oak River View First Addition was conveyed by the State Land Commissioner of Alabama by deed dated November 27, 1935, and recorded in Deed Book Number 60 N. S. at Pages 255, Baldwin County Records, a copy of which is hereto attached, marked Exhibit "C" and by reference made a part hereof as though fully incorporated herein.

5. He admits that no suit other than this suit is pending to enforce or test the validity of his title to the said property.

6. He denies each and all of the other allegations of the Cross Bill that have not been specifically answered herein, and for further answer to the said Cross Bill alleges that before September 1, 1934, he went into possession of the South Half of Section 21, Township 8 South Range 4 East, in Baldwin County, Alabama, under the tax deed described above as Exhibit "A" in good faith, commenced the erection of valuable improvements thereon which improvements consist of a good wire fence, a residence, barn and other outhouses, and has been in the actual, open, notorious, hostile, exclusive and continuous possession of the said property since the said date, and since he completed the erection of the improvements on the said property has resided on and now resides on and makes his home on the said property, consequently, any cause of action which the Respondents and Cross-Complainants have or may have had for the recovery of the said property was barred by laches and the statute of limitations of three years at the time the Cross-Bill in this case was filed.

7. A. W. Keller, who is also known as Albert W. Keller, an officer of the Sunny South Development Company, a Corporation, and who claims to be Trustee for certain bondholders and owner of certain bonds which he claims to be a charge on the property in question, resides less than two miles from the said property and had actual knowledge that Complainant and Cross-Respondent was in the actual possession thereof and erecting valuable improvements on the said property, and stood idly by until the said valuable improvements were completed and for more than three years, and then the said corporation, A. W. Keller, as Trustee and Albert W. Keller commenced suit by Cross Bill filed in this cause attempting to recover possession of the said property with the improvements placed thereon by the Complainant and Cross Respondent.

8. He further alleges that he has been under the said tax deed in good faith, in actual and adverse possession of the South Half of Section 21, Township 8 South Range 5 East, and has used and occupied the same for more than three years next preceding the filing of said Cross-Bill, and during the period of such use and occupancy has placed improvements, including a residence, barns, garage, outhouses and fences thereon of the reasonable market value of \$4,202.24.

9. He further alleges by way of answer to said Cross Bill, and suggests upon the record, that he has, for three years next before the filing of the Cross-Bill herein, had adverse possession of the land in Baldwin County, Alabama, described as follows: The South Half of Section 21, Township 8 South Range 5 East.

Having fully answered the said Cross Bill Complainant and Cross Respondent prays that it be dismissed.

E. G. Richarby, Jr.
J. T. Blackburn
Solicitors for Complainant and
Cross Respondent.

EXHIBIT "A"

No. 151

ORIGINAL

THE STATE OF ALABAMA

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, on 16th day of April, A. D. 1928, the Probate Court of Baldwin County rendered a decree for the sale of lands hereinafter described and conveyed, for the payment of State and County taxes then due from Sunny South Development Co., the owner of said lands, and for the payment of the fees, costs and expenses of and under said decree, and the sale had in execution thereof.

AND WHEREAS, thereafter, to-wit, on the 28th day of May, 1928, under and in pursuance of said decree, said lands were regularly offered for sale by the Tax Collector of Baldwin County for said taxes, fees, costs and expenses, and no person having bid a sufficient sum for said lands to pay the same, said lands were bid in for the State for the sum of said taxes, fees, costs and expenses.

AND WHEREAS, the time allowed by law for the redemption of said lands has elapsed since said sale, and the same not having been redeemed, the title thereto under said sale is still in the State.

AND WHEREAS, said lands having been entered upon the books of the State Tax Commission, and the State Tax Commission of the State of Alabama, with the approval of the Governor, has fixed the price of said land, and ascertained that the sum of Six Hundred eighty-five and no/100 (\$685.00) Dollars is sufficient to cover and satisfy all claims of the State and County against said lands for or on account of taxes, interest, fees, and costs, and officers' fees which were due upon or have accrued against said lands, as provided by law.

AND WHEREAS, application has been made to the State Tax Commission of the State of Alabama by E. G. Caldwell to purchase said lands, and said sum of Six Hundred eighty-five and no/100 (\$685.00) Dollars therefor has been paid into the State Treasury.

NOW THEREFORE, The State Tax Commission of the State of Alabama, by virtue of and in accordance with the authority in it vested by law, with the approval of the Governor of Alabama, and in consideration of the premises above set out, has this day granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said E. G. Caldwell, without warranty or covenant of any kind on the part of the State, express or implied, all right and title of the State of Alabama in and to said lands, described as follows:

✓ $S\frac{1}{2}$ sec. 21, t8s r4e,

lying and being situate in said County and State, to have and to hold the same, the said right and title of the State in the lands aforesaid, unto E. G. Caldwell and his heirs and assigns forever.

In testimony whereof I have hereunto set my hand and seal this the 24th day of July, 1934.

Approved:
By B. M. Miller
Governor.

STATE TAX COMMISSION OF ALABAMA,
By S. R. Butler
State Tax Commissioner.

THE STATE OF ALABAMA, MONTGOMERY COUNTY.

I, Julia Klinge, a Notary Public in and for said County, in said State, hereby certify that S. R. Butler, whose name is signed to the foregoing conveyance as State Tax Commissioner, and who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he, in his capacity as such State Tax Commissioner, executed the same voluntarily on the day the same bears date.

Given under my hand this the 24th day of July, 1934.

Julia Klinge, Notary Public.

THE STATE OF ALABAMA, MONTGOMERY COUNTY.

I, Julia Klinge, a Notary Public in and for said County, in said State, hereby certify that Henry S. Long, whose name is signed to the foregoing conveyance as President of the State Tax Commission, and who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he, in his capacity as such President, executed the same voluntarily on the day the same bears date.

Given under my hand this the 16th day of May, 1935.

Julia Klinge, Notary Public.

THE STATE OF ALABAMA, MONTGOMERY COUNTY.

I, Julia Klinge, a Notary Public in and for said County, in said State, hereby certify that Henry S. Long, whose name is signed to the foregoing conveyance as State Land Commissioner, and who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he, in his capacity as such State Land Commissioner, executed the same voluntarily on the day the same bears date.

Given under my hand this the 2 day Dec. 1935.

Julia Klinge, Notary Public.

E. G. CALDWELL,

Complainant,

VS.

SUNNY SOUTH DEVELOPMENT
COMPANY, a Corporation,
et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

STIPULATION.

IT IS STIPULATED AND AGREED by and between the Complainant, E. G. Caldwell, and the Respondents, Sunny South Developing Company, a Corporation, Albert W. Keller, Carrie S. Tuttle and Albert W. Keller, as Trustee, acting by and through their respective solicitors of record as follows:

1. That the Complainant, E. G. Caldwell, was at the time of the filing of the original Bill of Complaint in this cause, and is on this date, in the peaceable possession of, claiming to own in his own right the lands described in the original Bill of Complaint filed by the Complainant in this cause which are the following described lands situated in Baldwin County, Alabama, to-wit:

South Half; South Half of Northeast Quarter; East Half of Northwest Quarter, all in Section Twenty-one (21), Township Eight (8) South Range Four (4) East; and ALSO Lot Numbered Forty (40) in Oak River View, according to the official plat thereof recorded in Map Book 1 at page 40, Baldwin County Records.

2. That the Farmers and Merchants Bank, a Corporation, the successor in trust to the State Bank of Foley, which was named Trustee in that certain mortgage or deed of trust from the Sunny South Developing Company, a Corporation, dated August 1, 1921, and recorded in Book Number 25 of Mortgages at pages 596-9, Baldwin County Records and in that certain mortgage or deed of trust from the Sunny South Developing Company, a Corporation, dated June 2, 1922, and recorded in Book Number 27 of Mortgages at pages 144-60, Baldwin County Records, did resign as such Trustee and that Albert W. Keller was appointed in and by the Circuit Court of Baldwin County, Alabama,

in Equity, as Trustee, under the two said deeds of trust and for all purposes stated therein on to-wit, July 12, 1937, as will fully appear from all of the proceedings shown by Equity File Number 341 in the matter of the resignation of the Farmers and Merchants Bank, as Trustee, in the Circuit Court of Baldwin County, Alabama, and that the said Albert W. Keller is now acting as such Trustee.

3. That there has been deposited in the Farmers and Merchants Bank at Foley, Alabama, the sum of One Thousand Dollars (\$1,000.00) to be paid to the said Trustee when a Decree is rendered quieting title to the above described property in favor of the Complainant and against the Respondents named in this cause.

4. The Complainant has and does hereby withdraw all pleadings filed by him in this cause except the following: Original Affidavit, Bill of Complaint, /Order of Publication and Proof thereof, Lis Pendens Notice, Motion for Decree Pro Confesso on Publication against the Sunny South Development Company, a Corporation, Decree Pro Confesso on Publication against the Sunny South Development Company, a Corporation and Amended Bill of Complaint, and the Respondents and each of them consent to the withdrawal of the said pleadings by the Complainant.

5. The Respondents each and all withdraw all pleadings filed by them in this cause and each and all consent and agree that a Decree be rendered quieting title to all of the above described property in the Complainant and against the Respondents and each of them, cancelling and removing the two above described deed of trust as clouds on the Complainant's title to the said property.

6. That the Court costs of this proceeding be taxed as follows: Fifty Dollars (\$50.00) against the Respondent, Albert W. Keller, as Trustee, and the remainder of said cost above the said Fifty Dollars (\$50.00) be taxed against the Complainant, E. G. Caldwell.

7. The Respondents, Sunny South Developing Company, a Corporation, Albert W. Keller, Carrie S. Tuttle and Albert W. Keller, as Trustee, consent to the filing of the Amended Bill of Complaint by the Complainant in this cause, accept service thereof and waive all other and further notice of same. The said Respondents also consent and agree that this stipulation shall in all respects be considered as their Answer to the Original and Amended Bill of Complaint, and further consent and agree that a Decree may be immediately rendered quieting Complainant's title to the above described property in him and against the said Respondents, Sunny South Developing Company, a Corporation, Albert W. Keller, Carrie S. Tuttle and Albert W. Keller, as Trustee, as provided in this stipulation.

8. The Court file and the original papers having been lost or destroyed, the Court may make and enter a Decree substituting certified copies of the original Bill of Complaint, Summons, Affidavit for Publication, Order of Publication and proof thereof, and Lis Pendens Notice from certified copies of the record as provided by Section 8 of Title 7 of the 1940 Code of Alabama, for the purposes stated therein.

9. That a copy of this Stipulation be filed in this cause and that it may be used by the Complainant and the Respondents as evidence or in submitting this cause for final Decree.

Executed in triplicate on this the 24th day of July, 1941.

E. G. CALDWELL, Complainant,

By J. T. Blachum
As his Solicitor of Record.

SUNNY SOUTH DEVELOPING COMPANY, a Corporation;
Albert W. Keller;
Carrie S. Tuttle, and
Albert W. Keller, as Trustee

By A. C. Beebe
As their Solicitors of Record.

E. G. CALDWELL,

Complainant,

VS.

SUNNY SOUTH DEVELOPMENT COMPANY,
a Corporation, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 286.

AMENDED BILL OF COMPLAINT.

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

Now comes the Complainant in the above entitled cause and amends the original Bill of Complaint heretofore filed by him in this cause so that the same will read as follows:

1. The Complainant is over twenty-one years of age and a resident of Baldwin County, Alabama.

2. The Respondent, Sunny South Development Company, a Corporation, is a domestic corporation, not a railroad corporation, which has no officer, agent or employee in the State of Alabama, who can be served with process; the Respondent, Sunny South Developing Company, a Corporation, is a domestic corporation, which has its principal place of business at Foley, in Baldwin County, Alabama; the Respondent, Albert W. Keller, is over twenty-one years of age and a resident of Baldwin County, Alabama; the Respondent, Carrie S. Tuttle, is over twenty-one years of age and a non-resident of the State of Alabama, whose residence and place of address is 3428 South Oak Park Avenue, Berwyn, Illinois; the Respondent, Albert W. Keller, as Trustee, is the successor in trust to the Farmers and Merchants Bank of Foley, a Corporation and the State Bank of Foley, a Corporation, now acting under and by virtue of his appointment as such Trustee made by this Court and is now the Trustee under that certain deed of trust from Sunny South Developing Company, a Corporation to State Bank of Foley, dated August 1, 1921, and recorded in Book Number 25 of Mortgages at pages 596-9, Baldwin County Records; and also that certain deed of trust from Sunny South Developing Company, a Corporation, to State Bank

to all of the above described lands in the Complainant and against the Respondents and Decreeing that the said Respondents and each of them have no right, title, interest in, claim or encumbrance upon the said lands or any part thereof, and will perpetually enjoin the said Respondents and each of them from claiming or attempting to claim any right, title, interest in, claim or encumbrance upon the said lands or any part thereof.

2. Complainant prays for such other, further and general relief as he may be equitably entitled to the premises considered.

J. B. Blackburn,

Solicitor for Complainant.

E. G. CALDWELL,
Complainant,

vs.

SUNNY SOUTH DEVELOPING
COMPANY, a corporation,
A. W. KELLER, as Trustee,
ALBERT W. KELLER and
CARRIE S. TUTTLE,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Come the respondents in the above styled cause, and jointly and severally answer the aforesaid bill of complaint as amended, and say:

1st. They deny that the complainant is the owner of and in the peaceable possession of the lands described in the bill of complaint.

2nd. They admit that there is no suit pending to enforce or test the validity of their claim or title to the said lands.

3rd. That the title to the property described in the bill of complaint as amended is in the Sunny South Developing Company, a corporation organized under the laws of the State of Alabama, with its principal place of business at Foley, Baldwin County, Alabama; that A. W. Keller, as successor to the State Bank of Foley, holds a deed of trust conveying the said property, which said deed of trust is dated the 1st day of August, 1921, recorded in the office of the Judge of Probate of Baldwin County, Alabama, on the 15th day of September, 1921, in Mortgage Book 25, pages 596-7; that the said deed of trust was executed by the said Sunny South Developing Company to secure first mortgage bonds, some of which are now held and owned by your respondents, Albert W. Keller and Carrie S. Tuttle, which said bonds, secured by the aforesaid deed of trust, are owing and past due and unpaid.

4th. Respondents further allege that the said Sunny South

they place themselves within the jurisdiction of this Honorable Court and offer to do and perform whatsoever this Court shall in equity require of them.

Deebe & Hall Deebe
Solicitors for Respondents.

FOOT NOTE:

Complainant and cross respondent is required to answer every allegation of the foregoing bill of complaint, paragraphs 1st to 7th inclusive, but not under oath; oath is hereby expressly waived.

Deebe & Hall Deebe
Solicitors for Respondents.

Developing Company is the owner of the aforesaid lands, subject to the aforesaid deed of trust to A. W. Keller, as successor to the State Bank of Foley, as Trustee, to secure first mortgage bonds owned by the said Albert W. Keller and Carrie S. Tuttle, having acquired the title thereto through and under the following instruments:

Patent from the U. S. Government to McCoy & Benners, conveying the South half of the Northeast quarter and the Southeast quarter of the Northwest quarter of Section 21, Township 8 South, Range 4 East, Baldwin County, Alabama, recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 2 N.S., page 133;

Patent from the U. S. Government to McCoy & Benners, conveying the South half of the Southwest quarter of said Section 21, recorded in said Probate office in Deed Book 2 N.S., page 202;

Deed from Benners to McCoy, conveying his interest in the said lands, recorded in said Probate office in Book G, page 416;

Patent from the U. S. Government to F. J. McCoy, conveying the Northeast quarter of the Northwest quarter of said Section 21, recorded in said Probate office in Deed Book 2 N.S., page 198;

Patent from the U. S. Government to F. J. McCoy, conveying the Northwest quarter of the Southeast quarter and the Northeast quarter of the Southwest quarter of said Section 21, recorded in said Probate office in Deed Book 2 N.S., page 141;

Patent from the U. S. Government to F. J. McCoy, conveying the Northwest quarter of the Southwest quarter of said Section 21, recorded in said Probate office in Deed Book 2 N.S., page 138;

Patent from the U. S. Government to F. J. McCoy, conveying the South half of the Southeast quarter of said Section 21, recorded in said Probate office in Deed Book 2 N.S., page 201;

Patent from the U. S. Government to Representatives of Thomas Johnson, conveying Lot 40 of Oak Riverview, recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Deed Book ____, page ____;

Deed from Representatives of Thomas Johnson to F. J. McCoy and W. M. Carney, conveying Lot 40 of Oak Riverview, recorded in said Probate office in Book G, page 604;

Deed from F. J. McCoy to W. M. Carney, conveying all of the aforesaid lands, recorded in said Probate office in Deed Book I, page 441;

Deed from W. M. Carney to James K. Clark, Sr., conveying all of the aforesaid lands, recorded in said Probate office in Book L, page 740;

Deed from James K. Clark, Sr., to James K. Clark, Jr., conveying all of the aforesaid lands, recorded in said Probate office in Deed Book 4 N.S., page 31;

Deed from James K. Clark, Jr., to the Sunny South Development Company, respondent, conveying all of the aforesaid lands, recorded in said Probate office in Deed Book _____, page _____;

5th. That the said Sunny South Developing Company is in possession of the said lands.

6th. Respondents further allege that the said complainant claims some right, title, interest in, claim or incumbrance upon the following described lands:

The South half and the South half of the Northeast quarter and the East half of the Northwest quarter of Section twenty-one, Township Eight South, Range Four East, and Lot Forty in Oak River View according to the map thereof recorded in Map Book One, Page forty.

7th. That there is no suit pending, save this, to enforce or test the validity of the said E. G. Caldwell's title to the said property, and these respondents having fully answered, pray that their answer be taken as a cross-bill, and they call upon the said E. G. Caldwell to set forth and specify what right, title, interest in, claim or incumbrance upon the said lands, or any part thereof, he has or claims to have, and how and by what instrument or instruments the same was derived or created.

