

THE MADDOCK FOUNDATION, INC.,
a Non-profit Corporation,

Plaintiff

vs

ELSIE JOHNSON AND ED JOHNSON,

Defendants

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

Come the defendants in the above styled cause and answering plaintiff's complaint and each court thereof separately and severally say:

1. That they are not guilty of the matters therein alleged.

2. That they are not guilty of the trespass alleged in the said complaint and in each count thereof, and say that they lawfully entered and took possession of the said premises, having the legal right to do so, in this that, under a certain contract between the defendants and one Margie Killius, the privy in title with the plaintiff in this cause, after conditions therein broken, namely: The payment of the purchase money when and as, in the manner provided therein, and she being more than 30 days in arrears in the payment of the purchase money as provided therein, and due and proper notice as provided in the said contract having been given to her, all of which was known to the plaintiff in this cause, and the entry of these defendants on the said premises was in all things legal and was not a trespass as alleged in the complaint.

3. That the plaintiff ought not to further prosecute this suit because these defendants lawfully and rightfully entered and took possession of the lands described in the complaint under a certain contract, copy of which is hereto attached and marked Exhibit A, between the defendants and one, Margie Killius, wherein and whereby these defendants contracted and agreed to sell to the said Margie Killius the lands described in the bill of complaint

for and at an agreed price therein stated, and under the terms therein stated that their entry on the said lands, on to-wit: the 19th day of May, 1953, was after a breach of the said contract, by the said Margie Killius to make the payments due thereon as of March 6th and April 6th, 1953, and after she had failed to make other payments provided therein at the time and in the manner provided in said contract, and under the terms of the said contract the failure of the said Margie Killius to meet the said payments, these defendants had a right to and did cancel the said contract and went into possession of the same as they were lawfully entitled to do under the said contract, and their said entry on the said lands was not, under the laws of the State of Alabama, a trespass thereon.

4. The plaintiff ought not to further prosecute this case for this, that the matters complained of have been adjudicated by a court of competent jurisdiction, and show that the acts complained of in plaintiff's complaint grew out of the defendants' cancellation and entry on the premises described in the complaint under the terms of a contract between the defendants and Margie Killius, now Margie Killius Maddock, a copy of which said contract is hereto attached marked Exhibit A and made a part of this plea; that in and by the said contract the defendants had a right to cancel the same and retake possession of the said lands upon default for 30 days in the payment of the purchase price as therein specified and the purchaser Margie Killius, made default in the payment of the moneys due and remained in default for a period of more than 30 days; and the defendants as they had a right to do under the contract, did notify the said Margie Killius in writing of such default and that the defendants had cancelled the said contract and under such default and on such notice the defendants entered into possession of the said lands as they had a legal right to do; that the said Margie Killius subsequent thereto filed her suit in the Circuit Court of Baldwin County, Alabama, in Equity, Number 3031, a copy of which is hereto attached and made a part of this plea, marked exhibit B, and these defendants answered

the same, a copy of their answer being hereto attached, marked Exhibit C, and made a part of this plea, and the said cause was tried by the Honorable H. M. Hall, Judge of the said Circuit Court of Baldwin County, Alabama, sitting in Equity, and a decree therein was rendered by him, a copy of which said decree, is hereto attached marked Exhibit D, and made a part of this plea, in and by which said decree the Court reinstated the said contract and denied to the complainant therein any and all damages by virtue of the cancellation of the said contract and of the re-entry by these defendants into possession of the lands described in the complaint; that the plaintiff in this cause was a privy in title to the said Margie Killius and is bound by the said decree.

5. That the plaintiff ought not to further prosecute this suit because, heretofore, on the 6th day of November, 1952, the plaintiff negotiated with the defendants for the purchase by it of the lands described in the complaint and for reasons best known to the plaintiff the contract for the purchase of the said lands was taken in the name of one Margie Killius; that in taking the said contract in her name the said Margie Killius was acting for and on behalf of the plaintiff in this cause, and the plaintiff in this cause entered into possession thereof ostensibly as a lessee, when as a matter of fact the plaintiff was the party in interest in the purchase of the said property under the said contract of purchase, a copy of which contract is hereto attached marked Exhibit A and made a part of this answer; that the payments made thereunder were made by the plaintiff in this cause and the plaintiff in this cause defaulted in the payment of the purchase money under said contract, namely, in the payment of installments due thereon on the 6th day of March and 6th day of April, 1953, and plaintiff being in default thereunder for more than 30 days, the defendants in this cause cancelled the said contract, and after due and proper notice, as required in the said contract,

to Margie Killius the party in whose name the plaintiff took the contract to purchase the said lands, and to the plaintiff in this cause, entered as they had a right to so do and immediately advised the plaintiff in this cause and the said Margie Killius that they had a right to and they would cooperate with them in removing any poultry, machinery and crops that they had on the said lands; and the plaintiff and the said Margie Killius failed and refused to cultivate and harvest the said crops thereon and failed and refused to take possession of and tend and care for the poultry thereon so that damage to the said crops and to the poultry and other property of the plaintiff thereon was the direct result of the act or failure to act of plaintiff in this cause in taking possession of the said lands, as they had a legal right to do.

6. That the plaintiff ought not to further prosecute this suit because, heretofore, on the 6th day of November, 1952, the plaintiff negotiated with the defendants for the purchase by it of the lands described in the complaint and for reasons best known to the plaintiff the contract for the purchase of the said lands was taken in the name of one Margie Killius; that in taking the said contract in her name the said Margie Killius was acting for and on behalf of the plaintiff in this cause, and the plaintiff in this cause entered into possession thereof ostensibly as a lessee, when as a matter of fact the plaintiff was the party in interest in the purchase of the said property under the said contract of purchase, a copy of which said contract is hereto attached marked Exhibit A and made a part of this answer; that the payments made thereunder were made by the plaintiff in this cause and the plaintiff in this cause defaulted in the payment of the purchase money under said contract, namely, in the payment of installments due thereon March 6, 1953 and April 6, 1953, and plaintiff being in default thereunder for more than 30 days, the defendants in this cause cancelled the said contract, and after due and proper notice, as required in the said contract, to Margie Killius the party in whose name the plaintiff took the contract to purchase the said lands, and to the plaintiff in this cause, entered as they had a right to so do and

immediately advised the plaintiff in this cause and the said Margie Killius that they had a right to and they would cooperate with them in removing any poultry, machinery and crops that they had on the said lands; and the plaintiff and the said Margie Killius failed and refused to cultivate and harvest the said crops thereon and failed and refused to take possession of and tend and care for the poultry thereon so that damage to the said crops and to the poultry and other property of the plaintiff thereon was the direct result of the act or failure to act of plaintiff in this cause and not the result of the act of the defendants in this cause in taking possession of the said lands, as they had a legal right to do; and the defendants further say that the complainant acting through and by the said Margie Killius brought suit in the Chancery Court of Baldwin County, Alabama, a court of competent jurisdiction, and the said suit was prosecuted to decree and in such decree the Honorable Hubert M. Hall, Judge of the Circuit Court of Baldwin County, in Equity sitting, did make and enter an order and decree in which and by which, this Honorable Court found and decreed that the complainant therein, who was in said cause acting for the plaintiff in this suit had no right to damages because of the entrance of these defendants on the said lands, and the plaintiff in this cause, being privy in title to the said Margie Killius, is bound by the said decree in Circuit Court as aforesaid, a copy of the complaint as amended in the said cause, a copy of the defendants answer to the bill of complaint as amended in said cause, and a copy of the decree of the Honorable Hubert M. Hall in said Circuit Court sitting in equity, in said cause is hereto attached, marked respectively as exhibit B, C and D.

7. That the plaintiff ought not to further prosecute this suit because the matters claimed herein have been adjudicated by a court of competent jurisdiction, namely, the Circuit Court of Baldwin County, Alabama, in a suit therein in which one Margie Killius was complainant and these defendants were respondents therein, and in which said suit the said Margie Killius was acting for and on behalf of the plaintiff in this suit, for that the plaintiff

negotiated with the defendants for the purchase by it of the lands described in the complaint and for reasons best known to the plaintiff the contract for the purchase of the said lands was taken in the name of one Margie Killius; that in taking the said contract in her name the said Margie Killius was acting for and on behalf of the plaintiff in this cause, and the plaintiff in this cause entered into possession thereof ostensibly as a lessee, when as a matter of fact the plaintiff was the party in interest in the purchase of said property under the said contract of purchase, a copy of which said contract is hereto attached and marked Exhibit A and made a part of this answer; that the payments made thereunder were made by the plaintiff in this cause and the plaintiff in this cause defaulted in the payment of the purchase money under said contract, namely, in the payment of installments due thereon March 6, 1953 and April 6, 1953, and the plaintiff being in default thereunder for more than 30 days, the defendants in this cause cancelled the said contract, and after due and proper notice, as required in the said contract, to Margie Killius the party in whose name the plaintiff took the contract to purchase the said lands, and to the plaintiff in this cause, entered as they had a right to so do and immediately advised the plaintiff in this cause and the said Margie Killius that they had a right to and they would cooperate with them in removing any poultry, machinery and crops that they had on the said lands; and the plaintiff and the said Margie Killius failed and refused to cultivate and harvest the said crops thereon and failed and refused to take possession of and tend and care for the poultry thereon so that damage to the said crops and to the poultry and other property of the plaintiff thereon was the direct result of the act or failure to act of plaintiff in this cause and not the result of the act of the defendants in this cause in taking possession of the said lands, as they had a legal right to do; and the defendants further say that the complainant acting through and by the said Margie Killius brought suit in the Chancery Court of Baldwin County, Alabama, a court of competent jurisdiction, and the said suit was

