

JOHN H. KING,

Complainant,

-VS-

CHARLES J. EBERT, LAMAR IRWIN &
FRED C. GRIFFIN,

Respondents.

BRIEF AND ARGUMENT OF COMPLAINANT.

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

As correctly stated by Respondents in their brief filed in this cause, the bone of contention between the respective parties to this suit is the amount the Complainant is to pay to Respondents to redeem the property involved, which was sold at foreclosure sale by The First Joint Stock Land Bank of Montgomery, in which it became the purchaser at said sale at and for the sum of TWELVE HUNDRED (\$1200.00) DOLLARS. See deed executed by John H. King and Ada M. King, by J. M. Williams, as Attorney in Fact and Auctioneer, dated and acknowledged on the 15th. day of July, 1935.

The First Joint Stock Land Bank of Montgomery sold and conveyed the property involved to Charles J. Ebert and Lamar Irwin for the sum of TWELVE HUNDRED (\$1200.00) DOLLARS. See deed of The First Joint Stock Land Bank of Montgomery, dated 12th day of July, 1935. That at the time of the purchase of said land by the said Charles J. Ebert and Lamar Irwin from The First Joint Stock Land Bank of Montgomery the said Ebert and Irwin claimed that the Land Bank assigned the indebtedness as evidenced by the note of John H. King, which was given in connection with the aforesaid mortgage to them for value, as they claim. This note shows that there was due thereon on the date of the last payment by Mr. King, which was July 1, 1933, the sum of \$1423.80. On the date of the sale of said land there was due, at 6% interest, \$1594.66. After deducting the sale price, would leave the sum of \$394.66 due on July 5, 1935, on which interest at 6% should be charged to date.

Section 10,145 of the Code of 1923, says that 10% interest is to be paid in redemption on the purchase price.

that if redemption is made from a person who at the time of the redemption owned the debt for which the property was sold, the person redeeming it is also to pay the debt with interest thereon mentioned in this case the stipulated interest, and if ~~the~~ legal rate of interest is to be charged it would mean one and the same thing, for the Legislature fixed the rate of interest in Alabama at 6% on the 9th day of February, 1935, which went into effect about March 11, 1935, and was in effect at the date of the sale. The interest on \$394.66 from July 5, 1935 to April 5, 1939, would be \$88.86, being \$23.68 per annum, or \$1.98 per month.

Purchase price	\$1200.00
Interest at 10% to April 5, 1939	450.00
Balance of Indebtedness	394.66
Interest on Balance of indebtedness at 6% per annum	88.86.

To this amount should be added taxes paid by Ebert & Irwin, and it appears that they paid the following taxes:

Taxes for 1936, 2/12/37	29.58
Interest to April 5, 1939	1.88
Taxes paid by F. C. Griffin for 1936, 12/16/36	10.50
Interest to April 5, 1939	1.38
Taxes paid by F. C. Griffin for 1937, 12/21/37	12.08
Interest to April 5, 1939	.88

Total amount necessary to pay purchase price, interest, balance of indebtedness, interest thereon and taxes and interest thereon	\$2211.07
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We respectfully contend that the aforesaid sum of \$2211.07 would be the amount that John H. King would be required to pay in and for the redemption of this land, except for the fact that

there were certain improvements made on the land by the purchasers, or their vendees, which we will discuss further along in this brief.

We respectfully contend that in ascertaining the amount necessary to redeem, the Respondents have used the wrong basis to calculate their interest on. The Statute only contemplates the payment of 10% interest on the purchase price and not on any indebtedness that might be left due on the debt after the foreclosure and interest on the debt is to be calculated at the legal rate of interest. This will very clearly appear from a casual reading of Section 10145 of the 1923 Code of Alabama.

There is no competent evidence in the record that The First Joint Stock Land Bank of Montgomery paid any taxes on this property or any premiums on insurance policies. There is introduced a statement as Respondent's Exhibit 3 to Charles Ebert's testimony, which attempts to set forth purported payments of taxes and premiums of insurance by The First Joint Stock Land Bank of Montgomery, but no one testifies as to the correctness of this statement, and so far as this Court knows from the record and legal testimony, there is nothing shown to have been paid for taxes or insurance by The First Joint Stock Land Bank of Montgomery. It is true that Mr. Ebert testified that at the time he acquired the note there was a balance due on the note of \$1749.19. We know, beyond a question, that Mr. Ebert is very incorrect in this statement, for the total indebtedness on the note at the time of the default was less than \$1500.00; that the principal was only \$1500.00, and the note itself shows that the

interest and a portion of the principal was paid July 1, 1933. The mortgage was foreclosed in 1935, and the property was bought in by the mortgagee for \$1200.00. The purchase price, of course, went on the indebtedness, which was evidenced by the note - Then how could Mr. Ebert's testimony be correct when he stated that at the time he acquired the note, which was some several days after the foreclosure of the mortgage that there was due thereon the sum of \$1749.19? There could not have been this amount due on the note. His testimony in this respect will not hold water; it is all wet. Nor does Mr. Ebert attempt to say, nor any one else so far as that is concerned that Exhibit 3 correctly states the amount of Mr. King's indebtedness with The First Joint Stock Land Bank of Montgomery. The burden of proof is upon the Respondents as to the amount of the indebtedness.

See

Rice v. Schloss,
7 Southern, page 802.

Now as to the question of improvements, as we understand the law, it is not the cost of the improvements, but the value of the same. Section 10158 of the 1923 Code of Alabama, which stipulates: "Any person offering to redeem must pay to the then holder of the legal title the value of all permanent improvements made on the land since foreclosure sale." The Statute, Code of 1923, Section 10153 does not deal with the cost, but the value of all permanent improvements made on the land since the foreclosure sale, and while the cost of improvements is related to the value, the reasonable value is made the basis of payment by the redemptioner.

Ewing vs. First National Bank,
227 Alabama, 46.

After the purchase of said lands by Ebert and Irwin from the First Joint Stock Land Bank they sold a small portion of said land to Mr. Fred C. Griffin. At the time that Mr. Griffin purchased the acre of land from Ebert and Irwin there was located on said acre of land a filling station which had been erected either by Mr. King or a predecessor in his title. That this filling station was moved a distance of about two hundred feet west of where it stood on the same forty acre of land. That Mr. Griffin then constructed a filling station on the acre of land acquired by him. That according to the testimony of the complainant the value of this improvement on said acre of land was about \$800.00. The building was constructed of hollow tile and was twenty-four or twenty-five feet by thirty feet; that this was the value of the improvements at the time that this proceeding was commenced for a redemption of the property, and that since said time an addition was made to the building by putting in a new floor and some interior work. That all told the permanent improvements on the one acre of land purchased by Mr. Griffin would not exceed \$1,000.00. This contention is supported by the testimony of John H. King, Lee Killian and S. W. Porter. Mr. Killian and Mr. Porter are not interested in the transaction. Mr. Porter is familiar with the cost of materials in that community; has constructed buildings; knew of buildings being erected and the cost of buildings. His testimony describes the building erected, which conforms with the testimony of John H. King, and states that the building erected by Griffin could be

Value of permanent improvements made by
Ebert & Irwin \$200.00

Value of permanent improvements made by
Fred C. Griffin 1,000.00

TOTAL AMOUNT NECESSARY TO REDEEM \$3,059.82

The interest has been calculated on these several
items to April 5, 1939.

Respectfully submitted,

Hylant & Chason
Solicitors for Complainant

We hereby certify that we have this day forwarded to
Messrs. Beebe & Hall, Attorneys for Respondents, a copy of the above
and foregoing brief, postage prepaid.

Hylant & Chason
Solicitors for Complainant

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY,
NO. 347.

JOHN H. KING,
Complainant,

VS.

CHARLES J. EBERT, LAMAR
IRWIN and FRED C. GRIFFIN,
Respondents.

BRIEF OF THE RESPONDENTS

BEEBE, HALL & BEEBE,
Solicitors for Respondents.

The issues made up between the parties hereto are comparatively simple, and as we see it, about the only question to be decided by the Court is the ascertainment and determination of the value of the permanent improvements placed on the lands since foreclosure.

It is undisputed that the Complainant, together with his wife, executed a mortgage to The First Joint Stock Land Bank of Montgomery, and along therewith, his note. The Complainant being in default on the mortgage, it was foreclosed by the Mortgagee, The First Joint Stock Land Bank of Montgomery, and the said Bank became the purchaser; that subsequent to said foreclosure and purchase, The First Joint Stock Land Bank of Montgomery sold the property to the Respondents, Charles J. Ebert and Lamar Irwin, of Foley, Alabama, and at the same time, by proper endorsement, transferred and assigned the said note and indebtedness to the Respondents, Charles J. Ebert and Lamar Irwin.

There can be no question but that The First Joint Stock Land Bank transferred to the Respondents, Ebert and Irwin, the balance of the unpaid mortgage indebtedness, and evidenced the said act by a transfer and delivery of the note secured by said mortgage.

The delivery of the note to the purchasers was sufficient to carry the equitable title to the purchasers and to make it their property as to any balance due thereon.

Malone vs. Nelson, 167 So., 714.

The amount of the indebtedness, which is undisputed, as of December 10th, 1936, was \$1974.04. The Respondents are unquestionably entitled to interest at 10% on this amount from that date.

It is also undisputed that the Respondents have paid taxes on the property for the years 1936 and 1937; that Ebert and Irwin paid, for the 1936 taxes, on February 12th, 1937, \$29.58, and for the 1937 taxes, on February 11th, 1938, \$29.58; that Griffin paid, on December 16th, 1936, the 1936 taxes, amounting to \$10.50, and on December 21st, 1937, the taxes for 1937, amounting to \$12.08. They are entitled to interest at 6% per annum on these amounts from the date of payment.

This leaves the only issue, as we see it, the question as to the value of the permanent improvements. The Respondents are entitled to be repaid the reasonable value of all permanent improvements made on the lands since foreclosure sale. The testimony as to these improvements varies. The Complainant, King, in his testimony, admits that the improvements placed on the property by Griffin are worth at least \$1,000.00, and those placed on the property by Ebert and Irwin are worth at least \$200.00.

The Respondents have furnished itemized and verified statements of the improvements placed on the property by each of them. These improvements, according to the testimony of the several witnesses on behalf of the Respondents are: To improvements placed on the property by Griffin - between \$1400.00 and \$1500.00, and those placed on the property by Ebert and Irwin - between \$400.00 and \$500.00. The expenditures for permanent improvements likewise carries interest at 6% per annum.

We have computed and submit the amounts necessary to be paid by the Complainant to the Respondents in the redemption are as follows:

Principal due on Mortgage 12/10/36	\$1974.04
Interest - 12/10/36 to 2/10/39 at 10%	427.70

Taxes for 1936 paid by Ebert and Irwin on 2/12/37	\$ 29.58
Interest - 2/12/37 to 2/10/39 at 6%	2.00
Taxes for 1937 paid by Ebert and Irwin on 2/11/38	29.58
Interest - 2/11/37 to 2/10/39 at 6%	.30
Taxes for 1936 paid by F. C. Griffin on 12/16/36	10.50
Interest - 12/16/36 to 2/10/39 at 6%	1.36
Taxes for 1937 paid by F. C. Griffin on 12/21/37	12.08
Interest - 12/21/37 to 2/10/39	.73
Improvements made by Griffin	1420.81
Interest from 11/1/35 to 2/10/39 at 6%	277.03
Improvements made by Ebert and Irwin	445.13
Interest at 6%	86.75

This makes a total of the principal indebtedness, interest thereon, taxes and interest, amount expended for permanent improvements, and interest thereon of \$4717.59

The Respondents, of course, stand ready and willing to reconvey the property to the Complainant upon the payment of this amount, to-wit: \$4717.59.

The respective Solicitors of record for the parties hereto, as is their usual custom, submit this matter to the Court, you might say, waiving all legal technicalities, that the Court may ascertain and determine the amount to be paid by the Complainant to the Respondents in the event a redemption is perfected.

The Respondents, in their answer and as a part thereof, set out

as follows:

"That as evidence of good faith and in order to enable Complainant to accomplish the purpose for which this bill was originally filed, to-wit, the redemption of said property, that they are willing for Complainant to redeem the same from said foreclosure, upon paying to them the amount required by the laws of the State of Alabama for the redemption of land sold under foreclosure of mortgages, the value of all permanent improvements and other legal expenditures and charges, together with the legal interest thereon, as provided by law, and offer to submit to this Honorable Court the right to fix such time as it considers reasonable to permit Complainant to redeem."

The Respondents have filed no claim to the property, other than that they be repaid the amount of money as fixed by law, and offering to permit the Complainant to redeem upon the payment of the amount fixed by the Court, all costs of this proceeding should be taxed against the Complainant. Blum vs. Mitchell, 59 Ala., 535.

The foreclosure was perfected on July 5th, 1935, something over three years ago, and the Complainant has not until this time redeemed the property.

We, therefore, submit that in view of the circumstances and the unusual length of time having expired since the foreclosure, that thirty days should be a reasonable time to allow the Complainant to come in and perfect his redemption.

We, therefore, respectfully submit that the Respondents are entitled to have repaid to them the sum of \$4717.59, together with interest thereon from this date, and that upon the payment of said amount, a deed should be executed reconveying the property to the Complainant; that the costs in this cause should be taxed against the Complainant, and that thirty days is a reasonable time to allow the Complainant to redeem.

Respectfully submitted,

BEEBE, HALL & BEEBE,

By: *[Signature]*
Solicitors for Respondents.

*Received
in full
[Signature]*

Respectfully submitted,

EDWARD, WALL & BERRY

~~By: _____~~
Solicitors for Respondents.

*British and Foreign
Subscribers*

EXHIBIT "A" TO TESTIMONY OF JOHN H. KING.
GRIFFIN MOTOR COMPANY

Wholesale Automotive Necessities

Master Service Station

LOXLEY, ALABAMA

May 28, 1937.

Itemized list of of material and labor used in constructing buildings on the one acre in the Northease Quarter of Southwest Quarter of Section Twenty-Six, Township Seven, South of Range Four East, purchased from Chas. Ebert and L. Irwin, as per deed of record:

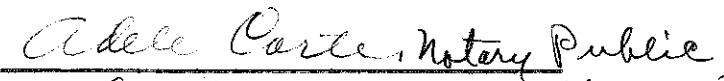
Brick, Tile, Lime, Cement, Sand and Plaster	295.92
Rough Lumber and Posts	89.20
Dressed Lumber, finishing lumber, and laths	151.26
Builders hardware, nails and steel	58.59
Sash, Doors, and glass	78.20
Roofing, Felt, and Asphalt	71.46
Electrical fittings, including material and labor	78.41
Paint & Varnish	26.95
Contract on masonry work	177.85
All other labor	167.45
Above expenditures made in September and October 1935	
	<hr/> 1295.29
Interest at 6% from Nov. 1, 1935 to June 1st 1937	123.03
Taxes	20.16
	<hr/> 1438.48
Material and labor (Since October 1935)	25.52
Total	<hr/> \$ 1464.00

Submitted to John H. King and Ada J. King, as per their request dated May 26th, 1937. Copy to Chas. J. Ebert & L. Irwin.



 (F.C. Griffin)

Sworn to and subscribed before me this 29th day of May 1937.



 My Com Expires Mar 12, 1941
 (Baldwin Co.)

JOHN H. KING,
Complainant,
-vs-
CHARLES J. EBERT, ET AL.,
Respondents.

IN THE CIRCUIT COURT--IN EQUITY
STATE OF ALABAMA
BALDWIN COUNTY.

It is agreed by and between the parties, through their Solicitors of Record, that Mary F. Green is to act as Commissioner in taking the testimony of John H. King, Lee Killian, S. W. Porter and John Small, witnesses for Complainant, and is to take the said testimony down in shorthand and is to transcribe the same, and to furnish a copy of the testimony so taken, which is to be taxed as a part of the costs, to Beebe & Hall, Solicitors for Respondents, and Hybart & Chason, Solicitors for Complainant; that the signing of the testimony by the witness and the issuance of a commission is hereby waived.

Dated this 8th day of November, 1938.

Beebe & Hall
Solicitors for respondents.

Hybart & Chason
Solicitors for complainant.

(page two)

Q: Do you know whether the First Joint Stock Land Bank of Montgomery assigned to them their indebtedness against this place or not?

A: I couldn't tell you.

Q: What amount did you owe the First Joint Stock Land Bank at the time of the foreclosure?

A: \$1670.00, I think was the amount if I'm not mistaken.

Q: That's your best recollection?

A: That's my best recollection.

Q: Do you know when the First Joint Stock Land Bank of Montgomery sold this property to Charles J. Ebert and Lamar Irwin?

A: Very shortly after the Mortgage was foreclosed, I don't know just how long.

Q: Would you say it was along about July 20th, 1935?

A: Something like that.

Q: You have seen the conveyance from the First Joint Stock Land Bank of Montgomery to Charles J. Ebert and Lamar Irwin on the records over here, have you not?

A: No, I have not.

Q: After Ebert and Irwin became the owners of the property by purchase from the First Joint Stock Land Bank of Montgomery, did you surrender the possession of the property to them?

A: No sir, I wasn't living there at the time. I was living at Robertsdale.

Q: They took charge of the property then?

A: Yes, they took charge of it.

Q: You didn't have any effects there on the place at all?

A: No sir.

Q: They just took charge of it?

A: I was living in Robertsdale at the time it came due, and I had already moved away and I just---

Q: How long before they became the purchaser had you moved away from the property?

A: I had been away from there possibly two or three months.

Q: Carried all of your effects off?

A: All except one wardrobe. There was one wardrobe in the house.

Q: Is that still there?

A: Yes sir.

Q: You never made any claim to the property?

A: Not at that time.

Q: I mean the right to hold it. You never made any claim to the right to hold the property from them?

A: No.

(page six)

A: That's right.

Q: And was this an exaggerated statement of the improvements?

A: Yes sir.

Q: Now located on this thirty-nine acres of land, what improvements are on it, Mr. King?

A: House and a barn.

Q: Who is living on--

A: There were three good sized chicken houses on it at the time that they redeemed it, and there is only one of them now.

Q: Three good chicken houses on there?

A: Yes sir.

Q: What size houses were those chicken houses?

A: They were 12x16, something like that, possibly one 10x12 or 10x10 and the other 10x16.

Q: What was the value of those chicken houses?

A: They were probably worth \$25.00 or \$30.00 apiece.

Q: And you say there is only one there now?

A: Yes sir.

Q: What's become of the other two?

A: Torn down.

Q: Moved away?

A: Moved away.

Q: Did I ask you who was living in the house?

A: I forget the man's name, he is a night watchman--

Q: Lawrence Rigsby?

A: Yes sir, Lawrence Rigsby.

Q: Has he been living there all the time Ebert owned the place?

A: No sir, part of the time there has been two families living in the house.

Q: What improvements have been made on that house since Mr. Ebert owned it?

A: They put a roof on the house and they put possibly two squares of sheeting under the porch, the front porch the sheeting was old and they put possibly two squares.

Q: What improvements did they make on the barn?

A: Just put the roof on.

Q: What kind of roof was this that they put on?

A: Sheet iron roofing.

(page six)

(page ten)

A: Yes sir.

Q: And what would you say the material that went into that building, what was the worth, exclusive of the labor?

A: Without the labor?

Q: Yes.

A: \$500.00 or \$600.00.

Q: \$500.00 or \$600.00 worth of labor?

A: Materials.

Q: Then what would be a fair price for constructing the building?

A: \$150.00 or \$200.00.

Q: And what size is that building?

A: About 24x30.

Q: How many rooms to it?

A: Two, oh you might say one room. Just a scant partition between.

Q: Does it have a driveway?

A: Yes.

Q: How big?

A: Twelve feet wide and the length of the building. 12x24.

Q: Is the building stuccoed on the outside?

A: Yes.

Q: And the roof?

A: Just a rubberoid roofing.

Q: Does it have a concrete driveway?

A: No sir.

Q: And you say something about having put some new flooring in. That was necessary, wasn't it? The other had gone bad?

A: No.

Q: What was the object?

A: They just didn't want the concrete floor, they told me. Said it made it so damp that they put a new flooring in there.

Q: That was necessary to preserve the building, wasn't it?

A: No.

Q: You don't think so.

A: I don't think so.

Q: Mr. Griffin, or someone, has paid taxes on this property since they had it, you say?

A: Yes.

JOHN H. KING,
complainant,
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Respondents.

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It is agreed by and between the parties, through their Solicitors of Record, that Mary F. Green is to act as Commissioner in taking the testimony of John H. King, Lee Killian, S. W. Porter and John Small, witnesses for Complainant, and is to take the said testimony down in shorthand and is to transcribe the same, and to furnish a copy of the testimony so taken, which is to be taxed as a part of the costs, to Beebe & Hall, Solicitors for Respondents, and Hybart & Chason, Solicitors for Complainant; that the signing of the testimony by the witness and the issuance of a commission is hereby waived.

Dated this 8th day of November, 1938.

Beebe & Hall
Solicitors for respondents.

Hybart & Chason
Solicitors for complainant.

TESTIMONY OF MR. JOHN H. KING. DIRECT EXAMINATION BY HON. C. L. HYBART, ONE OF THE SOLICITORS FOR THE COMPLAINANT.

Q: This Mr. John H. King?

A: Yes sir.

Q: Mr. King, where do you live?

A: I live in Robertsdale.

Q: Mr. King, are you the owner of the Northeast quarter of South-west quarter of Section 26, Township 7 South of Range 4 East?

A: Yes sir.

Q: Did you make a Mortgage, did you and Mrs. King make a Mortgage on this property to anyone?

A: First Joint Stock Land Bank of Montgomery.

Q: What was the Mortgage indebtedness, Mr. King?

A: \$1500.00.

Q: Do you recall when it was executed?

A: I'm not sure whether it was 1925 or 1926.

Q: Now was this property sold, Mr. King?

A: Yes sir.

Q: Under that Mortgage?

A: Yes sir.

Q: Mortgage was foreclosed?

A: Yes sir.

Q: Do you know who became the purchaser at that sale?

A: Mr. Ebert and Mr. Irwin.

Q: Did they buy it at the foreclosure sale or did they buy it from the First Joint Stock Land Bank?

A: I think they bought from the First Joint Stock Land Bank.

Q: The First Joint Stock Land Bank bought it in at the Mortgage foreclosure?

A: Yes sir.

(page two)

Q: Do you know whether the First Joint Stock Land Bank of Montgomery assigned to them their indebtedness against this place or not?

A: I couldn't tell you.

Q: What amount did you owe the First Joint Stock Land Bank at the time of the foreclosure?

A: \$1670.00, I think was the amount if I'm not mistaken.

Q: That's your best recollection?

A: That's my best recollection.

Q: Do you know when the First Joint Stock Land Bank of Montgomery sold this property to Charles J. Ebert and Lamar Irwin?

A: Very shortly after the Mortgage was foreclosed, I don't know just how long.

Q: Would you say it was along about July 20th, 1935?

A: Something like that.

Q: You have seen the conveyance from the First Joint Stock Land Bank of Montgomery to Charles J. Ebert and Lamar Irwin on the records over here, have you not?

A: No, I have not.

Q: After Ebert and Irwin became the owners of the property by purchase from the First Joint Stock Land Bank of Montgomery, did you surrender the possession of the property to them?

A: No sir, I wasn't living there at the time. I was living at Robertsdale.

Q: They took charge of the property then?

A: Yes, they took charge of it.

Q: You didn't have any effects there on the place at all?

A: No sir.

Q: They just took charge of it?

A: I was living in Robertsdale at the time it came due, and I had already moved away and I just---

Q: How long before they became the purchaser had you moved away from the property?

A: I had been away from there possibly two or three months.

(page three)

Q: All you've endeavored to do since that time is redeem your property?

A: Yes sir, that's all. I started the redemption a little over a year afterward.

Q: Are the Defendants or Respondents in this case in possession of this property now?

A: Yes sir.

Q: Do you know whether Mr. Ebert and Mr. Irwin conveyed any of this property to Mr. Fred C. Griffin?

A: Yes sir.

Q: How much did they convey?

A: One acre.

Q: Would you say this was the description of it, Mr. King? Beginning at the Northeast corner of the Northeast Quarter of Southwest Quarter of Section 26, Township 7 South of Range 4 East, run South 210 feet, thence West 210 feet, thence North 210 feet, thence East 210 feet to point of beginning.

A: That's right.

Q: One acre square in the Northeast corner of the Northeast Quarter of the Southwest Quarter of Section 26, Township 7 South of Range 4 East.

A: That's right.

Q: Now, after Mr. Fred C. Griffin purchased this one acre of land from Ebert and Irwin did Griffin go into possession of it?

A: Yes sir.

Q: At the time you surrendered possession of said lands, or at the time the First Joint Stock Land Bank of Montgomery took over the possession of the lands involved in this suit, had you practically completed a filling station on the acre of ground which F. C. Griffin is now in possession of?

A: Yes sir.

Q: Now after F. C. Griffin--he is one and the same person as Fred C. Griffin is he not?

A: Yes sir.

Q: After he purchased said acre of land that I just described from

(page four)

Q: On your same forty acres of land?

A: Yes sir.

Q: Did Griffin, Fred C. Griffin, construct a filling station?

A: Yes sir.

Q: On the land?

A: My understanding was that he sold it to Lawrence Schaff, or he and Schaff had an agreement that he was to furnish the money and Schaff was to do the work.

Q: You don't know whether he made a conveyance of that land to Schaff do you?

A: No sir, I couldn't tell you.

Q: Has there been a filling station constructed there by Griffin or Schaff?

A: Yes sir.

Q: On this acre of land?

A: Yes sir.

Q: And what was the value of that improvement?

A: About \$800.00 at the time of the redemption. There has been a little more done since then, but at the time I started redemption it was worth about \$800.00.

Q: What kind of building?

A: Hollow tile.

Q: What size?

A: I imagine about 24 or 25 feet by thirty.

Q: That's your best judgment?

A: Yes sir.

Q: And you say up to the time that you commenced this proceedings to redeem the land that the value of the improvements at that time was \$800.00.

A: I don't think it would beat that.

Q: You don't think it would exceed \$800.00?

(page five)

Q: Do you know what taxes they have paid on the place?

A: No sir.

Q: Now those improvements haven't increased in value, have they?

A: I don't think so.

Q: Did you call on Fred C. Griffin for a statement, make a written demand on him for a statement to furnish you with an itemized statement of the improvements and the amount necessary to redeem?

A: No sir.

Q: You never did call on him for that?

A: I called on Irwin and Ebert. They submitted Griffin's statement.

Q: And did Fred C. Griffin submit a statement?

A: Not to me. He submitted one to Irwin and Ebert.

Q: Was this the statement that they submitted to you, Mr. King?

A: When I called on Mr. Irwin and Mr. Ebert for the necessary to redeem this was attached to their statement that they rendered to me.

Mr. Hybart: We introduce in evidence statement of F. C. Griffin, Charles J. Ebert and L. Irwin, and ask that the same be marked Exhibit "A" and made a part of the testimony of the witness.

Q: You have examined that statement, have you?

A: Yes sir.

Q: Those statements, are they exaggerated?

A: Very much.

Q: And you say that up until the time that you commenced your proceedings to redeem in this Court that the improvements would not exceed \$800.00 on this acre of land?

A: That's right.

Q: And that since that time the improvements wouldn't exceed \$200.00?

A: I don't think so.

Q: Now, as to the balance of the land, are Charles J. Ebert and Lamar Irwin in possession of the thirty-nine acres?

A: Yes sir.

(page six)

A: That's right.

Q: And was this an exaggerated statement of the improvements?

A: Yes sir.

Q: Now located on this thirty-nine acres of land, what improvements are on it, Mr. King?

A: House and a barn.

Q: Who is living on--

A: There were three good sized chicken houses on it at the time that they redeemed it, and there is only one of them now.

Q: Three good chicken houses on there?

A: Yes sir.

Q: What size houses were those chicken houses?

A: They were 12x16, something like that, possibly one 10x12 or 10x10 and the other 10x16.

Q: What was the value of those chicken houses?

A: They were probably worth \$25.00 or \$30.00 apiece.

Q: And you say there is only one there now?

A: Yes sir.

Q: What's become of the other two?

A: Torn down.

Q: Moved away?

A: Moved away.

Q: Did I ask you who was living in the house?

A: I forget the man's name, he is a night watchman--

Q: Lawrence Rigsby?

A: Yes sir, Lawrence Rigsby.

Q: Has he been living there all the time Ebert owned the place?

A: No sir, part of the time there has been two families living in the house.

(page seven)

Q: How many squares on the house?

A: 11 squares on the house.

Q: And about two squares on the barn, you say?

A: About six squares on the barn.

Q: Did they cover the barn entirely?

A: Covered the barn entirely.

Q: And you say about two squares of sheeting?

A: About two squares of sheeting on the house on the porch.

Q: Those all the improvements made on the house?

A: That's all.

Q: What's the value of those improvements?

A: Well, it wouldn't exceed \$175.00 to \$200.00.

Q: You've built houses, have you, Mr. King?

A: Yes sir.

Q: And you've known of houses being built?

A: Yes sir.

Q: Acquainted with the price of material?

A: Yes sir.

Q: Labor in that community?

A: Labor and material wouldn't exceed it.

Q: You acquainted with the price of labor and material in that community?

A: Yes sir.

Q: And have known the same for some time?

A: Yes sir.

Q: And you say that in your judgment it wouldn't exceed \$200.00?

A: No sir.

Q: I believe you testified you didn't know what taxes had been paid by them?

(page eight)

A: That's right.

Q: And what was the principal sum?

A: If I'm not mistaken it was \$1200.00 to \$1500.00.

Q: Wasn't it \$1500.00?

A: I think that's right.

Q: And that was payable so much monthly?

A: Yes sir.

Q: What rate of interest?

A: It commenced at the top and graduated on down.

Q: Supposed to be 6%?

A: Something like that, it was \$52.00 every six months. \$104.00 a year.

Q: When did you make default on that Mortgage?

A: Well, it was in '34, I think.

Q: And what was the amount due on the Mortgage at that time?

A: \$1670.00.

Q: It was foreclosed?

A: Yes sir.

Q: And the First Joint Stock Land Bank bought it in, you say?

A: Yes sir.

Q: You don't know what the purchase price was in the Foreclosure Deed?

A: No sir.

Q: And subsequently, do you know how long after that before Irwin and Ebert bought it?

A: No sir, I do not.

Q: Do you know how much they paid?

A: \$1200.00 is what I heard they paid.

Q: At that time there was much more than \$1200.00 due on the Note and Mortgage?

(page nine)

A: No sir.

Q: Now at the time this property was foreclosed what improvements were on the property? Was there a dwelling house?

A: Yes sir.

Q: That house was moved?

A: No.

Q: Wasn't it moved a distance up the street there?

A: No.

Q: The house is still on the property?

A: Yes sir.

Q: And you say there has been some improvements put on it?

A: Roof put on it.

Q: And the barn?

A: Roof put on the barn.

Q: And you say there was a small filling station there on the corner?

A: That filling station was moved.

Q: It is still on the property?

A: Yes sir.

Q: Has it been repaired?

A: I couldn't say that it has.

Q: These improvements to the house and barn were of a permanent nature, weren't they?

A: Yes sir.

Q: Now you say they later built a filling station on the corner?

A: Yes sir.

Q: Of what construction was that?

A: Brick and tile.

Q: Any lumber in it?

STATEMENT OF AMOUNT NECESSARY TO REDEEM

Mr. J. H. King,
 Robertsdale, Alabama.

In accordance with your demand for a sworn itemized statement of the amount necessary to redeem the northeast quarter (NE $\frac{1}{4}$) of the southwest quarter (SW $\frac{1}{4}$) of Section twenty-six (26), township seven (7) south, range four (4) east in Baldwin County, Alabama, we submit the following:

Purchase money as shown by foreclosure deed	\$1200.00
Interest at 10%	220.00

LAWFUL CHARGES

Repairs to buildings, labor, and material consisting of a new roof on house and barn, a new fence along the east line and the construction of a one-car garage and altering of tenant house. The following items are evidenced by invoices and cancelled checks:

Foley Building Supply Company, material...	\$113.73
A. Kihn, labor.....	29.40
Baldwin Supply Company, material.....	81.09
A. Kihn, labor.....	4.80
Foley Building Supply Company, material...	18.40
Bill Schrieber, labor.....	8.00
Foley Hardware Company, material.....	1.90
Foley Woodworking Company, material.....	3.10
G. K. Ptomey, labor.....	5.00
Foley Woodworking Company, material.....	5.13
Foley Hardware Company, material.....	9.22
Foley Hardware Company, material.....	16.23
Riviera Utilities Corp., drop cord.....	2.25
William Schrieber, labor.....	12.50
Foley Building Supply, material.....	16.69
Foley Building Supply, material.....	7.54
Lamar Irwin, labor and material.....	110.15

1. Repairs to buildings, labor and material	\$445.13
2. Taxes paid	66.53
3. Total debt for which property sold	\$1749.19
Less foreclosure sale	<u>1200.00</u>
Balance of debt	549.19
4. Interest on deficiency at 6%	60.50
	<u>\$2541.35</u>

Total amount necessary to redeem thirty-nine acres, which does not include the one acre on which the filling station is located.

You will note that no interest has been charged on the item of permanent improvements and taxes paid, although, interest has been computed according to law on the other items of the statement.

5. The amount necessary to redeem the one acre with improvements in the northeast quarter of the above described forty acres is as set forth in the statement heretofore furnished to you by F. C. Griffin.

STATE OF ALABAMA }
BALDWIN COUNTY }

Chas. J. Ebert and L. Irwin, being first duly sworn, do each on oath, depose and say: That they are the vendees of First Joint Stock Land Bank of Montgomery, Alabama, which was the purchaser of the property above described at the mortgage foreclosure sale held June 27th, 1935; that they are also the owners by assignment of the debt for which the property was sold; that they have sold to Fred C. Griffin one acre in the Northeast corner of the above described forty acres, who is now the owner thereof and who has furnished redemption statement to J. H. King; that the above statement showing the amount necessary to redeem the thirty-nine acres which these affiants still own, is true and correct and that the additional statement of Fred C. Griffin, showing the amount necessary to redeem said one acre tract is true and correct as these affiants are informed and believe.

Chas. J. Ebert

L. Irwin

Subscribed in my presence and sworn to before me this June 1st,
1937.

Paul Tompney

Notary Public

TESTIMONY OF LEE KILLIAN. DIRECT EXAMINATION BY HON. C. L. HYBART,
ONE OF THE SOLICITORS FOR COMPLAINANT.

Q: Your name, please sir?

A: Mr. Killian.

Q: What are your initials?

A: Lee Killian.

Q: Where do you live?

A: North end of Foley.

Q: How old are you?

A: 55.

Q: Are you acquainted with this forty acres of land involved in this suit?

A: I have been out there a few times, yes sir.

Q: How far do you live from it?

A: It must be about two miles East of Foley and I must live about another mile.

Q: Do you know this land that Fred C. Griffin is in possession of on which he has a filling station?

A: Yes sir.

Q: Are you acquainted with that filling station?

A: I have been past there, never inside.

Q: What's your business, Mr. Killian?

A: I'm just a day laborer, work for a nursery most of the time.

Q: Had any experience in constructing buildings?

A: Yes sir.

Q: Know the cost of material and things of that kind?

A: Yes sir, in a small way.

Q: Well, a small building like that you are familiar with?

A: Sure, yes sir.

Q: Now what sort of building is that, Mr. Killian?

A: That's a hollow tile and stuccoed on the outside, about 24x30.

Q: What's the value of that building?

A: I would say it could be put up for \$750.00.

Q: \$750.00?

A: Yes sir.

Q: That would be a fair price for it?

A: Yes sir.

Q: Mr. Killian, are you acquainted with this house over there on the 39 acres that Mr. Leonard, what's his name, Rigsby, lives in?

A: I was in there a while back. (page eleven)

(page twelve)

Q: What improvements have been made on that house there by Mr. Ebert and Mr. Irwin?

A: New roof put on and also about two squares of ceiling on the porches.

Q: What about the barn?

A: There has been a new roof on the barn.

Q: That's all the improvements that have been made on it?

A: Yes sir.

Q: What kind of material was used in constructing those roofs?

A: On the barn corrugated roofing and on the house is composition shingles, I don't know what they are, made of rubberoid, I suppose.

Q: And what, in your opinion, is the value of those improvements?

A: I would say the material could be bought and put on for \$125.00.

Q: You're familiar with the cost of materials in that community and cost of labor?

A: Yes sir.

Q: And you would say the improvements then on the 39 acres would amount to that sum of money?

A: Yes sir.

CROSS EXAMINATION BY MR. HALL.

Q: Have you ever been in this filling station, Mr. Killian?

A: No sir.

Q: You don't know how it is finished inside, do you?

A: No sir.

Q: How is the roof finished?

A: Just a flat rubber roofing on it.

Q: Have you made a thorough investigation of this filling station?

A: No sir, I just walked around on the outside.

Q: Did you go all the way around the building?

A: No sir, just on the west and the north.

To Mary F. Green

Taking Testimony of John H. King,
Lee Killian, S. W. Porter and
John Small, witnesses for Complainant,
in case of John H. King vs. Charles
J. Ebert et al.....\$10.00.

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A: No sir.

Q: Did you know the condition of the building at the time they got it?

A: No sir.

Q: Who pointed out to you the improvements that were made?

A: You could see them for yourself. Mr. King and I went out there.

Q: That's all you happened to notice?

A: Yes sir.

Q: You don't know whether there were more or not?

A: No sir.

Q: And that was to the house and barn?

A: Yes sir.

Q: There are other small buildings on that lot?

A: One small chicken house.

Q: Do you know whether it has been improved?

A: No.

RE-DIRECT EXAMINATION BY MR. HYBART.

Q: The building on the 39 acres is an old building?

A: Yes sir.

Q: And the improvements would show for themselves whether new or old?

A: Yes sir.

Q: And the only improvements you could see were those you told about?

A: Yes sir.

Q: In fixing the value of the filling station at \$750.00, I believe you fixed it at \$750.00?

A: Yes sir.

Q: You contemplated a complete building?

A: Yes sir.

Q: Inside and out?

A: Mr. King told me it was the outside, because he started proceedings before the inside was finished.

Q: But from the outside you would say \$750.00?

A: Yes sir.

TESTIMONY OF MR. S. W. PORTER. DIRECT EXAMINATION BY MR. HYBART.

Q: Mr. Porter, are you familiar with a filling station of Fred C. Griffin's on the lands involved in this suit here?

A: Yes sir.

Q: How far do you live from there, Mr. Porter?

A: 2½ miles.

Q: You are familiar with the cost of materials in that community?

A: Well, I am. I've just done some building myself, and I'm familiar with it.

Q: And you've done other building just recently, haven't you?

A: Yes sir.

Q: And you've known of buildings being erected and the cost of building?

A: Yes sir.

Q: Mr. Porter, in your opinion what was the value of the improvements put on that one acre of land there by Mr. Fred C. Griffin?

A: I would say \$1000.00.

Q: What sort of building is this he has erected there?

A: You're talking about the filling station. There has been a filling station erected.

Q: What sort of material is it made of?

A: Hollow tile.

Q: What is about the size of the building?

A: I would judge 24x30.

Q: Do you know how many rooms in the building?

A: I reckon you would call it two rooms.

Q: And what sort of a roof has it got on it?

A: It has a composition paper roof.

Q: And the floor is built out of wood?

A: Wood.

Q: In your judgment \$1000.00 would be its value?

A: I think it could be duplicated for \$1000.00, yes sir.

Q: Now do you know about this house over there on the 39 acres?

A: Yes sir.

Q: Do you know what improvements have been put on that by Mr. Ebert and Mr. Irwin?

A: I know there's a new roof and that's all the improvements that I can tell.

Q: That's visible?

A: Yes sir.

(page fifteen)

Q: It's an old house?

A: Yes sir.

Q: And a person going there can tell any improvements being made in the age of the material in the last year or two?

A: Yes sir.

Q: And you saw a roof on the house there?

A: Yes sir.

Q: What sort of roof, what was it made of?

A: Composition.

Q: And did it appear that the roof was put all over the house?

A: Yes.

Q: And, in your opinion, what was that roof worth, together with material on the house? Well, were there any other improvements on the place that you noticed?

A: Well, there was some sheeting put on the porch.

Q: And was anything on the barn?

A: Yes, there has been a roof put on the barn.

Q: What sized barn is that?

A: Well, I don't know.

Q: Your best judgment?

A: My judgment would be something like 24x30.

Q: Now in your opinion, Mr. Porter, what was a fair value of the improvements as placed on the house and barn?

A: I would say \$125.00 or \$130.00 for material and labor.

CROSS EXAMINATION BY MR. HALL.

Q: Have you made a close inspection of the filling station, Mr. Porter, inside and out?

A: Yes sir.

Q: Have you been inside the building, the house?

A: Yes sir.

Q: And made an examination just recently?

A: Yes sir.

Q: With an idea of coming here to testify?

A: Yes.

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TESTIMONY OF JOHN SMALL. DIRECT EXAMINATION BY MR. HYBART.

Q: Your name, please sir?

A: John Small.

Q: Where do you live, Mr. Small?

A: North of Foley.

Q: How old are you?

A: 60.

Q: Are you acquainted with the property involved in this suit?

A: Yes sir.

Q: How long have you known it?

A: Ever since it was built.

Q: You mean ever since the house was built?

A: Yes sir.

Q: Did you construct that house?

A: I sure did not.

Q: What business are you engaged in?

A: I used to work on the produce shed, I was foreman.

Q: Do you know the cost of material and labor in that community pretty well?

A: Yes sir, I have built one myself.

Q: What improvements did Mr. Ebert and Mr. Irwin make on this house?

A: Put a new roof on and some sheeting under the porch.

Q: Anything on the barn?

A: Roof.

Q: In your opinion, what was the value of those improvements?

A: About \$125.00 or \$130.00.

Q: Would that cover the material and labor?

A: To my notion, it will.

Q: Be a good price for it?

A: Yes sir.

Q: Are you acquainted with this filling station that Mr. Fred C. Griffin has built on a portion of this property?

A: Yes, I am.

Q: What sort of building is that?

A: Hollow tile and a driveway.

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(page seventeen)

Q: Small building?

A: About 24x30, something like that.

Q: Did you tell us what sort of roof it had on it?

A: I couldn't tell you that.

Q: Couldn't tell us?

A: No, I couldn't.

Q: In your opinion what was the value of those improvements?

A: Well, I think it can be put there for \$1000.00.

Q: That would amply cover it, material and labor?

A: Yes sir.

CROSS EXAMINATION BY MR. HALL.

Q: When was the last time you viewed these properties, Mr. Small?

A: About two months ago, I guess.

Q: How long was it before then when you viewed them, or had you made any inspection of them prior to that time?

A: No, I had not.

Q: you think the filling station would be \$1000.00, and the improvements to the other property \$125.00 or \$130.00?

A: Yes, something like that.

I, Mary F. Green, as Commissioner, hereby certify that the foregoing deposition of John H. King, Lee Killian, S. W. Porter and John Small, on Oral Examination, was taken down in writing by me in the words of the witnesses, said witnesses having been duly sworn, at the time and place herein mentioned; that I have personal knowledge of personal identity of said witnesses; that I am not of counsel or of kin to any of the parties to said cause, or in any manner interested in the result thereof.

Given under my hand and seal this 8th day of November,
1938.

Mary F. Green.

TESTIMONY.

JOHN H. KING,

Complainant,

-vs-

CHARLES J. EBERT ET AL.,

Respondents.

IN THE CIRCUIT COURT--IN EQUITY

STATE OF ALABAMA

BALDWIN COUNTY.

Filed November 30, 1938

R. S. Duck
Register.

By - Walter Thompson
Agents -

JOHN H. KING,

Complainant,

-vs-

CHARLES J. EBERT, LAMAR
IRWIN and FRED C. GRIFFIN,

Respondents.

IN THE CIRCUIT COURT--IN EQUITY

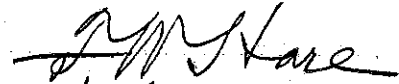
STATE OF ALABAMA

BALDWIN COUNTY.

This cause coming on to be heard was submitted for Decree on Demurrers to original Complaint filed in said cause, and upon a consideration thereof I am of the opinion that said Demurrers should be overruled;

It is, therefore, ORDERED, ADJUDGED AND DECREED by the Court that said Demurrers to said Complaint be, and the same hereby are, overruled, Defendants allowed sixty days in which to answer.

Dated this 2nd day of February, 1938.



Judge.

Hundred Forty-five and 13/100 (\$445.13) Dollars, when in truth and fact said improvements do not amount to more than Two Hundred (\$200.00) Dollars" is a mere conclusion of the pleader.

Beckwith & Debe
Solicitors for the Respondents.

JOHN H. KING,
Complainant,

VS.

CHARLES J. EBERT, LAMAR
IRWIN and FRED C. GRIFFIN,
Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY,

NO. 347.

This cause is submitted on behalf of the Respondents upon the following papers:

1. Demurrers to original Bill of Complaint;
2. Order overruling Demurrers;
3. Answer of the Respondents to the original Bill of Complaint;
4. Testimony of Charles J. Ebert, Fred C. Griffin, Max Griffin, J. A. Pilgrim, August Kihn, George Schaaf, J. R. Montgomery, Johnnie Evans, and W. E. Cooney;
5. Agreement as to taking testimony of witnesses dated November 29th, 1938; by the Solicitors for the respective parties;
6. Agreement or Stipulation between the parties as to the introduction of copies of original instruments in lieu of the original or certified copies, dated December _____, 1938;
7. Copy of Mortgage from John H. King and Ada J. King, his wife, to the First Joint Stock Land Bank of Montgomery, dated July 2nd, 1928, and of record in the office of the Probate Judge of Baldwin County, Alabama, in Mortgage Book 42, page 556-9;
8. Copy of Foreclosure Deed from John H. King and Ada J. King, by J. M. Williams, Jr., as Attorney-in-Fact, et al. to the First Joint Stock Land Bank of Montgomery, dated July 5th, 1935, and of record in the office of the Probate Judge of Baldwin County, Alabama, in Deed Book 57 NS, page 376;
9. Deed from the First Joint Stock Land Bank of Montgomery, Alabama, to Chas. J. Ebert and Lamar Irwin, dated July 20th, 1935, and of record in the office of the Probate Judge of Baldwin County, Alabama, in Deed Book 57 NS, page 423;
10. Original note from John H. King to the First Joint Stock Land Bank of Montgomery, dated July 2nd, 1928, together with the transfer or assignment thereof from the First Joint Stock Land Bank of Montgomery to Chas. J. Ebert and Lamar Irwin, dated July 20th, 1935;
11. Copy of Deed from Chas. J. Ebert and L. Irwin, et al. to Fred C. Griffin, dated September 7th, 1935, and of record in the office of the Probate Judge of Baldwin County, Alabama, in Deed Book 57 NS, pages 517-9;
12. Statement of the First Joint Stock Land Bank of Montgomery as to unmatured balance due on said mortgage and identified as Exhibit 3 attached to Respondents' testimony.
13. Statement of amount necessary for redemption 12/10/36 by the First Joint Stock Land Bank of Montgomery;
14. Copy of Statement of amount necessary to redeem furnished John H. King, Robertsdale, Ala., at his request, marked Respondents' Exhibit 4;
15. Copy of itemized list of materials and labor used in constructing buildings on the King property and identified as Respondents' Exhibit 5;

16. Duplicate tax receipt for taxes paid by Chas. J. Ebert and L. Irwin for 1936;

17. Duplicate tax receipt for taxes paid by Chas. J. Ebert and L. Irwin for 1937;

18. Duplicate tax receipt for taxes paid by Fred C. Griffin for 1936;

19. Duplicate tax receipt for taxes paid by Fred C. Griffin for 1937;

R. S. Duch

Register.

By - Sandie Thompson
Deputy -

JOHN H. KING,)	
)	
Complainant,)	IN THE CIRCUIT COURT--IN EQUITY
)	
-vs-)	STATE OF ALABAMA
)	
CHARLES J. EBERT, LAMAR)	BALDWIN COUNTY.
IRWIN and FRED C. GRIFFIN,)	
)	
Respondents.)	

TO HON. F. W. HARE, JUDGE OF THE TWENTY-FIRST JUDICIAL CIRCUIT:-

Your Orator, John H. King, humbly complaining of the Defendants in a matter as will hereinafter appear, shows unto your Honor as follows:-

FIRST:

That both he and said Defendants are over the age of twenty-one years and reside in Baldwin County, Alabama.

SECOND:

Your Orator further shows unto your Honor that on the 2nd day of July, 1928, that he was the owner in fee of the following described real estate situated in Baldwin County, Alabama, to-wit:

Northeast Quarter of Southwest Quarter (NE $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section Twenty-six (26), Township Seven (7) South of Range Four (4) East;

that on said day he and his wife, Ada J. King, executed a Mortgage to the First Joint Stock Land Bank of Montgomery, and included therein as security the aforesaid real estate; that default (on account of the unusual economic conditions then existing in Baldwin County, Alabama), was made in the payment of the aforesaid mortgage indebtedness, and that on the 27th day of June, 1935, the First Joint Stock Land Bank of Montgomery, Alabama, foreclosed the aforesaid Mortgage by selling said property at public outcry, in front of the Courthouse door at Bay Minette, Alabama, during the legal hours of sale, and that at said sale the First Joint Stock Land Bank of Montgomery became the purchaser of said property at and for the sum of Twelve Hundred Dollars (\$1200.00) and a Foreclosure Deed was made by the Auctioneer conducting the sale on July 5th, 1935, to said First Joint Stock Land Bank of Montgomery, Alabama.

(page two)

THIRD:

Your Orator further shows unto your Honor that on July 20th, 1935, that the First Joint Stock Land Bank of Montgomery, Alabama, sold and conveyed to Charles J. Ebert and Lamar Irwin the aforesaid lands at and for the sum of Twelve Hundred Dollars (\$1200.00); that your Orator has examined the conveyance to Charles J. Ebert and Lamar Irwin above referred to, as filed for record in the Office of the Probate Judge of Baldwin County, Alabama, and that said conveyance does not show that the debt over and above the amount for which the property was sold, if any, was conveyed or transferred to the Respondents Charles J. Ebert and Lamar Irwin; that your Orator further shows unto your Honor that right after the foreclosure of said Mortgage he surrendered the possession of said land by moving away from the same and carrying his effects with him, and before the period of time allowed him by law to vacate said premises after said foreclosure.

Your Orator further shows unto your Honor that the said Charles J. Ebert and Lamar Irwin, soon after their purchase of the aforesaid lands, which, of course, were subject to the right of redemption of your Orator, went into the possession of the aforesaid lands, and continued therein as to the entire subdivision, up until September 7th, 1935, when they sold and conveyed to Fred C. Griffin one acre of land in said subdivision, more particularly described as follows:-

"Beginning at the Northeast corner of the Northeast Quarter of the Southwest Quarter of Section 26, Township 7 South, Range 4 East, run South 210 feet, thence West 210 feet, thence North 210 feet, thence East 210 feet to point of beginning. Meaning and intending to convey one acre square in the Northeast corner of the Northeast Quarter of the Southwest Quarter of Section 26, Township 7 South, Range 4 East".

That immediately after the purchase of the aforesaid acre by the said Griffin he went into the possession of the same and has continued in such possession ever since.

FOURTH:

Your Orator further shows unto your Honor that at the time that he surrendered the possession of said lands after said

(page two)

(page three)

foreclosure as aforesaid, that he had practically completed a filling station on the acre of ground which the said Griffin is now in possession of under his aforesaid purchase; that after the said Griffin purchased said acre of land and went into the possession of the same, that he moved the filling station off of the said one acre of land and constructed a filling station thereon of the value of between Six and Eight Hundred Dollars, and your Orator further shows unto your Honor that said improvements made by the said Griffin upon said land have not increased in value, and are not worth now more than the sum of Eight Hundred Dollars (\$800.00). Your Orator further shows unto your Honor that the said Griffin on written demand by your Orator made more than ten days ago, calling upon the said Griffin to furnish an itemized statement of the improvements and the amount necessary to redeem, has rendered a statement claiming that said improvements amount to the sum of Fourteen Hundred Sixty-four Dollars (\$1464.00), and a copy of said statement is hereto attached and marked Exhibit "A" to this Bill of Complaint; that said claim for improvements as made by the said Griffin is exaggerated and that said improvements on said one acre of land do not exceed in value the sum of Eight Hundred Dollars (\$800.00), as aforementioned; that said statement is silent as to the value of the land and the amount necessary to redeem the same.

FIFTH:

Your Orator further shows unto your Honor that the said Charles J. Ebert and Lamar Irwin are in the possession of the balance of said subdivision and have been so since their said purchase from the First Joint Stock Land Bank of Montgomery, and that more than ten days ago your Orator made written demand upon the said Ebert and Irwin to furnish him with an itemized statement of any improvements that they might have made upon said land, together with the necessary amount that it would take to redeem from them, and your Orator further shows unto your Honor that the said Ebert and Irwin furnished to him an exaggerated statement of the improvements made upon said lands by them in the sum of Four Hundred

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Forty-five & 13/100 Dollars (\$445.13), when in truth and face said improvements do not amount to more than Two Hundred Dollars (\$200.00). In said statement rendered by said Ebert and Irwin it is set forth that they purchased the indebtedness of your Orator which was due by him to the First Joint Stock Land Bank of Montgomery on the said Mortgage after deducting the purchase price of Twelve Hundred Dollars (\$1200.00), in the sum of Five Hundred Forty-nine and 19/100 Dollars (\$549.19), but, as hereinbefore stated, said conveyance to the said Charles J. Ebert and Lamar Irwin does not show that the balance of the debt, if any, was conveyed or transferred by the said First Joint Stock Land Bank to the said Ebert and Irwin, and that in said statement they are claiming this additional amount as necessary to redeem, together with the interest on the purchase price and interest on the balance of indebtedness, together with the amount paid for taxes on said lands. A copy of said statement is hereto attached, marked Exhibit "B" and is made a part of this Bill of Complaint.

SIXTH:

Your Orator further shows unto your Honor that, as afore-stated, said claims for improvements are exaggerated and unreasonable; that there is no machinery set up by the statute for the purpose of arbitrating or ascertaining the value of said improvements made on said lands by the Defendants to this Bill of Complaint; that by the said Ebert and Irwin selling said one acre of land to the said Griffin, and he participating therein, that the parties defendant have brought about a condition that the statute relative to arbitration or ascertaining the value of the improvements on the land does not contemplate, fit or suit; that the law requires your Orator to redeem said lands as a whole and there is no way specified by statute for your Orator to arbitrate or ascertain the value of the improvements on said land according to the statute, on account of the fact that said land has been divided up by conveyance made by Ebert and Irwin and participated in by Griffin; that the statute contemplates when it sets up its machinery for ascertaining the value of improvements by referees selected by the respective parties thereto that the purchaser of the land will not subdivide

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it so as to make it impracticable to ascertain the value of the improvements as set forth therein and to permit a redemption of whole and not by piece meal, and consequently there is no way for your Orator to ascertain the amount necessary to tender to the said Ebert and Irwin or to the said Griffin, and that there is no way to ascertain by law the necessary amount to pay into this Honorable Court.

Your Orator further shows unto your Honor that he is willing, able and ready to pay all lawful charges and claims necessary for a redemption of said property under and by right of the laws of Alabama, and your Orator herein submits himself to the jurisdiction of this Court and offers herein to do equity and to comply with all orders and decrees of your Honor relative to the matters herein involved.

PRAYER FOR PROCESS.

To the end that equity may be had in the premises your Orator prays that your Honor will cause the usual Writ of Process to issue to Charles J. Ebert, Lamar Irwin and Fred C. Griffin, making them parties defendant to this Bill of Complaint, and requiring them to plead, answer or demur to the same within the time required by law.

PRAYER FOR RELIEF.

THE PREMISES CONSIDERED, your Orator prays that your Honor on a hearing in this cause will decree that he is entitled to redeem the aforesaid property from and by virtue of said Mortgage Foreclosure Sale; that your Honor will order a reference to ascertain all lawful charges, claims and demands that the said Defendants hold in connection with their purchase of said property, including improvements, amount due on purchase price, amount due on any indebtedness that may have been assigned or conveyed to either of them or all of them by the First Joint Stock Land Bank of Montgomery, taxes that might have been paid, and other just claims or demands held by the Defendants in connection with their purchase of the aforesaid property, and that your Honor will also decree that on the payment of all said lawful charges by your

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Orator into the Register of this Court that Defendants shall have no further right, title, claim or interest in and to said property, and that your Honor will also grant to him a writ of possession for said premises against said Defendants. Your Orator prays for such other, further, different and general relief as in equity may seem just and meet.

Hypert & Chasman
Solicitors for Complainant.

FOOT NOTE:-

Defendants are required to answer Paragraphs 1 to 6, inclusive, of the foregoing Bill of Complaint, but answer under oath is hereby expressly waived.

Hypert & Chasman
Solicitors for Complainant.

EXHIBIT "A".

GRIFFIN MOTOR COMPANY,

.....

LOXLEY, ALABAMA

May 28, 1937.

Itemized list of of material and labor used in constructing buildings on the one acre in the Northeast Quarter of Southwest Quarter of Section Twenty-Six, Township Seven South of Range Four East, purchased from Chas. J. Ebert and L. Irwin, as per deed of record:

Brock, Tile, Lime, Cement, Sand and Plaster	395.92
Rough Lumber and Posts	89.20
Dressed Lumber, finishing lumber, and laths	151.26
Builders hardware, nails and steel	58.59
Sash, Doors, and glass	78.20
Roofing, Felt, and Asphalt	71.46
Electrical fittings, including material and labor	78.41
Paint & Varnish	26.95
Contract on masonry work	177.85
All other labor	167.45
Above expenditures made in September and and October 1935	
	<hr/>
	1295.29
Interest at 6% from Nov. 1, 1935 to June 1st, 1937	123.03
Taxes	20.16
	<hr/>
	1438.48
Material and labor (Since October 1935)	25.52
	<hr/>
Total	\$1464.00

Submitted to John H. King and Ada J. King, as per their request dated May 26th, 1937. Copy to Chas. J. Ebert & L. Irwin.

F. C. Griffin
(F. C. Griffin)

Sworn to and subscribed before me this 29th day of May 1937.

Adele Corte, Notary Public.
My Com. expires Mar. 12, 1941.
Baldwin Co.

EXHIBIT "B".

STATEMENT OF AMOUNT NECESSARY TO REDEEM.

Mr. J. H. King,
Robertsdale, Alabama.

In accordance with your demand for a sworn itemized statement of the amount necessary to redeem the Northeast Quarter (NE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section twenty-six (26), township seven (7) South, range four (4) East in Baldwin County, Alabama, we submit the following:

Purchase money as shown by foreclosure deed	\$1200.00
Interest at 10%	220.00

LAWFUL CHARGES

Repairs to buildings, labor, and material consisting of a new roof on house and barn, a new fence along the east line and the construction of a one-car garage and altering of tenant house. The following items are evidenced by invoices and cancelled checks:

Foley Building Supply Company, material.....	\$113.73
A. Kihn, labor.....	29.40
Baldwin Supply Company, material.....	81.09
A. Kihn, labor.....	4.80
Foley Building Supply Company, material....	18.40
Bill Schrieber, labor.....	8.00
Foley Hardware Company, material.....	1.90
Foley Woodworking Company, material.....	3.10
G. K. Ptomey, labor.....	5.00
Foley Woodworking Company, material.....	5.13
Foley Hardware Company, material.....	9.22
Foley Hardware Company, material.....	16.23
Riviera Utilities Corp., drop cord.....	2.25
William Schrieber, labor.....	12.50
Foley Building Supply, material.....	16.69
Foley Building Supply, material.....	7.54
Lamar Irwin, labor and material.....	110.15

1. Repairs to buildings, labor and material		\$445.13
2. Taxes paid		66.53
3. Total debt for which property sold	\$1749.19	
Less foreclosure sale	<u>1200.00</u>	
Balance of debt		549.19
4. Interest on deficiency at 6%		60.50
		<u>\$2541.35</u>

Total amount necessary to redeem thirty-nine acres, which does not include the one acre on which the filling station is located.

You will note that no interest has been charged on the item of permanent improvements and taxes paid, although, interest has been computed according to law on the other items of the statement.

5. The amount necessary to redeem the one acre with improvements in the Northeast Quarter of the above described forty acres is as set forth in the statement heretofore furnished to you by F. C. Griffin.

STATE OF ALABAMA,)
BALDWIN COUNTY.)

Chas. J. Ebert and L. Irwin, being first duly sworn, do
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each on oath, depose and say: That they are the vendees of First Joint Stock Land Bank of Montgomery, Alabama, which was the purchaser of the property above described at the mortgage foreclosure sale held June 27th, 1935; that they are also the owners by assignment of the debt for which the property was sold; that they have sold to Fred C. Griffin one acre in the Northeast corner of the above described forty acres, who is now the owner thereof and who has furnished redemption statement to J. H. King; that the above statement showing the amount necessary to redeem the thirty-nine acres which these affiants still own, is true and correct and that the additional statement of Fred C. Griffin, showing the amount necessary to redeem said one acre tract is true and correct as these affiants are informed and believe.

Chas. J. Ebert

L. Irwin.

Subscribed in my presence and sworn to before me this
June 1st, 1937.

(SEAL)

Lloyd A. Magney,
Notary Public,