And now having fully answered, respondents pray that this may be taken as a cross bill and that the said E. G. Caldwell be made a party respondent to the same, and by proper process be required to plead, answer or demur to the same within the time and under the pains and penalties prescribed by law and the practice of this Honorable Court, and that upon the final hearing of the cause made by this cross-bill of complaint this Honorable Court will adjudge and decree that the said E. G. Caldwell has no right, title, interest in, claim or incumbrance upon the aforesaid lands, or any part thereof, and respondents pray for such other, further or different relief as in equity and good conscience they may be entitled to receive, and

EXHIBIT "B"

No. 411

DUPLICATE

THE STATE OF ALABAMA

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, on 16th day of April, A. D. 1928, the Probate Court of Baldwin County rendered a decree for the sale of lands hereinafter described and conveyed, for the payment of State and County taxes then due from Sunny South Development Co., the owner of said lands, and for the payment of the fees, costs, and expenses of and under said decree, and the sale had in execution thereof.

AND WHEREAS, thereafter, to-wit, on the 28th day of May 1928, under and in pursuance of said decree, said lands were regularly offered for sale by the Tax Collector of Baldwin County for said taxes, fees, costs, and expenses, and no person having bid a sufficient sum for said lands to pay the same, said lands were bid in for the State for the sum of said taxes, fees, costs, and expenses.

AND WHEREAS, the time allowed by law for the redemption of said lands has elapsed since said sale, and the same not having been redeemed, the title thereto under said sale is still in the State.

AND WHEREAS, said lands having been entered upon the books of the State Tax Commission, and the State Tax Commission of the State of Alabama, with the approval of the Governor, has fixed the price of said land, and ascertained that the sum of Four hundred and no/100 (\$400.00) dollars is sufficient to cover and satisfy all claims of the State and County against said lands for or on account of taxes, interest, fees, and costs, and officers' fees which were due upon or have accrued against said lands, as provided for by law.

AND WHEREAS, application has been made to the State Tax Commission of the State of Alabama by E. G. Caldwell to purchase said lands, and said sum of Four hundred and no/100 (\$400.00) Dollars therefor has been paid into the State Treasury.

NOW THEREFORE, The State Tax Commission of the State of Alabama, by virtue of and in accordance with the authority in it vested by law, with the approval of the Governor of Alabama, and in consideration of the premises above set out, has this day granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said E. G. Caldwell, without warranty or covenant of any kind on the part of the State, express or implied, all right and title of the State of Alabama in and to said lands, described as follows:

$S\frac{1}{2}$ of $NE\frac{1}{4}$. $E\frac{1}{2}$ of $NW\frac{1}{4}$. sec. 21, t8s r4e,

lying and being situate in said County and State, to have and to hold the same, the said right and title of the State in the lands aforesaid, unto E. G. Caldwell and his heirs and assigns forever.

In testimony whereof I have hereunto set my hand and seal this the 16th day of May, 1935.

Approved
By Bibb Graves
Governor.

STATE TAX COMMISSION OF ALABAMA,
By Henry S. Long
President.

EXHIBIT "C"

ORIGINAL

No. 632

THE STATE OF ALABAMA

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, on 16th day of April, A. D. 1928, the Probate Court of Baldwin County rendered a decree for the sale of lands hereinafter described and conveyed, for the payment of State and County taxes then due from Sunny South Development Co., the owner of said lands, and for the payment of the fees, costs, and expenses of and under said decree, and the sale had in execution thereof.

AND WHEREAS, thereafter, to-wit, on the 28th day of May, 1928, under and in pursuance of said decree, said lands were regularly offered for sale by the Tax Collector of Baldwin County for said taxes, fees, costs, and expenses, and no person having bid a sufficient sum for said lands to pay the same, said lands were bid in for the State for the sum of said taxes, fees, costs, and expenses.

AND WHEREAS, the time allowed by law for the redemption of said lands has elapsed since said sale, and the same not having been redeemed, the title thereto under said sale is still in the State.

AND WHEREAS, said lands having been entered upon the books of the State Land Commissioner, and the State Land Commissioner of the State of Alabama, with the approval of the Governor, has fixed the price of said land, and ascertained that the sum of Fifteen and no/100 (\$15.00) Dollars is sufficient to cover and satisfy all claims of the State and County against said lands for or on account of taxes, interest, fees, and costs, and officers' fees which were due upon or have accrued against said lands, as provided for by law.

AND WHEREAS, application has been made to the State Land Commissioner of the State of Alabama by E. G. Caldwell to purchase said lands, and said sum of Fifteen and no/100 (\$15.00) Dollars therefor has been paid into the State Treasury.

NOW THEREFORE, The State Land Commissioner of the State of Alabama, by virtue of and in accordance with the authority in him vested by law, with the approval of the Governor of Alabama, and in consideration of the premises above set out, has this day granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said E. G. Caldwell, without warranty or covenant of any kind on the part of the State, express or implied, all right and title of the State of Alabama in and to said lands, described as follows:

Lot 40, Oak River View First Addn.

lying and being situate in said County and State, to have and to hold the same, the said right and title of the State in the lands aforesaid, unto E. G. Caldwell and his heirs and assigns forever.

In testimony whereof ⁺ have hereunto set my hand and seal this the 27th day of November, 1935.

Approved

By Bibb Graves
Governor.

STATE LAND COMMISSIONER OF ALABAMA,
By Henry S. Long
State Land Commissioner.

E. G. CALDWELL,

Complainant,

VS.

SUNNY SOUTH DEVELOPMENT COMPANY,
a corporation, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY, NUMBER 286.

FINAL DECREE

This cause coming on to be heard on this date and being submitted on behalf of the Complainant upon the Original Bill of Complaint, Affidavit, Order of Publication, Proof of Publication, Motion for Decree Pro Confesso on Publication against the Sunny South Development Company, a Corporation, Decree Pro Confesso against Sunny South Development Company, a Corporation, Decree substituting papers, Amended Bill of Complaint, Stipulation by the parties to this cause dated July 24th, 1940 and the Testimony as noted by the Register and upon behalf of the Respondent, the Sunny South Developing Company, a Corporation, Albert W. Keller, Carrie S. Tuttle and Albert W. Keller as Trustee, upon the said Stipulation hereinabove referred to in which the said Respondents consented that this Decree be rendered, upon consideration of all which the Court is of the opinion that the Complainant is entitled to the relief prayed for, namely a Decree Quieting Title to the lands hereinafter described in him and against all the said Respondents, whereupon it is ORDERED, ADJUDGED and DECREED by the Court as follows:

1. That the Complainant, E. G. Caldwell, is, as against the Respondents, Sunny South Development Company, a Corporation, Sunny South Developing Company, a Corporation, Albert W. Keller, Carrie S. Tuttle and Albert W. Keller as Trustee, the true and lawful owner in his own right of the following described real property situated in Baldwin County, Alabama, to-wit:

South half; South half of Northeast Quarter; East Half of Northwest Quarter, all in Section Twenty-one (21), Township Eight (8) South Range Four (4) East; and ALSO Lot Numbered Forty (40) in Oak River View, according to the official plat thereof recorded in Map Book 1 at page 40, Baldwin County Records.

2. That title to the said land is in the Complainant, E. G. Caldwell and title thereto is forever quieted in him and against the Respondents, Sunny South Development Company, a Corporation, Sunny South Developing Company, a Corporation, Albert W. Keller, Carrie S. Tuttle and Albert W. Keller, as Trustee and that the said Respondents and each of them are without any right, title or interest in the said land or any part thereof, or any interest therein, and they and each of them are hereby perpetually enjoined from asserting or attempting to assert any claim to the said property or any part thereof or any interest therein, or from claiming any lien or encumbrance on the said property or any part thereof or any interest therein.

3. That Albert W. Keller, as Trustee, has been duly appointed in and by this Court as Succeeding Trustee or Successor in Trust to the State Bank of Foley, a Corporation, which was named in that certain Deed of Trust from Sunny South Developing Company, a Corporation, to the State Bank of Foley, dated August 1, 1921, and recorded in Book Number 25 of Mortgages at pages 596-9, Baldwin County Records and that certain Deed of Trust from Sunny South Developing Company, a Corporation to the State Bank of Foley dated June 1, 1922 and recorded in Book Number 27 of Mortgages at pages 144-60, Baldwin County Records and also as Succeeding Trustee or Successor in Trust to the Farmers and Merchants Bank, a Corporation under the two aforesaid Deeds of Trust, and the said Albert W. Keller is now acting as Trustee under his said appointment as the Trustee in and under the two aforesaid Deeds of Trust and for all purposes stated therein; which said Deeds of Trust are hereby cancelled in so far as the same are clouds on the title to the above described property or any part thereof.

4. This Decree has been consented to by all of the Respondents named herein except the Sunny South Development Company, a Corporation.

5. Fifty Dollars (\$50.00) of the costs of this proceeding are hereby taxed against the Respondent, Albert W. Keller as Trustee, and the remainder of the said costs are hereby taxed against the Complainant, E. G. Caldwell.

6. The Register of this Court shall, within thirty days from

the rendition of this Decree, file a certified transcript hereof for record in the Probate Court of Baldwin County, Alabama, the county in which the said land lies, and tax the expense thereof in the costs of this cause.

Done on this the 4th day of August, 1941.

F. W. Hare

Judge.

STATE OF ALABAMA

BALDWIN COUNTY

I, Robert S. Duck, Register of the Circuit Court of Baldwin County, Alabama, in Equity, do hereby certify that the above and foregoing instrument is a full, true, correct and exact copy of the final Decree in the case of E. G. Caldwell, Complainant, vs. Sunny South Development Company, a Corporation, Sunny South Developing Company, a Corporation, Albert W. Keller, Carrie S. Tuttle and Albert W. Keller, as Trustee, as the same appears of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Court on this the 6th day of August, 1941.

R. S. Duck

Register of the Circuit Court of
Baldwin County, Alabama, in Equity.

E. G. CALDWELL,

Complainant,

VS.

SUNNY SOUTH DEVELOPMENT COMPANY,
a corporation, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 286.

FINAL DECREE

This cause coming on to be heard on this date and being submitted on behalf of the Complainant upon the Original Bill of Complaint, Affidavit, Order of Publication, Proof of Publication, Motion for Decree Pro Confesso on Publication against the Sunny South Development Company, a Corporation, Decree Pro Confesso against Sunny South Development Company, a Corporation, Decree substituting papers, Amended Bill of Complaint, Stipulation by the parties to this cause dated July 24th, 1940 and the Testimony as noted by the Register and upon behalf of the Respondent, the Sunny South Developing Company, a Corporation, Albert W. Keller, Carrie S. Tuttle and Albert W. Keller as Trustee, upon the said Stipulation hereinabove referred to in which the said Respondents consented that this Decree be rendered, upon consideration of all which the Court is of the opinion that the Complainant is entitled to the relief prayed for, namely a Decree Quieting Title to the lands hereinafter described in him and against all the said Respondents, whereupon it is ORDERED, ADJUDGED and DECREED by the Court as follows:

1. That the Complainant, E. G. Caldwell, is, as against the Respondents, Sunny South Development Company, a Corporation, Sunny South Developing Company, a Corporation, Albert W. Keller, Carrie S. Tuttle and Albert W. Keller as Trustee, the true and lawful owner in his own right of the following described real property situated in Baldwin County, Alabama, to-wit:

South half; South half of Northeast Quarter; East Half of Northwest Quarter, all in Section Twenty-one (21), Township Eight (8) South Range Four (4) East; and ALSO Lot Numbered Forty (40) in Oak River View, according to the official plat thereof recorded in Map Book 1 at page 40, Baldwin County Records.

2. That title to the said land is in the Complainant, E. G. Caldwell and title thereto is forever quieted in him and against the Respondents, Sunny South Development Company, a Corporation, Sunny South Developing Company, a Corporation, Albert W. Keller, Carrie S. Tuttle and Albert W. Keller, as Trustee and that the said Respondents and each of them are without any right, title or interest in the said land or any part thereof, or any interest therein, and they and each of them are hereby perpetually enjoined from asserting or attempting to assert any claim to the said property or any part thereof or any interest therein, or from claiming any lien or encumbrance on the said property or any part thereof or any interest therein.

3. That Albert W. Keller, as Trustee, has been duly appointed in and by this Court as Succeeding Trustee or Successor in Trust to the State Bank of Foley, a Corporation, which was named in that certain Deed of Trust from Sunny South Developing Company, a Corporation, to the State Bank of Foley, dated August 1, 1921, and recorded in Book Number 25 of Mortgages at pages 596-9, Baldwin County Records and that certain Deed of Trust from Sunny South Developing Company, a Corporation to the State Bank of Foley dated June 1, 1922 and recorded in Book Number 27 of Mortgages at pages 144-60, Baldwin County Records and also as Succeeding Trustee or Successor in Trust to the Farmers and Merchants Bank, a Corporation under the two aforesaid Deeds of Trust, and the said Albert W. Keller is now acting as Trustee under his said appointment as the Trustee in and under the two aforesaid Deeds of Trust and for all purposes stated therein; which said Deeds of Trust are hereby cancelled in so far as the same are clouds on the title to the above described property or any part thereof.

4. This Decree has been consented to by all of the Respondents named herein except the Sunny South Development Company, a Corporation.

5. Fifty Dollars (\$50.00) of the costs of this proceeding are hereby taxed against the Respondent, Albert W. Keller as Trustee, and the remainder of the said costs are hereby taxed against the Complainant, E. G. Caldwell.

6. The Register of this Court shall, within thirty days from

the rendition of this Decree, file a certified transcript hereof for record in the Probate Court of Baldwin County, Alabama, the county in which the said land lies, and tax the expense thereof in the costs of this cause.

Done on this the 4th day of August, 1941.

F. N. Stare

Judge.

E. G. CALDWELL,

Complainant,

VS.

SUNNY SOUTH DEVELOPMENT COMPANY,
a Corporation, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 286.

DECREE.

This cause coming on to be heard on this date and being submitted on the Stipulation of the parties filed in this cause from which it appears that the Original Bill of Complaint, Summons, Affidavit for Publication, Order of Publication, Proof thereof and Lis Pendens Notice have been lost or destroyed and that copies thereof should be substituted in the manner provided by law, whereupon IT IS ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That the Register of this Court shall forthwith file in this cause certified copies of the original Bill of Complaint, Summons, Affidavit of Publication, Order of Publication, proof thereof, and Lis Pendens Notice from the records, which said certified copies shall have the same force and effect as the original as provided by Section 8 of Title 7 of the 1940 Code of Alabama.

Dated this 4th day of Aug. 1941.

A. W. Hare

Judge.

E. G. CALDWELL,
Complainant,

vs.

SUNNY SOUTH DEVELOPING
COMPANY, a corporation,
A. W. KELLER, as Trustee,
ALBERT W. KELLER and
CARRIE S. TUTTLE,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Come the respondents in the above styled cause, and jointly and severally answer the aforesaid bill of complaint as amended, and say:

1st. They deny that the complainant is the owner of and in the peaceable possession of the lands described in the bill of complaint.

2nd. They admit that there is no suit pending to enforce or test the validity of their claim or title to the said lands.

3rd. That the title to the property described in the bill of complaint as amended is in the Sunny South Developing Company, a corporation organized under the laws of the State of Alabama, with its principal place of business at Foley, Baldwin County, Alabama; that A. W. Keller, as successor to the State Bank of Foley, holds a deed of trust conveying the said property, which said deed of trust is dated the 1st day of August, 1921, recorded in the office of the Judge of Probate of Baldwin County, Alabama, on the 15th day of September, 1921, in Mortgage Book 25, pages 596-7; that the said deed of trust was executed by the said Sunny South Developing Company to secure first mortgage bonds, some of which are now held and owned by your respondents, Albert W. Keller and Carrie S. Tuttle, which said bonds, secured by the aforesaid deed of trust, are owing and past due and unpaid.

4th. Respondents further allege that the said Sunny South Developing Company is the owner of the aforesaid lands, subject to

the aforesaid deed of trust to A. W. Keller, as successor to the State Bank of Foley, as Trustee, to secure first mortgage bonds owned by the said Albert W. Keller and Carrie S. Tuttle, having acquired the title thereto through and under the following instruments:

Patent from the U. S. Government to McCoy & Benners, conveying the South half of the Northeast quarter and the Southeast quarter of the Northwest quarter of Section 21, Township 8 South, Range 4 East, Baldwin County, Alabama, recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 2 N.S., page 133;

Patent from the U. S. Government to McCoy & Benners, conveying the South half of the Southwest quarter of said Section 21, recorded in said Probate office in Deed Book 2 N.S., page 202;

Deed from Benners to McCoy, conveying his interest in the said lands, recorded in said Probate office in Book G, page 416;

Patent from the U. S. Government to F. J. McCoy, conveying the Northeast quarter of the Northwest quarter of said Section 21, recorded in said Probate office in Deed Book 2 N.S., page 198;

Patent from the U. S. Government to F. J. McCoy, conveying the Northwest quarter of the Southeast quarter and the Northeast quarter of the Southwest quarter of said Section 21, recorded in said Probate office in Deed Book 2 N.S., page 141;

Patent from the U. S. Government to F. J. McCoy, conveying the Northwest quarter of the Southwest quarter of said Section 21, recorded in said Probate office in Deed Book 2 N.S., page 138;

Patent from the U. S. Government to F. J. McCoy, conveying the South half of the Southeast quarter of said Section 21, recorded in said Probate office in Deed Book 2 N.S., page 201;

Patent from the U. S. Government to Representatives of Thomas Johnson, conveying Lot 40 of Oak Riverview, recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Deed Book ____, page ____;

Deed from Representatives of Thomas Johnson to F. J. McCoy and W. M. Carney, conveying Lot 40 of Oak Riverview, recorded in said Probate office in Book G, page 604;

Deed from F. J. McCoy to W. M. Carney, conveying all of the aforesaid lands, recorded in said Probate office in Deed Book I, page 441;

Deed from W. M. Carney to James K. Clark, Sr., conveying all of the aforesaid lands, recorded in said Probate office in Book L, page 740;

Deed from James K. Clark, Sr., to James K. Clark, Jr.,

the deeds from the State Tax Commission of the State of Alabama, under which the said complainant claims title to the said lands, be cancelled as a cloud on respondents' title, and that the complainant be enjoined from claiming any right, title or interest in, or incumbrance upon the said lands, and from exercising or attempting to exercise any right, possession or control over the said property, or any part thereof.

