

A. J. SWIRN

PLAINTIFF

VS

JOSEPH D. MIDDLETON

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 1690

Now comes the Plaintiff, A. J. Swirn, and moves the court to transfer this cause from the Law side of the docket to the equity side thereof, and represents that there is an equitable question the decision of which should dispose of the cause, and which cannot be disposed of on the Law Side of the Court, and that he has an equitable right as follows:

1.

That the Plaintiff, A. J. Swirn, and John Carlson acquired by conveyance from D. O. Stuart and Clara M. Stuart, his wife, dated August 20, 1947, and of record in the office of the Probate Judge of Baldwin County, Alabama, in Deed Book 145 NS pages 149-50 the following described real property situated in Baldwin County, Alabama, to-wit:

Lots A, 1, 2, 3, 4, 5, in Block 1 of Gulf Bays Tract in Section 4, Township 9 South, Range 5 East.

2.

That the Plaintiff and the said John Carlson immediately upon acquiring said property went into the possession thereof.

3.

That John Carlson on September 11, 1949, as shown by instrument of record in the office of the Probate Judge of Baldwin County, Alabama, in Deed Book 157 NS pages 458-60 conveyed an undivided one half interest in the real property herein described, and also various items of personal property, a description of which is contained in the exhibit hereto attached marked Exhibit "A"; that the said conveyance contained the recital "This property is subject to a mortgage in favor of the State Bank of Elberta in the sum of \$2250.00; that the \$2250.00 was the balance due on a mortgage from D. O. Stuart and wife to the State Bank of Elberta of record in Mortgage Book 122 pages 175-6 and which was outstanding against the real property hereinabove described at the time of the purchase thereof by the Plaintiff and John Carlson as herein set out.

4.

That the Plaintiff with his own funds paid the balance due on the mortgage herein referred to, to the State Bank of Elberta, in the sum of \$2250.00, which sum has never been repaid to him, and for which he has a lien on the real property herein above described; that the said John Carlson at the time of the conveyance to Joseph D. Middleton as herein referred to had no right to convey any interest in the personal property thereby conveyed, and a conveyance of the same was made without the consent or approval of the Plaintiff.

5.

That the said Joseph D. Middleton on September 26, 1950, executed a mortgage to P. J. Doyle for the sum of SEVENTEEN HUNDRED FIFTY (\$1750.00) DOLLARS which is of record in the office of the Probate Judge of Baldwin County, Alabama, in Mortgage Book 176 pages 360-3, covering the land and personal property being the property shown by Exhibit "A" hereto attached; that the said Joseph D. Middleton had no authority or right to execute a mortgage involving the said personal property.

6.

That the Plaintiff and his wife on October 13, 1949, entered into an agreement with Joseph D. Middleton, a copy of which is hereto attached marked Exhibit "A" and asked to be taken as a part hereof, as though herein fully set out.

7.

That the said Joseph D. Middleton immediately after the execution of the contract hereinabove referred to took possession of the said real property and the personal property therein described and has remained in the exclusive possession thereof to this day.

8.

That the said Joseph D. Middleton has defaulted in the payment of the notes described in the contract, hereto attached marked Exhibit "A" and has failed to pay either the principal or the interest thereon.

9.

That the said Joseph D. Middleton has paid to the Plaintiff nothing for the use of the said real property or personal property as described in said Exhibit "A".

10.

That the Plaintiff is advised and believes that much of the personal property described in said exhibit has been destroyed, misplaced or lost, or greatly depreciated in value by useage and abuse.

11.

That the real property as described herein is of such nature, kind and description that it cannot be equitably divided without a sale thereof.

12.

That the respective rights of the parties herein cannot be determined without a proper accounting,

WHEREFORE, the Plaintiff respectfully requests that this cause be transferred to the Equity Side of the docket that he may obtain the benefits of his equitable rights in this cause of action.

Andrew J. Swirn
Plaintiff
Samuel
Solicitor for the Plaintiff

STATE OF ALABAMA

BALDWIN COUNTY

Before me the undersigned authority, in and for said County, in said State, personally appeared A. J. Swirn, who is known to me and who having been by me first duly sworn, deposes and says that he is the Plaintiff in the above styled cause; that the facts stated in the foregoing motion to transfer this cause to the Equity side of the docket are true.