prosecuted to decree and in such decree the Honorable Hubert M. Hall, Judge of the Circuit Court of Baldwin County, in equity sitting, did make and enter an order and decree in which and by which, this Honorable Court found and decreed that the complainant therein, who was in said cause acting for the plaintiff in this suit had no right to damages because of the entrance of these defendants on the said lands, and the plaintiff in this cause, being privy in title to the said Margie Killius, is bound by the said decree in Circuit Court as aforesaid, a copy of the complaint as amended in the said cause, a copy of the defendants answer to the bill of complaint as amended in said cause, and a copy of the decree of the Honorable Hubert M. Hall in said Circuit Court sitting in equity, in said cause is hereto attached, marked respectively as Exhibit B, C and D.

BEEBE & SWEARINGEN

BY 
Attorney for defendants

EXHIBIT "A"

Agreement made this 6th day of November A. D. 1952, by and between Elise Johnson and Ed Johnson, wife and husband, hereinafter called the vendors, and Margie Killius, hereinafter called the Vendee:

W I T N E S S E T H:

The vendors agree to sell and convey and the vendee agrees to purchase that certain real property located in Baldwin County, Alabama, described as follows, to-wit;

The Northwest quarter (NW $\frac{1}{4}$) of the Northwest quarter (NW $\frac{1}{4}$) of the Northwest quarter (NW $\frac{1}{4}$) of Section four (4), Township Seven (7) South of Range Two (2) East, containing ten (10) acres, more or less;

The purchase price is Five Thousand Five Hundred (5500) Dollars payable as follows: Two hundred fifty (250) dollars upon the signing of this agreement, receipt thereof being hereby acknowledged and the balance in monthly instalments as follows: Four monthly of not less than Two Hundred Fifty (250) Dollars each commencing one month from date hereof and, thereafter, in monthly instalments of not less than Two Hundred (200) Dollars each, it being understood that all such monthly payments on unpaid balance herein shall be applied first toward interest at the rate of six per cent (6%) per annum on the unpaid balance owing hereunder and the balance of such monthly payments toward the reduction of the principal. Vendee shall have the right to accelerate payment at any time. It is also agreed that Vendee shall make all such monthly payments at the office of J. E. Gooden, Real Estate Broker, at and within the City of Fairhope, Alabama.

When the unpaid balance owing hereunder shall not exceed the sum of Two Thousand Five Hundred (2500) Dollars, Vendors agree to deliver to Vendee a proper full covenant warranty deed and to accept a mortgage on the above described property which said mortgage shall be payable in monthly instalments of not less than Two Hundred (200) Dollars, each to be applied first toward interest at six per cent, (6%) per annum and then toward the reduction of principal, it being understood that the within clause is optional on the part of the Vendee.

Vendors agree to furnish and abstract of title showing merchantable title in and to said property and to deliver same to Vendee for examination, it being agreed that, upon such examination, if defect in said title shall be shown, Vendors shall correct such defect by such means as may prove necessary or, if unable to do so, Vendors shall re-imburse Vendee in the amount of principal paid hereunder but shall retain interest at six per cent and, in such event, this agreement shall be deemed nullified and of no further effect, hereupon Vendee will give up possession immediately.

Vendee may have immediate possession of said property and may improve or build upon same, it being understood that any improvements or construction thereupon shall be and become a part of said real property.

Vendee agrees to keep said property in good repair and condition during the life of this agreement.

Taxes shall be pro-rated as of date hereof and Vendee assumes and agrees to pay all taxes accruing hereafter.

Upon completion by Vendee of the undertakings herein on her part, Vendors will deliver a full covenant warranty deed in and to the above described property conveying to Vendee the fee simple therein free of any encumbrance imputable to Vendors of their predecessors in the Title.

It is understood and agreed that time is of the essence hereof and should Vendee default for a period exceeding thirty (30) days in the performance of any undertaking on her part, Vendors shall have the right to void the within agreement and, in such event, Vendee agrees to return possession to the Vendors upon Ten (10) days written demand and, in such event, all amounts paid theretofore shall be treated as rent for

the use and occupancy of said premises and, as such, shall be retained by Vendors whereupon the within agreement shall be of no further force or effect.

The within agreement shall apply to and bind the heirs, executives, administrators, and assigns of the respective parties.

Witness the hands and seals of the parties and to a duplicate of like tenor and date.

In presence of:

J. E. Gooden

(signed) Elise Johnson (Seal)
Elise Johnson

(signed) Ed Johnson (SEAL)
Ed Johnson

(signed) Margie Killius (SEAL)
Margie Killius

Exhibit B.

MARGIE KILLIUS

Complainant,

vs

ELISE JOHNSON and
ED JOHNSON,

Defendants

NUMBER _____

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

AMENDED COMPLAINT

TO THE HONORABLE HUBERT HALL, JUDGE OF THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Your Complainant, Margie Killius, files this her bill of complaint against Elise Johnson and Ed Johnson and respectfully shows to the Court as follows:

ONE

The complainant, Margie Killius is a resident of Baldwin County, Alabama, over the age of twenty-one years and the defendants Elise Johnson and Ed Johnson are each over the age of twenty-one years and reside in the Fairhope Community in Baldwin County, Alabama.

TWO

The complainant, on November 6th, 1952, entered into an agreement in writing with Elise Johnson and Ed Johnson for the purchase and sale of the Northwest Quarter of the Northwest quarter of the Northwest quarter of Section 4, Township Seven South of Range 2 East containing ten acres, more or less, a copy of which agreement is attached hereto as Exhibit "A" and made a part thereof as though fully set out herein. Following the payment of the cash consideration and the execution of copies of the contract identified as Exhibit "A" the complainant went into possession of said property and used the same as the part of the facilities of a hospital and school for children and as such facility, land was planted, crops and buildings were erected so that on the 20th day of May, 1953 a crop of cucumbers was in the process of harvest, potatoes were being dug and more than 1000 chickens were housed and being cared for on said land.

THREE

Complainant further shows that she paid to J. E. Gooden, the agent of the defendants, designated in the purchase contract the following amounts; cash payment November 6, 1952, \$250.00 monthly installment

December 5, 1952, \$250.00 monthly installment January 16, 1953, \$250.00, monthly installment February 28, 1953, \$250.00 monthly installment, March 31, 1953, \$231.33, monthly installment May 1, 1953, \$170.00 further sums from time to time, within the grace period have been tendered and refused. Another payment is due before June 6, 1953 which the complainant is ready, able and willing to pay and to tender into court. *Complainant offers to do equity,*

FOUR

Complainant further shows that on, to-wit: the 20th day of May, 1953, the defendant Ed Johnson, by force and violence, entered upon the property above described and took actual possession of same, blocked the entrance and denying to the children; the patients of the institution using said land, admission to or entrance on said property, that the agent and employee of the complainant Hiram Armstrong attempted to enter said property on several occasions and was prevented by the defendant Ed Johnson and the complainant has been denied access to said property for any purpose and the trespass by the defendant Ed Johnson continues to this date.

FIVE

Complainant further shows that the crops on said land have been a complete loss since they could not be harvested when ready for harvest, that complainant is informed and believes and on such information charges that more than four hundred of the chickens on said property have died from lack of care and attention, that such damages can not be collected against the defendants as the complainant does not know of any property of the defendants which could be subjected to the payment of such a judgment, that the perishable crops and the remaining chickens could be saved, in part, if complainant had access and control of said personal property within the next few days.

SIX

Complainant further shows that defendants contend that a default has occurred under the terms of said contract, which contention is vigorously denied by this complainant and complainant further shows that no foreclosure of said contract has taken place, that no suit has been filed to enforce the rights of either party under said contract and the defendants, relying on force and violence, have attempted to impose

a construction of said contract and by such construction, forfeit the funds of the complainant paid to the defendants together with the personal property located on said lands and the other improvements including growing crops.

S E V E N

Complainant further alleges that all acts of the defendants are in violation of the law of the State of Alabama, that the enforcement of the rights of the defendants under a claimed default do not permit the invasion on said property by force and violence, the seizure of personal property and threats of assault on the employees and agents of this complainant, and complainant offers to do equity in this matter.

Complainant prays that this Court will take jurisdiction of this cause and that process will issue to the defendants, requiring them to appear and answer this bill of complaint within the time required by law or in default thereof a decree pro confesso be rendered against them.

Complainant prays for the following separate and several relief;

O N E

That there be immediately issued, a temporary writ of injunction restraining the defendants from the following acts;

A. From forceably preventing the complainant from entering upon and using the property above described.

B. From in any way hindering, delaying or preventing complainant from caring for the chickens, harvesting the crops, cultivating the lands and using the improvements, on the property above described.

C. From interfereing with, threatening or molesting any person attempting to enter, work or conduct any lawful business on the property above described.

D. From personal assault, threat or harm^{on}/or to the complainant, the Children, patients, at the institution above described, agents or employees of said institution or persons authorized by the complainant to enter said land and from peacefully going about on the lands above described.

T W O

That the injunction above prayed for be made permanent, on a final hearing of this cause.

T H R E E

That the contract attached hereto be construed by this Honorable Court and the rights of the parties under said contract be determined and this complainant be directed to pay into the Court or to defendant such sums and on such dates as the agreement between the parties and the loss of this State require to re-instate said contract of purchase and permit the sale of said lands in accordance therewith. If said contract be not re-instated then the sums paid by this complainant toward the purchase of said property be declared a lien upon said land in favor of this complainant as funds received by the defendants in excess of the reasonable use of said property and claimed by the defendants as a penalty or forfeiture against which the Court of Equity will grant relief.

F I V E

That the Court will determine the reasonable value of the personal property and crops destroyed by the action of the defendants and damages be awarded to you complainant equal to the reasonable market value of the property so destroyed or lost and the amount of same credited to you complainant on the purchase of said property, and complainant prays for such other, further or different relief as to Your Honor may seem meet.

STATE OF ALABAMA

BALDWIN COUNTY

Personally appeared before me, the undersigned authority in and for said County and State, personally appeared, Margie Killius, who being by me first duly sworn, deposes and says that she is the complainant in the foregoing bill of complaint, that she has read over the statements contained in the foregoing bill of complaint and the facts therein stated are true.

Sworn to and subscribed before me

this the 24 day of June, 1953.

Margie Killius

J. B. Blackburn
NOTARY PUBLIC - BALDWIN COUNTY, ALA.

"Exhibit C"

MARGIE KILLIUS

Complainant

vs.

ELISE JOHNSON AND ED
JOHNSON,

Defendants

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY

Come the defendants in the above styled cause and demurring to complainant's bill of complaint as amended, say:

1. There is no equity in the bill.
2. Complainant alleges no facts upon which this court can grant the relief prayed for.
3. Said bill of complaint is multifarious.
4. The complainant does not offer to do equity.
5. Said complaint shows on its face that the complainant's rights under the contract attached as exhibit "A" have expired.

And without waiving the aforesaid demurrers but insisting upon the same demurrers file this answer to the bill of complaint.

1. The defendants admit the allegations of paragraph one.
2. Defendants admit the execution of the contract alleged in paragraph two, they deny that the complainant used the said premises as a part of the hospital and school for children and that the lands were planted in crops and buildings were erected and that a crop of cucumbers was in the process of being harvested on May 20, 1953, and they deny that potatoes were being dug and that there were more than one thousand chickens on the premises and being cared for on said lands;
3. Defendants deny all of the allegations of paragraph three.
4. Defendants deny all of the allegations of paragraph four.
5. Defendants deny all the allegations of paragraph five.
6. Defendants deny all the allegations of paragraph six.
7. They deny all the allegations of paragraph seven.
8. And further answering said bill of complaint the defendants say that upon the entering into the contract alleged in paragraph two the complainant, or someone else acting for or under her,

took possession of the lands and buildings covered by the said contract; that on the said lands at the time of the execution of said contract there was thereon a substantial residence in a reasonably good state of repair, that there was a partially constructed concrete pump house, that there was considerable valuable shrubbery and a large number of valuable flowers on said premises, that the said residence had plumbing fixtures with necessary piping and connections with the well and pump on the said premises; that as will appear from the said contract the complainant in and by the said contract agreed to keep the said property in good repair and condition during the life of the said contract; that in violation of the said contract the complainant did herself, or through and by her agents, employees or persons placed in possession of the said premises, destroy a large part of the shrubbery and flowers on the said premises, did great damages to the said premises, and did break, tear up and remove pipe connecting the plumbing on the said premises, and did tear down the partially constructed pump house, and did remove an outdoor toilet to the site of the said pump house and did house chickens in large numbers in the dwelling house on the said premises, and did permit both the said buildings to be mired with chicken droppings and refuse so that the same was several inches deep over and around and in both houses, causing the same to smell of offensive odors and causing the same to rot and to be greatly depreciated in value and the premises greatly damaged thereby.

And further answering the complainant's bill of complaint the defendants say that on May 7, 1953 the complainant was in default in the payment of the monthly installment due under the said contract and in default April 6th, 1953/in the sum of \$18.67 on the payment due March 6th, 1953, and such default having continued for thirty days and more, these defendants say they had a right under the said contract and did declare the same null and void, and did retake possession of the said premises after the expiration of ten days, viz: on the 19th day of May, 1953, as they had the full legal right to do under the said contract

and the complainant now has no interest thereunder, the same having been forfeited under the terms thereof as aforesaid.

Further answering defendants say that at no time did they forbid the complainant to come on the said premises for the purpose of harvesting potatoes thereon or for the purpose of feeding, watering or removing chickens therefrom, but that these defendants by letter and by telephone repeatedly requested the complainant to come on the said premises and to harvest the said potatoes and to feed, water the said chickens and to take and remove the same therefrom, and at no time did they or either of them deny to complainant, or any person sent there by her, the right to enter on the said premises to harvest the said potatoes and to feed, water and remove the chickens therefrom, that defendants never attacked or abused anyone who entered thereon except that he did request some one who came there with a child who was not of sound mentality that he not bring the child back; that this request was made because such child was boisterous and abusive and attempted to attack the defendant, Ed Johnson.

That the complainant in the destruction of the pump house and the erection of the outdoor toilet on the side of the same, in the destruction and removal of the flowers and shrubbery from the premises of the defendant as aforesaid, and in the abuse and misuse of the defendants premises as aforesaid has damaged these defendants in the sum of \$1,000.00.

And the defendants having fully answered complainant's bill of complaint pray that this may be taken as their cross bill and that the complainant be made cross defendant hereto and by appropriate process be required to plead, answer or demur to the same within the time and under the pains and penalties prescribed by law;

And these defendants and cross complainants further pray that upon the final hearing of this cause this Honorable Court will make and enter an order ascertaining, adjudging and decreeing that the complainant has no right, title or interest in, claim or demand to the property described in the bill of complaint, to-wit:

The Northwest quarter of the Northwest quarter of
the Northwest quarter of Section 4, Township 7 South,
Range 2 East, containing 10 acres, more or less;

And that this Honorable Court ascertain and decree the
damage suffered by the defendants and cross-complainants and that the
complainant be ordered to pay the same and upon failure to do so
process of this court issue for the enforcement of payment thereof,
and these defendants and cross-complainants further pray for such
other, further or different relief as in equity and good conscience
they shall be entitled to receive in the premises.

W. C. Beebe
Attorney for defendants and cross-
complainants.

"Exhibit D"

MARGIE KILIUS,)	IN THE
Complainant)	CIRCUIT COURT OF BALDWIN COUNTY,
VS.)	ALABAMA, IN EQUITY.
ELSIE JOHNSON AND ED JOHNSON,)	NO. 3031
Defendants.)	

This cause coming on to be heard is submitted upon the original and amended bill of complaint, original and amended demurrers, answer and cross bill and answer to cross bill, the stipulations and admissions of parties, and the testimony of the witnesses taken ore tenus.

The Court, after considering the pleadings and hearing the testimony of the witnesses for the complainant and Respondents ascertains and finds as follows:

The Complainant and Respondents, on November 6th., 1952, entered into a written contract, evidencing the sale and purchase of a tract of land set out in the bill of complaint; that J. E. Gooden was designated to receive the payments; that J. E. Gooden was the agent of the Respondents; that the complainant, before the commencement of this suit paid to said J. E. Gooden the sum of FOURTEEN HUNDRED THIRTY ONE AND 33/100 (\$1431.33) DOLLARS, and at the time of filing suit paid into the hands of the Register of this Court TWO HUNDRED FIFTY AND 00/100 (\$250.00) DOLLARS, making a total of SIXTEEN HUNDRED EIGHTH ONE AND 33/100 (\$1681.33) DOLLARS; that the amount due under the contract to June 6, 1953, was SIXTEEN HUNDRED FIFTY AND 00/100 (\$1650.00) DOLLARS. That there has been a substantial compliance on the part of the complainant with the said contract; that the complainant is entitled to relief in reinstating the contract, but not entitled to damages; that the Respondents' demurrers are not well taken; and that they are not entitled to the relief prayed for under their cross bill.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE
Court as follows:

(1) That the demurrers of the Respondents to the original and amended bill of complaint be and they are hereby overruled.

(2) That the original contract by and between the Complainant and Respondents be and it is hereby reinstated and is in full force and effect.

(3) That the Complainant pay to the Respondents, in accordance with the terms of the contract on July 6, 1953, the sum of ONE HUNDRED SIXTY EIGHT AND 67/100 (\$168.67) DOLLARS,

(4) That the Complainant is not entitled to damages claimed in the original and amended complaint and as to such damages her claim is denied and dismissed.

(5) That the claim of the Respondents under their cross bill is denied and dismissed.

(6) That the Register of this Court pay over to the Respondents TWO HUNDRED FIFTY AND 00/100 (\$250.00) DOLLARS held by her to be applied on the original contract.

(7) The costs of this proceeding be taxed against the Respondents, for which execution may issue.

Dated at Bay Minette, Alabama, this the 2nd day of July, 1953.

sd/ Hubert M. Hall
Judge, 28th Judicial Circuit of
Alabama.

~~2289~~
2075
The Maddock Foundation
Inc,

Plaintiff

vs

Elsie Johnson &
Ed Johnson
Defendants.

Filed 11-4-54
Wise County
Register

BEEBE & SWEARINGEN
LAWYERS

BAY MINETTE, ALABAMA

Replied 2-22-55
H. M. W. J.

THE MADDOCK FOUNDATION, INC.
a non-profit corporation,

Plaintiff,

VS

ELSIE JOHNSON AND ED
JOHNSON,

Defendants,

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

Come the defendants in the above style cause and demurring
to County 1 of the plaintiffs complaint say:

1. That the said count does not state a cause of action.
2. The said count is vague and indefinite.
3. The said count does not allege facts with sufficient certainty to apprise the defendants of what they are called upon to answer.
4. That the said count alleges the wrongful taking of various items of personal property but does not allege the quantity or value of the items alleged to have been taken.

Defendants demurring to Count 2 of plaintiffs complaint say:

1. That the said count does not state a cause of action.
2. The said count is vague and indefinite.
3. The said count does not allege facts with sufficient certainty to apprise the defendants of what they are called upon to answer.
4. That the said count sounds in damages only.
5. The said count does not allege facts showing that any damages were suffered by the plaintiff by virtue of the alleged trespass.
6. That the said count alleges to distinct causes of action.
7. That the said count shows a misjoinder of causes of action.
8. That the said count does not allege facts showing any damage resulting to the plaintiff by virtue of alleged trespass.


ATTORNEY FOR DEFENDANTS

2075

Defendants
Remiss to
Original
Cause Plaintiff

FILED

SEP 29 1953

ALICE J. BUCH: Clerk

THE MADDOX FOUNDATION, INC.,
A NON-PROFIT CORPORATION,
PLAINTIFF,
VS
ELSIE JOHNSON and ED JOHNSON,
DEFENDANTS.

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

Come the defendants in the above styled cause and demurring to count three of plaintiff's complaint filed August 18, 1954, say:

1. Said count is indefinite.
2. Said count alleges no facts showing a trespass by defendants on the lands of plaintiff.
3. Said count alleges no damages to plaintiff resulting from the alleged trespass.
4. Said count is insufficient to appraise the defendants of what they are called upon to answer.
5. Said count does not allege how and in what manner defendants trespassed upon the lands of the plaintiff's.
6. Said count does not allege how and in what manner the defendants damaged the plaintiff.
7. It does not appear from the said count that the defendants trespassed upon the lands of the plaintiff.
8. It does not appear from the complaint that the plaintiff was damaged by the alleged trespass.
9. That the allegation of damages in said count is a conclusion of the pleader.
10. Said count does not allege when the defendants trespassed on the lands of the plaintiff.
11. For it does not appear from said count that defendants destroyed or in any manner injured or damaged growing crops of the plaintiff on said lands.
12. For it does not appear from said count that crops growing on said lands were the property of the plaintiff.

Becker & Associates
W. C. Becker
Attorney for Defendants.

MADDOCK FOUNDATION, INC. a
non-profit corporation,

Plaintiff,

vs-

ELSIE JOHNSON and ED
JOHNSON,

Defendant.

NO. 3357

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

Comes the Plaintiff and demurs to pleas 2, 3, 4, 5, 6,
and 7, separately and severally on the following separate and
several grounds;

1. Said pleas do not set up a defense for the conversion of personal property.
2. The matters alleged in said pleas may be offered in evidence under the general issue.
3. Said pleas allege immaterial matter which does not avoid liability for conversion of personal property or trespass to real property.
4. Nothing alleged in said count authorized the forceful entry on land in possession and claimed by another.
5. Said pleas show affirmatively that no suit was brought for the recovery of possession but that said possession was admittedly taken by force with out order of Court or a writ from any court.
6. Said pleas attempt to show res adjudicata but the action for decree pleaded was not between the parties to this cause.
7. Said pleas attempted to establish prior litigation but it affirmatively appears that said litigation would not involve personal property alleged to be converted in this suit. It is not alleged that Margie Killius at any time claimed to own personal property described in Count One of the complaint.
8. It affirmatively appears that the Plaintiff in this cause was a tenant in possession and the failure of title by the landlord did not justify the forceable ejection of the tenant by a third party which is the defense pleaded in these pleas.

9. Said pleas allege immaterial matter which does not amount to a defense to an action for conversion or an action in trespass.

10. The exhibits to pleas six and seven affirmatively show that the title to the personal property alleged to be converted was claimed by the tenant and affirmatively show that said contract was not in default.


Attorney for Plaintiff.

[Faint, illegible text and stamps are visible in the background of the signature block.]

2075

Answers to
depts pleas

FILED

NOV 20 1954

ALICE J. DUCK, ~~Register~~ Clerk

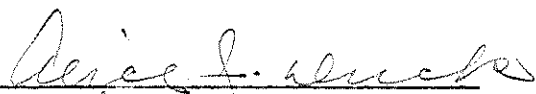
STATE OF ALABAMA

COUNTY OF BALDWIN

TO ANY SHERIFF OF THE STATE OF ALABAMA;

You are hereby commanded to summon Elsie Johnson and Ed Johnson to appear, within thirty days from the service of this writ, in the Circuit Court of Baldwin County, Alabama, to be held for said County at the place of holding the same, then and there to answer the complaint of the Maddock Foundation, Inc, a corporation.

WITNESS my hand this 28th day of August, 1953.


Mrs. Alice Duck, Clerk of
Circuit Court of Baldwin
County, Alabama

THE MADDOCK FOUNDATION, INC.
a non-profit corporation,

Plaintiff,

VS

ELSIE JOHNSON and ED
JOHNSON,

Defendants,

#

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

COUNT ONE

The Plaintiff claims of the Defendants \$5,872.00 damages for wrongfully taking the following goods and chattels, the property of the Plaintiff, viz: 8 acres of potatoes, 1000 capone chickens, 1½ acres of cucumbers, ¼ acre of tomatoes, ¼ acre cabbage, peppers, beans, 1 Farmall tractor, 8 heat lamps, 24 chicken feeders, 20 water fountains, 2 broken pecan trees, 6 tons chicken manure, 1 fresh water well, on to-wit, the 20th day of May, 1953.

COUNT TWO

The Plaintiff claims of the defendants \$6000.00 damages for a trespass by the Defendants and the interruption and destruction of farm therapy for 31 children on the following tract of land in Baldwin County, Alabama, viz;

The Northwest Quarter (NW¼) of the Northwest Quarter (NW¼) of the Northwest Quarter (NW¼) of Section four (4) Township Seven (7) South of range two (2) east, containing ten acres more or less.

in the possession of the Plaintiff and for injury to growing crops thereon, on to-wit, the 20th day of May, 1953,


ATTORNEY FOR PLAINTIFF

The Plaintiff demands a trial by Jury.


ATTORNEY FOR PLAINTIFF

Received 28 day of Aug 1953
this 28 day of Aug 1953
TAYLOR WILKINS, Sheriff

Received 28 day of Aug 1953
and on 1 day of Sept 1953
I served a copy of the within
on Elvie Johnson &
Ed Johnson
by service on _____

TAYLOR WILKINS, Sheriff

By V F Hall D. S.

RECORDED
NO 2075

The Maddox Foundation
Inc. a non-profit corp

vs.

Elvie Johnson &
Ed Johnson

De quid Complaint

FILED

AUG 28 1953

ALICE J. DUCK, Clerk

THE MADDOCK FOUNDATION, INC.,
A Non-Profit Corporation,

Plaintiff,

VS.

ELSIE JOHNSON AND ED
JOHNSON,

Defendants.

NO. _____

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW.

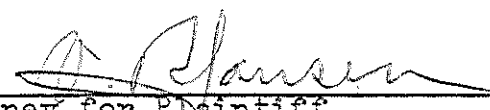
Comes the Plaintiff and leave of the Court having been obtained, files the following amendment to the Complaint, viz:

COUNT THREE:

The Plaintiff claims of the defendant \$6,000.00 Damages for a trespass by the Defendants on the following tract of land in Baldwin County, Alabama, viz:

The Northwest Quarter (NW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Four (4) Township Seven (7) South of Range Two (2) East, containing ten acres more or less,

in the possession of the Plaintiff, all to the damage of the Plaintiff on the 20th day of May, 1953.



Attorney for Plaintiff.

RECORDED

2502

Amendment
of Complaint
Cavit 3

Filed 8/18/54
Hester
Judge

VERNOL R. JANSEN
LAWYER
205 TITLE INSURANCE BUILDING
MOBILE, ALA.

August 17, 1954

Mrs. Alice Duck
Clerk of Circuit Court
Bay Minette, Alabama

Dear Mrs. Duck:

Please file the enclosed amended count to the complaint in the case of Maddock Foundation, vs Elsie Johnson et al.

Very truly yours,

Vernol R. Jansen

VRJ/lj

2075

MEMORANDUM FOR THE RECORD

SUBJECT:

DATE:

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211

75

158

15,75