Berbe Hall Berbe
Solicitors for Respondents.

FOOT NOTE:

Complainant and cross respondent is required to answer every allegation of the foregoing bill of complaint, paragraphs 1st to 8th inclusive, but not under oath; oath is hereby expressly waived.

Berbe Hall Berbe
Solicitors for Respondents.

I hereby accept service of the foregoing cross bill, acknowledge receipt of copy, and waive further notice, this the 3 day of September, 1937.

E. G. Caldwell
Solicitor for Complainant,
E. G. Caldwell.

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

OR BILL QUIA TIMET.

Comes the Complainant E. G. CALDWELL, and shows by this his bill of complaint, the following facts as a basis for the relief hereinafter prayed against the defendants, (SUNNY SOUTH DEVELOPMENT COMPANY, a corporation, FARMERS and MERCHANTS BANK, a corporation, as trustee of two mortgages issued by the Sunny South Development Company, ALBERT W. KELLER, CARRIE S. TUTTLE and the unknown PARTIES HOLDING BONDS ISSUED BY THE STATE BANK OF FOLEY AS TRUSTEE IN A MORTGAGE GIVEN BY THE SUNNY SOUTH DEVELOPMENT COMPANY.)

FIRST: The complainant is the owner and is in peaceful possession of the following described lands in Baldwin county, Alabama.

The South Half and the South Half of the Northeast Quarter and the East Half of the Northwest Quarter of Section Twenty-one, Township Eight South, Range Four East, and Lot number Forty in Oak River View according to the map thereof recorded in Map Book One, Page Forty.

SECOND: That the defendants, SUNNY SOUTH DEVELOPMENT COMPANY, FARMERS and MERCHANTS BANK as trustee, ALBERT W. KELLER, CARRY S. TUTTLE, and the unknown PARTIES HOLDING BONDS ISSUED BY THE STATE BANK OF FOLEY AS TRUSTEE IN A MORTGAGE GIVEN BY THE SUNNY SOUTH DEVELOPMENT COMPANY, whose names and residences are to this complainant unknown after making dilligent search and inquiry, unjustly claim some title or interest in the complainant's property above described but there is no suit pending to enforce or test the validity of the defendants' claim or title and this complainant seeks that this Honorable Court require the defendants to show the nature and extent of their title or claim if they have have any so that it may be adjudged and determined by this Court.

WHEREFORE COMPLAINANT PRAYS that a supeona issue against the defendants, Farmers and Merchants Bank and Albert W. Keller and that publication be had against the defendants Sunny South Development Company, Carrie S. Tuttle, and the unknown parties holding bonds issued by the State Bank of Foley, as trustee in a Mortgage given by the Sunny South Development Company, and require all of these defendants to appear plead answer or demur and set forth and specify their title

E. G. CALDWELL,

COMPLAINANT,

-vs-

SUNNY SOUTH DEVELOPMENT COMPANY,
a corporation, FARMERS and MERCH-
ANTS BANK, a corporation, as trustee
ALBERT W. KELLER, CARRIE S. TUTTLE,
and UNKNOWN PARTIES HOLDING BONDS
ISSUED BY THE STATE BANK OF FOLEY
AS TRUSTEE IN A MORTGAGE GIVEN BY
THE SUNNY SOUTH DEVELOPMENT COMPANY.

DEFENDANTS.

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

AFFIDAVIT FOR PUBLICATION.

STATE OF ALABAMA, :
 : Ss.
COUNTY OF BALDWIN.:

Before me the undersigned Notary Public in and for Baldwin county, Alabama personally appeared E. G. CALDWELL known to me to be the complainant herein who being by me first duly sworn, says on oath:

That the SUNNY SOUTH DEVELOPMENT COMPANY is a domestic corporation and that the president, secretary, cashier and managing agent thereof are absent from the state of Alabama and that in the belief of this affiant there is no person in the employ of such corporation doing business for it in the state and that said corporation is inactive and has no officers or employees.

That CARRIE S. TUTTLE is a non-resident of the state of Alabama and over the age of twenty-one years and that her residence is 3428 South Oak Park Avenue, Berwyn, Illinois.

That affiant does not know and has been unable to ascertain after making diligent inquiry the names and residences of the parties holding bonds issued by the State Bank of Foley as trustee in a mortgage given by the Sunny South Development Company, but affiant believes them to be over the age of twenty-one years.

Subscribed and sworn to before
me this the 18th day of December 1936

E. G. Caldwell
AFFIANT.

[Signature]
NOTARY PUBLIC, BALDWIN COUNTY, ALABAMA.

claim, interest or incumbrances to the lands described herein and how and by what instrument the same was derived and created.

THE PREMISES CONSIDERED complainant further prays that this Honorable Court will adjudge and determine that the defendants have no valid or enforceable claim, title or demand as to or against the property of this complainant, described in this bill and that the Court will decree that the defendants be forever barred from all claim to any estate, title, claim or interest in said property that the court finds to be unjust or without right.

Complainant Complainant further prays for such other, further or different relief as he may show himself entitled in the premises.


SOLICITOR FOR COMPLAINANT.

FOOT NOTE.

The defendants are required to answer each and every paragraph of the foregoing bill of complaint, but not under oath, oath being hereby expressly waived.


SOLICITOR FOR COMPLAINANT.

The defendant Farmers & Merchants Bank is in Foley and can be served on its officers there.

The defendant Albert W. Keller is a resident of Foley, Alabama.

E. G. CALDWELL,
Complainant,

vs.

SUNNY SOUTH DEVELOPING
COMPANY, a corporation,
FARMERS & MERCHANTS BANK,
a corporation, as Trustee,
ALBERT W. KELLER and CARRIE
S. TUTTLE,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Come the defendants, Sunny South Developing Company, a corporation, Farmers & Merchants Bank, a corporation, as Trustee, Albert W. Keller and Carrie S. Tuttle, in the above styled cause, separately and severally, and demur to complainant's bill of complaint as amended April 23, 1937, and as grounds of demurrer say:

1st. There is no equity in the bill of complaint as amended.

2nd. Said bill of complaint does not allege that the taxes were not paid on the said lands for the year or years for which the said sale was made.

3rd. Said bill of complaint does not allege that the said lands were lawfully assessed to the Sunny South Development Company.

4th. Said bill of complaint does not allege that the lands were subject to taxation for the years for which they were sold to the Sunny South Development Company.

5th. Said bill of complaint does not allege that due and proper notice of the delinquency in the payment of the taxes for which the same were sold was given to the person against whom the said lands were assessed at the time and in the manner required by law.

6th. Said bill of complaint does not allege that report of delinquency was made at the time and in the manner required by the Judge of Probate.

7th. Said bill of complaint does not allege that no-

tice was given by the Judge of Probate in the manner and within the time required by law of the pendency of any proceedings before his court for the sale of the said lands for the non-payment of taxes.

8th. Said bill of complaint does not allege that any valid decree of the Probate Court was ever rendered authorizing and directing the sale of the said lands for the payment of taxes.

9th. Said bill of complaint does not allege that due and proper notice of the sale of the said lands was given as required by law.

10th. Said bill of complaint does not allege that a sale of the said lands for unpaid taxes was made within the time, at the place and in the manner required by law.

11th. Said bill of complaint does not allege that a due and proper certificate of such sale was issued and delivered to the person, in the manner and within the time required by law.

12th. Said bill of complaint does not allege that the State Auditor transmitted to the Tax Assessor of Baldwin County, Alabama, by the first day of August, 1928, a descriptive list of the lands in the County reported to him as bid in for the State during that year, including the lands described in the bill of complaint and not redeemed, and that the Assessor presented such descriptive list to the County Tax Assessor, and that the County Tax Assessor compared such list with the records of sales of land for taxes in the County and the redemption thereof, and that he put a fair valuation on the said lands and endorsed such valuation with the calculations of the taxes on such descriptive list and returned the same to the State Auditor, and that the State Auditor added the amount of the taxes so assessed on such valuation to the amount for which the lands were sold, and that the Assessor furnished to the Judge of Probate a copy of the list returned to the State Auditor, and that the Judge of Probate entered the taxes thereon calculated on the record of the sale thereof copied in his office.

13th. Said bill of complaint does not allege that the Tax Collector of Baldwin County for the year for which the said

lands were sold procured a substantially bound book and entered therein, in the manner usual in docketing causes for trial in the Circuit Court, the real estate described in the said bill of complaint, showing the person against whom the taxes were assessed and that the taxes were not paid, and the amount of the unpaid taxes, fees and penalties due from such person, specifying the amount due the State, the County and the Special Tax Districts.

14th. Said bill of complaint does not allege that a properly bound book showing the delinquency of the taxes on said land, made up as required by law, was delivered to the Judge of Probate before the first day of March, 1928.

15th. Said bill of complaint does not allege that the Probate Judge, upon receipt of the list of delinquent tax payers and of real estate upon which taxes are due, gave notice of such delinquency in the manner required by law.

16th. Said bill of complaint does not allege that the notice of the Probate Judge of delinquency in the payment of taxes on the lands described in the bill of complaint was served by the Tax Collector or his deputy upon the person to whom the said lands were assessed by delivering a copy of the same to such person or by leaving a copy of the same at his place of residence.

17th. Said complaint does not allege that return of notice of delinquency served upon the person against whom the taxes were assessed on the lands described in the bill of complaint was made by the Tax Collector with his endorsement thereon, showing when and how same was served, or showing his reason for not serving the same.

18th. Said bill of complaint does not allege that notice of delinquency as required by law was served upon the person against whom the taxes on the said lands were assessed was served ten (10) days before the commencement of the term to which the same was returnable, or that the cause stood for trial and was tried at the succeeding term thereof.

19th. Said bill of complaint does not allege that notice

of the intended sale by the Tax Collector of the said lands for taxes was given by the Tax Assessor in the manner required by law thirty (30) days after the end of the term of the Probate Court, at which a decree of sale for the said lands was made.

20th. Said bill of complaint does not allege that the person to whom the said lands were assessed for taxes was served in the manner and within the time required by law with notice of the application of the Tax Collector for a decree authorizing the sale of the said lands.

21st. Said bill of complaint does not allege that immediately at the end of the term of court at which the decree ordering the sale of the said lands for the payment of taxes was rendered, the Tax Collector proceeded to enforce such decree by a sale of the real estate ordered to be sold, and that he gave notice for thirty (30) days before the date of the sale by publication for three (3) successive weeks in some newspaper published in Baldwin County, Alabama, or at least three (3) weeks before the date of the sale posted a notice at the court house of Baldwin County, Alabama, and at some public place in the precinct in which the real estate is situated, that at the time specified therein he would proceed to sell such real estate.

22nd. Said bill of complaint does not allege that the State Tax Commission, before making a sale of the lands to the complainant, gave notice of his application to purchase to the person against whom the property was assessed for taxes or to any person having an interest therein as required by law.

23rd. Said bill of complaint does not allege facts showing that he holds title to said property under a valid assessment and sale of the said property.

24th. Said bill of complaint does not allege facts showing compliance by the Tax Collector and by the Probate Court with the statutes made and provided for the assessment and sale of property for taxes.

25th. Said bill of complaint does not allege facts

showing a valid sale of the said property to the complainant by the State Tax Commission.

Dube, Hall & Dube
Attorneys for Defendants.

E. G. CALDWELL,

Complainant,

-vs-

SUNNY SOUTH DEVELOPMENT COMPANY,
a corporation, FARMERS and MERCHANTS
BANK, a corporation, as trustee
ALBERT W. KELLER, CARRIE S. TUTTLE,
and UNKNOWN PARTIES HOLDING BONDS
ISSUED BY THE STATE BANK OF FOLEY
AS TRUSTEE IN A MORTGAGE GIVEN BY
THE SUNNY SOUTH DEVELOPMENT COMPANY


Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY # 286

LIS PENDENS NOTICE.

Notice is hereby given that E. G. CALDWELL as complainant has filed a bill to quiet title against the SUNNY SOUTH DEVELOPMENT COMPANY, a corporation, FARMERS and MERCHANTS BANK, a corporation, as trustee, CARRIE S. TUTTLE, ALBERT W. KELLER and UNKNOWN PARTIES HOLDING BONDS ISSUED BY THE STATE BANK OF FOLEY AS TRUSTEE IN A MORTGAGE GIVEN BY THE SUNNY SOUTH DEVELOPMENT COMPANY. SAID SUIT IS in the Circuit Court of Baldwin county, Alabama/and is to enforce the complainant's right to the following described lands in Baldwin county, Alabama.

The South Half and the South Half of the Northeast Quarter and the East Half of the Northwest Quarter of Section Twenty-one, Township Eight South, Range Four East, and Lot Forty in Oak River View according to the map thereof recorded in Map Book One, Page forty.


AS SOLICITOR FOR COMPLAINANT.

E. G. CALDWELL,

Complainant,

VS.

SUNNY SOUTH DEVELOPMENT
COMPANY, a Corporation,
et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

DECREE PRO CONFESSO ON PUBLICATION.

In this cause it appearing to the Register that the Order of Publication heretofore made in this cause was published once a week for four consecutive weeks commencing on the 24th day of December, 1936, in the Foley Onlooker, a newspaper of general circulation published at Foley, in Baldwin County, Alabama (the residences and post office addresses of the officers and agents of the said corporation being unknown); and it now further appearing to the Register that the said Sunny South Development Company, a Corporation has to the date hereof failed to plead, answer or demur to the Bill of Complaint in this cause:

IT IS THEREFORE on motion of the Complainant, Ordered and Decreed by the Register that the said Bill of Complaint be, and it hereby is, in all things taken as confessed against the Sunny South Development Company, a Corporation.

Witness my hand and seal this 21st day of July, 1941.

R. S. Durb

Register.

The State of Alabama,
Baldwin County

Circuit Court of Baldwin County, In Equity

To Any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon Albert W Keller.

~~Secretary~~ Secretary Sunny South Development Co.

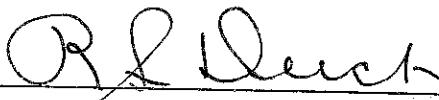
of Baldwin. County, to be and appear before the Judge of the Circuit Court of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by

E G Caldwell.

against said Albert W Keller.

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

WITNESS, Robert S. Duck, Register of said Circuit Court, this 15th day of February. 1937.



Register

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

E. G. CALDWELL,

Complainant,

-vs-

SUNNY SOUTH DEVELOPMENT COMPANY,
a corporation, FARMERS and MERCHANTS
BANK, a corporation, as trustee
ALBERT W. KELLER, CARRIE S. TUTTLE,
and UNKNOWN PARTIES HOLDING BONDS
ISSUED BY THE STATE BANK OF FOLEY
AS TRUSTEE IN A MORTGAGE GIVEN BY
THE SUNNY SOUTH DEVELOPMENT COMPANY

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY # 286

LIS PENDENS NOTICE.

Notice is hereby given that E. G. CALDWELL as complainant has filed a bill to quiet title against the SUNNY SOUTH DEVELOPMENT COMPANY, a corporation, FARMERS and MERCHANTS BANK, a corporation, as trustee, CARRIE S. TUTTLE, ALBERT W. KELLER and UNKNOWN PARTIES HOLDING BONDS ISSUED BY THE STATE BANK OF FOLEY AS TRUSTEE IN A MORTGAGE GIVEN BY THE SUNNY SOUTH DEVELOPMENT COMPANY. Said suit is in the Circuit Court of Baldwin county, Alabama, ^{in Equity} and is to enforce the complainant's right to the following described lands in Baldwin county, Alabama.

The South Half and the South Half of the Northeast Quarter and the East Half of the Northwest Quarter of Section Twenty-one, Township Eight South, Range Four East, and Lot Forty in Oak River View according to the map thereof recorded in Map Book One, Page forty.


AS SOLICITOR FOR COMPLAINANT.

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

To Any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon Sunny South Development Company,
a corporation, Farmers & Merchants Bank as Trustee and Albert W.
Keller,

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 Sum-
mons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by

E. G. Caldwell

against said Sunny South Development Company, a Corporation, Farmers
& Merchants Bank, as Trustee and Albert W. Keller, 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, Robert S. Duck, Register of said Circuit Court, this 21st day
of December 1936

R. S. Duck Register

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

The State Of Alabama }
Baldwin County }

Circuit Court of Baldwin County, In Equity.

To Any Sheriff of the State of Alabama—GREETINGS:

WE COMMAND YOU, That you summon SUNNY SOUTH DEVELOPMENT COMPANY, A Corporation, Farmers & Merchants Bank as Trustee, and Albert W. Keller,

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 E. G. CALDWELL

against said SUNNY SOUTH DEVELOPMENT COMPANY, a Corporation, FARMERS & MERCHANTS BANK, as Trustee, and ALBERT W. KELLER, 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, R. S. Duck, Register of said Circuit Court, this 21st day of December, 1936, 1104

R. S. DUCK, Register

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

The State of Alabama, {
BALDWIN COUNTY

CIRCUIT COURT. (Equity)

Term, 194

E. J. Caldwell
No. *254* vs. *James Bennett*
et al

BILL OF COSTS

REGISTER'S FEES	AMOUNT	SHERIFF'S FEES:	AMOUNT
Fees in Circuit Court—		Summoning on Bill, Each Defendant.....	1.50
Docketing Cause, One fee only of.....	1.00	Executing Writ of Injunction, or Ne Exeat, each..	1.50
Issuing Summons on Bill, each.....	.50*	Executing Subpoenas for Witnesses, each.....	.65
Issuing Copies Thereof, each.....	.40	Executing Writs of Possession, each.....	5.00
Entering Return of Same, each.....	.15	Executing Scire Facias or Notice, each.....	1.50
Orders of Publication to Non-Residents, each.....	1.00*	Taking and Approving Bonds, each.....	1.00
Filing Bill or Other Paper, each.....	.10	Impanelling Jury.....	.75
Copies of Same, Per 100 Words.....	.15	Collecting Execution for Costs Only, each.....	1.50
Entering Appearances, each.....	.25*	Sheriff's Commissions.....	
Issuing Writs of Injunction, Ne Exeat, each.....	1.50		
Issuing Copies Thereof, each.....	.50		
Entering Return of Same, each.....	.15		
Decrees Pro Confesso, each.....	1.00*	Total Sheriff's Fees.....	1.50
Order Appointing Guardian Ad Litem, each.....	1.00*		
Issuing Commissions to Take Testimony, each.....	.50		
Taking Testimony, Per Day.....	1.50	SUMMARY OF FEES, COSTS, AND JUDGMENT	
Taking Testimony, Per 100 words.....	.20	Fees in Circuit Court—	
Receiving and Filing Depositions, each pkg.,.....	.10	Register's Fees.....	43.85
Indorsing Depositions Published, each pkg.....	.10	Ex-Register's Fees.....	
All Entries on Commission Docket, Each Cause.....	.50	Sheriff's Fees.....	1.50
Entering Order Submitting Cases for Decree, each.....	.50	Ex-Sheriff's Fees.....	
Other Orders of Court, each.....	.25	Witness Fees.....	
Noting Testimony on Hearing of Cause, each.....	.50	Commissioner's Fees.....	
Entering Decrees, of 500 Words of Less, each.....	.75	Guardian Ad Litem.....	
Per 100 words over 500.....	.15	Publisher's Fees.....	16.60
Taking Accounts, etc., on Ref., per Day.....	3.00*	Solicitor's Fees.....	
Taking Testimony on Reference Relating to		Court Reporter's Fees, Per Day or fraction thereof	5.00
Trustee, etc., per 100 words.....	.15	Trial Tax.....	3.00
Reference and Reports, each.....	2.00*		
Reports of 500 Words or Less.....	2.50		
Per 100 Words over 500.....	.15		
Issuing Subpoenas for Witnesses, each.....	.25		
Issuing Witness Certificates, each.....	.25		
All Entries on Subpoena Docket, each Cause.....	.50	Fees and Costs in Inferior Court:	
Taking and Approving Bonds, each.....	1.00	Clerk of Inferior Court Fees.....	
Making Complete Record, per 100 Words.....	.15	Sheriff's Fees.....	
Hearing, etc., Regarding Appointment of Re-		Witness Fees.....	1.35
ceiver or Trustee.....	3.00	<i>James Bennett</i>	1.35
Settlements with Receiver or Trustee, each.....	3.00	<i>et al</i>	
Examining Vouchers in Settlements, each.....	.10	Total Fees and Costs in Inferior Court.....	2.70
Examining Answers on Exceptions, each Answer.....	3.00		
Removal Disabilities on Non-Age.....			
Commissions on Sales.....			
Making Deeds to Property Sold, each.....	2.00		
Receiving and Paying Out Money Other Than			
That Arising from Sales.....			
Certificates or Affidavits, with Seal, each.....	.50		
Certificates or Affidavits without Seal, each.....	.25		
Issuing Scire Facias or other Notice, each.....	.50		
Other Orders of Register, except Cont., each.....	.50		
Entering Certificates of Supreme Court, each.....	.50		
Transcript for Supreme Court, per 100 words, each.....	.15		
Additional Copies, per 100 words.....	.05		
Appeal Bond, each.....	1.00		
Certificate of Appeal, each.....	.50		
Notice of Appeal, each.....	.50		
Report to State Board of Health, each case.....	.50		
Certificate of Judgment, each.....	.25		
Issuing Executions, each.....	.75		
Entering Returns Thereof, each.....	.15		
Total Register's Fees.....	8.00		
	3.00		
	13.50		

43.85
1.50
3.00
1.35
1.35
51.05

135
135
2.70

43.85
1.50
42.80

E. G. CALDWELL,)	
	{	
Complainant,)	IN THE CIRCUIT COURT OF
VS.	(BALDWIN COUNTY, ALABAMA.
)	
SUNNY SOUTH DEVELOPMENT	(IN EQUITY. NO. 286.
COMPANY, A CORPORATION,)	
FARMERS & MERCHANTS BANK,	(
A CORPORATION, AS TRUSTEE,)	
ALBERT W. KELLER, CARRIE S.	(
TUTTLE, ET AL.,)	
Respondents.	(
)	

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

BILL QUIA TIMET.

COMES the Complainant, E. G. CALDWELL, and shows by this his Bill of Complaint, the following facts as a basis for the relief hereinafter prayed against the defendants, Sunny South Development Company, a Corporation, Farmers & Merchants Bank, a corporation, as trustee of two mortgages issued by the Sunny South Development Company, Albert W. Keller, Carrie S. Tuttle and the unknown parties holding bonds issued by the State Bank of Foley, as trustee in a Mortgage given by the Sunny South Development Company.

FIRST: The complainant is the owner and is in peaceful possession of the following described lands in Baldwin County, Alabama.

The South half and the South half of the Northeast quarter and the East half of the Northwest quarter of Section Twenty-one, Township Eight South, Range Four East, and Lot number Forty in Oak River View according to the map thereof recorded in Map Book One, Page Forty.

SECOND: That the defendants, Sunny South Development Company, Farmers & Merchants Bank, as trustee, Albert W. Keller, Carry S. Tuttle, and the unknown parties holding bonds issued by the State Bank of Foley as trustee in a mortgage given by the Sunny South Development Company, whose names and residences are to this complainant unknown after making diligent search and inquiry, unjustly claim some title or interest in the complainant's property above described, but there is no suit pending to enforce or test the validity of the defendants' claim or title and this complainant seeks that this Honorable Court require the defendants to show the nature and extent of their title or claim if they have any so that it may be adjudged and determined by this Court.

WHEREFORE Complainant prays that a subpoena issue against the defendants, Farmers and Merchants Bank and Albert W. Keller and that publication be had against the defendants Sunny South

Development Company, Carrie S. Tuttle, and the unknown parties holding bonds issued by the State Bank of Foley, as trustee in a Mortgage given by the Sunny South development Company, and require all of these defendants to appear, plead, answer or demur and set forth and specify their title, claim, interest or incumbrance to the lands described herein and how and by what instrument the same was derived and created.

THE PREMISES CONSIDERED complainant further prays that this Honorable Court will adjudge and determin that the defendants have no valid or enforcable claim, title or demand as to or against the property of this complainant, described in this bill and that the Court will decree that the defendants be forever barred from all claim to any estate, title, claim or interest in said property that the court finds to be unjust or without right.

Complainant further prays for such other, further or different relief as he may show himself entitled in the premises/

E. G. RICKARBY, JR.,
Solicitor for Complainant.

FOOT NOTE:-

The defendants are required to answer each and every paragraph of the foregoing Bill of Complaint, but not under oath, oath being hereby expressly waived.

E. G. RICKARBY, JR.,
Solicitor for Complainant.

.....

I, R. S. Duck, Register of the Circuit Court of Baldwin County, Alabama, in Equity, hereby certify that the above and foregoing is a true and correct copy of the Bill of Complaint filed in the above cause, as the same appears of record in Final Record Number 6, at page- 562.

Witness my hand this 23rd day of July, 1941.

R. S. Duck
R. S. Duck, Register.

(COPY)

AFFIDAVIT FOR PUBLICATION.

STATE OF ALABAMA, }
 } Ss.
COUNTY OF BALDWIN. }

Before me, the undersigned Notary Public in and for Baldwin County, Alabama personally appeared E. G. Caldwell known to me to be the complainant herein who being by me first duly sworn, says on oath:

That the Sunny South Development Company is a domestic corporation and that the president, secretary, cashier and managing agent thereof are absent from the State of Alabama, and that in the belief of this affiant there is no person in the employ of such corporation doing business for it in the State and that said corporation is inactive and has no officers or employees.

That Carrie S. Tyttle is a non-resident of the State of Alabama and over the age of twenty-one years and that her residence is 3428 South Oak Park Avenue, Berwyn, Illinois.

That affiant does not know and has been unable to ascertain after making diligent inquiry the names and residences of the parties holding bonds issued by the State Bank of Foley as trustee in a mortgage given by the Sunny South Development Company, but affiant believes them to be over the age of twenty-one years.

E. G. CALDWELL.

Affiant.

Subscribed and sworn to before me
this the 18 day of December, 1936.

E. G. RICKARBY, JR., Notary
Public, Baldwin County, Alabama.

(SEAL)

::::::::::::

I, R. S. Duck, Register of the Circuit Court of Baldwin County, Alabama, in Equity, hereby certify that the above and foregoing is a true and correct copy of the Affidavit for Publication filed in the above cause, on the 19th day of December, 1936, as the same appears on record in Final Record Number 6, at page 563.

R. S. Duck
R. S. Duck, Register.

NOTICE TO NON-RESIDENTS

E. G. Caldwell,
Complainant,
vs.

Sunny South Development Com-
pany, a corporation; Farmers &
Merchants Bank, a corporation, as
Trustee; Albert W. Keller, Carrie
S. Tuttle and unknown parties
holding bonds issued by the State
Bank of Foley as Trustee in a
mortgage given by the Sunny South
Development Company,

In
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c
s
Don Eicher,
C. E. Hankins
A. B. Hankins
M. H. Grimes
H. O. Johnson
Otto Harms,
of Robt
Charles R. We
Al

AFFIDAVIT OF PUBLICATION

I, Frank V. Barchard

Editor of The Onlooker, published at
Foley, Ala., do solemnly swear that a copy of the above notice,
as per clipping attached, was published once each week in the
regular and entire edition of said newspaper, and not in any
supplement thereof, for 4 consecutive weeks, com-
mencing with the issue dated Dec. 24, 1936, and
ending with the issue dated Jan. 14, 1937.

Frank V. Barchard

Subscribed and sworn to before me this 20 day
of January, 1937

My Commission Expires Oct. 19, 1939

[Signature]
Notary Public

Serve On _____

Circuit Court of Baldwin County

IN EQUITY

No. _____

Summons

vs.

Solicitor for Complainant

Recorded in Vol. _____ Page _____

**THE STATE OF ALABAMA,
Baldwin County**

Received in office this _____

day of _____, 194 _____

Sheriff.

Executed this _____ 31st _____ day of

December, 1936, ~~1934~~

by leaving a copy of the Summons with

E. Frank Sanders, Cashier of
Farmers & Merchants Bank, Albert
W. Keller,

Defendant s

M. H. WILKINS

Sheriff

JOHN R. DAVIS

Deputy Sheriff

Summons sent to Carrie S. Tuttle
by Registered mail, with copy of
Bill, Delivered 12-24-36; return
receipt filed 12-28-36.

R. S. DUCK,
Register.

I, R. S. Duck, Register of the Circuit Court, in Equity,
of Baldwin County, Alabama, hereby certify that the within and fore-
going is a true and correct copy of the Summons in this cause, as
the same appears of record in Equity Final Record No. 6, at page
561-562.

R. S. Duck
R. S. DUCK, Register.

State of Alabama,
Southern County.

Probate Court
DEC 21 1936

I filed in office this _____ day of _____

at _____

and duly recorded

at _____ as page _____

and I certify that _____

has and is _____

being held as provided by law.

Judge of Probate

By _____

CLK.

E. S. Caldwell
Clerk

as

Sumner Smith

Development Council
a corporation with
off.

For the Circuit

Court of Alabama

Alabama

Am against

has pending with

W. H. ...
Secretary for Bank

RS Clerk

30

RECORDED
7-33

27

Serve on Edna W Keller
~~the County of Baldwin~~
Circuit Court of Baldwin County
IN EQUITY

No. _____
SUMMONS

E W Caldwell

vs.
Henry Leitch Duff

THE STATE OF ALABAMA,
BALDWIN COUNTY

Received in office this _____

day of _____, 193

SHERIFF

Executed this 27th day of
July 1937

by leaving a copy of the within Summons with

Albert W Keller

vs.
Henry Leitch Duff
Defendant

W H Suckman

Sheriff

By John R Davis
Deputy Sheriff

E W Richardson
Solicitor for Complainant

286

Book
RECORDED

4-277

LIS PENDENS NOTICE

filed Dec. 19, 1936

G. J. Duck, Register

Recd
RECORDED
6-561

H. P. [Signature]

Served on

H. P. [Signature]

Circuit Court of Baldwin County
IN EQUITY

No. 286

SUMMONS

H. G. CALDWELL,

Complainant,

vs.

SUNNY SOUTH DEVELOPMENT CO.,

a Corporation,

Respondent.

THE STATE OF ALABAMA,

BALDWIN COUNTY

Received in office this _____

day of _____, 193_____

SHERIFF

Executed this 31st day of

December 1934

by leaving a copy of the within Summons with
*E. Frank Sandlin - Cashier of
Sunny South Merchants Bank*

Albert W. Keller

Defendant

M. H. Williams

Sheriff

By *John R. Harris*

Deputy Sheriff

E. G. RICKAREY

Solicitor for Complainant

Recorded in Vol. _____ Page _____

No. 286.

(COPY)

E. G. CALDWELL,

Complainant,

Vs.

SUNNY SOUTH DEVELOPMENT
COMPANY, ET AL.,

Respondents.

BILL OF COMPLAINT.

(COPY)

E. G. CALDWELL,
Complainant,

VS.

SUNNY SOUTH DEVELOPMENT
COMPANY, A CORP., ET AL.,

Respondents.

AFFIDAVIT FOR PUBLICATION.

Filed December 19, 1936.
R. S. DUCK, Register.

E. G. CALDWELL,

COMPLAINANT,

-vs-

SUNNY SOUTH DEVELOPMENT COMPANY,
a corporation, FAIRMENS and MERCHANTS BANK, a corporation, as trustee
ALBERT W. KELLER, CARRIE S. TUTTLE,
and UNKNOWN PARTIES HOLDING BONDS
ISSUED BY THE STATE BANK OF FOLEY
AS TRUSTEE IN A MORTGAGE GIVEN BY
THE SUNNY SOUTH DEVELOPMENT COMPANY.

DEFENDANTS.

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

AFFIDAVIT FOR PUBLICATION.

STATE OF ALABAMA, :
 : SS.
COUNTY OF BALDWIN.:

Before me the undersigned Notary Public in and for Baldwin county, Alabama personally appeared E. G. CALDWELL known to me to be the complainant herein who being by me first duly sworn, says on oath:

That the SUNNY SOUTH DEVELOPMENT COMPANY is a domestic corporation and that the president, secretary, cashier and managing agent thereof are absent from the state of Alabama and that in the belief of this affiant there is no person in the employ of such corporation doing business for it in the state and that said corporation is inactive and has no officers or employees.

That CARRIE S. TUTTLE is a non-resident of the state of Alabama and over the age of twenty-one years and that her residence is 3426 South Oak Park Avenue, Marwyn, Illinois.

That affiant does not know and has been unable to ascertain after making diligent inquiry the names and residences of the parties holding bonds issued by the State Bank of Foley as trustee in a mortgage given by the Sunny South Development Company, but affiant believes them to be over the age of twenty-one years.

Subscribed and sworn to before me this the 18 day of December 1936

AFFIANT.


NOTARY PUBLIC, BALDWIN COUNTY, ALABAMA.

E. G. CALDWELL,

Complainant,

-vs-

SUNNY SOUTH DEVELOPMENT
COMPANY, a corporation,
FARMERS & MERCHANTS BANK,
a corporation, as Trustee,
ALBERT W. KELLER and CARRIE
S. TUTTLE,

Defendants.

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

COMPLAINANT'S BRIEF AS TO DEMURRERS
TO BILL AS AMENDED.

In this case the equity of the bill having been tested and found sufficient by the court on previous demurrers, the complainant has amended the original bill to meet the requirements of section 3104 which provides:

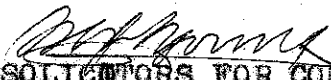
In a suit brought to recover the possession of lands, if either party claims under a tax title he must, in order to entitle himself to the benefits of the three preceding sections, state in his complaint or plea, that he claims or defends, as the case may be, under a tax sale, giving the date of such sale; and such statement shall be a sufficient averment of the facts necessary to entitle him to such benefits.

Now the defendants file demurrers raising the point that the allegation is a general allegation as it does not allege facts showing that the tax title held by us is valid. The law regarding the allegations in a bill to quiet title is most specific and can be found in code section 9906 which provides:

The bill must describe the land with certainty, must allege the possession and ownership of the complainant, and that the defendant claims or is reputed to claim some right, title, or interest in or incumbrance upon such lands, and must call upon him to set forth and specify his claim, interest or incumbrance, and how and by what instrument the same is derived or created.

The law does not require us to allege how we got our title and therefore we need not set out the steps in the proceedings

which show that the tax deed is valid. *This is a matter of proof at the time of submission on the merits.*
We respectfully submit that the demurrers are without merit and should be overruled and the defendant required to answer in time to have the case at issue and testimony taken by Law Day which is the sixteenth day of August, 1937.


SOLICITORS FOR COMPLAINANT.

Copy this day mailed to Mr. W. C. Beebe, Solicitor for demurrant

July 5, 1937.

(COPY)

E. G. CALDWELL,
Complainant,

Vs.

SUNNY SOUTH DEVELOPMENT
CO., A CORP., ET ALS.,

Respondents.

LIS PENDENS NOTICE.

NOTICE is hereby given that E. G. Caldwell, as complainant has filed a bill to quiet title against the Sunny South Development Company, a corporation, Farmers & Merchants Bank, a corporation, as trustee, Carrie S. Tuttle, Albert W. Keller and Unknown Parties holding bonds issued by the State Bank of Foley, as strustee, in a mortgage given by the Sunny South Development Company. Said suit is in the Circuit Court of Baldwin County, Alabama, in Equity, and is to enforce the complainant's right to the following described lands in Baldwin County, Alabama.

The South half and the South half of the Northeast quarter and the East half of the Northwest quarter of Section Twenty-~~one~~^{one}, Township Eight South, Range Four East, and Lot Forty in Oak River View according to the map thereof recorded in Map Book One, page forty.

E. G. RICKARBY, JR.,

As Solicitor for Complainant,

Recorded in Probate Office.

::::::::::::::::::::

I, R. S. Duck, Register of the Circuit Court of Baldwin County, Alabama, hereby certify that the above and foregoing is a true and correct copy of the Lis Pendens notice in the above case, as recorded in Equity Final Record number 6, at page 563.

Witness my hand this 23rd day of July, 1941.

R. S. Duck
R. S. Duck, Register.

E. G. CALDWELL,

Complainant,

-vs-

SUNNY SOUTH DEVELOPMENT COMPANY,
et al,

Respondent and cross complainant,

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

MOTION TO SUBMIT FOR HEARING ON DEMURRERS TO THE CROSS BILL FILED
UNDER CHANCERY RULE SEVENTY-FOUR.

Comes the complainant and hereby gives notice to the
adverse party that he is having the cause set for a hearing on
the demurrers filed against the respondent's cross-bill and that
the same will be heard on the _____ day of _____, 1958
at _____ o'clock in _____, Alabama.

WILLIAM J. YOUNG

AND

E. G. Caldwell
is solicitors for Complainant.

copy

Perkins, Hall & Balle

E. G. CALDWELL,
Complainant,

vs.

SUNNY SOUTH DEVELOPMENT
COMPANY, a Corp., et al.,
Respondents.

MOTION FOR SUBMISSION OF
CAUSE

(COPY)

Filed this 31 day December 1932
R. S. Quaker
Clerk-Register

E. G. RICKARBY, JR.
ATTORNEY AT LAW
POPPE BUILDING
FOLEY, ALABAMA

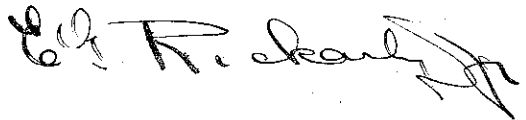
August 3, 1937.

Honorable Robert S. Duck,
Register in Chancery,
Bay Minette, Alabama.

Dear Mr. Duck: In Re; Caldwell v. Sunny South Dev
Co. Et al.

With this I am enclosing motion for leave to
withdraw the amendment that we have heretofore filed
in this cause. Please look over the record and see
if this does not leave our bill as originally filed
and without any amendments. If it does not please
notify me.

Yours very truly,



E/R.

Cc. Messrs Beebe, Hall & Beebe,
Bay Minette, Alabama.

Cc. W. J. Young, Esq.,
Mobile, Alabama.

Enc.

E. G. CALDWELL,

Complainant,

VS.

SUNNY SOUTH DEVELOPMENT
COMPANY, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

This cause coming on to be heard is submitted on demurrer to the Bill of Complaint as amended.

The bill is filed under the statute for quieting titles to land and contains many unnecessary and burdensome allegations concerning complainant's title. The fact that the complainant has assumed these unnecessary burdens does not make his bill demurrable. The case of Vaughan vs. Palmore, 176 Ala. 72; 57 South. 488, is in point.

The Register will enroll the following

DECREE

This cause coming on to be heard is submitted for decree on demurrer to the Bill of Complaint as amended, and upon consideration thereof, I am of the opinion that said demurrer is not well taken.

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

This 24th., day of July, 1937.



Judge

E. G. CALDWELL,

COMPLAINANT,

-vs-

SUNNY SOUTH DEVELOPMENT COMPANY,
a corporation, FARMERS and MERCH-
ANTS BANK, a corporation, as trustee
ALBERT W. KELLER, CARRIE S. TUTTLE,
and UNKNOWN PARTIES HOLDING BONDS
ISSUED BY THE STATE BANK OF FOLEY
AS TRUSTEE IN A MORTGAGE GIVEN BY
THE SUNNY SOUTH DEVELOPMENT COMPANY,

DEFENDANTS.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY # _____

AFFIDAVIT FOR PUBLICATION.

STATE OF ALABAMA, :
 : ss.
COUNTY OF BALDWIN, :

Before me the undersigned Notary Public in and for
Baldwin county, Alabama personally appeared E. G. CALDWELL known
to me to be the complainant herein who being by me first duly
sworn, says on oath:

That the SUNNY SOUTH DEVELOPMENT COMPANY is a do-
mestic corporation and that the president, secretary, cashier
and managing agent thereof are absent from the state of Alabama
and that in the belief of this affiant there is no person in the
employ of such corporation doing business for it in the state
and that said corporation is inactive and has no officers or
employees,

That CARRIE S. TUTTLE is a non-resident of the state
of Alabama and over the age of twenty-one years and that her res-
idence is 3428 South Oak Park Avenue, Berwyn, Illinois.

That affiant does not know and has been unable to
ascertain after making diligent inquiry the names and residences
of the parties holding bonds issued by the State Bank of Foley
as trustee in a mortgage given by the Sunny South Development
Company, but affiant believes them to be over the age of twenty-
one years.

Subscribed and sworn to before
me this the 18th day of November 1937

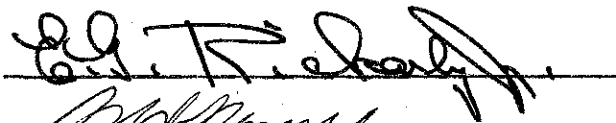
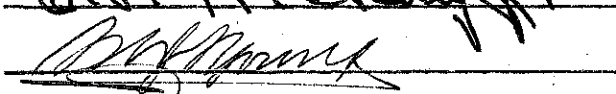
E. G. Caldwell
AFFIANT.

E. G. Tickers
NOTARY PUBLIC, BALDWIN COUNTY, ALABAMA.

E. G. CALDWELL, Complainant	*	In the Circuit Court of Baldwin
	*	
Vs.	*	County, Alabama, IN EQUITY.
	*	
SUNNY SOUTH DEVELOPMENT COM- PANY, et. al., Respondents	*	CASE No.
	*	

Comes the complainant, E. G. CALDWELL and moves the court for leave to amend his original bill of complaint filed in this cause by adding thereto paragraph number three, as follows:

"THIRD. Complainant claims and defends his right to the lands described in this bill of complaint and the possession thereof under a tax sale made on to-wit, the 28th day of May, 1928, wherein said lands were bid in by the State of Alabama. Complainant avers that said lands not having been redeemed by the Sunny South Development Company, in whose name they were assessed at the time of said sale, or by any other person having an interest in said lands within the time allowed by law, and after the expiration of the period within which said lands could have been redeemed, he made application to the State Tax Commission of the State of Alabama to purchase said lands from the State of Alabama, under Sections 3120 to 3123 inclusive of the Code of Alabama of 1923; that after notice of his said application had been given as required by law, and the time fixed in said notice for the owner, or any one having an interest in the lands, to redeem the same, had expired, complainant purchased said lands at the price fixed by the State Auditor, or State Tax Commission of the State of Alabama, and immediately upon procuring a deed conveying to him said lands, he entered upon and took possession of the same, erecting thereon valuable improvements consisting of a dwelling and other necessary outbuildings to be used in connection therewith, at a cost of to-wit, the sum of \$4102.24, and since the completion of said dwelling and other buildings ~~has~~ so erected on said lands, has been occupying the same as his home, and was so occupying said lands and improvements, claiming them as his own, at the time of the commencement of the proceedings in this cause"



 Solicitors for complainant,

E. G. CALDWELL,

Complainant,

VS.

SUNNY SOUTH DEVELOPMENT
COMPANY, a Corporation,
et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

MOTION FOR DECREE PRO CONFESSO ON PUBLICATION.

Motion is hereby made for a Decree Pro Confesso against the Sunny South Development Company, a domestic corporation other than a railroad corporation whose officers and managing agents are absent from the State of Alabama, and which has no person in its employ or doing business for it in this state which may be served with legal process, on the ground that service was had against the said corporation in the manner provided by law by publication of the Order of Publication issued by this Court in this cause which said order was published once a week for four consecutive weeks in the Foley Onlooker, a newspaper of general circulation published at Foley, in Baldwin County, Alabama, which said notice appeared in the issues of said paper of December 24, 1936, December 31, 1936, January 7, 1937 and January 14, 1937, and more than thirty days have expired since the completion of the said publication and the said Defendant has failed to plead, answer or demur to the Bill of Complaint filed against it in this cause to the date hereof.

Dated this 18th day of July, 1941.

J. B. Blackburn
Solicitor for Complainant.

E C Colwell,
Complainant

v
Sunny South Development Co

Circuit Court
Beebe in County
In Equity.

Come the defendants in the above styled
Cause and answering the complaint therein

1. They deny that complainant is in the
peaceable possession of the lands described
in the complaint, and say that the said
lands are in the possession of the defendant
Sunny South Development Co.

2. That the said lands are owned by the Sunny
South Development Co by means conveyed
from the United States Government; that the
Farmers & Merchants Bank holds a lien
to it by virtue of a mortgage executed
to secure notes or bonds given by defendants
Albert W Keller, Carrie D Tuttle and others.

3. That the complainant holds a tax title
on said property; that no notice of such
tax sale or title has ever been given
to defendant Farmers & Merchants
Bank, trustee, the holder of said mortgage
and that it has a right to redeem said
lands from said tax sale.

4. ~~Complainant~~ Defendant Farmers & Merchants
Bank as trustee, Albert W Keller and Carrie
D Tuttle alleged that they are ready, able and
willing to redeem said lands and
pray they may be permitted to do so and
offer to do and perform whatsoever the
Court shall require

Beebe Hall & Deely
attys.

E. G. CALDWELL, Complainant

Vs.

SUNNY SOUTH DEVELOPMENT COM-
PANY, et. al., Respondents

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

Comes the complainant, E.G.CALDWELL, and moves the Court to strike the following clause out of the answer heretofore filed by the respondents:

Paragraph number three - "that no notice of such tax sale or title has ever been given to defendant, Farmers & Merchants Bank, as trustee, the holder of said mortgage and that it has a right to redeem said lands from said tax sale"

and as grounds for said motion says - that the same is irrelevant

E. G. Rickaby, Jr.

M. Young

Solicitors for complainant,

E. G. CALDWELL,

Complainant,

VS.

SUNNY SOUTH DEVELOPMENT CO.,
A CORPORATION, ET AL.,

Respondents.

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

)
)
) IN EQUITY.
)
)

This cause coming on to be heard is submitted for decree on demurrer to the bill of complaint, and, upon a consideration thereof, the Court is of the opinion that said demurrer is not well taken, and should be overruled.

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

The Respondents herein are allowed thirty days from the date of the filing of this decree within which to answer said bill of complaint.

Done at Monroeville, Alabama, this the 22nd. day of February, 1937.

F. W. Hare

JUDGE.

E. G. CALDWELL,

Complainant,

vs.

SUNNY SOUTH DEVELOPMENT COMPANY, et al,
a Corporation,

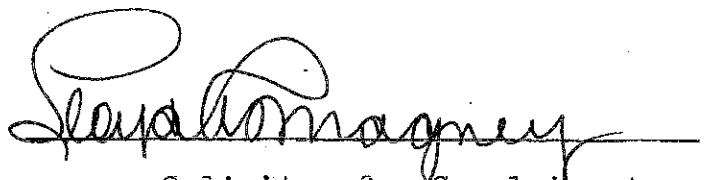
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

DEMURRER

Come now the defendants, Farmers & Merchants Bank of Foley, as trustee, and Albert W. Keller and demur to the Bill of Complaint and to each and every count thereof separately and severally and as ground for such demurrer say:

There is no equity in the Bill.


Solicitor for Complainant

TO THE HONORABLE J. W. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN SPITE.

QUIA TIMET.

Comes the Complainant E. G. GIBSON, and shows by this his bill of complaint, the following facts as a basis for the relief hereinafter prayed against the defendants, SUNNY SOUTH DEVELOPMENT COMPANY, a corporation, FARMERS and MERCHANTS BANK, a corporation, as trustee of two mortgages issued by the Sunny South Development Company, ALBERT W. HOLLIER, GARRIE H. TUTTLE and the unknown PARTIES HOLDING BONDS ISSUED BY THE STATE BANK OF MOBILE AS TRUSTEE IN A MORTGAGE GIVEN BY THE SUNNY SOUTH DEVELOPMENT COMPANY.

FIRST: The complainant is the owner and is in peace-
full possession of the following described lands in Baldwin county,
Alabama.

The South Half and the South Half of the Northeast
Quarter and the East Half of the Northwest Quarter
of Section Twenty-one, Township Eight South, Range
Four East, and Lot number Forty in Oak River View
according to the map thereof recorded in Map Book
One, Page Forty.

SECOND: That the defendants, SUNNY SOUTH DEVELOPMENT
COMPANY, FARMERS and MERCHANTS BANK as trustee, ALBERT W. HOLLIER,
GARRIE H. TUTTLE, and the unknown PARTIES HOLDING BONDS ISSUED BY
THE STATE BANK OF MOBILE AS TRUSTEE IN A MORTGAGE GIVEN BY THE SUN-
NY SOUTH DEVELOPMENT COMPANY, whose names and residences are to
this complainant unknown after making diligent search and inquiry,
unjustly claim some title or interest in the complainant's property
above described but there is no suit pending to enforce or test the
validity of the defendants' claim or title and this complainant avers
that this Honorable Court require the defendants to show the nature
and extent of their title or claim if they have- have any so that it
may be adjudged and determined by this Court.

THIRD: The Complainant PRAYS that a subpoena issue against
the defendants, Farmers and Merchants Bank and Albert W. Hollier and
that publication be had against the defendants Sunny South Development
Company, Garrrie H. Tuttle, and the unknown parties holding bonds is-
sued by the State Bank of Mobile, as trustee in a mortgage given by
the Sunny South Development Company, and require all of these defendants
to appear plead answer or demur and set forth and specify their title

claim, interest or incumbrance to the lands described herein
and how and by what instrument the same was derived and created,

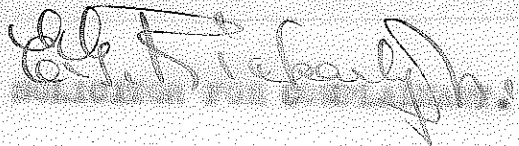
The Plaintiff complains further prays
that this Honorable Court will adjudge and determine that the
defendants have no valid or enforceable claim, title or demand as
to or against the property of this complaint, described in this
bill and that the Court will decree that the defendants be forever
barred from all claim to any estate, title, claim or interest in
said property that the court finds to be unjust or without right.

Complainant further prays for such other, further
or different relief as he may hereinafter entitle in the premises.



FOR BILL.

The defendants are required to answer each and every
paragraph of the foregoing bill of complaint, but not under oath,
oath being hereby expressly waived.



The defendant Farmers & Merchants
Bank is in Foley and can be served
on its officers there.

The defendant Albert W. Heller is
a resident of Foley, Alaska.

E. G. CALDWELL,

COMPLAINANT,

vs

SUNNY SOUTH DEVELOPMENT COMPANY,
a corporation, FARMERS and MERCHANTS
BANK, a corporation, ALBERT W. KELLAN,
CARRIE S. TUTTLE

RECORDED
INDEXED
292

Deere and Lemmer

Filed July 26 1937

R. Deere & Co.
Des Moines

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RECORDED

7-279

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AFFIDAVIT OF PUBLICATION

Filed Dec. 19, 1936

G. S. Sweet, Register

RECORDED
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7-110

Amendments to
Bill of Complaint

filed April 23, 1937.
R. S. Suter, Registrar.

MOTION FOR DECREE PRO CONFESSO
ON PUBLICATION.

E. G. CALDWELL,

Complainant,

VS.

SUNNY SOUTH DEVELOPMENT COMPANY,
a Corporation, et als,

Respondents.

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

Filed July 18, 1941
R. S. Buck, Plaintiff

#286

RECORDED
Ducks
7-63

E.C. Caldwell

NY

Sammy Southwell
opulent Co

Answer

File March 26, 1937

R. B. Duck,

Register

Madison
RECORDED
2/14

E. G. CALDWELL,
Complainant

Vs

SMYNN SOUTH DEVELOPMENT CO., et.al

MOTION TO STRIKE PART OF ANSWER
OF DEFENDANTS.

Filed April 22/1937

Dr. K. B. ...
Dywan

RECORDED
INDEXED
2-251

DECEMBER ON DENVER

Well on
Denver

Filed Jan 23rd 1932
9 February, 1932
R. S. Owen, Register

278 RECORDED
INDEXED

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

E. G. CALDWELL,

Complainant,

vs.

SUNNY SOUTH DEVELOPMENT COMPANY
et al, a Corporation,

Respondents.

DEMURRER

Filed January 23 1937
Dr. Caldwell
Respondent

LLOYD A. MAGNEY
Attorney
Foley, Alabama.

(Answer)

E. G. CALDWELL,

Complainant,

vs.

SUNNY SOUTH DEVELOPING
COMPANY, a corporation,
FARMERS & MERCHANTS BANK,
a corporation, as Trustee,
ALBERT W. KELLER and CARRIE
S. TUTTLE,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

BRIEF OF BEEBE, HALL & BEEBE FOR DEFENDANTS.

This cause is submitted for decree upon demurrers to the bill of complaint as amended.

The bill of complaint as amended alleges that the complainant holds title to the property involved in this suit under a sale of the land for taxes. The allegation is general.

The defendants filed demurrers to the said bill of complaint as amended numbered 1 to 23, raising the question that the bill is insufficient in that it does not allege facts showing that the tax title held by the complainant is valid. The essential steps and proceedings in a sale of lands for taxes are:

1st. A valid assessment of the property.

2nd. A non-payment of the taxes.

3rd. Notice of such delinquency.

4th. Report of the Tax Collector to the Probate Judge

that he was unable to collect the taxes without a sale of the property.

5th. Notice of the proceedings in the Probate Court to sell the property.

6th. A valid decree authorizing and directing the sale.

7th. Due and proper notice of the sale.

8th. Illegal sale and purchase by the State of Alabama.

9th. A valid assessment of the subsequent taxes through the manner authorized by statute.

10th. Compliance with the statutes by the State of Alabama in making a deed to the property.

The burden of averring and proving the regularity in such proceeding rests upon the complainant under a tax title.

78 So., 956;
54 So., 549;
27 So., 482.

The statutory requirements with reference to assessment and sale of property in effect at the time of the sale involved in this case appear in Acts 1919, page 282 et seq. Particular reference is made to Sections 240, 242, 243, 247, 249, 250, 253, 256, 269.

We respectfully submit that the bill of complaint does not meet these requirements, and therefore is subject to the demurrers imposed.

BEEBE, HALL & BEEBE,

By H C Beebe
For Defendants.

Copy mailed E. G. Rickarby, Jr., Solicitor for complainant.

E. G. RICKARBY, JR.
ATTORNEY AT LAW
POPPE BUILDING
FOLEY, ALABAMA

July 6, 1937.

Honorable Robert Duck;
Register in Chancery,
Bay Minette, Alabama.

Dear Sir:- In re; Caldwell v. Sunny South Dev. Co et al.

With this I hand you reply brief in the the demur-
rers to the ammended complaint. I have sent a copy of
this to Messrs Beebe, Ha. & Beebe together with a agree-
ment for submission which I expect that they will hand you
in the next few days.

Yours very truly,



E/R.

BEEBE, HALL & BEEBE
LAWYERS
BAY MINETTE, ALABAMA

W. C. BEEBE
H. M. HALL
J. P. BEEBE

January 17, 1938.

Hon. F. W. Hare,
Monroeville, Alabama.

Dear Judge:-

Enclosed is brief in the case of Caldwell vs.
A. W. Keller et al.

Yours very truly,

BEEBE, HALL & BEEBE,

By

W. C. Beebe

WCB/T
Enc.

E. G. CALDWELL,

Complainant,

vs.

SUNNY SOUTH DEVELOPING
COMPANY, a corporation,
A. W. KELLER, as Trustee,
ALBERT W. KELLER and
CARRIE S. TUTTLE,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

RESPONDENT'S BRIEF SUBMITTED ON DEMURRERS
TO RESPONDENTS' CROSS BILL.

The questions raised by complainant's demurrers to respondents' cross bill are as stated in his brief:

1st. That Section 3109 does not give to respondent, A. W. Keller, as Trustee, the right to redeem.

2nd. That he did not redeem under Sections 3110 and 3111 of the Code of 1923.

3rd. That he did not keep his offer to pay the money by putting the money in court.

Discussing his first objection that Section 3109 does not permit respondent, A. W. Keller, as Trustee, to redeem from complainant in the instant case:

Section 3109 provides that:

"Real estate sold for taxes and purchased by the State may be redeemed at any time before the title passes out of the State, or if purchased by any other purchaser,

may be redeemed at any time within two years from the date of the sale by the owner . . . or by mortgagee . . . If the mortgage or other instrument creating a lien under which the party seeks to redeem is duly recorded at the time of said tax sale, the said party shall, in addition to the time herein specified, have the right to redeem said real estate sold, or any portion thereof, covered by his mortgage or lien, at any time within one year from the date of written notice from the purchaser of his purchase of said lands at tax sale, served upon such party, and notice served upon either the original mortgagee or lien holder, or their transferee of record, or their heirs, personal representatives or assigns, shall be sufficient notice."

The respondent, A. W. Keller, as Trustee, in his cross bill alleges that complainant holds the tax title to said property, having purchased the same from the State, the State having purchased the same under a Tax Collector's sale under an assessment against the Sunny South Developing Company. Respondent and cross complainant further alleges that he holds a mortgage lien on the said property, which mortgage was of record at the time of the sale and which mortgage is still owing and outstanding, and claims a right to redeem the said property. He alleges that he made application to the Probate Judge to redeem the said lands, but that the Probate Judge refused to permit redemption, and he prays this court to permit him to redeem the property from the tax title held by complainant and cross respondent.

Complainant and cross respondent takes the position in his brief that Section 3109, quoted in part above, does not apply to sales of property where the State had purchased the property and in turn sells it to an individual.

For the purposes of these demurrers it is admitted that no notice of the purchase, either by the State or by the complainant and cross respondent, was ever given to respondent and cross complainant, A. W. Keller, as Trustee, or his predecessor in title under the said mortgage. The reading of the statute clearly shows that all of the provisions of this Section apply to sales both where the State becomes a purchaser and where an individual becomes a purchaser at the Tax Collector's sale.

Section 3121 et seq. of the Code relative to a sale of the lands by the State, where the State has purchased the same, clearly shows that the intent of the statute that the purchaser from the State shall acquire only such rights as the State holds, and if the rights that the State holds are subject to a right of redemption, the purchaser from the State acquires the same subject to such right of redemption.

Under Section 3109 the State had acquired the property, and in order to make effective the two-year statute of redemption, the burden was on the State to notify the holder of the mortgage of its purchase. In the instant case, the State failed to do this, and the purchaser (complainant in this case) acquired such property subject to the additional one year period after notice which A. W. Keller, as Trustee, holding a mortgage lien, had to redeem, namely, one year from the time notice was given to him. Having acquired the property subject to this additional time of redemption in the cross complainant, the burden then was upon Caldwell (complainant

in this cause) to give notice to the holder of the mortgage in order to start the one-year provision of Section 3109 to run. This Caldwell has failed to do.

The notice required to be given by the State under Section 3121 is the notice required to be given to the owner of the land and not the notice required by Section 3109 to be given to the mortgagee in order to cut off his right of redemption. But if this section should be construed as the only notice required to be given to the mortgagee, the mortgagee's instrument being of record, the notice should have been given to him. No notice in this case was given even under Section 3121. The original owner of the land, Sunny South Developing Company, was a corporation organized under the laws of the State of Alabama, had a managing officer in this County who was known or could have been easily ascertained both by the State Tax Commission or such officer as shall be required to give such notice. The Farmers & Merchants Bank, who was then the holder of the mortgage under which A. W. Keller seeks to redeem, was a corporation organized and doing business in this County at Foley, a fact well known or easily ascertainable, so that the notice required by Section 3121 was not given in the instant case, as is shown by the pleadings in this case.

See 26 R. C. L., Sections 388, 389, pages 431-433, for a full discussion of the effect of not giving notice where notice is required and also holding that when service is required, diligent inquiry must be made to ascertain the whereabouts of the per-

son to whom notice must be given.

See also 62 So., 696;
42 So., 553.

We do not find that the provision of Section 3109 under consideration has ever been directly construed by our courts. But see 142 So., page 666, in which case a foreign judgment holder attempted to redeem after the two-year period, on the ground that notice had not been given to it. The court denied this foreign judgment holder the right to redeem, on the ground that it was not a judgment creditor, since its judgment had already been reduced to a judgment in this state. This case clearly recognized the right of a mortgagee or judgment creditor under the laws of this State to redeem after the two-year period.

Section 3109 is almost identical with the statutes in Massachusetts, Kansas and Kentucky, which statutes have been construed by the courts of the respective states to give to the mortgagee the additional period provided in Section 3109, and that only the giving of the notice there would start the statute of redemption to run against the holder of a mortgage.

See Faxon vs. Wallace, 98 Mass., page 44;
Hawes vs. Howland, 136 Mass., page 267;
Stone vs. Stone, 165 Mass., page 474;

Each of these cases holds that though the initial period of two years to redeem has lapsed, the mortgagee of record at the time of the tax sale has the additional period to redeem after notice is given, which under the Massachusetts statute was two years.

177 Mass., page 43, also holds that this additional time

to redeem passes to the assignee of the original mortgage.

179 Mass., page 112, holds this statute constitutional.

See also 185 Mass., page 119;
82 Kas., page 518;
86 Kas., page 292;
121 S.W., page 495;
123 S.W., page 328;
121 S.W., page 951.

Missouri and Indiana both have statutes similar to ours and both recognize the position of the cross complainant in this case.

101 Mo., page 625;
54 Ind., page 157.

As to complainant and cross respondent's second point, namely, that the redemption prayed for in this bill can not be exercised in a Court of Chancery, but must be exercised in the manner provided by statute:

See 60 So., page 142, Bains Bros. vs. Walthall, wherein it is held that the remedy given by statute to redeem from tax sale is not exclusive and does not take away the remedy by bill in Chancery.

See also 127 So., page 202;
135 So., page 340;

See also 61 Corpus Juris., page 1250, Section 1700, discussing the time for redemption, wherein it is stated that the right may be exercised at any time within the period provided after required notice is given. See Notes 99, 1, 2 and 3 under this Section.

As to the third question raised by complainant's demurrers and brief, that the cross respondent has not paid the money into court, the cross complainant alleges that the Probate Judge denied

the right of redemption, hence cross complainant was unable to ascertain the amount necessary to redeem. Further he prays this Court to ascertain the amount required to redeem and offers to pay the same, placing himself wholly within the jurisdiction of this Court, and offers to do whatever this Court shall require.

We therefore respectfully submit that the complainant's demurrers to respondent's cross bill are not well taken and should be overruled.

Beebe Hall Beebe
Solicitors for Respondent and
Cross Complainant.

Copy of this brief has been forwarded to Elliott G. Rickarby, Jr., Solicitor for complainant and cross respondent, this the 17 day of January, 1938.

Beebe Hall Beebe
Solicitors for Respondent and
Cross Complainant.

Vaughan T. Palmer, 176 Ala 72, 57 Dec 1882

E. G. CALDWELL,

Complainant,

-vs-

SUNNY SOUTH DEVELOPMENT
COMPANY, a corporation,
FARMERS & MERCHANTS BANK,
a corporation, as Trustee,
ALBERT W. KELLER and CARRIE
S. TUTTLE,

Defendants.

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

COMPLAINANT'S BRIEF AS TO DEMURRERS
TO BILL AS AMENDED.

In this case the equity of the bill having been tested and found sufficient by the court on previous demurrers, the complainant has amended the original bill to meet the requirements of section 3104 which provides:

In a suit brought to recover the possession of lands, if either party claims under a tax title he must, in order to entitle himself to the benefits of the three preceding sections, state in his complaint or plea, that he claims or defends, as the case may be, under a tax sale, giving the date of such sale; and such statement shall be a sufficient averment of the facts necessary to entitle him to such benefits.

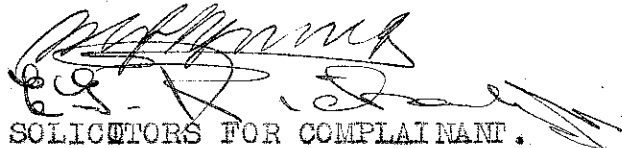
Now the defendants file demurrers raising the point that the allegation is a general allegation as it does not allege facts showing that the tax title held by us is valid. The law regarding the allegations in a bill to quiet title is most specific and can be found in code section 9906 which provides:

The bill must describe the land with certainty, must allege the possession and ownership of the complainant, and that the defendant claims or is reputed to claim some right, title, or interest in or incumbrance upon such lands, and must call upon him to set forth and specify his title, claim, interest or incumbrance, and how and by what instrument the same is derived or created.

The law does not require us to allege how we got our title and therefore we need not set out the steps in the proceedings

which show that the tax deed is valid. *This is the matter of proof at the time of submission on the merits.*

We respectfully submit that the demurrers are without merit and should be overruled and the defendant required to answer in time to have the case at issue and testimony taken by Law Day which is the sixteenth day of August, 1937.


SOLICITORS FOR COMPLAINANT.

Copy this day mailed to Mr. W. C. Beebe, Solicitor for demurrant

July 6, 1937.



E.G. CALDWELL, Complainant,

vs

SUNNY SOUTH DEVELOPMENT COM-
PANY, a corporation; FARMERS
and MERCHANTS BANK, a corpora-
tion, as trustee, et. als.,
Respondents.

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

BRIEF OF COMPLAINANT ON MOTION TO STRIKE
PART OF ANSWER OF RESPONDENTS.

The bill in this case was filed for the purpose of perfecting and quieting the title of complainant to the lands described in the bill of complaint, and contains the statutory jurisdictional averments.

Demurrers were filed to the bill of complaint and were overruled, whereupon an answer was filed on behalf of the defendants, paragraph three of said answer containing the following:

"That the complainant holds a tax title on said property; that no notice of such tax sale or title has ever been given to defendant, Farmers & Merchants Bank, as trustee, the holder of said mortgage and that it has a right to redeem said lands from said tax sale."

The motion under consideration, is to strike the above quoted part of the answer, because it contains irrelevant and immaterial matter.

In support of the motion in question, we submit that the title of complainant to the lands in question, is based upon a purchase by him from the State of Alabama of all of "its rights, title and interest in the lands" which it acquired at tax sale by the failure of the Sunny South Development Company, the

owner of the lands, or the mortgagee (the Farmers & Merchants Bank, as trustee under a mortgage securing certain bonds) or the other defendants (who are bondholders under the deed of trust made to the Bank) to pay the taxes due the State of Alabama for the year 1927, which lands were sold on May 28th, 1928 under a decree of the Probate Court of Baldwin County, Alabama, rendered against the Sunny South Development Company on to-wit, the 16th day of April 1928, and after notice of said tax sale had been given by the Tax Collector of Baldwin County, Alabama, by publication as required by law; there being no bidders for the said property at said tax sale, the said lands were knocked down and bid in by the Tax Collector for the State of Alabama, for the amount of the taxes, penalties, fees and costs of making the sale. The lands described in the bill of complaint, were acquired by the State at the sale above mentioned. Complainant acquired his title from the State by purchase as follows: One parcel on July 24, 1934; one on May 16th 1935, and the other on November 27th, 1935, long after the expiration of the time allowed for redemption, said purchases being made by complainant under the provisions of Sections 3121, et.seq. of the Code of 1923.

Under the Revenue Law of the State, as found in the printed Acts of Alabama for the year 1919, page 449, the State of Alabama had a lien upon all lands assessed against the owners thereof for the taxes for the tax year beginning October 1, 1926, which lien was paramount to all other liens of every character.

Section 416 of said Act, found on page 449, as above, reads as follows:

"From and after the first day of October of each year, when property becomes assessable the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property real or personal assessed to owner unknown which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; and if such property is within the limits of a municipal corporation such municipal corporation shall have a like lien thereon for the payment of the taxes which may be assessed by it. These liens shall be superior to all other liens and shall exist in the order named and each of such liens may be enforced and foreclosed by sale for taxes as provided in this Act, or as other liens upon property are enforced."

In the Act of August 17, 1923, adopting the Code of 1923, there appears in Section 3, the following:

"Section 3, ~~*****~~ 'No statute applying to the revenue laws of this State, or to taxation, **** shall be repealed or affected in any manner by the adoption of this Code or by the failure to incorporate such statutes as a part thereof.'"

Section 416 of the Revenue Code as hereinabove set out, does not appear to have been brought forward into the present Code, hence we call attention of the court to the provisions of the Act adopting the Code as above set forth.

The following Sections of the Code of 1923, are applicable to the case at bar: Sections 3067, 3109, 3110, 3111, which are in words and figures as follows:

"When no personal property can be found out of which the taxes of any delinquent taxpayer can be collected, or an amount insufficient to fully satisfy such taxes, the real estate of such taxpayer, or the real estate upon which such taxes are a lien, shall be sold for payment thereof, or of the balance due thereon, in the manner hereinafter prescribed. But the failure of the Tax Collector to so exhaust such personal property shall not invalidate the sale of any real estate."

Section 3109

"Real estate sold for taxes and purchased by the State may be redeemed at any time before the title passes out of the State, or if purchased by any other purchaser, may be redeemed at any time within two years from the date of the sale by the owner, his heirs or personal representatives, or by any mortgagee or purchaser of such lands, or any part thereof, or by any person having an interest therein, or in any part thereof, legal or equitable, in severalty or as tenant in common, including a judgment creditor, or other creditor having a lien thereon, or any part thereof; and an infant or insane person entitled to redeem at any time before the expiration of two years from the sale may redeem at any time within one year after the removal of his disability; and such redemption may be of any part of the lands so sold, which includes the whole of the interest of the redemptioner. If the mortgage or other instrument creating a lien under which a party seeks to redeem is duly recorded at the time of said tax sale, the said party shall, in addition to the time herein specified, have the right to redeem said real estate sold, or any portion thereof, covered by his mortgage or lien, at any time within one year from the date of written notice from the purchaser of his purchase of said lands at tax sale, served upon such party, and notice served upon either the original mortgagee or lien holder or their transferees of record, or their heirs, personal representatives or assigns, shall be sufficient notice."

Section 3110

"In order to obtain the redemption of land from tax sales, where the same has been sold to the State, the party desiring to make such redemption shall deposit with the Judge of Probate of the county in which the land is situated, the amount of money for which the lands were sold, with interest thereon at the rate of fifteen per cent per annum, from the date of sale, together with the amount of all taxes due on such lands since the date of sale, including the current tax assessing year with interest thereon at the rate of eight per cent per annum from maturity of such taxes, and all costs and fees due to officers as set out in the following Section."

Section 3111

"In order to obtain the redemption of land from tax sales where the same has been sold to another than the State,

the party desiring to make such redemption shall deposit with the judges of probate of the county in which the land is situated the amount of money for which the lands were sold, with interest thereon at the rate of fifteen per cent per annum from the date of sale, together with the amount of all taxes which have been paid by the purchaser, which fact shall be ascertained by consulting the records in the office of the tax collector, with interest on said payments at the rate of eight per cent per annum. If any taxes on said lands have been assessed to the purchaser, and have not been paid, and if said taxes are due, which fact may be ascertained by consulting the tax collector of the county, the probate judge shall also require the party desiring to redeem said land, to pay the tax collector the taxes due on said lands, which have not been paid by the purchaser, before he is entitled to redeem the same. If any taxes have been assessed against said lands and have not been paid by the purchaser because the same are not due, the party seeking to redeem such lands shall deposit the amount of the taxes assessed for the current year with the tax collector, to be by him applied to the payment of such taxes when due, and the purchaser shall thereafter be relieved from any further liability on account of such taxes. In all redemptions of land from tax sales, the party securing the redemption shall pay all costs and fees due to officers and a fee of one dollar to the judge of probate for his services in the matter of such redemption." (The following sections of the Code of 1923 are also applicable :3121,3122,3123, and 3126,viz:
Section 3121

"When application is made to the State auditor by any person to purchase lands in which such persons had no interest, the auditor shall mail a notice in writing to the owner or some person having an interest in such lands, if his place of residence is known, or, if not known, then to the judge of probate of the county in which such lands are situated, informing him that such application has been made and fixing a reasonable time within which such owner or other person having an interest in the lands may redeem the same; the judge of probate shall cause the notice to be posted at the courthouse, and he shall mail a copy of said notice to the owner, if known, to him, and if such lands are not redeemed within the time so fixed, the same shall be sold to the applicant, or any other person desiring to purchase the same, without other or further notice to such owner or person having an interest in the lands, if such lands are redeemed within the time so fixed, the judge of probate must, without delay, report the same to the State auditor, and pay over the redemption money, as required by law.

Section 3122

"When lands have been sold for taxes, and bought in by the State, and after the lapse of two years from such sale, no person entitled thereto has redeemed the same, the State auditor may sell all the right, title and interest of the State in and to such land at the best price obtainable."

Section 3123

"When lands have been sold by the State as provided in Sections 3120 (2322) and 3121 (2324), and the purchase money has been paid, the State auditor, in behalf of the State, shall execute to the purchaser, a deed duly acknowledged, without warranty or covenant of any kind on the part of the State, express or implied, conveying to him all the right, title and interest of the State in and to the lands purchased by him; and such purchaser shall thereafter have all the right, title and interest of the State in and to such lands, and shall be held and treated as the assignee of all the taxes due upon such lands, or for which they were sold, and the penalties, and of all the taxes that should have been, under the law, assessed upon the same, if they had been the property of a private citizen of the State; and he shall be clothed with all the rights, liens, powers and remedies, whether as a plaintiff or defendant, respecting said lands as an individual purchaser at the tax collector's sale would have in similar circumstances; and all such liens and charges as the State had before such sale by the State auditor shall be enforced in favor of such purchaser from him as under the provisions of law relating to individual purchasers at sales by the tax collector. Such purchaser, on failure of his title shall have his lien and charges assessed by the court or by a jury, and may foreclose the same by a proceeding at law in such suit."

Section 3126

"The right to redeem any real estate bid in for the State shall be forfeited, unless such real estate is redeemed within the time prescribed in this chapter; and if not redeemed within the time all the right, title and interest of the owner of such real estate, and of the person whose duty it was to pay the taxes thereon in and to such real estate, shall be transferred to, and absolutely vested in the State."

We assume that the defendant, the Farmers & Merchants Bank, as trustee, claims its right in this case to redeem

under the following provisions of Section 3109 of the Code of 1923, viz:

"If the mortgage or other instrument creating a lien under which a party seeks to redeem is duly recorded at the time of the tax sale, the said party in addition to the time hereinafter specified have the right to redeem said real estate sold, or any portion thereof covered by his mortgage or lien, at any time within one year from the date of written notice from the purchaser of his purchase of said lands at tax sale."

It is apparent that there is a distinction to be made between purchases by the State and those by individuals, at tax sales, as can be gathered from reading Sections 3110 and 3111 of the Code.

We deny that defendants are entitled to any such written notice as above, when the property has been acquired by the State at any sale made to enforce its lien given under Section 416 of the Revenue Act of 1919. We maintain that the words underscored above, refer only to purchases made by individuals who purchase lands at the Tax sale made by the Tax Collector, and that they do not apply to sales made by the State upon an application of disinterested parties to purchase, after the time for redemption has expired. We base this contention upon the fact that the State has a paramount lien upon all property for taxes as provided by said Section 416 of the Revenue Act hereinabove set out; that said Act has never been amended or repealed, and was in full force and effect at the time of the sale of the lands involved in this suit, by the Tax Collector, and likewise at the time of the sale by the State to complainant in this case; that the State was under no obligation to give any notice to the mortgagee or other lien

holder of the fact that it had acquired the property when it enforced its lien for unpaid taxes, and that the only notice to which the defendants were entitled, were such notices as are required to be given under Sections 3121 et seq. when application is made by a third party to purchase, after the time for redemption has expired, which notices we submit were properly given by the State, as required by the Sections 3121, et seq. set out in the early part of this brief.

It is our further contention that the rule of 'Caveat Emptor' is applicable to individuals who purchase lands at tax sales, to the same extent and with the same force and effect as in sales under judicial proceedings or foreclosure sales, and that if such third person becomes a purchaser at tax sale without first having informed himself of the title, the regularity of the proceedings, etc. he must suffer the same consequences, pains and penalties of the law as one who purchases at a judicial or foreclosure sale, and in the event an individual becomes a purchaser at tax sale he must ascertain whether there or any mortgages or liens upon the property, and in such event, the law requires him to give notice to the holder of such mortgage or lien on said property that he had become such purchaser at such tax sale before the right of said mortgage or lien holder to redeem the property, has been precluded.

The answer of the defendant, The Farmers & Merchants Bank, as trustee, in this case, sets up the fact that as trustee it holds a mortgage upon the lands described in the bill of complaint and that as such trustee it has a right at this time to redeem said lands because "no notice of such tax sale has ever

been given to the defendant, the Farmers & Merchants Bank, as trustee, the holder of said mortgage."

It is our contention, and we submit the Bank, as such trustee, was not required to have any further notice of the tax sale by the Tax Collector than the usual publication of the sale of lands belonging to delinquent tax payers of Baldwin County, Alabama, which notice we submit was duly advertised and made by the Tax Collector, in which he fixed the time and place of sale, after a decree of sale had been rendered against the Sunny South Development Company by the Probate Judge of Baldwin County, Alabama for its failure to pay said taxes.

If the defendant Bank refers to the sale made by the State of Alabama to the complainant in this case, then we say that said Bank as trustee, was not entitled to any further notice than that which was required to be given under Section 3121 of the Code of Alabama, which Section we have hereinabove set forth in this brief.

While it is true that Section 3109 of the Code of 1923 (which was and is applicable to tax sales made in 1928) contains the provisions:

"If the mortgage or other instrument creating a lien under which a party seeks to redeem is duly recorded at the time of said tax sale, the said party shall in addition to the time herein specified, have the right to redeem said real estate sold, or any portion thereof, covered by his mortgage or lien at any time within one year from the date of written notice from the purchaser of his purchase of said lands at tax sale, served upon such party."

It is our contention that said above underscored part of said Section is not applicable in the present case, and only

applies to purchases by individuals at tax sales made by the Tax Collector as distinguished from purchasers from the State of Alabama of lands acquired by the State for delinquent taxes, and sold by the State after the time of redemption has expired.

In as much as the Revenue Act of 1919 fixed a lien in favor of the State upon all lands in the State, subject to taxation, paramount to all other liens, of which lien the defendant was charged with notice and knowledge, it became and was the duty of the defendants, the Sunny South Development Company, as well as the Farmers & Merchants Bank and the bondholders, in order to protect their interest in the lands described in this suit, to pay, or see to the payment of the taxes and thereby prevent the enforcement of the lien held by the State, or after sale, had ~~been~~^{been} made, to see that the lands were redeemed from the State and the back taxes and all delinquent taxes paid within the time allowed by law to make such redemption. A failure on their part to take advantage of the rights and opportunities afforded them by the law, did not and does not impose upon the State any duty to notify the "mortgagee" of its acquisition of said property at the sale made by the Tax Collector, or extend their time to redeem said property, and we repeat and respectfully submit, that as defendants, ~~they~~ failed to protect themselves at the time of the sale made by the Tax Collector, they had left only the right to redeem the property within the two years as then allowed by the statute, and failing to so redeem said lands

within that period, they have no further right to make redemption, as under the provisions of Section 3126 of the Code of 1923:

"All the right, title and interest of the owner of such real estate, and of the person whose duty it was to pay the taxes thereon in and to such real estate"

there was 'transferred to, and absolutely vested in the State',
and that under the provisions of Section 3122 of the Code of 1923:

"The State 'after the lapse of two years from such sale, no person entitled thereto having redeemed the same may sell all the right, title and interest of the State in and to such land at the best price obtainable."

Acting under the provisions of Sections 3120 and 3123 inclusive, of the Code of 1923, complainant in the instant case, made application to the State to purchase the lands described in the bill of complaint, and became a purchaser from the State of Alabama, and received conveyances of all of the 'right, title and interest of the State, in and to such land' paying the price fixed by the officials of the State of Alabama.

We repeat that neither of said Sections provide for or require a purchaser from the State of Alabama of its interest in the lands, to give notice to a mortgagee or lien holder of his purchase from the State, after such mortgagee or lien holder has permitted the time to expire within which he could have redeemed said lands.

A careful reading of the provisions of the law upon which the defendants in this case rely, show conclusively, as we submit, that said Sections do not apply to sales made by the

State, but merely to sales made to individuals by the Tax Collector at the time of the tax sale, and that part of said Section has no field of operation to sales made by the State after the statutory period of redemption by the owner, or any one having any interest in the lands, has expired, and the title of the State has become absolute.

May we ask, if they are now in a position to redeem the lands, then why did they not take advantage of that right when the State gave notice of complainant's application to purchase? They had a reasonable time after the date of the notice of complainant's application to protect themselves, and if they did not take heed of such notice at that time, they should not now be permitted to complain.

The defendants in this case having failed to protect themselves as they were permitted to do under the statutory law of this State, any attempt to inject into this case an immaterial issue, i. e., that no notice was given by the purchaser at tax sale of his tax purchase, and hence they should now be permitted to come in and redeem.

We respectfully submit that the averment or allegation of the answer which we have moved to strike and exclude, is wholly immaterial, and that the motion should be granted.

E. G. Rickard, Jr.

[Signature]
Attorneys for Complainant.

Recd Copy of 14/37
[Signature]
Cal. for F. M. Bank.

Copy mailed to Messrs
Buck, Hall & Beck, Solicitors for
Respondents May 14, 1937
E. G. Rickard, Jr.

TO THE HONORABLE J. S. HARR, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

BILL QUIA TIMET.

Comes the Complainant E. G. COLWELL, and shows by this his bill or complaint, the following facts as a basis for the relief hereinafter prayed against the defendants, SUNNY SOUTH DEVELOPMENT COMPANY, a corporation, Farmers and Merchants Bank, a corporation, as trustee of two mortgages issued by the Sunny South Development Company, ALBERT W. KELLER, CARRIE S. TUTTLE and the unknown PARTIES HOLDING BONDS ISSUED BY THE STATE BANK OF FOLEY AS TRUSTEE IN A MORTGAGE GIVEN BY THE SUNNY SOUTH DEVELOPMENT COMPANY.

FIRST: The complainant is the owner and is in peaceful possession of the following described lands in Baldwin county, Alabama.

The South Half and the North Half of the Northeast Quarter and the West Half of the Northwest Quarter of Section Twenty-one, Township Eight South, Range Four West, and Lot number Forty in Oak River Vice according to the map thereof recorded in Map Book One, Page Forty.

SECOND: That the defendants, SUNNY SOUTH DEVELOPMENT COMPANY, FARMERS and MERCHANTS BANK as trustee, ALBERT W. KELLER, CARRIE S. TUTTLE, and the unknown PARTIES HOLDING BONDS ISSUED BY THE STATE BANK OF FOLEY AS TRUSTEE IN A MORTGAGE GIVEN BY THE SUNNY SOUTH DEVELOPMENT COMPANY, whose names and residences are to this complainant unknown after making diligent search and inquiry, unjustly claim some title or interest in the complainant's property above described but there is no suit pending to enforce or test the validity of the defendants' claim or title and this complainant seeks that this Honorable Court require the defendants to show the nature and extent of their title or claim if they have ~~any~~ any so that it may be adjudged and determined by this Court.

WHEREFORE COMPLAINANT PRAYS that a subpoena issue against the defendants, Farmers and Merchants Bank and Albert W. Keller and that publication be had against the defendants Sunny South Development Company, Carrie S. Tuttle, and the unknown parties holding bonds issued by the State Bank of Foley, as trustee in a mortgage given by the Sunny South Development Company, and require all of these defendants to appear plead answer or demur and set forth and specify their title

claim, interest or incumbrances to the lands described herein and how and by what instrument the same was derived and created.

THE PETITIONER COMPLAINANT further prays that this Honorable Court will adjudge and determine that the defendants have no valid or enforceable claim, title or demand as to or against the property of this complainant, described in this bill and that the Court will decree that the defendants be forever barred from all claim to any estate, title, claim or interest in said property that the court finds to be unjust or without right.

Complainant further prays for such other, further or different relief as he may show himself entitled in the premises.


W. T. Richard

FOR BILL.

The defendants are required to answer each and every paragraph of the foregoing bill of complaint, but not under oath, oath being hereby expressly waived.


W. T. Richard

The defendant Farmers & Merchants Bank is in Foley and can be served on its officers there.

The defendant Albert W. Keller is a resident of Foley, Alabama.

E. G. CALDWELL,

Complainant,

-vs-

SUNNY SOUTH DEVELOPMENT
COMPANY et al.,

Respondents.

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

Comes the complainant and moves the Court for leave to withdraw the amendment heretofore filed to the bill of complaint on to wit the twenty-fourth day of April, 1937 and entitled "Paragraph number Three".

WILLIAM J. YOUNG

W. R. Richard
Solicitors for Complainant.

A copy of this motion has this the third day of August 1937 been mailed to Messrs Beebe, Hall & Beebe, the Solicitors for the Respondent.

E. G. Caldwell
Of Counsel for Complainant.

E. G. CALDWELL,

Complainant,

-vs-

SUNNY SOUTH DEVELOPMENT COMPANY,
et al,

Respondent and cross complainant,

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

MOTION TO SUBMIT FOR HEARING ON DEMURRERS TO THE CROSS BILL FILED
UNDER CHANCERY RULE SEVENTY-FOUR.

Comes the complainant and hereby gives notice to the
adverse party that he is having the cause set for a hearing on
the demurrers filed against the respondent's cross-bill and that
the same will be heard on the 20th day of January, 1938
at 8 o'clock in Monroeville, Alabama.

WILLIAM J. YOUNG

AND


As solicitors for Complainant.

E.G. CALDWELL, Complainant

vs

SUNNY SOUTH DEVELOPING COMPANY, et al.

)
) Equity Division of
) the Circuit Court of
) Baldwin County,
) Alabama.
)

Comes E.G. CALDWELL, cross respondent, and demurs to the Cross Bill filed in the above stated cause, and for grounds of demurrer assign the following:

1. There is no equity in the cross bill.

2. Because said cross bill does not allege that the cross complainants attempted to redeem the lands described in the original and cross bill from the purchaser at tax sale made by the Tax Collector of Baldwin County, on May 28, 1928, within the time allowed by law.

3. Because the said cross bill does not allege that cross complainants have offered to redeem said lands from the tax sale of May 28, 1928, by tendering to the proper officer the amount of said taxes due for the year 1927, including the taxes, and expenses of sale, together with the interest thereon from the date of said tax sale.

4. Because said cross bill does not allege that the cross complainants have offered to redeem said lands from the tax sale of May 28, 1928, by offering to pay and tendering to the proper officer, the amount of said tax sale, with the interest thereon, and subsequent taxes and interest accruing after the date of said tax sale, to-wit, May 28, 1928, prior to the date of sale made by the State of Alabama to cross respondent in this cause.

5. Because the cross bill does not allege that cross complainants have ever tendered to cross respondent the purchase price paid by him to the State of Alabama for the lands described in the bill, together with the interest thereon.

6. Because no tender has ever been made by cross complainant prior ~~or~~ to the filing of the cross bill, nor has any tender been made since the filing of said bill or kept good by payment of an amount into court, sufficient to cover the purchase price paid by cross respondent to the State of Alabama with interest thereon.

E. S. Rickard, Jr. & W. M. Young
Solicitors for Cross Respondent

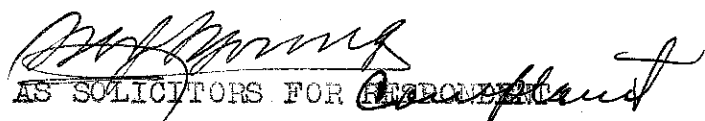
E. G. CALDWELL,		
Complainant,		IN THE CIRCUIT COURT OF
		BALDWIN COUNTY ALABAMA.
-vs-		IN EQUITY.
SUNNY SOUTH DEVELOPMENT COMPANY, et al.		
Respondents.		

AGREEMENT AS TO SUBMISSION.

Comes the Complainant and Respondents in the above entitled cause by their respective solicitors of record and respectfully request that the Judge take this cause under submission during vacation and rule on the demurrers filed by the Respondents to the Complainant's bill as amended.

Executed this the 3^d day of July, 1937.


AS SOLICITORS FOR COMPLAINANT.


AS SOLICITORS FOR ~~COMPLAINANT~~ *Complainant*

Bubbe Hall & Belle
for Respondents

Order
7-214

RECORDED

Agreement of
Administration
Deceased

Filed July 7, 1937.
R. S. O'Neal, Register

286
RECORDED
7-30-5

H. G. CAIDWELL,
Complainant,

vs.

SUNNY SOUTH DEVELOPMENT
COMPANY, et al,
Respondents

Remitted to Cross-Bier

Filed October 16, 1937

H.S. Cook, Register

RECORDED

Book
9-353

E. G. CALDWELL,
Complainant,

vs.

SUNNY SOUTH DEVELOPMENT COMPANY,
a Corp., Et Al.,
Respondents.

MOTION FOR SUBMISSION OF CAUSE:

Filed this *31* day *December* 19*37*

W. S. Quirk,
Clerk *Raynor*

done
28 (RECORDED)
7-258

MOTION FOR LEAVE TO WITH-
DRAW AMENDMENT.

Fixed Aug. 3, 1937
R. S. Daniels, Register

E. G. CALDWELL,

COMPLAINANT,

vs

SUNNY SOUTH DEVELOPMENT COMPANY,
a corporation, FARMERS and MERCHANTS
BANK, a corporation, ALBERT W. KELLER,
GARRIE S. TUTTLE

The pleadings before the Court are: 1. Complainant's statutory bill to quiet title, 2. Respondent's answer denying our ownership and possession and claiming title to the property in the Sunny South Development Company, setting up the fact that A. W. Keller as successor to the State Bank of Woley holds a deed of trust on the property and that Respondents Albert W. Keller and Carrie S. Tuttle hold some bonds issued under the deed of trust. They further trace their chain of title back to the government. 3. They ask that the answer be treated as a cross bill and make all of the statutory allegations of a bill to quiet title except they do not alledge peacefull possession. Alledge that our title is a tax title acquired from the State Tax Commission and seek to redeem in the name of Albert W. Keller as trustee and Albert W. Keller and Carrie S. Tuttle as holders of some of the bonds under the deed of trust. They seek to redeem under section 3108 as mortgagees holding a line on the property which was recorded at the time of the tax sale.

In our first demurrer, "That there is no equity in the bill we are contending. First, that their cross bill to be good should be measured by the same standards as an original bill and their failure of alledge that the possession was peacefull is defective. Second, that they have no right to redeem for section 3108 does not give the mortgagee the right to wait until one year after written notice from the purchaser of his purchase at the tax sale when the land is purchased by the state at the tax sale.

The very wording of the act shows that this is not contemplated. The act says that the notice must be given by the

by the purchaser at the tax sale. The State of Alabama is the purchaser. There is no provision in the law for the State or any of its officers to examine the probate records and find out who holds mortgages and liens on the land that it purchases at the tax sales and give them notice in writing of the state's purchase.

Furthermore the title to the complainant to the land in question, is based upon a purchase by him from the State of Alabama of all of "its rights, title and interest in the lands" which is acquired at tax sale by the failure of the Sunny South Development Company, the owner of the lands, or the mortgagee (the Farmers & Merchants Bank, as trustee under a mortgage securing certain bonds) or the other defendants (who are bondholders under the deed of trust made to the Bank) to pay the taxes due the State of Alabama for the year 1927, which lands were sold on May 28th, 1928 under a decree of the Probate Court of Baldwin County, Alabama, rendered against the Sunny South Development Company on to-wit, the 16th day of April 1928, and after notice of said tax sale had been given by the Tax Collector of Baldwin County, Alabama, by publication as required by law; there being no bidders for the said property at said tax sale, the said lands were knocked down and bid in by the Tax Collector for the State of Alabama, for the amount of the taxes, penalties, fees and costs of making the sale. The lands described in the bill of complaint, were acquired by the State at the sale above mentioned. Complainant acquired his title from the State by purchase as follows: One parcel on July 24, 1934; one on May 16th 1935, and the other on November 27th, 1935, long after the expiration of the time allowed for redemption, said purchase being made by complain-

ant under the provisions of Sections 3121, et, seq of the Code of 1923.

Under the revenue Law of the State, as found in the Printed Acts of Alabama for the year 1919, page 449, the State of Alabama had a lien upon all lands assessed against the owners thereof for the taxes for the tax year beginning October 1, 1936, which lien was paramount to all other liens of every character.

Section 416 of said Act, found on page 449, as above, reads as follows:

"From and after the first day of October of each year, when property becomes assessable the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property real or personal assessed to owner unknown which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; and if such property is within the limits of a municipal corporation such municipal corporation shall have a like lien thereon for the payment of the taxes which may be assessed by it. These liens shall be superior to all other liens and shall exist in the order named and each of such liens may be enforced and foreclosed by sale for taxes as provided in this Act, or as other liens upon property are enforced."

In the Act of August 17, 1923, adopting the Code of 1923, there appears in Section 3, the following:

"Section 3,*****'No statute applying to the revenue laws of this State, or to taxation, **** shall be repealed or affected in any manner by the adoption of this Code or by the failure to incorporate such statute as a part thereof."

Section 416 for the Revenue Code as hereinabove set out does not appear to have been brought forward into the present Code, hence we call attention of the court to the provisions of the Act adopting the Code as above set forth.

The following sections of the Code of 1923, are applicable to the case at bar: Section 3067, 3109, 3110, which are in words and figures as follows:

"When no ~~personal~~ property can be found out of which the taxes of any delinquent taxpayer can be collected, or an amount insufficient to fully satisfy such taxes, the real estate of such taxpayer, or the real estate upon which such taxes are a lien, shall be sold for payment thereof, or of the balance due thereon, in the manner hereinafter prescribed. But the failure of the Tax Collector to so exhaust such personal property shall not invalidate the sale of any real estate."

Section 3109

"Real estate sold for taxes and purchased by the State may be redeemed at any time before the title passes out of the State, or if purchased by any other ~~pur-~~
~~chaser~~, may be redeemed at any time within two years from the date of the sale by the owner, his heirs or personal representatives, or by any mortgagee or purchaser of such lands, or any part thereof, or by any person having an interest therein, or in any part thereof, legal or equitable, in severalty or as tenant in common including a judgment creditor, or other creditor having a lien thereon, or any part thereof; and an infant or insane person entitled to redeem at any time before the expiration of two years from the sale may redeem at any time within one year after the removal of his disability and such redemption may be or any part of the lands so sold, which includes the whole or the interest of the redemptioner. If the mortgage or other instrument creating a lien under which a party seeks to redeem is duly recorded at the time of said tax sale, the said party shall, in addition to the time herein specified, have the right to redeem said real estate sold, or any portion thereof, covered by his mortgage or lien, at any time within one year from the date of written notice from the purchaser of his purchase of said lands at tax sale, served upon such party, and notice served upon either the original mortgagee or lien holder or their transferee or record, or their heirs, personal representatives or assigns, shall be sufficient notice."

Section 3110

"In order to obtain the redemption of lands from tax sales, where the same has been sold to the State, the party desiring to make such redemption shall deposit with the Judge or Probate of the county in which the land is situated, the amount of money for which the lands were sold, with interest thereon at the rate of fifteen per cent

per annum, from the date of sale, together with the amount of all taxes due on such lands since the date of sale, sale, including the current tax assessed year with interest thereon at the rate of eight per cent per annum from maturity of such taxes, and all costs and fees due to officers as set out in the following Section."

Section 3111

"In order to obtain the redemption of land from tax sales where the same has been sold to another than the State, the party desiring to make such redemption shall deposit with the judge of probate of the county in which the land is situated the amount of money for which the lands were sold, with interest thereon at the rate of fifteen per cent per annum from the date of sale, together with the amount of all taxes which have been paid by the purchaser, which fact shall be ascertained by consulting the records in the office of the tax collector, with interest on said payments at the rate of eight per cent per annum. If any taxes on said lands have been assessed to the purchaser, and have not been paid, and if said taxes are due, which fact may be ascertained by consulting the tax collector of the county, the probate judge shall also require the party desiring to redeem said land, to pay the tax collector the taxes due on said lands, which have not been paid by the purchaser, before he is entitled to redeem the same. If any taxes have been assessed against said lands and have not been paid by the purchaser because the same were not due, the party seeking to redeem such lands shall deposit the amount of the taxes assessed for the current year with the tax collector, to be by him applied to the payment of such taxes when due, and the purchaser shall thereafter be relieved from any further liability on account of such taxes. In all redemptions of land from tax sales, the party securing the redemption shall pay all costs and fees due to officers and a fee on one dollar to the judge of probate for his services in the matter of such redemption."

The following sections of the code of 1923 are also applicable:

Sections 3121, 3122, 3123 and 3126, viz:

"When application is made to the State auditor by any person to purchase lands in which such persons had no interest, the auditor shall mail a notice in writing to the owner or some person having an interest in such land, if his place or residence is known, or if not known, then to the judge of probate of the county in which such lands are situated, informing him that such application has been made and fixing a reasonable time within which such owner or other person having an interest in the lands may redeem the same; the judge of probate shall cause the notice to be posted at the

courthouse, and he shall mail a copy of said notice to the owner, if known, to him, and if such lands are not redeemed within the time so fixed, the same shall be sold to the applicant, or any other person desiring to purchase the same, without other or further notice to such owner or person having an interest in the land. If such lands are redeemed within the time so fixed, the judge of probate must, without delay, report the same to the State auditor, and pay over the redemption money, as required by law.

Section 3122

"When lands have been bought for taxes, and bought in by the State, and after the laps of two years from such sale, no person entitled thereto has redeemed the same, the State auditor may sell all the right, title and interest of the State in and to such land at the best price obtainable."

Section 3123.

"When lands have been sold by the State as provided in Sections 3120 (2323) and 3121 (2324), and the purchase money has been paid, the State Auditor, in behalf of the State, shall execute to the purchaser, a deed duly acknowledged, without warranty or covenant of any kind on the part of the State, express or implied, conveying to him all the right, title and interest of the State in and to the lands purchased by him; and such purchaser shall thereafter have all the right, title and interest of the State in and to such lands, and shall be held and treated as the assignee of all the taxes due upon such lands, or for which they were sold, and the penalties, and of all the taxes that should have been, under the law, assessed upon the same, if they had been the property of a private citizen of the State; and he shall be clothed with all the rights, liens, powers and remedies, whether as a plaintiff or defendant, respecting said lands as an individual purchaser at the tax collector's sale would have in similar circumstances; and all such liens and charges as the State had before such sale by the State auditor shall be enforced in favor of such purchaser from him as under the provisions of law relating to individual purchasers at sales by the tax collector. Such purchaser, on failure of his title shall have his lien and charges assessed.

charges assessed by the court or by a jury, and may foreclose the same by a proceeding at law in such suits.

Section 3126

"The right to redeem any real estate bid in for the State shall be forfeited, unless such real estate is redeemed within the time prescribed in this chapter; and if not redeemed within the time all the right, title and interest of the owner of such real estate, and of the persons whose duty it was to pay the taxes thereon in and to such real estate, shall be transferred to, and absolutely vested in the State."

We assume that the defendant, the Farmers & Merchants Bank, as trustee, claims its right in this case to redeem under the following provisions of Section 3109 of the Code of 1923 viz;

"If the mortgage or other instrument creating a lien under which a party seeks to redeem is duly recorded at the time of the tax sale, the said party in addition to the time hereinafter specified have the right to redeem said real estate sold, or any portion thereof covered by his mortgage or lien, at any time within one year from the date of written notice from the purchaser of his purchase of said lands at tax sale."

It is apparent that there is a distinction to be made between purchases by the State and those by individuals, at tax sales, as can be gathered from reading Section 3110 and 3111 of the Code.

We deny that defendants are entitled to any such written notice as above, when the property has been acquired by the State at any sale made to enforce its lien given under Section 416 of the Revenue Act of 1919. We maintain that the words underscored above, refer only to purchases made by individuals who purchase lands at the Tax sale made by the Collector, and that they do not apply to sales made by the State upon an application of disinterested parties to purchase after the time for redemption has expired. We base

this contention upon the fact that the State has a paramount lien upon all property for taxes as provided by said Section 416 of the Revenue Act hereinabove set out; that said Act has never been amended or repealed, and was in full force and effect at the time of the sale of the lands involved in this suit, by the Tax Collector, and likewise at the time of the sale by the State to complainant in this case; that the State was under no obligation to give any notice to the mortgagee or other lien holder, of the fact that it had acquired the property when it enforced its lien for unpaid taxes, and that the only notice to which the defendants were entitled, were such notices as are required to be given under Sections 3121 et seq. when application is made by a third party to purchase, after the time for redemption has expired, which notices we submit were properly given by the State, as required by the Sections 3121, et seq. set out in the early part of this brief.

It is our further contention that the rule of 'Caveat Emptor' is applicable to individuals who purchase lands at tax sales, to the same extent and with the same force and effect as in sales under judicial proceedings or foreclosure sales, and that if such third person becomes a purchaser at tax sales without first having informed himself of the title, the regularity of the proceedings, etc. he must suffer the same consequences, pains and penalties of the law as one who purchases at a judicial or foreclosure sale, and in the event an individual becomes a purchaser at tax sale he must ascertain whether there are any mortgages or liens upon the property, and in such event, the law requires him to give notice to the holder of such mortgage or lien on said property that he had

become such purchaser at such tax sale before the right to said mortgage or lien holder to redeem the property, has been precluded.

The answer of the Respondents, Albert W. Keller, as trustee, and Albert W. Keller and Carrie S. Tuttle, set up the fact that they hold a deed of trust and some bonds which are a lien upon the land described in the bill of Complaint, and that as such they have the right to redeem because no notice from the purchaser at the tax sale has been given them.

It is our contention, and we submit the Bank, as such trustee, was not required to have any further notice of the tax sale by the Tax Collector than the usual publication of the sale of lands belonging to delinquent tax payers of Baldwin County, Alabama, which notice we submit was duly advertised and made by the Tax Collector, in which he fixed the time and place of sale, after a decree of sale had been rendered against the Sunny South Development Company by the Probate Judge of Baldwin County, Alabama for its failure to pay said taxes.

If the ~~complainant~~ Bank refers to the sale by the State of Alabama to the complainant in this case, then we say that said Bank as trustee, was not entitled to any further notice than that which was required to be given under Section 3121 of the Code of Alabama which Section we have hereinabove set forth in this brief.

While it is true that Section 3109 of the Code of 1923 (which was and is applicable to tax sales made in 1928) contain the provisions-

"If the mortgage or other instrument creating a lien under which a party seeks to redeem is duly recorded at the time of said tax sale, the said party shall in addition to the time herein specified, have the right to redeem said real estate sold, or any portion thereof, covered by his mortgage or lien at any time within one year from the date of written notice from the purchaser of his purchase of said lands at tax sale, served upon such party."

It is our contention that said above underscored part of said Section is not applicable in the present case, and only applies to purchases by individuals at tax sales made by the Tax Collector as distinguished from purchases from the State of Alabama of lands acquired by the State for delinquent taxes, and sold by the State after the time of redemption has expired.

In as much as the Revenue Act of 1919 fixed a lien in favor of the State upon all lands in the State, subjects to taxation, paramount to all other liens, of which lien the defendant was charged with notice and knowledge, it became and was the duty of the defendants, the Sunny South Development Company, as well as the Farmers & Merchants Bank and the bondholders, in order to protect their interest in the lands described in this suit, to pay or see to the payment of the taxes and thereby prevent the enforcement of the lien held by the State, or after sale, had been made, to see that the lands were redeemed from the State and the back taxes and all delinquent taxes paid within the time allowed them by the law to make such redemption. A failure on their part to take advantage of the rights and opportunities afforded them by the law did not and does not impose upon the State any duty to notify the "mortgagee" of its acquisition of said property at the sale made by the Tax Collector or extend their time to redeem said property, and we repeat and respectfully submit, that as defendants, failed to protect themselves at the time of the sale made by the Tax Collector, they had left only the right to redeem the property within the two years as then allowed by the statute, and failing to so redeem said lands that period, they have no further right to make redemption, as under the provisions of Section 3126 of the Code of 1923:

"All right, title and interest of the owner of such real estate, and of the person whose duty it was to pay the taxes thereon in and to such real estate."

gave notice of complainant's application to purchase? They had a reasonable time after the date of the notice of complainant's application to protect themselves, and if they did not take heed of such notice at that time, they should not now be permitted to complain.

The defendants in this case having failed to protect themselves as they were permitted to do under the statutory law of this State, now attempt to inject this into the case by praying to redeem in their cross bill. We respectfully submit that the avowments or allegations comprising this cross bill do not entitle him to the relief prayed for.

We are familiar with the law that the party filing the bill to quiet title need only allege the statutory allegations, but in this case he has not alleged peaceful possession, and further, this bill is more than a cross bill to quiet title, but is a bill to redeem.

A bill to redeem must contain necessary facts which he must allege in adding ^{tion} to show ^{was} that he has those rights. First, he has to have that right and we feel like the above argument shows that he has had no right; second demurrer points out that his application or attempt to redeem does not show that it was made within the statutory time as provided by law. The third demurrer points out that he did not tender the proper amounts to the proper offices. The fourth demurrer points out that the State had already sol this land before he attempted to redeem. The fifth demurrer points out that he did not allege that he tendered to us the money. The sixth demurrer points out still further that the tender was not made before the filing of this bill, and has

not been kept good by depositing the money into Court. We there-
for submit that there are absolutely not facts alleged to entitle
him to redeem his land by an equitable cross bill; first, the
Section does not give him this right; second, that he did not at-
tempt to go about the redemption in the statutory way before com-
ing into equity; and third, that he does not keep his offer to
pay the money good by putting the money in Court. We therefore
submit though the demurrers clearly show that the cross-complainant
is not entitled to the relief prayed thereunder and that the case
should be tried on original bill and answer.

Respectfully submitted,

S. B. Rickards Jr.
W. J. Young
Solicitors for Cross-Respondent.

I hereby certify that I have this the 3 day of March
mailed, with postage prepaid, a copy of this brief to W. C.
Beege Esq. of Bay Minette, Alabama, Solicitor for the Respondents
in this case.

S. B. Rickards Jr.
W. J. Young
Of Counsel to Cross-Respondent.

RS Duke

Bay Minette, Ala., 8/6 1941

In Account With
G. W. ROBERTSON
Judge of Probate, Baldwin County

Please Return Bill With Remittance

Recording	from	to	Privilege Tax	Rec. Fee.	Total
<i>Original</i>	<i>Account</i>	<i>E. B. Caldwell</i>	<i>J. A. Lewis</i>		<i>135</i>
		<i>Paid</i>			
		<i>8/6/41</i>			
		<i>BWR</i>			



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(Date)

Declared value, *100* (Postage paid)

From *W S Dyer* (Sender)

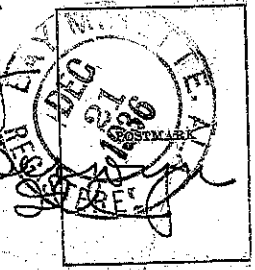
Addressed to *Miss Corneille* (Post office and State)

3428 South Oak Park Ave (Street and number)

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fee paid *10*



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