Andrew J. Swirn
Sworn to and subscribed before me on this the 27 day of October, 1952.
Henry J. Wilting
Notary Public, Baldwin County, Alabama

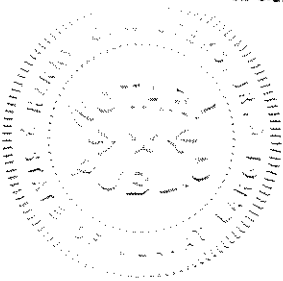


EXHIBIT "A"

STATE OF ALABAMA

COUNTY OF BALDWIN

This agreement, made and entered into by and between A. J. Swirn and his wife Elizabeth F. Swirn, hereinafter called the parties of the first part, and Joseph D. Middleton, hereinafter called the party of the second part, Witnesseth that the said parties have contracted and agreed with each other as follows:

The parties of the first part agree to sell to the party of the second part for the consideration of Six thousand seven hundred and fifty and 00/100 (\$6750.00) Dollars, and the part of the second part agrees to buy from the parties of the first part for the same consideration and on the terms and conditions herein set out, all of our right, title, and interest in and to the following described property in the County of Baldwin, State of Alabama, and more particularly described as follows, to-wit:

Lots numbered A, One, Two, Three, Four, and Five in Block One in the Gulf Bays Tract, as per plat on file in the office of the Judge of Probate of Baldwin County, Alabama, in Misc. Record Book One, pages 256-57, and the improvements thereon.

Also all of our right, title and interest in and to the equipment and supplies of the Orange Beach Boat Works, which includes the property hereinafter listed, to-wit:

Buildings - Shop 20'x 55' frame, concrete floor
Ways, cradle, tracks, cables, blocks
Dock
Haul-out winch, with Chevrolet motor
Battery and Hydrometer
Drill Press
Large Planer, 8" x 30"
Table saw (small)
Band Saw (Small)
Band saw (large)
International motor for planer and shafting
Electric drill (large)
Electric drill (small)
Electric sander
Flourescent lights
Battery charger (Allen)
"C" clamps
Cable and rope
Sledge hammer
Large Wheelbarrow
Briggs & Stratton Motor
3 large band saw blades
Nails, bolts, keystock, and misc.
1 Grapnell
Band Saw blades
Table saw blades
Rigging Clamp vixe
25 lb. Red lead
Tap and Die set
Large Hydraulic jack
Gear pumps (bronze)

Kermath motor (to be rebuilt)
 Table saw (large)
 Pipe vise
 Yard timbers
 2 plug cutters
 Hack saw blades
 2 lb. hammer
 Bottom brushes and hose for dock and ways
 Wrenches and miscellaneous tools
 2 - 25 ft. heart pine 4" x 8" boat keels
 2 three-corner scrapers
 2 oil drums
 1 pr. iron wheels
 caulking irons
 Sheet cooper
 Hand saw
 Saw filing jig
 Cypress and pine planking in loft
 Brass shaft, 10 ft.
 2 large screw jacks
 Rotary pump
 Propeller
 Large knift-switch
 1 "Pitcher" pump and pipe
 1 Hospital ice box and compartments
 1 Gasoline tank
 Plywood enclosure for cockpit
 3 spring berths
 8 mooring buoys
 1 25 ton R.R. jack
 Water pump (electric) and piping (approx. 300 ft.)
 Wiring on dock, lights, and outlets
 Skiff and oars
 Paint brushes
 1 Butane gas tank abd system
 1 Grinder

Also, all of our right, title, and interest in and to the house
 Carlson built on this property.

Together with all and singular, tenements, hereditaments and appur-
 tenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same unto the said part of the second part and
 his heirs and assigns forever.

And the said parties of the first part, for themselves, their heirs,
 executors, administrators and assigns, hereby covenants and agrees with
 the said party of the second part, that they are lawfully seized of an in-
 defeasable estate in fee simple in said property, that they are in quiet
 and peaceable possession thereof, that said property is clear of all encum-
 brances, and they will clear the same of all mortgages now existing on said
 property, and that they will warrant and forever defend the title to said
 property and the peaceable possession thereof unto the said party of the
 second part, his heirs and assigns against the lawful claims of all persons
 whomsoever.

