

THE STATE OF ALABAMA, BALDWIN COUNTY.

IN CIRCUIT COURT, IN EQUITY

JAMES A. BISHOP, Complainant,

vs.

SWIFT & COMPANY, Respondent.

Oral Examination before Philip R. Livaudais, Commissioner,
of the following witnesses:

J. W. ANTHONY
DEWITT SMITH

said examination being conducted in New Orleans, Louisiana, on this the Fifth day of October, 1934, in accordance with the stipulation below noted, and there being present Jesse F. Hogan, Esq., Solicitor for Complainant, and Leon G. Brooks, Esq., Solicitor for Respondent.

STIPULATION

IT IS AGREED, between Jesse F. Hogan, Solicitor for the Complainant, and Leon G. Brooks, Solicitor for the Respondent, that Philip R. Livaudais, of New Orleans, Louisiana, may act as the Commissioner of the Court to take the testimony, on oral examination, of J. W. Anthony and DeWitt Smith, witnesses for the Respondent, in New Orleans, Louisiana, on October 5, 1934; that said Commissioner may exercise all of the powers that he might exercise if a commission had been duly issued to him by the Court; and that the testimony as transcribed by said Commissioner may be filed in the Court as the testimony of said witnesses, whose signatures thereto are waived.

The witness J. W. ANTHONY, being duly sworn, testified as follows:

DIRECT EXAMINATION

MR. BROOKS:

Q. Mr. Anthony, your name is J. W. Anthony?

A. Yes Sir.

- Q. You reside in New Orleans, Louisiana?
- A. Yes Sir.
- Q. What position, if any, do you occupy with Swift & Company, the Respondent?
- A. Manager.
- Q. Did you occupy that same position during the year 1932?
- A. Yes Sir.
- Q. Do you recall, or have you refreshed your recollection, as to a transaction in that year between Swift & Company and James A. Bishop?
- A. I recall such a transaction.
- Q. At the time that transaction arose, in a general way, what connection did you have with the handling of sales contracts made by Swift & Company?
- A. Well, the work is departmentalized, with the Sales Manager and sales clerks, and the Credit Department, and then I myself come in, not on specific details but on the general whole, and the transaction goes through its various channels, and if it hits no snags of any kind I have very little connection with it; if there is a snag of any kind, I come in connection with it in a general way, just as any one in charge of a business would.
- Q. Was it a part of your duty, or authority, to approve sales contracts made by the Company through the New Orleans office?
- A. That is my duty and that is my authority, but it is also a delegated authority. In other words, with hundreds, and some years we will have a thousand contracts come in within a period of six weeks, I would not sign each and every one, they would

be signed by one of the clerks.

Q. Isn't it a fact that they must be signed in your name?

A. They must all be signed in my name.

Q. And, in the course of your business and the system that the company follows, state whether or not you either have personal knowledge, or that you have a system which gives you knowledge from records, of the compliance with the conditions the company imposes before the sales contracts are signed?

A. I have such knowledge.

Q. That was true, as well in January and February 1932, as at this time?

A. Exactly. It has been so for years.

Q. Examine the instrument which I am now handing to you, Mr. Anthony,- and, I will say by way of explanation for the record, that this is the same instrument which was introduced in evidence as "Respondent's Exhibit 2" at the hearing in Mobile, Alabama, when testimony was taken by the Complainant. (Handing document to witness). What kind of instrument is that, Mr. Anthony?

A. That is a proposed straight sale contract, as a direct sale to a person where there is an outright purchase. We have on the road,- by way of explanation,- a number of salesmen, ranging anywhere from twelve on up to twenty-five, sometimes more. We give these folks these blank forms of contract. They go out soliciting business. We have no knowledge, naturally, of whom they are going to be able to do business with, so that being the case we simply send them out blank contracts. They sign them, send them in to us, and when we approve them after

we find that all the facts that satisfy us from a credit standpoint, and all the other things, when those things meet with our approval, then we accept the business, and it is our practice then to, - in this lefthand corner, - to put the execution of the contract. Prior to that time it is simply a proposed contract, and after it is approved in the office it is an executed contract. And that is the way it is handled throughout.

Q. Is this the instrument to which James A. Bishop was a party, and under which fertilizers were shipped to him in the Spring of 1932?

A. Yes Sir.

Q. Who was the salesman, or field representative, of Swift & Company at that time who negotiated that contract?

A. Dewitt Smith.

Q. What were his duties?

A. He was a salesman in the field, going out interviewing prospective buyers and prospective handlers of fertilizers. He would call on as many as he could see during the course of a day. With some of them he would be able to write up a contract, with others he would not. When he had closed, - written a contract with them, he would immediately mail it in to New Orleans along with credit information, so that the New Orleans office could decide whether or not they wished to accept it.

Q. Was he authorized to close contracts for the sale of fertilizers himself?

MR. HOGAN: I object to that, on the ground that it is calling for the conclusion of the witness.

A. Positively not.

Q. Was Mr. Smith given authority by Swift & Company to pass on credit risks?

MR. HOGAN: I object to that on the ground that it calls for the conclusion of the witness, and move to exclude the answer in each case.

A. No Sir.

MR. HOGAN: In order to save time, whenever I object to a question, it is understood that I move to exclude the evidence.

MR. BROOKS: That is alright.

Q. Did he have any authority to make any agreement concerning the sale of fertilizers except as set forth in this written contract?

MR. HOGAN: I object to that question -----

A. No.

MR. HOGAN: Hold, a moment. I object to that question on the ground that it calls for the conclusion of the witness, and, on the further ground that the Complainant is not bound by any secret instructions to salesmen.

A. No -----

MR. HOGAN: --- and move to exclude the answer.

Q. Have you any independent recollection of the transaction with respect to the security offered by Mr. Bishop, or, have you refreshed your recollection concerning that so that you can testify about it?

A. I have refreshed my memory with this exception, that I have not refreshed my memory to the point where I could quote dates, words and all those things. I have refreshed my memory, though, and

I do have a recollection of the James A. Bishop account.

Q. Well now, then, with respect to the contract and the delay, if any, between the date of this instrument and the date of shipment of the fertilizers thereunder, state what your recollection is; that is, as to the reason, if any, for the delay?

MR. HOGAN: We object to his testifying to the reason for the delay, as calling for the mental operation of the witness.

A. To answer that requires an explanation. It depends upon what you mean by delay. When a contract comes into the office, we have to, - not living in the community, not knowing all the facts, not having access to all the records, we have to write to people at a distance and ask them to give us various information about people. Now, that is not ordinarily referred to as a delay, that is just in the natural sequence of business, the writing of these folks. In some of those areas where the crops come on all of a sudden and where crop conditions are rather poor, the Clerks of Court and folks like that are sometimes overburdened with work. You may write in June -----

Q. Well, Mr. Anthony, here is what I want to get you as a matter of statement of your recollection, not any negligible delay that I am referring to, but a time; in other words, if you know why the shipment of the fertilizer in this case was not made, we will say, within a few days after January 19, 1932?

MR. HOGAN: Well now, I object to that question on the ground that it is calling for a mental operation by the witness; and on the further ground that it calls for a conclusion of the witness.

MR. BROOKS: I will change that, then, and ask you this, to
eliminate the objection.

Q. Mr. Anthony, this instrument shows it was approved February
16, 1932 -----

A That's right.

Q. --- in your name, at New Orleans, Louisiana.

A. That's right.

Q. It shows that it was dated January 19, 1932. Was there an
investigation made by the company respecting the credit risk
involved; that is to say, regarding the property of Mr. Bishop?

A. The usual investigations were made.

Q. Do you recall what, if anything, was found that was regarded
by the company as an obstacle?

A. The thing which was regarded by the company as an obstacle
was, as I recall, that Mr. Bishop was claiming that certain pro-
perties were clear of indebtedness, but in verifying his claim
we found out that those properties as reflected by the court
records in Baldwin County, were not free of indebtedness.

Q. Do you know how long it was before it was cleared of indebtedness,
approximately?

A. I don't remember the exact date, but I do remember that we re-
ceived a wire from some folks, - I don't know whether it was the
attorneys or just who they were, or the Clerk of the Court -----

MR. HOGAN: Have you got the wire?

MR. BROOKS: I have.

A. (cont'd) --- in which they verified that the properties were at
that time clear. The order was then approved and put in
line for shipment; that is, the contract was in line then for

approval and shipment.

Q. Examine this instrument and state whether or not that was received at the office of Swift & Company, Mr. Anthony? (Handing document to witness).

A. Yes Sir.

Q. At what time, - I just want to identify it as to the time ----

A. Around noon. That says "Feb 16 AM 11:09".

Q. 1932?

A. 1932, and it would have been received in our office between ten or fifteen minutes of the time dated. That is the Western Union date.

MR. HOGAN: I move to exclude the answer, on the ground that that is hearsay evidence as to the supposed date.

MR. BROOKS: I intend to connect it up.

Q. This telegram appears to be addressed to P. J. Burg, care of Swift & Company.

A. He was our Credit Man.

Q. Where is he now?

A. He is now dead.

MR. BROOKS: We introduce this telegram in evidence, and ask that it be marked Exhibit 1, to the Respondent's testimony.

(THE TELEGRAM WAS MARKED FOR IDENTIFICATION "RESPONDENT'S EXHIBIT 1" AND IS ANNEXED TO THESE DEPOSITIONS).

MR. HOGAN: We object to the introduction of the telegram on the ground that it is irrelevant and immaterial, and, secondly, that it is hearsay testimony in regard to the cancellation of the

mortgage. It is not evidence of the true date of the cancellation of the mortgage.

CROSS EXAMINATION

MR. HOGAN:

Q. Does your record show when you first received notice of this cancellation?

A. Of the cancellation, - this is the first notice we had of the cancellation.

Q. No, of the existence of the mortgage?

A. That was the detail that I could not answer.

Q. Have you got that information in your office?

A. I imagine it is in the files of Mr. Brooks, there.

Q. Yes Sir.

(THE WITNESS HANDS COUNSEL FOR COMPLAINANT DOCUMENTS TAKEN FROM FILE, WITH THE STATEMENT):

That's the type of information, and that's the information which was pasted in what is known as our "Credit File".

Q. Have you got the abstract, Mr. Anthony, or did you examine it?

A. No, we don't carry abstracts in our office.

Q. You don't know the date of that?

A. How is that?

Q. You don't know the date incumbrance. This letter of Mr. Rickarby is dated January 25, 1932.

A. No, I don't know the date. Mr. Hogan, the attorneys, when they give us the mortgage records, don't as a rule tell us the date they were put on; they simply tell us that there is a mortgage uncanceled.

Q. This letter of Elliott D. Rickerby, dated January 25, 1932,

that was the first information you had of the existence of the mortgage on Mr. Bishop's property?

A. I assume that was one of the first, I don't know of any other. I have just in the last few days reviewed the file.

Q. In that letter, Mr. Rickerby advised you that this mortgage executed and held by the Bank of Fairhope but that he had been assured by the President that the mortgage had been paid in full.

A. The only thing I know is what the letter tells me.

Q. Well, look at the letter.

MR. BROOKS: Well, we object to the questioning of the witness as to the contents of the letter because the letter itself is the best evidence of what it contains.

A. That's all I know, exactly what the letter there says.

Q. You read the letter yourself at the time?

A. No, I can't say that I read the letter, with the multitude of things that come through our office. It would be the practice for the Credit Man to tell me "there is a mortgage against this" and "we can" or "we cannot accept it".

Q. Did the Credit Man tell you anything about this particular transaction?

A. I can't say that on that date he did/

Q. Did he on any date?

A. He did tell me.

Q. What did he tell you?

A. He told me there was a mortgage on this Bishop property and he could not make this shipment.

Q. Is that the only reason he gave you, that there was a mortgage?

A. That there was a mortgage.

- Q. Did he tell you then that the attorney who reported the mortgage also reported that the President of the Bank stated to him that the mortgage had been paid in full?
- A. I don't recall his having told me that.
- Q. Have you any other information concerning the date of that mortgage that you have referred to?
- A. I have no exact information concerning the date, or the date it was placed of record.
- Q. None of the reports contain that information?
- A. I couldn't state. We don't ask for copies of abstracts, because they are too expensive.
- Q. Now, did you instruct Mr. Smith to have an abstract made of that property, to get an opinion on that title?
- A. I personally did not instruct Mr. Smith on this particular case.
- Q. Your office did not instruct him?
- A. I couldn't say whether they did or did not; I couldn't answer that.
- Q. He did that on his own initiative?
- A. I presume that when the attorneys reported this mortgage, that Mr. Bishop, having -----
- Q. You can just leave out your presumption, if you don't know.
- A. Well, that is all I can give you.
- Q. You don't know. Now, how long had Mr. Smith been in your employ at that time?
- A. I would have to refer to our records to tell you exactly, but I think this was about his second season with us; it may have been a little bit longer, but I think it was his second season with us.

Q. And it was his business to sell fertilizer for you?

A. Soliciting fertilizer orders.

Q. Now, some time after this contract with Mr. Bishop was made, -
Mr. Smith had authority to collect payment on these fertilizer
contracts, did he not?

A. He was both a salesman and a collector.

Q. And he made collection from Mr. Bishop?

A. During the summer, --- I presume if he had made the collection,
we would not be here.

Q. Well, do you remember the occasion when Mr. Smith made some col-
lection from Mr. Bishop, including cash and a check, and he
sent you the check and didn't send you the cash, and you wrote
him about it?

A. I don't recall the exact details of it.

Q. Have you got that correspondence in your file?

A. The entire file is here in the office.

Q. Mr. Anthony, did you make any credit investigation as to Mr.
Bishop's credit in connection with this transaction?

A. Oh yes, a great deal.

Q. What investigation did you make?

A. Let me see the file and I will tell you the places where we
made our investigation. (Witness examines file). I was just
trying to ascertain if it is possible the people to whom we wrote.
This file here doesn't tell to whom we wrote. It is our prac-
tice to write -----

Q. Let me refresh your memory. You sold Mr. Bishop fertilizer the
year before, and I don't think you made any investigation at
the time.

A. Just let me, - the best evidence of the fact that we did is the

fact that here Elliott G. Rickerby says: "James A. Bishop mortgage. Supplementing my letter of yesterday, I am forwarding to you bill of Messrs J. A. Ertzinger & Sons for continuation of the Bishop abstract, with which item, of course, Mr. Bishop should be charged" -----

Q. That was all in connection with the title examination?

A. Yes Sir.

Q. But that is the only examination you made?

A. I couldn't say. Of course, the principal thing here was the question of the mortgage.

Q. Is that the only thing?

A. I couldn't answer that. It would not be the usual thing for is to do. We would not base credit by asking one man something.

Q. I wish you would examine your files and tell me whether that was, or was not, the only investigation that you made, the investigation with respect to the title to that land?

A. That will require an investigation of the file. That isn't here. It is a matter of going to the office and trying to find the old file and running through it.

Q. Well, can you do that?

A. Yes.

Q. In response to Mr. Rickerby's suggestion that Mr. Bishop should be charged with these fees, you made a demand on Mr. Bishop to pay these fees, did you not?

A. I couldn't answer that in detail, and I think it is quite obvious that I could not.

Q. Well, you have the file there.

A. Well, it is a matter of reviewing the file.

Q. Well, I want the files reviewed.

MR. BROOKS: Did you write these letters yourself?

THE WITNESS: No, I didn't write the letters myself, and this is a business that varies from a million to three million dollars a year. The man that handles the business does not handle all of those files.

Q. They are all in your custody?

A. Just the same as this country is in charge of Huey Long, as far as that goes.

MR. BROOKS: I want to make an objection to your requiring Mr. Anthony to answer questions with reference to details that he did not handle. (To the witness): Isn't it a fact that you have only carbon copies of letters addressed to Mr. Bishop?

THE WITNESS: That's all.

MR. BROOKS: And not the originals of these letters?

THE WITNESS: That's all.

Q. Didn't Mr. Bishop decline to pay those charges, the charges for the abstract and for Mr. Rickerby's examination?

A. I can answer one of those questions which you asked a while ago. Under date of January 29th a letter was dictated, carbon copy in the file, addressed to Mr. James A. Bishop, of Barnwell, Alabama. In the third paragraph of this letter it says: "In this connect we also attach two bills that we received, one for twelve dollars from J. A. Ertzinger & Sons, Bay Minette, and the other from Attorney Elliott G. Rickerby, Robertsville, in the amount of twenty-five dollars, representing their costs and fees in this matter. Attorney Rickerby has the supplemental

abstract in his office and will return it to you upon payment of the attached bill. Please advise us whether you will arrange to make payment direct to them". That is the third paragraph of a letter which was written to Mr. Bishop, and goes on to say that we recently received a contract but that we can't take it until we get these matters straightened up that affect the credit.

Q. Now, Mr. Bishop declined to pay these fees, did he not? Did he send you a letter declining to pay those fees?

A. Now, let's see, that letter was written on January 29th (Examining file). When you ask a question and two years elapse, it can't be answered without you go forward and backward.

Q. Didn't you hold up that shipment, Mr. Anthony, as a matter of fact, in part at least, because Mr. Bishop didn't pay those fees?

A. Absolutely not. I can answer that without any equivocation.

MR. HOGAN: That's all I want to ask Mr. Anthony now.

Mr. Anthony, you are going to look over your files and see whether or not you made any other credit examination besides the examination of this title.

THE WITNESS: Alright.

DeWITT SMITH, a witness on behalf of the Respondent, having been duly sworn, testified as follows:

DIRECT EXAMINATION

MR. BROOKS:

Q. Mr. Smith, where do you live now?

A. Silver Creek, Mississippi.

Q. Were you at any time connected with Swift & Company?

A. I was.

Q. In what capacity?

A. Traveling Salesman for them.

Q. Was that position also known as Field Representative?

A. Yes Sir.

Q. For how long a time did you occupy that position?

A. I want to work in July 1930 and worked for them until August 1, 1932.

Q. What were your duties with the company during that period of time?

A. Well, I contacted the grade to sell them fertilizer on cash basis and credit basis. In the case of a credit basis, I was required to get a financial statement of each individual customer that asked credit, verify this statement as well as I could by the records at the court house pertaining to deeds and trusts, and mail that in with recommendation to the Credit Department.

Q. You took orders for fertilizer?

A. Yes Sir.

Q. And sent them in to the New Orleans office?

A. Yes Sir, to be approved or disapproved.

Q. Was Baldwin County in your territory?

A. It was.

Q. Do you know James A. Bishop?

A. I do.

Q. Did you, in 1932, take an order from him for fertilizer?

A. Some time in January.

Q. Examine this instrument here, Mr. Smith, which, by way of explanation, is the instrument designated as Respondent's Exhibit 2 to the testimony taken in Mobile. Is that the order or instru-

ment at the time that covered that transaction with Mr. Bishop?

(Handing document to witness).

A. Yes Sir, this is the beginning of the transaction.

Q. Did you personally handle that with Mr. Bishop at the time?

A. I did.

Q. Now, Mr. Smith, what was said, if anything, before that contract, before that paper was executed there, with reference to any security that Mr. Smith was to give?

A. As I recall, there was a balance due of a previous contract, a carry-over from the year before, that Mr. Bishop could not pay, or did not pay, and he wished additional credit for fertilizers for the year '33, and in order to enable my Credit Man to approve his credit, as a basis for him approving it, he asked for security as to his new business of '33 and as to his old carry-over from '31, and he offered certain lands, certain acreage which I made note of and corresponded with the Credit Department about.

Q. Did Mr. Bishop make any statement to you with reference to the incumbrances on that real estate that he was offering as security?

A. Not at that particular time, no Sir.

Q. Well, did he at any time?

A. When I made,- after the records were searched and found that the bank at Fairhope held an uncanceled mortgage for a thousand dollars, I went to see Mr. Bishop and informed him of that fact, which he didn't know of, as he said, and he produced the deed of trust and the note, as I recall it, that the deed of trust was paid in the amount of so many dollars, and I told him that

the bank had not canceled that deed of trust at Bay Minette, which Mr. Bishop did not understand at that time, I don't think, and he went to see Mr. Northropp, the president of the bank at Fairhope, and he told him that he would have that deed of trust forwarded to Bay Minette.

Q. So, he had agreed to give this security to the company by way of a mortgage on the real estate; is that true?

A. Yes Sir.

Q. You discussed that with him, with Mr. Bishop?

A. Yes Sir.

Q. Well now, state whether or not you and Mr. Bishop together, or whether you or he went to see a lawyer there regarding the title to this property?

A. Well, after I took this up with the Credit Department, they informed me as to what they wanted done, and Mr. Bishop met me at Robertsdale to draw up this contract, or have it drawn, so he suggested, - at least, we went to a lawyer by the name of Rickerby, I think, and he drew the mortgage which also constituted a crop lien on his crops for '32, which was executed by Mr. Bishop and Mrs. Bishop, and due to the fact that this mortgage still had not been canceled on the records at Bay Minette, it wasn't acceptable to Swift & Company until that was canceled.

Q. Well, what arrangements were made with Mr. Rickerby, and by whom, if you know, to investigate the title to this real estate?

A. As best I recall, Mr. Rickerby's association in this case was that he drew the contract and was to investigate the title along with the work that he did with the contract.

Q. Do you know whether or not he did investigate it?

- A. He did. Mr. Bishop had an abstract with him, I understand, I believe he had one with him that day, and left it with Mr. Rickerby to bring the abstract up to the present date.
- Q. Alright. Then did you talk to Mr. Rickerby after that examination of the title had been made, or do you recall about the time that that was done?
- A. It was done along about the same time that he drew the contract.
- Q. Well, after that, did you then discuss with Mr. Bishop that it was reported that the mortgage to the bank had not been canceled?
- A. Twice, as I recall.
- Q. And you say he went to see Mr. Northropp at the bank at Fairhope?
- A. Mr. Bishop told me that.
- Q. At what time did you learn of the cancellation of the mortgage on the records?
- A. Mr. Bishop was needing his fertilizers, and I came over to Bay Minette and went over to the court house myself and found that the cancellation had not been forwarded from the bank.
- Q. Do you recall when that was?
- A. The last of January or the first of February.
- Q. You mean the first part of the month?
- A. The first part of February.
- Q. And you found it had not been canceled on the record?
- A. Yes Sir.
- Q. Then, what did you do?
- A. I went to see Mr. Bishop Sunday, I think Sunday afternoon, and informed him of that fact, and the cancellation,- I don't recall whether he got it Monday, or whether,- I don't recall how the cancellation was gotten, but any rate it was gotten, and when I found out by Monday that it had been canceled, I had the attor-

neys that were looking after that particular part of the case for us to wire our Credit Department that the cancellation was on record at Bay Minette.

Q. Who were those attorneys?

A. Beebe & Hall, or Beebe & Beebe, I don't recall which.

Q. Attorneys at Bay Minette?

A. Yes Sir.

Q. The company had you to engage them to look into the records and advise them?

A. Yes Sir, and to rush the shipment of the fertilizer as much as possible. In other words, the reason they entered into it was due to the fact that I couldn't stay around there until the cancellation came in, I had other work to do, I didn't know whether I would be in Florida or the Northern part of Alabama, and I asked them as a favor to wire Swift & Company.

Q. Now, Mr. Smith, did you make any agreement or representations at any time to Mr. Bishop that this fertilizer would be shipped to him immediately after the date of this instrument, January 19, 1932?

A. I did not. I had no such authority.

Q. Did you promise him, upon the giving of this order, that his fertilizer would be promptly shipped out?

A. No Sir.

Q. Without any other action on the part of Swift & Company or its officers?

A. No Sir.

Q. You say you had no such authority?

A. No Sir.

Q. Do you recall that he told you that he wanted this to plant early

potatoes, and you told him that you would get it through to him in time to plant his early potatoes, and assured him of that?

A. No Sir, I had no such authority.

Q. Or anything in substance like that?

A. No Sir. The face of his contract shows that it has got to be approved in New Orleans, so it would be silly on my part, having drawn up the contract, to make any such promises to anybody.

Q. You say you didn't do that?

A. No Sir.

Q. Had no such understanding?

A. No Sir.

CROSS EXAMINATION

MR. HOGAN:

Q. When Mr. Bishop signed this contract, what, if anything, was said by him to you about having the title examined?

A. Nothing at all, I don't think, Mr. Higan, due to the fact that we had lawyers employed to do that.

Q. And, Mr. Rickerby is the lawyer you had employed?

A. He is the lawyer to draw the contract, he wasn't on the retainer fee of the company, but as a convenience to Mr. Bishop, because we met there.

Q. You met at Bay Minette when the contract was signed?

A. I mean Robertsville, not Bay Minette.

Q. When was this that you made this agreement with Mr. Rickerby about examining this title?

A. The same day the contract was drawn.

Q. Did you go to Mr. Bishop's house to get that abstract?

A. I don't recall. It seems to me like Mr. Bishop had that abstract with him.

- Q. Didn't you go down to see Mr. Bishop's wife to get the abstract from her?
- A. I believe I did, I believe I did, and carried it to Mr. Bishop.
- Q. And that was after this contract was signed that you got that abstract?
- A. Yes Sir, because the contract was signed when the deed of trust was signed.
- Q. The deed of trust was signed along with the contract and mortgage, you mean?
- A. The entire set of papers were signed at one time, the notes, contract, the deed of trust, the order for the fertilizers, was all signed at one time.
- Q. When you got that abstract from Mrs. Bishop, then it was that you completed your arrangements with Mr. Rickerby to make the examination?
- A. No, due to the fact that Mr. Bishop was anxious to save time, he called me up and asked me if Mr. Bishop did have that abstract it would be cheaper, and then I went down to Mr. Bishop's on Monday morning following that telephone conversation and got the abstract and carried it to Mr. Rickerby that same morning.
- Q. Do you remember how long it was after that before Mr. Rickerby made the report to you on the title?
- A. He didn't report to me on the title, he reported to the New Orleans office.
- Q. And then, were you advised of it?
- A. I was, by the New Orleans office.
- Q. Then you went down to see Mr. Bishop, did you?
- A. Yes Sir, - I went to see Mr. Bishop so many times ---

- Q. But when you got that advice, you went down to see him again?
- A. I went down to see him two or three times, I don't recall whether I went immediately following that, but I went to see him two or three times concerning the cancellation of the mortgage.
- Q. That was after you had gotten advice from the New Orleans office?
- A. Yes Sir.
- Q. When was it Mr. Bishop showed you that canceled mortgage?
- A. The first trip down there, I think.
- Q. The first trip down there after you found out about the existence of the mortgage?
- A. Yes Sir.
- Q. And he showed you the note marked paid?
- A. And the deed of trust.
- Q. And he showed you the deed of trust marked paid?
- A. Yes Sir.
- Q. And, did you advise Swift & Company of that fact?
- A. I did.
- Q. Now, this preliminary contract that Mr; Bishop signed, that was in duplicate, was it?
- A. Yes Sir.
- Q. And you left the blue copy with Mr. Bishop?
- A. No, I mailed all the copies in to New Orleans to be approved, and they did the mailing back.
- Q. They mailed this blue copy?
- A. I suppose so, but I mailed them all in to the New Orleans office.
- Q. Now, this blue copy has "mortgage" on it, and certain number of tons, and over here, different grades of fertilizer?
- A. Yes Sir.
- Q. Now, those different grades of fertilizer were used for different

- crops, were they not?
- A. I don't know about that. I presume so.
- Q. Do you know what grade was used on the potato crop?
- A. No Sir, I have no idea.
- Q. But Mr. Bishop told you he wanted that fertilizer, some of it, to use on his potato crop, did he not?
- A. Yes Sir, some for corn and some for water melons, I think.
- Q. And you knew he was making a potato crop?
- A. Yes Sir.
- Q. And you knew he was raising them for the market?
- A. Yes Sir.
- Q. Mr. Smith, that mortgage was signed, after the mortgage had been prepared, it was signed by Mr. Bishop's wife and left for you at Fairhope?
- A. Mr. Bishop executed the mortgage at Robertsville that day, and Mr. Bishop brought Mrs. Bishop to Fairhope and it was executed there.
- Q. You mailed the mortgage and the contract then together?
- A. With the order for the fertilizer, all together.
- Q. You instructed Mr. Bishop to leave that mortgage for you in Fairhope, did you not?
- A. I don't recollect.
- Q. Well, how did you know where to get it?
- A. I don't recall whether we talked about that. Mr. Bishop left word there with somebody to give it to me.
- Q. Didn't you tell him to leave it at Mr. Ruby's store?
- A. I don't know Mr. Ruby's.
- Q. Didn't you pick it up at Mr. Vizer's store?
- A. I don't recall.

Q. You know Mr. Vizer?

A. Yes, I had a grocery account there all the time I lived in Fairhope.

Q. And you don't recall where you picked that mortgage up?

A. No Sir, I don't.

Q. And you don't recall whether you told Mr. Bishop to leave it there, or not?

A. No Sir, I just don't recall that part of it.

Q. Do you know whether there was any delay in canceling that mortgage on the record after the cancellation was received in Bay Minette?

A. There was not. The day that the cancellation was received, within an hour's time it was canceled, and within another hour Swift & Company were notified by Western Union that it was canceled.

Q. Do you know on what day it was canceled?

A. Some time the first part of February, about the middle of February, just what date I don't recollect, the day of the month; the best I remember was that it was canceled on Monday, but I would not be sure about that, but the best of my recollection, I think it was Monday.

Q. You don't know what day?

A. I don't know exactly what date.

Q. Do you know by whom the cancellation, the authority to cancel, was executed?

A. By the Bank of Fairhope.

Q. By whom it was prepared, I mean?

A. In the bank?

Q. Yes?

- A. I wouldn't say. I think, I wouldn't say for sure, but I think it was executed by a little black-headed fellow; I don't recall, I am not certain about who drew that authority to cancel.
- Q. It was done by one of the employees of the bank?
- A. They drew it up themselves.
- Q. By whom did they send that, do you know; did they send it to the Probate Court themselves, or give it to you, or Mr. Rickerby?
- A. I don't recall; it seems to me that he had to go to Bay Minette with it himself.
- Q. Who, Mr. Northropp?
- A. One of the men in the bank. Anyway, I was there when the cancellation was put on the book, and I was the one that notified Beebe & Hall that it was canceled. Young Beebe went to the Circuit Clerk's room,- in my State and County it is the Circuit Clerk,- I don't know what you call it -----
- Q. Probate Court?
- A. --- (cont'd) --- well, probably, in Alabama, and saw that it was canceled, and he immediately went and wired Swift & Company, and I went on.
- Q. When you were negotiating with Mr. Bishop about the sale of this fertilizer, did he tell you when he wanted to plant his potatoes?
- A. As soon as he got this fertilizer.
- Q. He told you that?
- A. I don't know whether he told me that.
- Q. You don't remember whether he told you that he usually planted his potatoes around the first of February?
- A. No, Sir, I don't recall that.

Q. Did you know that that is when he usually planted his potatoes?

A. No Sir, because I had about a hundred and fifty customers in that potato country, and they planted at different times. Of course, what my mind was centered on was selling them fertilizers.

Q. Well, I just asked you if you knew?

A. No, I don't remember.

Q. And you don't remember whether Mr. Bishop told you that he wanted to plant his potatoes around the first of February?

A. I don't recall.

Q. But you did know that he wanted fertilizer as soon as he could get it?

A. Yes Sir, I knew he wanted fertilizer to plant potatoes.

Q. And, as soon as he could get it?

A. Yes Sir.

Q. And you notified Swift & Company to that effect?

A. No Sir, not necessarily.

Q. Well, I am asking you if you did.

A. No Sir, I did not, because I had no reason to.

Q. When you sent in that contract, did you tell them that Mr. Bishop wanted that fertilizer as soon as he could get it?

A. No Sir.

Q. Did you write them at any time to hurry it up?

A. Well, when this cancellation came up, my communications to them would indicate that he wanted the fertilizer, because we notified them by wire just as soon as the cancellation was made, instead of sitting down and writing we went to the expense of wiring them.

Q. You were the field representative of Swift & Company in Baldwin County at the time this sale was made?

A. Yes Sir.

Q. And you had charge of the collections of the company too, did you not?

A. That was part of my duties.

Q. And, did you look after the crops and the liens they had on the crops?

A. No more than to watch the crops when they moved to the market so we would be sure to get our money.

Q. Did you give them any advice about when was a good time to market their crops?

A. No Sir, I had nothing to do with that.

Q. Did you ever do that, though?

A. Well, discussions, just like people will talk, but as to giving advice and instructions to farmers, I had nothing to do with that part of it.

Q. But you did give your personal opinion?

A. Sure.

Q. And, when Mr. Bishop was digging his potatoes, you went over and gave your opinion as to whether it was a good time to dig potatoes, didn't you?

A. As I recall it, I went to his potato field, and it was muddy, and I think I made the remark that if they were my potatoes I would not dig them, due to the fact that the mud was sticking to the potatoes.

Q. If the potatoes had been left in the ground after that they would have decayed, would they not?

A. No Sir, his potatoes didn't decay. Some of them decayed after he put them under the house.

Kirby Wharton, or whatever his name was, carried it to Bay Minette.

Q. You saw that it was canceled?

A. Yes Sir.

Q. Mr. Beebe, I think you said, was the lawyer?

A. Yes Sir.

Q. And, you had Mr. Beebe wire Swift & Company?

A. That same morning.

RE-CROSS EXAMINATION

MR. HOGAN:

Q. Mr. Smith, did you say that you signed this mortgage and sale before Mr. Rickerby?

A. It seems to me like he did.

Q. And on the same day that he signed that original sale contract?

A. The papers were all drawn together, the contract, the financial statement, the mortgage and the order, drawn in Mr. Rickerby's office.

Q. Now, did Mr. Bishop sign that mortgage there?

A. To the best of my recollection, he did.

Q. And did he acknowledge it there?

A. To the best of my recollection.

Q. Now, Gladys Lohr lives in,-- do you know Gladys Lohr?

A. No.

Q. The mortgage shows that Gladys Lohr took the acknowledgment of Mr. