

STATE OF ALABAMA, )  
BALDWIN COUNTY. )

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon FRANK P. PROPST and FRANK A. PROPST to appear within thirty days from the service of this writ, in the Circuit Court, to be held for said County, at the place of holding the same, then and there to answer the complaint of E. F. SLAY.

WITNESS my hand this 23<sup>rd</sup> day of February, 1939.

R. S. Duck,  
Clerk.  
*By - Nantice Thompson,*  
*Dputy Clerk*

E. F. SLAY,  
Plaintiff,  
VS.  
FRANK P. PROPST and  
FRANK A. PROPST,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA,  
AT LAW.

1. The Plaintiff claims of the Defendants the sum of Three Hundred Sixty-three and 28/100 (\$363.28) Dollars due from them by account on to-wit, January 1st, 1939, *which sum of money is still due and unpaid*
2. The Plaintiff claims of the Defendants the further sum of Three Hundred Sixty-three and 28/100 (\$363.28) Dollars, on account stated between the Plaintiff and the Defendants on to-wit, January 1st, 1939, *which sum of money is still due and unpaid*
3. The Plaintiff claims of the Defendants the further sum of Three Hundred Sixty-three and 28/100 (\$363.28) Dollars for work and labor done for the Defendants by the Plaintiff on to-wit, during the year 1938, *which sum of money is still due and unpaid*
4. The Plaintiff claims of the Defendants the further sum of Three Hundred Sixty-three and 28/100 (\$363.28) Dollars for money, on to-wit, the 1st day of January, 1939, received by the Defendants to the use of the Plaintiff; which sums of money, with the interest thereon, are still due and unpaid.
5. The Plaintiff claims of the Defendants the further and additional sum of Three Hundred Sixty-three and 28/100 (\$363.28) Dollars, for that, whereas, on February 14th, 1938, the Plaintiff and the Defendants entered into a written contract whereby the Defendants were to lease and let unto the Plaintiff all of the turpentine timber located in Baldwin County, Alabama, which was worked and under the control of the Defendants, for the term of the turpentine season

for the year 1938, and that the Plaintiff was to carry on the turpentine operation, and all proceeds from said turpentine operation were to be divided between the Plaintiff and the Defendants on a half and half basis, after deducting all of the costs of distilling and hauling said turpentine; that a part of the timber covered by said agreement was leased to the Government; that the Plaintiff has complied with all the terms and conditions of the said contract; that the Defendants have collected from the Government, for said timber leased to the Government, the sum of Seven Hundred Twenty-six and 57/100 (\$726.57) Dollars, and that one-half of said amount, to-wit, Three Hundred Sixty-three and 28/100 (\$363.28) Dollars belongs to the Plaintiff; that the Plaintiff has demanded payment of said amount and the Defendants have refused; hence this suit.

Richard Lee & Beebe  
Attorneys for Plaintiff.

6. The Plaintiff claims of the Defendants the sum of, to-wit, \$363.28 for that hereinafter on to-wit the Plaintiff and the Defendants entered into a written contract whereby the Defendants were to lease and let unto the Plaintiff all the turpentine timber located in Macon County, Alabama, which was worked and under the control of the Defendants for the term of the turpentine season for the year 1938, and the Plaintiff was to carry on the turpentine operation, and all proceeds from said turpentine operation were to be divided between the Plaintiff and Defendants on a half and half basis, after deducting all costs of distilling and hauling said turpentine; that the

by serving copy of within Summons and  
Complaint on

Frank P. Propst and  
Frank A. Propst

W.R. Stuart  
By B.G. Fursica Deputy Sheriff

RECORDED

SUMMONS AND COMPLAINT

E. F. SLAY,  
Plaintiff,  
VS.  
FRANK P. PROPST and  
FRANK A. PROPST,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA,  
AT LAW.

Filed February 22, 1939  
R.S. Duck, Clerk  
By - Audelia Thompson, Deputy

Defendants breached said agreement in that  
they entered into the Government Conservation  
program, and the Plaintiff was not permitted  
to work said timber under said program  
and he was thereby damaged in the amount  
of \$100.00, hence the suit

E. F. SLAY,  
Plaintiff,

vs.

FRANK P. PROPST and  
FRANK A. PROPST,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

### DEMURRERS OF FRANK A. PROPST

Comes now the Defendant, Frank A. Propst, and files the following Demurrers to the original Bill of Complaint filed in this cause, and does demur thereto in the following manner, to-wit:

#### I

The said Defendant demurs to the entire Bill of Complaint filed in this cause and assigns the following grounds therefor:

1-a. That the said Bill of Complaint constitutes a misjoinder of causes of action.

1-b. That the said Bill of Complaint joins separate and distinct causes of action contrary to law.

1-c. That the said Bill of Complaint shows on its face that it is a misjoinder of separate and distinct causes of action not arising out of the same transaction, in that count 1 claims of the Defendants a sum of money set out therein, whereas counts 2, 3, and 4 claim of the Defendants, in each of said counts, a further sum of money, and count 5 claims of the Defendants a further and additional sum of money, and nowhere in the said Bill of Complaint does it appear that said further sums or that said further and additional sums constitute causes of action arising out of the same transaction.

#### II

The said Defendant demurs to count 1 of said Bill of Complaint and assigns the following grounds therefor:

2-a. That the said count fails to allege that the sum claimed is still unpaid.

2-b. That the said count is not a substantial compliance with the form as set out in the Code of Alabama, Section 9531, Form 10.

2-c. That for aught that appears from said count, the account sued on has been paid.

#### III

The said Defendant demurs to count 2 of the said Bill of Complaint and assigns as grounds therefor:

3-a. That the said count fails to allege that the sum claimed is still unpaid.

3-b. That the said count is not a substantial compliance with the form as set out in the Code of Alabama, Section 9531, Form 10.

3-c. That for aught that appears from said count, the account sued on has been paid.

3-d. That the said count fails to aver that the sum claimed is due from the Defendant.

3-e. That the said count fails to aver that the sum claimed is due from the Defendants.

3-f. That for aught that appears in said count, the amount claimed therein is due from some person or persons other than the Defendant.

3-g. That the said count fails to allege from whom the alleged account stated is due.

3-h. That the said count is vague, indefinite, and uncertain as to from whom the account is due.

#### IV

The said Defendant demurs to count 3 of said Bill of Complaint and assigns the following grounds therefor:

4-a. That the said count fails to allege that the sum claimed is still unpaid.

4-b. That the said count is not a substantial compliance with the forms set out in the Code of Alabama, Section 9531, Form 10.

4-c. That for aught that appears from said count, the account suit on has been paid.

4-d. That the said count fails to aver that the sum claimed is due from this Defendant.

4-e. That the said count fails to aver that the sum claimed is due from the Defendants.

4-f. That for aught that appears in said count, the amount claimed therein is due from some person or persons other than the Defendant.

4-g. That the said count fails to allege from whom the alleged account stated is due.

4-h. That the said count is vague, indefinite, and uncertain as to from whom the account is due.

4-i. That the said count is vague, indefinite, and uncertain as to the time when the alleged work and labor was done.

4-j. That the said count fails to allege that the work and labor was done at the request of the Defendants or either of them.

4-k. That the said count fails to allege that the work and labor was done at the request of the Defendants or either of them, nor does it allege that the said work and labor was accepted by the Defendants or either of them.

#### V

The said Defendant demurs to count 4 of the said Bill of Complaint and assigns as grounds therefor:

5-a. That the said count is not a substantial compliance with the form set out in the Code of Alabama, Section 9531, Form 10, in that it does not aver that the amount claimed is due from the Defendants.

5-b. That the said count is not a substantial compliance with the form set out in the Code of Alabama, Section 9531, Form 10, in that the said count does not aver that the amount claimed is due from the Defendants or either of them.

5-c. That the said count is vague, indefinite, and uncertain as to from whom the amount claimed is due.

5-d. That for aught that appears in said count, the sum claimed therein is not due from the Defendants.

5-e. That for aught that appears in said count, the amount claimed therein is due from someone other than these Defendants.

5-f. That for aught that appears in said count, the amount claimed therein was received by the Defendants for a consideration moving from them, and the said count therefore does not state a cause of action for money had and received.

#### VI

The said Defendant demurs to count 5 of the said Bill of Complaint and assigns as grounds therefor:

6-a. That the said count is vague, indefinite, and uncertain in that it fails to aver by whom the timber was leased to the Government.

6-b. That for aught that appears in said count, the timber was leased to the Government by someone other than this Defendant.

6-c. That for aught that appears in said count, there is a non-joinder of some necessary party or parties Defendant.

6-d. That for aught that appears in said count, the timber leased to the Government was not worked and under the control of the Defendants.

6-e. That for aught that appears in said count, the timber leased to the Government was not subject to the terms of the alleged agreement between the Plaintiff and the Defendants.

6-f. That the said count fails to show that the alleged agreement between the Plaintiff and the Defendants obligated the Defendants to pay to the Plaintiff the amount claimed as due.

6-g. That the said count shows on its face that the Defendants do not owe the Plaintiff any sum of money.

6-h. That the said count shows on its face that the sum claimed as due was not subject to the terms of the alleged agreement between the Plaintiff and the Defendants.

6-i. That the said count shows on its face that the Plaintiff is not entitled to any of the proceeds which the Defendants received by leasing timber to the Government.

6-j. That for aught that appears in said count, the Plaintiff entered into the alleged agreement with the Defendants with full knowledge and notice of the alleged lease to the Government.

6-k. That for aught that appears in said count, the Plaintiff contracted with the Defendants with the knowledge that his contract was subject to a prior lease to the Government.

6-l. That for aught that appears in the said count, the plaintiff was a purchaser with notice of prior rights and liabilities.

6-m. That for aught that appears in said count, the Plaintiff does not stand in the position of an innocent purchaser for value without notice.

6-n. That the said count shows on its face that the money received by the Defendants from the Government was not part of the "proceeds from the turpentine operations", as contemplated in the alleged agreement.

6-o. That the said count shows on its face that the money received by the Defendants from the Government was not subject to division as contemplated in the alleged agreement, in that the said money could not be subjected to the deduction of the costs of distilling and hauling turpentine, because said count does not show that any turpentine was distilled or hauled under the alleged lease to the Government.

6-p. That the said count fails to show that the Defendants or either of them were under any obligation to pay to the Plaintiff any part of the money obtained from the Government on the alleged lease.

6-q. That the terms of the alleged contract are averred in a vague, indefinite, and uncertain manner, and hence are not sufficient to support a cause of action.

6-r. That for aught that appears in said count, the amount claimed is still subject to deductions for hauling and distilling.

4-s. That the said count fails to show that all the costs of distilling and hauling the turpentine have been paid, hence it is impossible to determine that the amount claimed is the correct amount due, if any.

6-t. That the said count alleges that payment was demanded, but fails to show the time and place of such alleged demand.

6-u. That for aught that appears from said count, any cause of action arising from the alleged demand for payment may be barred by the statute of limitations, in that the time of the alleged demand is not averred.

6-v. That for aught that appears in said count, the alleged demand was made on some person or persons other than these Defendants or either of them.


6-w. That the said count fails to show from whom payment was demanded.

6-x. That the said count fails to aver that there was any consideration for the alleged obligation of the Defendants to pay to the Plaintiff the amount claimed.

6-y. That for aught that appears in said count, the sum claimed is not yet due.

6-z. That the said count fails to aver the date on which the Defendants received the alleged amount of money from the Government, and for aught that appears, said money was received by the Defendants from the Government before they entered into the alleged agreement with the Plaintiff.

And the said Defendant prays the judgment of this court whether he shall make any further answer thereto, and prays further that he be dismissed with his costs in this behalf sustained.

  
Attorney for the Defendant, Frank A. Probst.


VII

The said defendant demurs to count 6 of said Bill of complaint and assigns as grounds therefor:

7a - Said count shows on its face that Plaintiff is not an <sup>innocent</sup> purchaser for value without notice of said agreement with the Government.

7b. - Said count shows on its face that Plaintiff is not entitled to damages.

7c - For aught that appears from said count, plaintiff knew about defendant's agreement with the Government at the time he entered into said lease, and hence is not an innocent purchaser for value without notice.

  
Attorney for Defendant, Frank A. Probst.

RECORDED

E. F. SLAY,  
Plaintiff,

vs.

FRANK P. PROBST and  
FRANK A. PROBST,  
Defendants.

DEFENDERS OF FRANK A. PROBST

IN THE CIRCUIT COURT OF  
BLADEN COUNTY, ALABAMA  
AT LAW

Filed in office this 20  
day of March, 1939.

*R. S. Buck*

Clerk

*By: Maurice Thompson,  
Deputy Clerk*

LESLIE HALL  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

LESLIE HALL  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA



E. F. SLAY,  
Plaintiff,

vs.

FRANK P. PROPST and  
FRANK A. PROPST,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

### DEMURRERS OF FRANK P. PROPST

Comes now the Defendant, Frank P. Propst, and files the following Demurrers to the original Bill of Complaint filed in this cause, and does demur thereto in the following manner, to-wit:

#### I

The said Defendant demurs to the entire Bill of Complaint filed in this cause and assigns the following grounds therefor:

- 1-a. That the said Bill of Complaint constitutes a misjoinder of causes of action.
- 1-b. That the said Bill of Complaint joins separate and distinct causes of action contrary to law.
- 1-c. That the said Bill of Complaint shows on its face that it is a misjoinder of separate and distinct causes of action not arising out of the same transaction, in that count 1 claims of the Defendants a sum of money set out therein, whereas counts 2, 3, and 4 claim of the Defendants, in each of said counts, a further sum of money, and count 5 claims of the Defendants a further and additional sum of money, and nowhere in the said Bill of Complaint does it appear that said further sums or that said further and additional sums constitute causes of action arising out of the same transaction.

#### II

The said Defendant demurs to count 1 of said Bill of Complaint and assigns the following grounds therefor:

- 2-a. That the said count fails to allege that the sum claimed is still unpaid.
- 2-b. That the said count is not a substantial compliance with the form as set out in the Code of Alabama, Section 9531, Form 10.
- 2-c. That for aught that appears from said count, the account sued on has been paid.

#### III

The said Defendant demurs to count 2 of the said Bill of Complaint and assigns as grounds therefor:

- 3-a. That the said count fails to allege that the sum claimed is still unpaid.
- 3-b. That the said count is not a substantial compliance with the form as set out in the Code of Alabama, Section 9531, Form 10.
- 3-c. That for aught that appears from said count, the account sued on has been paid.
- 3-d. That the said count fails to aver that the sum claimed is due from the Defendant.
- 3-e. That the said count fails to aver that the sum claimed is due from the Defendants.
- 3-f. That for aught that appears in said count, the amount claimed therein is due from some person or persons other than the Defendant.

3-g. That the said count fails to allege from whom the alleged account stated is due.

3-h. That the said count is vague, indefinite, and uncertain as to from whom the account is due.

#### IV

The said Defendant demurs to count 3 of said Bill of Complaint and assigns the following grounds therefor:

4-a. That the said count fails to allege that the sum claimed is still unpaid.

4-b. That the said count is not a substantial compliance with the form as set out in the Code of Alabama, Section 9531, Form 10.

4-c. That for aught that appears from said count, the account suit on has been paid.

4-d. That the said count fails to aver that the sum claimed is due from this Defendant.

4-e. That the said count fails to aver that the sum claimed is due from the Defendants.

4-f. That for aught that appears in said count, the amount claimed therein is due from some person or persons other than the Defendant.

4-g. That the said count fails to allege from whom the alleged account stated is due.

4-h. That the said count is vague, indefinite, and uncertain as to from whom the account is due.

4-i. That the said count is vague, indefinite, and uncertain as to the time when the alleged work and labor was done.

4-j. That the said count fails to allege that the work and labor was done at the request of the Defendants or either of them.

4-k. That the said count fails to allege that the work and labor was done at the request of the Defendants or either of them, nor does it allege that the said work and labor was accepted by the Defendants or either of them.

#### V

The said Defendant demurs to count 4 of the said Bill of Complaint and assigns as grounds therefor:

5-a. That the said count is not a substantial compliance with the form set out in the Code of Alabama, Section 9531, Form 10, in that it does not aver that the amount claimed is due from the Defendants.

5-b. That the said count is not a substantial compliance with the form set out in the Code of Alabama, Section 9531, Form 10, in that the said count does not aver that the amount claimed is due from the Defendants or either of them.

5-c. That the said count is vague, indefinite, and uncertain as to from whom the amount claimed is due.

5-d. That for aught that appears in said count, the sum claimed therein is not due from the Defendants.

5-e. That for aught that appears in said count, the amount claimed therein is due from someone other than these Defendants.

5-f. That for aught that appears in said count, the amount claimed therein was received by the Defendants for a consideration moving from them, and the said count therefore does not state a cause of action for money had and received.

#### VI

The said Defendant demurs to count 5 of the said Bill of Complaint and assigns as grounds therefor:

6-a. That the said count is vague, indefinite, and uncertain in that it fails to aver by whom the timber was leased to the Government.

6-b. That for aught that appears in said count, the timber was leased to the Government by someone other than this Defendant.

6-c. That for aught that appears in said count, there is a non-joinder of some necessary party or parties Defendant.

6-d. That for aught that appears in said count, the timber leased to the Government was not worked and under the control of the Defendants.

6-e. That for aught that appears in said count, the timber leased to the Government was not subject to the terms of the alleged agreement between the Plaintiff and the Defendants.

6-f. That the said count fails to show that the alleged agreement between the Plaintiff and the Defendants obligated the Defendants to pay to the Plaintiff the amount claimed as due.

6-g. That the said count shows on its face that the Defendants do not owe the Plaintiff any sum of money.

6-h. That the said count shows on its face that the sum claimed as due was not subject to the terms of the alleged agreement between the Plaintiff and the Defendants.

6-i. That the said count shows on its face that the Plaintiff is not entitled to any of the proceeds which the Defendants received by leasing timber to the Government.

6-j. That for aught that appears in said count, the Plaintiff entered into the alleged agreement with the Defendants with full knowledge and notice of the alleged lease to the Government.

6-k. That for aught that appears in said count, the Plaintiff contracted with the Defendants with the knowledge that his contract was subject to a prior lease to the Government.

6-l. That for aught that appears in the said count, the plaintiff was a purchaser with notice of prior rights and liabilities.

6-m. That for aught that appears in said count, the Plaintiff does not stand in the position of an innocent purchaser for value without notice.

6-n. That the said count shows on its face that the money received by the Defendants from the Government was not part of the "proceeds from the turpentine operations", as contemplated in the alleged agreement.

6-o. That the said count shows on its face that the money received by the Defendants from the Government was not subject to division as contemplated in the alleged agreement, in that the said money could not be subjected to the deduction of the costs of distilling and hauling turpentine, because said count does not show that any turpentine was distilled or hauled under the alleged lease to the Government.

6-p. That the said count fails to show that the Defendants or either of them were under any obligation to pay to the Plaintiff any part of the money obtained from the Government on the alleged lease.

6-q. That the terms of the alleged contract are averred in a vague, indefinite, and uncertain manner, and hence are not sufficient to support a cause of action.

6-r. That for aught that appears in said count, the amount claimed is still subject to deductions for hauling and distilling.

6-s. That the said count fails to show that all the costs of distilling and hauling the turpentine have been paid, hence it is impossible to determine that the amount claimed is the correct amount due, if any.

6-t. That the said count alleges that payment was demanded, but fails to show the time and place of such alleged demand.

6-u. That for aught that appears from said count, any cause of action arising from the alleged demand for payment may be barred by the statute of limitations, in that the time of the alleged demand is not averred.

6-v. That for aught that appears in said count, the alleged demand was made on some person or persons other than these Defendants or either of them.

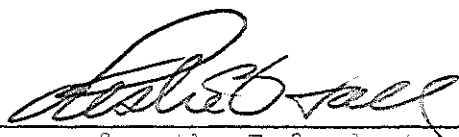
6-w. That the said count fails to show from whom payment was demanded.

8-x. That the said count fails to aver that there was any consideration for the alleged obligation of the Defendants to pay to the Plaintiff the amount claimed.

8-y. That for aught that appears in said count, the sum claimed is not yet due.

8-z. That the said count fails to aver the date on which the Defendants received the alleged amount of money from the Government, and for aught that appears, said money was received by the Defendants from the Government before they entered into the alleged agreement with the Plaintiff.

And the said Defendant prays the judgment of this court whether he shall make any further answer thereto, and prays further that he be dismissed with his costs in this behalf sustained.

  
Attorney for the Defendant, Frank P. Propst.

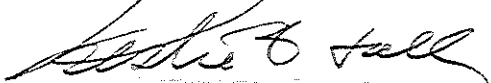
VII

The said defendant demurs to count 6 of said Bill of complaint and assigns as grounds therefor:

7a - Said count shows on its face that Plaintiff is not an innocent purchaser for value without notice of said agreement with the Government.

7b - Said count shows on its face that Plaintiff is not entitled to damages.

7c - For aught that appears from said count, plaintiff knew about Defendants' agreement with the Government at the time he entered into said lease, and hence is not an innocent purchaser for value without notice.

  
Attorney for Defendant,  
Frank P. Propst.

RECORDED

E. F. SLAY,  
Plaintiff,

vs.

FRANK P. PROPERT and  
FRANK A. PROPERT,  
Defendants.

DEEDS OF FRANK P. PROPERT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

Filed in office this 30

day of March, 1939.

R. S. Busch  
Clerk

By Martha J. Thompson  
Deputy Clerk

LESLIE HALL  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

LESLIE HALL  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

E. F. SLAY,  
Plaintiff,

vs.

FRANK P. PROPST and  
FRANK A. PROPST,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW.

ANSWERS TO INTERROGATORIES PROPOUNDED TO DEFENDANT,

FRANK A. PROPST.

\* \* \* \* \*

Now comes FRANK A. PROPST, one of the Defendants in the above styled cause, and makes and files these answers to the Interrogatories propounded to him by the Plaintiff in said cause, under Section 7764 et seq. of the Code of Alabama (1923):

1. For Answer to Interrogatory 1, he says:  
"My name is Frank A. Propst; I am 29 years of age, and live on the Old Pensacola Road, near Bay Minette, Baldwin County, Alabama."
2. For Answer to Interrogatory 2, he says:  
"I am one of the Defendants in the above styled cause."
3. For Answer to Interrogatory 3, he says:  
"I did not."
4. For Answer to Interrogatory 4, he says:  
"I did not make such a contract or agreement with the Plaintiff."
5. For Answer to Interrogatory 5, he says:  
"I did not."
6. For Answer to Interrogatory 6, he says:  
"I have not been paid anything by the Government or any branch or department thereof, for timber leased by me to the Government or any branch or department thereof, for the reason that I did not make any such lease."
7. For Answer to Interrogatory 7, he says:  
"I did not receive any such check, and did not make any such lease or rental."
8. For Answer to Interrogatory 8, he says:  
"I did not receive any money from the Government or any branch or department thereof for timber leased to it by me, as I did not make any such lease; I have not paid the Plaintiff any money so received, as I did not receive any, neither did I tender him any such money. I do not owe the Plaintiff any money."

Signed: Frank A. Propst

(page two)

STATE OF ALABAMA  
BALDWIN COUNTY

Before me, Leslie Hall, a Notary Public in and for said County in said State, personally appeared Frank A. Propst, who is known to me, and who, being first duly sworn, deposes and says:

That the answers given above <sup>to</sup> the Interrogatories propounded to him by the Plaintiff in the above styled cause are answered to the best of his ability and that they are truthfully answered in every particular.

Frank A. Propst  
Defendant.

Sworn to and subscribed before me this 26<sup>th</sup> day of January, 1940.

Leslie Hall  
Notary Public, Baldwin County, Alabama.

I hereby acknowledge receipt of a copy of the foregoing answers to Interrogatories propounded to the Defendant, Frank A. Propst, by the Plaintiff, in the above styled cause, and notice, and do hereby expressly waive any further or other service or notice thereof.

Dated this 27<sup>th</sup> day of January, 1940.

Baker Hall & Baker  
Attorney for Plaintiff.

E. F. SLAY,  
Plaintiff,

vs.

FRANK P. PROBST  
and  
FRANK A. PROBST,  
Defendants.

Answers of Frank A. Probst  
to Interrogatories.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

Filed in Office this 27th  
day of January, 1930.

R. S. Black  
Clerk,

by R. S. Black  
Deputy Clerk.



E. F. SLAY,  
Plaintiff,

vs.

FRANK P. PROPST and  
FRANK A. PROPST,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW.

ANSWERS TO INTERROGATORIES PROPOUNDED TO DEFENDANT,  
FRANK P. PROPST.

\* \* \* \* \*

Now comes FRANK P. PROPST, one of the Defendants in the above styled cause, and makes and files these answers to the Interrogatories propounded to him by the Plaintiff in said cause, under section 7764 et seq. of the Code of Alabama (1923):

1. For Answer to Interrogatory 1, he says:  
"My name is Frank P. Propst; I am 58 years of age, and live on the Old Pensacola Road, near Bay Minette, Baldwin County, Alabama."
2. For Answer to Interrogatory 2, he says:  
"I am one of the Defendants in the above styled cause."
3. For Answer to Interrogatory 3, he says:  
"I leased to Plaintiff some turpentine timber on that date."
4. For Answer to Interrogatory 4, he says:  
"The Plaintiff did not comply with all the conditions and terms of our contract, or lease, but he failed in several respects. The Plaintiff was required, by the terms of the lease, to comply with the United States Department of Agriculture, Forest Section, Code of Conservation Program current for the 1938 season. This Program called for fire protection and keeping fire out of the woods. The Plaintiff, Slay, failed to keep fire out of the woods, and it was necessary for the Defendant to go into the woods and put out fire on several occasions.  
"The above Program also called for the operator to count the trees in his forest. The Plaintiff, Slay, failed to do this, and it was necessary for the Defendant to hire the Plaintiff to do the counting of the crops. Slay took full pay for such work of counting, and did not contribute any part of his time for that. Slay did not co-operate in the Conservation Program in any way, but failed to carry out his agreement to do so, and caused the Defendant considerable trouble and expense by such failure."
5. For Answer to Interrogatory 5, he says:  
"During the 1938 turpentine year, I co-operated in the 1938 Naval Stores Conservation Program promulgated by the Agricultural Adjustment Administration,

"U. S. Department of Agriculture; and by reason of such co-operation in this Program, I became entitled to be paid certain benefits. I entered into this agreement with the Agricultural Adjustment Administration sometime during the Fall of 1937, which was prior to the time that I leased the timber not covered by the Conservation Program, to E. F. Slay. At the time I leased to E. F. Slay, he knew that I had already entered into the Conservation Program. So far as I know, Slay never did make an effort to get into the Conservation Program, and he never mentioned to me that he expected or wanted part of the Government check until a long time after I had leased to him."

6. For answer to Interrogatory 6, he says:  
"I did not lease any timber to the Government or any branch or department thereof, but I engaged in the Conservation Program, and received a benefit payment for my co-operation. Only the person co-operating in the Program was entitled to be paid, and Slay did not co-operate in the Program, so he was entitled to nothing."
7. For answer to Interrogatory 7, he says:  
"For co-operating in the Conservation Program during the year 1938, I received a check in the sum of \$ 726.56. This was for co-operating in the Conservation Program, which co-operation had to be furnished in order for the payment to be made. Slay did not co-operate in the Program, and was not entitled to payment therefor."
8. For answer to Interrogatory 8, he says:  
"I have not paid the Plaintiff, Slay, or tendered to him, any part of any money received by me from the Government or a branch or department thereof for timber leased to it by me, by reason of the fact that I did not so lease my timber, and I do not owe the Plaintiff any such money."

Signed: Frank P. Propst

STATE OF ALABAMA §  
BALDWIN COUNTY §

Before me, Leslie Hall, a Notary Public in and for said County in said State, personally appeared Frank P. Propst, who is known to me, and who, being first duly sworn, deposes and says:  
That the answers given above to the Interrogatories propounded to him by the Plaintiff in the above styled cause are according to the best of his ability and that they are truthful in every particular.

Frank P. Propst  
Defendant.

(page three)

Sworn to and subscribed before me this 25<sup>th</sup> day of January, 1938

Robert Hall  
Notary Public, Baldwin County, Alabama.

I hereby acknowledge receipt of a copy of the foregoing answers to interrogatories propounded to the Defendant, Frank P. Propst, by the Plaintiff, in the above styled cause, and notice, and do hereby expressly waive any further or other service or notice thereof.

Dated this 26 day of January, 1938

John Lee  
Attorney for Plaintiff.

E. J. SLAY,  
Plaintiff,  
vs.

FRANK P. PROBST and  
FRANK A. PROBST,  
Defendants.

Answers of Frank P. Probst  
to Interrogatories

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

Filed in office this 26th  
day of January 1950  
~~August~~

R. A. Dick  
Clerk,

by W. S. Smith  
Deputy Clerk.

LESLIE HALL,

E. F. SLAY,  
Plaintiff,

vs.

FRANK P. PROPST and  
FRANK A. PROPST,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW, No. 504.

PLEA OF DEFENDANT, FRANK P. PROPST

Comes now the Defendant, Frank P. Propst, and for answer to the Complaint in this cause filed, and to each and every count thereof, separately and severally, says:

1. That he is not guilty of the matters and things therein alleged.
2. That he is not indebted to the Plaintiff in any sum of money.
3. That there is no consideration for the alleged indebtedness.
4. That he denies the truth of the matters and things therein alleged.

*Robert Hall*  
Attorney for Defendant, Frank P. Propst.

5. That the Plaintiff did not comply with the terms of his alleged agreement with the defendant in that he failed to work the said timber and operations under the terms of the United States Department of Agriculture Forest Section, Code on Conservation Program current for the 1938 season, as he had agreed to do, and thus breached his agreement with the defendant, which the defendant claims as a set-off.

*Robert Hall*  
Attorney for Defendant Frank P. Propst.

At Law, No. 504.

E. F. SLAY, Plaintiff,

vs.

FRANK P. PROPST and  
FRANK A. PROPST,  
Defendants.

PLEA OF DEFENDANT, FRANK P.  
PROPST.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

Filed in office this 30<sup>th</sup>  
day of January, 1940.

R. S. DICK  
Clerk.

*By Wallace Thompson*  
*Deputy Clerk*

E. F. SLAY,  
Plaintiff,

vs.

FRANK P. PROPST and  
FRANK A. PROPST,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW, No. 504.

PLEA OF DEFENDANT, FRANK A. PROPST

Comes now the Defendant, Frank A. Propst, and for answer to the Complaint in this cause filed, and to each and every county thereof, separately and severally, says:

1. That he is not guilty of the matters and things therein alleged.
2. That he is not indebted to the Plaintiff in any sum of money.
3. That there is no consideration for the alleged indebtedness.
4. That he denies the truth of the matters and things therein alleged.

*Robert S. Hall*  
Attorney for the Defendant, Frank A. Propst.

5. That the Plaintiff did not comply with the terms of his alleged agreement with the defendant in that he failed to work the said timber and operations under the terms of the United States Department of Agriculture, Forest Section, Code or Conservation Program current for the 1938 season as he ~~failed~~ had agreed to do, and thus breached his agreement with the defendant, which the defendant claims as a set-off.

*Robert S. Hall*  
Attorney for the Defendant,  
Frank A. Propst.

At Law, No. 504.

E. F. SLAY,  
Plaintiff,

vs.

FRANK P. PROBST and  
FRANK A. PROBST,  
Defendants.

PLEA OF DEFENDANT, FRANK A.  
PROBST

IN THE CIRCUIT COURT OF BALDWIN  
COUNTY, ALABAMA, AT LAW,

Filed in office this 30<sup>th</sup>  
day of January, 1940.

R.S. Buck  
Clerk.



E. F. SLAY,

Plaintiff,

VS.

FRANK P. PROPST and  
FRANK A. PROPST,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

INTERROGATORIES PROPOUNDED BY THE PLAINTIFF TO THE DEFENDANTS, AND EACH, SEPARATELY AND SEVERALLY, IN ACCORDANCE WITH ARTICLE 10, CHAPTER 290 OF THE 1923 CODE OF THE STATE OF ALABAMA:

1. Please state your name, age and address.
2. Please state whether or not you are the Defendants in the above styled cause now pending in the Circuit Court of Baldwin County, Alabama, at Law.
3. Please state whether or not you entered into a turpentine working agreement with the Plaintiff on the 14th day of February, 1938.
4. Please state whether or not the Plaintiff, in accordance with said turpentine working agreement, entered upon the performance of said contract and complied with the conditions thereof. If you state that he did not comply with the conditions of said contract, please state wherein he failed.
5. Please state whether or not you, during the 1938 turpentine year, leased or rented any turpentine trees, turpentine timber, or entered into any agreement with the Government, or any branch of the Government, whereby you were to receive a cash rental for any turpentine timber that you were working, or which you held under lease.
6. Please state whether or not you have been paid by the Government or any branch or department thereof, for timber leased by you to the Government or some department or branch thereof.
7. Please state the amount of the check you received from the Government or a branch or department thereof for timber leased or rented to the Government.
8. Please state whether or not you have paid the Plaintiff, or tendered the Plaintiff, any part of the money received by you from the Government, or a branch or department thereof for timber leased to it by you.

B. F. Slay  
Attorneys for Plaintiff.

STATE OF ALABAMA, )  
BALDWIN COUNTY. )

Before me, the undersigned authority, in and for said County, in said State, personally appeared HUBERT M. HALL, who is known to me, and who having been by me first duly sworn, deposes and says, that he is attorney of record for the Plaintiff in the above styled cause; that truthful answers of the Defendants to the above interrogatories will be material testimony for the Plaintiff in said cause.

H. M. Hall

Sworn to and subscribed before me  
this 6th day of June, 1939.

W. B. Jones  
Notary Public, Baldwin County, Ala.

INTERROGATORIES PROPOUNDED  
TO THE DEFENDANTS.

E. F. SLAY,

Plaintiff,

VS.

FRANK P. PROPST and  
FRANK A. PROPST,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

Filed June 9, 1939

R. S. DUCK

clerk, register

By *Franklin Thayer*  
Deputy

June 8, 1939.

I hereby accept service of the within  
interrogatories, and waive any  
further notice thereof.

*Robert Hall* Attorney for  
the Defendants.

STATE OF ALABAMA §  
BALDWIN COUNTY §

TURPENTINE WORKING AGREEMENT

THIS AGREEMENT, in Duplicate Originals, made and entered into this 14th day of February, 1938, by and between FRANK F. PROBST and FRANK A. PROBST, hereinafter referred to as the Parties of the First Part, and S. W. SLAY, hereinafter referred to as the Party of the Second Part, WITNESSETH:

That, for and in consideration of the mutual promises and obligations of the Parties hereto, the said Parties have made this Agreement or Contract in terms as follows, to-wit:

The said Parties of the First Part do, by these presents, lease and let unto the Party of the Second Part all of the Turpentine Timber located in Baldwin County, Alabama, which is worked and under the control of the said Parties of the First Part, for the term of One Turpentine Season from the date of this agreement.

The said Party of the Second Part does hereby agree to pay for the said Lease in the following manner, to-wit: All proceeds from said Turpentine Operations are to be divided between the Parties of the First Part and the Party of the Second Part on a half and half basis, that is to say: 50% to the Parties of the First Part, and 50% to the Party of the Second Part; said Division to be made of the net proceeds after deduction of all costs of Distilling and Hauling said Turpentine.

The said Parties of the First Part are to put everything in connection with the said Operations, such as raising, hanging, etc., in readiness for Operation by the Party of the Second Part; but the said Parties of the First Part are not to commence the chipping as it is agreed that said chipping is to be done by the Party of the Second Part.

The said Parties of the First Part hereby agree to furnish to the Party of the Second Part, three (3) houses for the use of the Party of the Second Part, or his workmen.

It is agreed that the Party of the Second Part is to conduct all work and operations in connection with the reduction of the said Turpentine from its natural state to marketable state.

(page two)

In connection with said working operations, the said Party of the Second Part is to be responsible for and shall pay all labor used in working the said Turpentine Woods.

It is mutually agreed that the said Party of the Second Part is not to scrape down the trees included in the lease more than three (3) times during the season.

It is further agreed that the said Party of the Second Part shall put a streak on said timber at least once in every two week period, and that if the said Party of the Second Part shall fail or refuse to put on such streak for 2 consecutive weeks, at any time after the commencement of the regular chipping season, then this agreement and lease shall be null and void, and the Parties of the First Part shall have the immediate right of entry and possession of all the premises hereby covered; PROVIDED, NEVERTHELESS, that at any time the Parties hereto so agree, the Party of the Second Part may abstain from putting on streaks for an agreed period of time, and such action pursuant to such agreement shall not avoid this agreement and lease.

The said party of the Second Part is required to furnish all tools necessary to working these operations, and the said Parties of the <sup>First</sup> Second Part shall not be required to furnish any such tools without a separate agreement's being made for compensation therefor.

It is agreed that the Party of the Second Part shall work the said Timber and Operations under the terms of the United States Department of Agriculture, Forest Section, Code or Conservation Program current for the 1938 season.

If any of the terms of this agreement are not complied with by either of the Parties hereto, unless by a new agreement, this lease and agreement shall be null and void, and all rights hereunder shall cease.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 14th day of February, 1938.

\_\_\_\_\_  
(SEAL).

\_\_\_\_\_  
(SEAL).

\_\_\_\_\_  
(SEAL).

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF ALABAMA :  
BALDWIN COUNTY :

ACKNOWLEDGMENT.

Before me, LUCILE HALL, a Notary Public in and for said County in said State, personally appeared Frank P. Propst, and E. F. Slay, both of whose names are signed to the foregoing instrument of writing, and Frank P. Propst, whose name as Agent for Frank A. Propst, whose name as such Agent is signed to the foregoing instrument of writing, and I do hereby certify that the said Parties, in their individual capacities, and the said Frank P. Propst, as Agent aforesaid, are known to me, and that they acknowledged before me that they signed the said instrument voluntarily on the day the same bears date, and that they signed the same after being informed of the contents thereof, and that they signed the same for the uses and purposes mentioned therein, and that the said Frank P. Propst signed the same as Agent for the said Frank A. Propst, having full and competent and complete authority to sign as such Agent.

Given under my hand and official seal this 14th  
day of February, 1932.

\_\_\_\_\_  
Notary Public, Baldwin County, Alabama.

LESLIE HALL  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

E. F. SLAY,  
Plaintiff,

vs.

FRANK P. PROPST,  
Defendant.

0  
:  
:  
:  
:  
:  
0

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

No. 504.

BRIEF AND ARGUMENT OF DEFENDANT  
ON MOTION FOR NEW TRIAL

-O-

Leslie Hall  
Attorney for the Defendant

- - - - -

E. F. SLAY,	§	IN THE CIRCUIT COURT OF
Plaintiff,	:	
	§	BALDWIN COUNTY, ALABAMA
vs.	:	
	§	AT LAW
FRANK P. PROPST,	:	
Defendant.	§	No. 504.

BRIEF AND ARGUMENT OF DEFENDANT ON MOTION FOR  
NEW TRIAL.

-o-o-o-o-o-

Statement of the Case

This cause of action was commenced by summons and complaint. The complaint was originally in five counts, the first four of which were intended, apparently, as common counts for "account", "account stated", "work and labor", and "money had and received". The fifth count was a count for breach of contract. In each of the counts after the first, the complainant claimed "a further and additional sum of money".

The Defendant demurred, on a number of grounds, to the complaint as a whole, and to the separate counts. Demurrers to the bill of complaint as a whole were overruled. Demurrers to counts one, two, three, and five were sustained. Demurrers to count four were overruled.

Whereupon, Plaintiff amended counts one, two, and three to meet the objections raised by the demurrers; and then Plaintiff further amended by adding count six, which is a count for damages. Defendant demurred to count six, but demurrer was overruled.

Thereupon, trial was had.

During trial, before the Judge without a jury, Plaintiff introduced a written contract as the basis of his claim. Defendant attempted to cross-examine Plaintiff as to his knowledge at the time of execution of this instrument of a prior lease covering part of the property in question. Defendant also attempted to cross-examine Plaintiff as to conversations Plaintiff had with Defendant about a prior government lease before and at the time of execution of the contract introduced by Plaintiff. Objections to these questions were sustained, and Defendant excepted in each instance.

Defendant also attempted to evoke evidence in his own behalf about the above matters, but objections of Plaintiff were sustained, and Defendant excepted in each instance.

During the course of the Trial, Defendant offered to explain what he considered latent and patent ambiguities in the contract introduced by Plaintiff, but Plaintiff's objections to these offers were sustained and Defendant excepted.

Judgment went for the Plaintiff in the sum of \$360.00 and costs.

Defendant has filed a motion for new trial, and respectfully submits this brief in support thereof.

### CONTENTIONS

#### I.

I. It is respectfully submitted that the Court erred in overruling grounds 1-a, 1-b, and 1-c of Defendant's demurrer to the whole complaint, each of which raises the point that the complaint constitutes a misjoinder of causes of action contrary to Law. Each count after the first asks for a "further and additional sum of money", but there is nothing in the complaint to show that said claims constitute causes of action arising out of the same transaction, and if they are not such causes of action arising out of the same transaction, they cannot be joined in the same complaint. Code (1923) Section 9467.

It is admitted that if the Plaintiff had claimed the same sum of money in each count, it would not have been necessary for him to aver that the claims arose out of the same transaction, because that would have been evident. But in the case before us now, the Plaintiff did not do this. Instead, he claimed a "further and additional sum of money", thus making it incumbent on him to aver some facts to show that the claims (separate as they were) arose out of the same transaction. Having failed to so aver, his complaint is bad. Cf. Cox v. Awtry, 100 So. 337, 211 Ala. 356.

#### II

It is respectfully submitted that the Court erred in overruling ground 5-b of Defendant's demurrer to Count 4 of the Bill of Complaint. This count fails to aver that the amount claimed is due from Defendant. It is our contention that a complaint must state that the claim is due from Defendant, because if it does not, it is evident that the Defendant is not liable.

#### III

It is respectfully submitted that the Court erred in overruling ground 7-a of Defendant's demurrer to Count 6, which was added to the complaint by amendment. This



count is one for damages. The theory of any claim for damages is that the Defendant wronged the Plaintiff. In order for the Defendant to wrong the Plaintiff in a contractual relationship, the Defendant must have taken advantage of the Plaintiff to the Plaintiff's hurt. This could easily be so if the Plaintiff had no prior knowledge of the facts on which his asserted injury is based. But if the Plaintiff did have knowledge of such facts, then he cannot be heard to say that he has been wronged, because he went into the proposition with his eyes open--he knew where he stood--what he would get--when he entered into the contract. Therefore, not having been wronged, he has not been injured, and hence can recover no damages.

With that theory of a claim of damages in mind, it is essential for the Plaintiff to aver that he had no prior knowledge of the facts which give rise to his asserted claim; or at least he must aver that he is a purchaser without notice, or must aver some facts to show that he has been wronged. He cannot show he has been wronged in this particular case unless he shows that he was ignorant of the prior lease. He does not aver such ignorance, nor any facts to show how he was wronged. Having failed to so aver, the complaint is bad. At least, this count is bad.

#### IV

The Sixth, Seventh, Eighth and Ninth grounds for the Motion can be argued together. They submit the proposition that it was error for the Court to refuse to permit testimony as to Plaintiff's prior knowledge of the existence of an agreement between the Defendant and the Government covering part of the premises.

It is respectfully contended that it is the law that when a person rents part of a house or building, such as an apartment or an office room, he takes such part with knowledge that he is limited in his usage of the property. Especially if he has actual knowledge of the existence of other leases on other parts of the building, he knows, and it is the law, that he cannot claim damages because he was not permitted to use the remainder of the building.

In the case before us, the lease shows on its face that the Plaintiff took or rented only a part of the timber--the lease shows that the Plaintiff knew that, because the Plaintiff signed the instrument. The lease recites that Plaintiff was to get the turpentine timber "worked and under the control of" the other parties to the instrument. Under this lease, he could not logically claim that he was entitled to other timber that was not under the control of or worked by the Lessors. The Defendant, therefore, should have been permitted to show that timber leased to the Government was not under

the defendant's control or worked by him, and hence was not intended to be included in the contract with the Plaintiff.

In refusing to permit Defendant to explain the ambiguous nature of that paragraph of the contract, it is respectfully submitted that the Court committed error, for which Defendant claims he is entitled to a New Trial and an opportunity to introduce such evidence.

Further, it is respectfully submitted, the contract contains further positive proof that the Plaintiff knew that he was not to have the use of the entire amount of timber in the woods, but was to have the use of only a part thereof. The instrument recites that the Plaintiff (Lessee) agreed to work the timber leased, according to the terms and provisions of the Government conservation program. That program has the effect of Law, and should be matter of which the Court should take judicial knowledge. That program provides that trees under a certain size (9 inches in diameter) shall not be worked for turpentine.

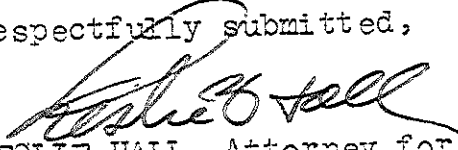
The recital in the contract was enough to put the Plaintiff on notice of that, or even to show that he actually knew it when he signed the contract.

But, considering that the clause may be vague, not clear--then, the Defendant should have been permitted to explain the ambiguities contained therein.

Not being able to introduce evidence that Plaintiff went into the contract with his eyes open--and not being able to explain ambiguous parts of the contract--the Defendant was thus deprived of his right to present an adequate defense.

It is, therefore, respectfully argued that the Court committed error in its several rulings, and that a New Trial should be granted so that the case may be heard in all its aspects...

Respectfully submitted,

  
LESLIE HALL, Attorney for  
the Defendant, Frank P. Propst.

I hereby certify that I have delivered a copy of this brief to H. M. Hall, Attorney for the Plaintiff, this 23rd day of February, 1940.



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

BEEBE, HALL & BEEBE  
LAWYERS  
BAY MINETTE, ALABAMA

MARCH 5, 1940.

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

Dear Judge:- IN RE: SLAY VS. PROPST.

You will recall the evidence in this case, undisputed, that a written lease was entered into between Mr. Propst and Mr. Slay, whereby all timber under Mr. Propst's control was to be worked by Mr. Slay and the proceeds divided equally. It is also undisputed that after the agreement was signed and when Mr. Slay went out to work the timber, many of the cups were moved from the timber in accordance with the requirements of the Government Conservation Program. Mr. Slay testified that he knew nothing of Mr. Propst having entered into any agreement prior to the execution of the contract.

Even though Mr. Slay might have known of the existence of an outstanding agreement, it is our opinion that this is not material, and that you were absolutely correct in not permitting Mr. Propst to testify that Mr. Slay knew that he had entered into an agreement with a Government Agency. In order to bear out this contention, we wish to call your attention to the case of Nunnally Co. vs. Bromberg & Co., 115 So., 230, and especially subsection 12 appearing on page 235, and which is as follows:

"Assuming that plaintiffs' lease covered the premises occupied as a beauty parlor, the mere fact that the plaintiffs or their agents had knowledge that defendant had leased part of the premises to another, when the lease to the plaintiffs was made and accepted, would not excuse the breach of the contract, nor would it mitigate the damages arising therefrom, in the absence of an election on the part of plaintiffs to treat their lease as an assignment of the rents accruing under the prior sublease. *Poposkey v. Munkwitz*, 68 Wis. 322, 32 N.W. 35, 60 Am. Rep. 858; *Townsend v. Nickerson*, 117 Mass. 501."

This case is sufficient to bear out your ruling, and we respectfully submit that the motion for a new trial should be denied.

Yours very truly,

EMH/J

*Robert M. Hall*

LESLIE HALL  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

February 29, 1940

Judge F. W. Hare  
Monroeville  
Alabama

Re: E. F. Slay vs. Frank P. Propst

Dear Judge Hare:

In accord with your request this morning, I am writing this letter for the purpose of calling to your attention the following additional authority for the matters set forth in my Motion for New Trial and in my Brief in this case.

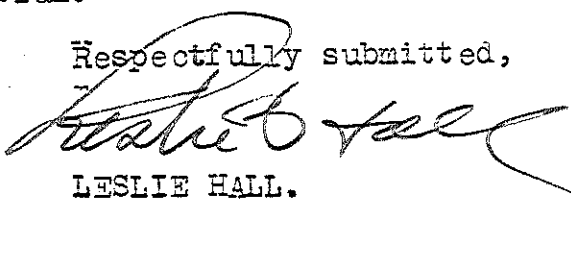
The authority which I respectfully submit for your consideration in ruling on the Motion is the case of Nunnally Co. vs. Bromberg & Co., (1928), 115 Sou. 230, 217 Ala. 180.

In the cited case, the basic facts are quite similar to our case. There was a leasing to the plaintiff by the defendant of certain premises, the exact extent of which, in each case, according to the ambiguous terms of each lease, should be subject of explanation. In the cited case and in the case before us, there was a prior lease covering a portion of the whole general premises. In each case, plaintiff failed to aver that the portion previously let to another was within the plaintiff's lease. Demurrer for this reason held good in the Nunnally case.

Likewise, in each case, there was an effort to show that premises included in prior lease were outside the plaintiff's lease. The Supreme Court held this defense available under the general denial. In the case now before us, it is respectfully submitted that the Court erred in refusing to permit the Defendant to make such a showing under his general denial.

In view of the important nature of this case to the turpentine men in this section, we should appreciate an early decision on the motion for new trial.

Respectfully submitted,

  
LESLIE HALL.

LH/"  
carbon copy to H. M. Hall.

The State of Alabama,

CIRCUIT COURT

No. 504

Baldwin County.

June

Term, 1940

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

YOU ARE HEREBY COMMANDED, That of the goods and chattels, lands and tenements of

Frank P. Probst

Defendant,

you cause to be made the sum of Three Hundred Sixty & 40/100 (\$360.40) DOLLARS,which E. F. Gray Plaintiff,recovered of Frank P. Probston the 30 day of January, 1940, by the Judgment of our Circuit Court held for the County ofBaldwin, besides the sum of Forty Eight & 15/100 (\$48.15) DOLLARS,costs of suit, and have the same to render to the said R. S. Dink, and make return of this Writ and the execution thereof, according to law.

Interest from \_\_\_\_\_, 19\_\_\_\_, to \_\_\_\_\_, 19\_\_\_\_.

Witness, my hand this 25 day of June, 1940.R. S. Dink

Clerk.

CLERK'S FEES		AMOUNT	SHERIFF'S FEES		AMOUNT
Issuing.....	Summons and Complaint.....	\$1.25	Serving and Returning.....	Summons.....	\$1.50
Issuing.....	copies of same.....	2 30	Serving and Returning.....	Writs.....	1.30
Issuing.....	Branch Summons and Complaint.....	1.25	Serving and Returning.....	Subpoenas for Wit.....	.65
Issuing.....	copies of same.....	.30	Levying.....	Attachment.....	3.00
Entering.....	Sheriff's Return or copy of above.....	.20	Entering and Returning.....	Attachment.....	.25
Docketing Cause.....		.25	Summoning and Returning.....	Garnishee.....	1.50
Entering.....	Appearances.....	.20	Serving and Returning.....	Sci. Fas. Notices.....	1.50
Filing.....	Pleas <u>9</u> Demurrers.....	.10	Impaneling Jury.....		.75
	Affidavits, Certified.....	.25	Collecting Cost, Execution.....		1.50
	Commissions to take Depositions.....	.75	Taking and Approving.....	Replevin Bonds.....	1.00
	copies of Interrogatories.....			Claim Bonds.....	1.00
	Notices of Filing Interrogatories.....	.50		Garnishment Bonds.....	.75
Filing.....	Packages of Depositions.....	.10		Forthcoming Bonds.....	1.00
Inclosing.....	Packages of Depositions.....	.10		Bail Bonds.....	1.00
	Orders in Court.....	2 30		Detinue Bond.....	1.00
	Continuances.....	.10	Writ of Possession.....		5.00
Issuing.....	Subpoenas for Witnesses.....	.30	Making Deed.....		5.00
Trial and Incidents.....		.75	Collecting Money on Execution.....		
Entering.....	Judgment.....	.30	Writ of Restitution.....		2.00
Issuing.....	Execution.....	.50	Sheriff's Commissions.....		
Entering.....	Sheriff's Return of Execution.....	.20	Sheriff's Deed.....		
Issuing.....	Certiorari Sci. Fas.....	.75	Seizing Personal Property in Detinue.....		3.00
Filing.....	Certiorari, etc.....	.15	Former Sheriff's Fees.....		
Issuing.....	Notices.....	.75	TOTAL SHERIFF'S FEES.....		11.65
Issuing.....	copies of same.....	.50	WAIVER.....	NO WAIVER.....	
Taking.....	Bonds.....	.75	RECAPITULATION.....		
Filing.....	Bonds.....	.10	Judgment for <u>plaintiff</u> for.....		360.00
Issuing.....	Attachment Writ..... and taking Bond.....	1.00	Interest from.....		
Filing.....	Attachments.....	.10	Damages.....		
	Summons of Garnishee.....	.50	Clerk's Fees.....		15.95
Swearing and Ent.....	Answer of Garnishee.....		Sheriff's Fees.....		11.65
Complete Record, 15c per 100 words.....		8.75	Justice of Peace Fees.....		
Transcript to Supreme Court.....			Witness Fees in Justice of Peace Court.....		
Certificate of Appeal to Supreme Court.....		.75	Constable's Fees.....		
Notices of Appeal.....		.75	Commissioner's Fees.....		
Appeal Bond.....		.75	Commissioner's Residence.....		
Certificate of Judgment.....		.50	Printer's Fees.....		
Witness Certificates.....		.25	Garnishee's Fees.....		
			Witness Fees in Circuit Court.....		12.55
			Former Clerk's Fees.....		
			Trial Tax.....		3.00
TOTAL CLERK'S FEES.....		15.95	TOTAL FEES.....		403.15

JUN 25 1940

No. 504 Page

The State of Alabama,

Baldwin COUNTY.

CIRCUIT COURT.

E. Y. Day vs. Plaintiff

Stewart P. Probst Defendant

CIVIL EXECUTION FOR COSTS AGAINST DEFENDANT

Judgment for Plaintiff for \$ 360.00

Interest from 19

to 19 \$

Damages \$ 48.15

Costs \$ 408.15

Total \$ 408.15

Civil Fee Book Exec Page 504

Execution Docket 11 Page 40

Filed June 25 1940 H. S. Buck Clerk

Book of Halls (Halls) Plaintiff's Attorney

Public Sale Defendant's Attorney

JUN 25 1940

COLLECT COSTS FROM DEFENDANT

The State of Alabama, COUNTY.

I hereby certify that the within Judgment and costs in this case are correct, and there was a waiver of exemption as to personal property under the Constitution and Laws of Alabama.

This day of 19

Clerk.

Received in Office

June 25 1940 Sheriff

Sheriff's Execution Docket, page

Sheriff's Fee Book, page 504

315-0 7/13/40

Det 327

The State of Alabama, COUNTY.

By virtue of the within Execution, I have, at o'clock M., this day of 1940, by Collecting from Stewart P. Probst \$357.55 and applied as follows: H. S. Buck atty \$300.00 R. S. Buck clerk \$31.50 W. R. Stewart Sheriff \$28.05 as per Receipt on Sheriff's Docket

W. R. Stewart Sheriff.

PLAINTIFFS WITNESSES

AMOUNT

DEFENDANT'S WITNESSES

TOTAL

Det 1760 \$487.15

CIVIL SUBPOENA—ORIGINAL—In case witness shall wish to charge for attendance, he shall produce to the Clerk in term this Subpoena, or within five days after adjournment of Court, else he will be barred.

Gill Ptg. & Sta. Co., Mobile—Re-Order No. 720

THE STATE OF ALABAMA

BALDWIN COUNTY

S.D. Page No. ....

Case No. 504

CIRCUIT COURT

August Term, 1939

To any Sheriff of the State of Alabama, GREETING:

You are hereby commanded to summon

Charlie Foster, Howard Lovett,  
George Hamille, Vernon W. Schombers,  
David Hamille

if to be found in your County, at the instance of the plaintiff

to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof,

by 8:30 o'clock of the forenoon, on the 22 day of August 1939

and from day to day and term to term of said Court until discharged by law, then and there to testify, and the truth to

say, in a certain cause pending, wherein E. F. Slay Plaintiff

and Frank P. Probst, et al. Defendant.

Herein fail not and have you then and there this Writ.

Given under my hand and seal, this 18 day of August 1939

R. B. DUB

clerk

Clerk.

By Wentley H. Hargis  
Deputy

Received in office this 18<sup>th</sup> day of

Aug

1939

W.R. Stuart

Sheriff.

I have executed this writ

Vernon Wesley

8/19/39  
W.S. Chubb PH

David Norville 8/19-39<sup>H</sup>

Charlie Foster 8/19-39<sup>H</sup>

Howard Lovell 8/19-39<sup>H</sup>

George Norville 8/19-39-H

W.R. Stuart

Sheriff.

A.P. Pruitt

plaintiff  
ORIGINAL

No. 504

Page.....

THE STATE OF ALABAMA

BALDWIN COUNTY

CIRCUIT COURT

E. J. Slay

Plaintiff

VS.

Frank P. Probst, et al

Defendant

CIVIL SUBPOENA

Issued this 18<sup>th</sup> day of

Aug P. S. DICK 1939

Clerk - register

Ma. Alice Thompson  
Clerk.



CIVIL SUBPOENA—ORIGINAL—In case witness shall wish to charge for attendance, he shall produce to the Clerk in term this Subpoena, or within five days after adjournment of Court, else he will be barred.

Gill Ptg. & Sta. Co., Mobile—Re-Order No. 720

THE STATE OF ALABAMA }  
BALDWIN COUNTY }

S.D. Page No. ....

CIRCUIT COURT

Case No. 504

January, Term, 1940

To any Sheriff of the State of Alabama, GREETING:

You are hereby commanded to summon Charlie Foster (Bay Minette), Howard Lovett (Bay Minette), George Harville (Bay Minette), Vernon Wookley (Pordido), and David Harville (Phillipsville); Vernon Wookley

if to be found in your County, at the instance of the Plaintiff

to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof, by 8:30 o'clock of the forenoon, on the 30th day of January, 1940 ~~193X~~

and from day to day and term to term of said Court until discharged by law, then and there to testify, and the truth to say, in a certain cause pending, wherein ~~xx~~ E. F. SLAY, is Plaintiff and FRANK P. PROBST, ET AL., are Defendant. s

Herein fail not and have you then and there this Writ.

Given under my hand and seal, this 18th day of January, 1940 ~~193X~~

R. E. Dush Clerk.

Received in office this 18<sup>th</sup> day of

January 1940  
W.R. Stuart.  
Sheriff.

I have executed this writ by serving

Charlie Foster 128 40

Howard Lovett 1-28-40

George Harville 1-28-40

Vernon Weekley Ex 1-29-WRS

David Harville " 1/28 RPP

Berlon Weekley 1/25/40

W.R. Stuart  
Sheriff.

ORIGINAL

No. 504

Page

THE STATE OF ALABAMA  
BALDWIN COUNTY

CIRCUIT COURT

E. F. SLAY,

Plaintiff

VS.

FRANK P. PROPST, ET AL.,

Defendant

CIVIL SUBPOENA

Issued this 18th day of

January, 1940

1940

R. S. DUCK,

Clerk.