The party of the second part, in consideration of the covenants of the
 parties of the first part, hereby agrees to pay the parties of the first

part the sum of Six Thousand Seven Hundred and Fifty and 00/100 (\$6750.00) Dollars, being the purchase price aforesaid, of which sum, One thousand and 00/100 (\$1000.00) Dollars is hereby acknowledged by the parties of the first part to have been paid and as having been received on this date, the unpaid balance of \$5750.00 is payable in accordance with the terms of ten (10) promissory notes described as follows:

One principal note for One thousand and 00/100 (\$1000.00) Dollars payable twelve months (12) after date.

One principal note for Five hundred and 00/100 (\$500.00) Dollars payable eighteen (18) months after date.

One principal note for Five hundred and 00/100 (\$500.00) Dollars payable twenty-four (24) months after date.

One principal note for Five hundred and 00/100 (\$500.00) Dollars payable Thirty (30) months after date.

One principal note for Five hundred and 00/100 (\$500.00) Dollars payable Thirty-six (36) Months after date.

One principal note for Five hundred and 00/100 (\$500.00) Dollars payable Forty two (42) months after date.

One principal note for Five hundred and 00/100 (\$500.00) Dollars payable forty eight (48) months after date.

One principal note for Five hundred and 00/100 (\$500.00) Dollars payable fifty four (54) months after date.

One principal note for Five hundred and 00/100 (\$500.00) Dollars payable Sixty (60) months after date.

One principal for Seven hundred and fifty and 00/100 (\$750.00) Dollars payable Sixty six (66) months after date.

Interest on the deferred payments at the rate of six per cent (6%)
per annum payable each six months after the date of this contract.

It is understood and agreed that the party of the second part has the privilege of paying, in addition to the regular payments, all or any part of the principal notes above described on the maturity date of any of the above described notes, and interest on the deferred payments will be prorated accordingly.

All of the said notes are made by the part of the second part and payable to the parties of the first part at the State Bank of Elberta, Baldwin County, Alabama.

Party of the second part further agrees to pay all taxes against the above described property on and after the date he takes possession, and to keep the property insured against fire and windstorm in amounts consistent with the value of the property. The loss under said policy to be payable to the parties of the first part as thierinterest may appear at the time of loss.

In the event the party of the second part shall fail for a period of Thirty (30) days to pay any of said installments when and as the same become due, or shall fail for a period of thirty (30) days to keep, perform or carry out any of their obligations under the terms of this contract, then upon such

failure the part of the first part shall have the right to terminate this contract by giving written notice to the party of the second part pointing out the particular wherein there has been such failure by the party of the second part, and unless corrected by them within ten days after the delivery of such written notice from the party of the first part, this contract shall stand terminated and cancelled, and upon such termination and cancellation, the party of the second part binds and obligates himself to vacate the property and to surrender and return the same to the parties of the first part, or anyone claiming under him; it being understood and agreed between the parties hereto that in the event of such termination of this contract all amounts previously paid on said purchase price shall be treated and considered by and between the parties hereto as the reasonable rental for the use and enjoyment of said premises by the party of the second part under this contract prior to said termination,

Upon the payment by the party of the second part in full of the balance of the purchase price, evidenced by said installment notes, then and thereupon shall be delivered to the party of the second part, warranty deed from the parties of the first part made in connection with this contract, conveying said property to the party of the second part; it being understood and agreed between the parties hereto that such deed shall be held in trust by State Bank of Elberta, Baldwin County, Alabama, and to be delivered by them to the party of the second part, when and after the balance of said purchase price evidenced by said notes have been paid in full.

The parties of the first part agree to pay in full the mortgage to the State Bank of Elberta, Elberta, Alabama, as recorded in Mortgage Book 122 pages 175-6, and any other mortgages now existing on said property.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, in duplicate, this 13th day of October, 19 .

A. J. Swirn (Seal)
Elizabeth F. Swirn (Seal)
Joseph D. Middleton (Seal)

State of Alabama
County of Baldwin

I, T. M. Moss, a Notary Public, in and for said State and County, hereby certify that A. J. Swirn whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this 13th day of October, 1949.

Commission expires July 2, 1952.

T. M. Moss
Notary Public, Baldwin County, Ala.

STATE OF ALABAMA
COUNTY OF BALDWIN

I, T. M. Moss, a Notary Public, in and for said State and County, hereby certify that Elizabeth F. Swirn, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that, being informed of the contents of said instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand this 13th day of October, 1949.

Commission expires July 2, 1952.

T. M. Moss
Notary Public, Baldwin County, Ala.

STATE OF ALABAMA
COUNTY OF BALDWIN

I, T. M. Moss, a Notary Public, in and for said State and County, hereby certify that Joseph D. Middleton, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this 13th day of October, 1949.

Commission expires July 2, 1952.

T. M. Moss
Notary Public, Baldwin County, Ala.

A. J. Swern
Plaintiff

VS.

Joseph D. Middleton
Defendant

FILED

OCT 27 1952

ALICE J. DUCK, Register

no 1691

Followers vs. Winter letters
Jurors — Fall Term of 1951

NO.	NAME	OCCUPATION	RESIDENCE
1.	L. B. BROCK	Farmer, Robertsdale	191
2.	NICK SAWYER	Salesman, Magnolia Springs	
3.	BERNARD DYKEMA	Magnolia Springs	
4.	HILLARD V. STREET	Ice Plant, Fairhope	191
5.	ELBERT M. RHODES	Farmer, Summerdale	191
6.	NORVELLE CABINESS	Filling Station, Bay Minette	191
7.	WILLIAM GILHART	Farmer, Fairhope	
8.	DOUGAL TAYLOR	Laborer, Bay Minette	191
9.	W. GAITHER HOBBS	Merchant, Bay Minette	191
10.	W. H. SWIFT	Seafood Dealer, Bon Secour	191
11.	LAWRENCE SUIT	Carpenter, Foley	
12.	GEORGE F. STEVENSON	Oil Agent, Bay Minette	191
13.	CLAUDE S. WOODSON	Furniture, Bay Minette	191
14.	ERWIN A. KOEHLER	Merchant, Elberta	
15.	JESSIE ANDREW	Telephone Operator, Daphne	
16.	PRESTON FULFORD	Seafood Dealer, Bon Secour	191
17.	CHARLIE BARNETT	Farmer, Gateswood	
18.	LILBERT WILSON	Bookkeeper, Stapleton	191
19.	TOM HOLMES, R. E. A.	Stockton	
20.	LLOYD CLAY	Laborer, Fairhope	
21.	DENNIS C. BYRNE	Mechanic, Bay Minette	191
22.	LLOYD A. BALLARD	Radio Repair, Bay Minette	191
23.	WILLIAM DRYER	Contractor, Daphne	191
24.	JAMES E. YOUNG	Merchant, Bay Minette	191
25.	GEORGE A. LYRENE	Farmer, Silverhill	
26.	PHILLIP KRISS	Farmer, Silverhill	
27.	HERSHEL GRAY	Farmer, Robertsdale	
28.	DEAN E. BUSHNELL	Newport, Bay Minette	
29.	MURREY BRYANT	Stockton, Stockton	
30.	CHESTER R. WHITE	Mechanic, Bay Minette	
31.	Ray Dawson	Live Stock Dealer, Robertsdale	
32.	A. J. Penell	Farmer, Bay Minette	191
33.	Harry Quinley	City Mailman, Bay Minette	191
34.	Horace White	Bay Minette	
35.	Ray E. Mounds	Traylor Field, Bay Minette	191
36.	Harold Carney	Pilot, Bay Minette	191
37.	A. R. Carter	Burly, Bay Minette	191
38.	Don Bayars	Salesman, Bay Minette	191
39.	Willie H. Davidson	Farmer, Bay Minette	
40.	Royal E. Stapleton	Merchant, Bay Minette	191
41.	Carl Davidson	Hospital Maintenance, Bay Minette	191
42.	A. E. Hobbs	Merchant, Bay Minette	191
43.	Jack Chandler	Salesman, Bay Minette	191
44.	Paul Smith	Salesman, Bay Minette	191
45.	Thomas Perkins	Bookkeeper, Bay Minette	191
46.	Vernon West	Ice Plant, Bay Minette	191
47.	Paul Quinley		
48.	Frank Cook	Insurance, Robertsdale	191

D. XXXX XXXX XXXX

D. XXXX XXXX XXX

Flowers

246

Antislavery

RECEIVED

RECEIVED

RECEIVED

1841-1842

STATE OF ALABAMA
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summons JOSEPH D. MIDDLETON 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 A. J. Swirn.

WITNESS my hand this the 3rd day of August, 1951.

Deirdre H. H. H.
Clerk

A. J. SWIRN

PLAINTIFF

VS

JOSEPH D. MIDDLETON

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

1.

The Plaintiff claims of the Defendant ONE THOUSAND (\$1000.00) DOLLARS due by promissory note made by him on the 13 day of October, 1949, and payable twelve months after date, which sum of money with interest thereon from date at the rate of six percent per annum is due and unpaid.

2.

The Plaintiff claims of the Defendant the further sum of FIVE HUNDRED (\$500.00) DOLLARS, due by promissory note made by him on the 13th day of October, 1949, and payable eighteen months after date, which sum of money with the interest thereon at six percent per annum from date is due and unpaid.

3.

The Plaintiff alleges that the Defendant in, by, and as a part of said notes waives all rights of exemption under the constitution and laws of Alabama and agreed to pay all costs of collecting or securing or attempting to collect or secure said notes, including a reasonable attorney's fee.

4.

The Plaintiff claims of the Defendant the further sum of TWO HUNDRED FIFTY (\$250.00) DOLLARS AS A reasonable attorney's fee.

Sam L. L.
Attorney for the Plaintiff

Received in Sheriff's Office
this 3 day of *Aug*, 1951
TAYLOR WILKINS, Sheriff

Executed Aug, 28, 1951
By Serving Copy on
Joseph, D. Middleton

Sheriff
Taylor Wilkins
By
Edleigh Steadham

701690

Record

A. J. SWIRN

PLAINTIFF

VS

JOSEPH D. MIDDLETON

DEFENDANT

BILL OF COMPLAINT

FILED
AUG 3 1951
ALICE J. DUCK, *clerk*
Register

Defendant's Address Orange Beach

A.J. SWIRN

PLAINTIFF

VS

JOSEPH D. MIDDLETON

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 1690

~~Now comes the Plaintiff and demurs to Defendant's pleas 2, 3, 4, and 5~~
and to each count separately and severally says:

1.

That said plea sets out no facts which constitute a defense to the Plaintiff's cause of action.

2.

That said plea set outs no facts showing a failure of consideration for the notes sued on.

3.

That said notes sued on were past due at the time of the alleged efforts to cancel the said contract.

4.

That the said plea affirmatively show that the consideration for the said notes has not failed.



Attorney for Plaintiff

Filed: September 24, 1952,

Selfair J. Mableberry, Jr.
Judge

A. J. SWIRN,)
Plaintiff,) IN THE CIRCUIT COURT OF
VS.) BALDWIN COUNTY, ALABAMA
JOSEPH D. MIDDLETON,) AT LAW. NO. 1690
Defendant.)

ANSWER

Now comes the defendant and for answer to the complaint
and to each and every count thereof, separately and severally, says:

1. Not guilty.

J. B. Blashern
Austell & Austell

Attorneys for defendant.

ANSWER

A. J. SWIRN,

Plaintiff,

VS.

JOSEPH D. MIDDLETON,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW. NO. 1690

FILED

OCT 12 1951

ALICE J. DUCK, Clerk

A. J. SWIRN,)		
)	IN THE CIRCUIT COURT OF	
Plaintiff,)	BALDWIN COUNTY, ALABAMA	
VS.)		
)	AT LAW	NO. 1690
JOSEPH D. MIDDLETON,)		
Defendant.)		

PLEAS

Now comes the defendant, by his attorneys, and for answer to the complaint and each and every count thereof, separately and severally, files the following additional pleas:

2. The consideration for the note for One Thousand Dollars (\$1,000.00), described in Count 1 of the complaint, and for the note for Five Hundred Dollars (\$500.00), described in Count 2 of the complaint, has failed in this: On, to-wit, the 13th day of October, 1949, the plaintiff, A. J. Swirn, together with his wife, Elizabeth Swirn, made, executed and delivered to the defendant, Joseph D. Middleton, a written contract, dated October 13, 1949, which is recorded in Book 176 of Mortgages at pages 373-4, Baldwin County, Alabama Records, in and by which the plaintiff agreed to sell and the defendant agreed to purchase the property described in the said contract, according to all of the terms and provisions thereof. The note for One Thousand Dollars (\$1,000.00), dated October 13, 1949 and due twelve months after date, which is described in Count 1 of the complaint, and the note for Five Hundred Dollars (\$500.00), dated October 13, 1949 and due eighteen months after date, which is described in Count 2 of the complaint, are two of the ten notes described in the said written contract and are the first two notes to be paid, as provided in the said contract. The said contract contains a provision reading as follows:

"In the event the party of the second part shall fail for a period of Thirty (30) days to pay any of said installments when and as the same become due, or shall fail for a period of thirty (30) days to keep, perform or carry out any of their obligations under the terms of this Contract, then upon such failure the party of the first part shall have the right to terminate this contract by giving written notice to the party of the second part pointing out the particular wherein there has been such failure by the party of the second part, and unless corrected by them within ten days after the delivery of such written notice from the party of the first part, this contract shall stand terminated and cancelled. . . ."

The said notes, described in Count 1 and Count 2 of the complaint, were not paid by the defendant when they became due and, while the defendant's default in the payment of the two said notes continued, the plaintiff, acting through his attorney, H. M. Hall, did, on, to-wit, January 16, 1951, notify the defendant by letter that he had failed to comply with the said contract and further notified the defendant in the said letter that unless the contract was corrected and made current within ten days after the receipt of the said written notice that the contract would stand terminated and cancelled. The said letter further notified the defendant that unless he made payments in accordance with the contract that all of his right under the contract would terminate within ten days after receipt of the said letter. The said letter was received by the defendant on, to-wit, January 17, 1951, and no payment was made by the defendant to the plaintiff, or to his said attorney, within ten days from receipt of the said letter. The cancellation of the said contract by the plaintiff, acting through his said attorney, cancelled the defendant's obligation to pay the two said notes, because of which the defendant is not liable to the plaintiff on the said notes, or either of them.

3. The plaintiff has cancelled the defendant's obligation to pay the note for One Thousand Dollars (\$1,000.00) described in Count 1 of the complaint, and the note for Five Hundred Dollars (\$500.00) described in Count 2 of the complaint in the following manner:

On, to-wit, the 13th day of October, 1949, the plaintiff, A. J. Swirn, together with his wife, Elizabeth Swirn, made, executed and delivered to the defendant, Joseph D. Middleton, a written contract, dated October 13, 1949, which is recorded in Book 176 of Mortgages at pages 373-4, Baldwin County, Alabama Records, in and by which the plaintiff agreed to sell and the defendant agreed to purchase the property described in the said contract, according to all of the terms and provisions thereof. The note for One Thousand Dollars (\$1,000.00), dated October 13, 1949 and due twelve months

after date, which is described in Count 1 of the complaint, and the note for Five Hundred Dollars (\$500.00), dated October 13, 1949 and due eighteen months after date, which is described in Count 2 of the complaint, are two of the ten notes described in the said written contract and are the first two notes to be paid, as provided in the said contract. The said contract contains a provision reading as follows:

"In the event the party of the second part shall fail for a period of Thirty (30) days to pay any of said installments when and as the same become due, or shall fail for a period of thirty (30) days to keep, perform or carry out any of their obligations under the terms of this Contract, then upon such failure the party of the first part shall have the right to terminate this contract by giving written notice to the party of the second part pointing out the particular wherein there has been such failure by the party of the second part, and unless corrected by them within ten days after the delivery of such written notice from the party of the first part, this contract shall stand terminated and cancelled. . ."

The said notes, described in Count 1 and Count 2 of the complaint, were not paid by the defendant when they became due and, while the defendant's default in the payment of the two said notes continued, the plaintiff, acting through his attorney, H. M. Hall, did, on, to-wit, January 16, 1951, notify the defendant by letter that he had failed to comply with the said contract and further notified the defendant in the said letter that unless the contract was corrected and made current within ten days after the receipt of the said written notice that the contract would stand terminated and cancelled. The said letter further notified the defendant that unless he made payments in accordance with the contract that all of his right under the contract would terminate within ten days after receipt of the said letter. The said letter was received by the defendant on, to-wit, January 17, 1951, and no payment was made by the defendant to the plaintiff, or to his said attorney, within ten days from receipt of the said letter. The cancellation of the said contract by the plaintiff, acting through his said attorney, cancelled the defendant's obligation to pay the two said notes, because of which the defendant is not liable to the plaintiff on the said notes or either of them.

Reckard

4. The consideration for the note for One Thousand Dollars (\$1,000.00), described in Count 1 of the complaint, and for the note for Five Hundred Dollars (\$500.00), described in Count 2 of the complaint, has failed in this: On, to-wit, the 13th day of October, 1949, the plaintiff, A. J. Swirn, together with his wife, Elizabeth Swirn, made, executed and delivered to the defendant, Joseph D. Middleton, a written contract dated October 13, 1949, which is recorded in Book 176 of Mortgages at pages 373-4, Baldwin County, Alabama Records, in and by which the plaintiff agreed to sell and the defendant agreed to purchase the property described in the said contract, according to all of the terms and provisions thereof. The note for One Thousand Dollars (\$1,000.00), dated October 13, 1949 and due twelve months after date, which is described in Count 1 of the complaint, is one of the two notes described in the said written contract and is the first note to be paid, as provided in the said contract. The said contract contains a provision reading as follows:

"In the event the party of the second part shall fail for a period of Thirty (30) days to pay any of said installments when and as the same become due, or shall fail for a period of thirty (30) days to keep, perform or carry out any of their obligations under the terms of this Contract, then upon such failure the party of the first part shall have the right to terminate this contract by giving written notice to the party of the second part pointing out the particular wherein there has been such failure by the party of the second part, and unless corrected by them within ten days after the delivery of such written notice from the party of the first part, this contract shall stand terminated and cancelled.."

The said note described in Count 1 of the complaint was not paid by the defendant when it became due and, while the defendant's default in the payment of the said note continued, the plaintiff did, on, to-wit, November 13, 1950, by letter dated November 13, 1950, notify the defendant that unless he made the payments on the said note which was due on October 13, 1950 within ten days, as allowed in the agreement, the contract would stand terminated and cancelled. The said letter was received by the defendant on, to-wit, November 14, 1950. No payments on the said note were made by the defendant within the said ten-day period. The cancellation of the said contract by the said plaintiff cancelled the defendant's obli-

gation to pay the said note, because of which the defendant is not liable to the plaintiff on the said note.

5. The plaintiff has cancelled the defendant's obligation to pay the note for One Thousand Dollars (\$1,000.00), described in Count 1 of the complaint, and the note for Five Hundred Dollars (\$500.00), described in Count 2 of the complaint in the following manner:

On, to-wit, the 13th day of October, 1949, the plaintiff, A. J. Swirn, together with his wife, Elizabeth Swirn, made, executed and delivered to the defendant, Joseph D. Middleton, a written contract dated October 13, 1949, which is recorded in Book 176 of Mortgages at pages 373-4, Baldwin County, Alabama Records, in and by which the plaintiff agreed to sell and the defendant agreed to purchase the property described in the said contract, according to all of the terms and provisions thereof. The note for One Thousand Dollars (\$1,000.00), dated October 13, 1949 and due twelve months after date, which is described in Count 1 of the complaint, is one of the two notes described in the said written contract and is the first note to be paid, as provided in the said contract. The said contract contains a provision reading as follows:

"In the event the party of the second part shall fail for a period of Thirty (30) days to pay any of said installments when and as the same become due, or shall fail for a period of thirty (30) days to keep, perform or carry out any of their obligations under the terms of this Contract, then upon such failure the party of the first part shall have the right to terminate this contract by giving written notice to the party of the second part pointing out the particular wherein there has been such failure by the party of the second part, and unless corrected by them within ten days after the delivery of such written notice from the party of the first part, this contract shall stand terminated and cancelled. . . ."

The said note described in Count 1 of the complaint was not paid by the defendant when it became due and, while the defendant's default in the payment of the said note continued, the plaintiff did, on, to-wit, November 13, 1950, by letter dated November 13, 1950, notify the defendant that unless he made the payments on the said note which was due on October 13, 1950 within ten days, as allowed in the agreement, the contract would stand terminated and

cancelled. The said letter was received by the defendant on, to-wit, November 14, 1950. No payments on the said note were made by the defendant within the said ten-day period. The cancellation of the said contract by the said plaintiff cancelled the defendant's obligation to pay the said note, because of which the defendant is not liable to the plaintiff on the said note.

Austell v Austell
J. B. Blaschke,
Attorneys for Defendant.

Recorded
PLEAS

A. J. SWIRN,

VS.

Plaintiff,

JOSEPH D. MIDDLETON,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 1690

*Filed: September 29, 1912.
Before J. Middleton, Jr.
Judge.*

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA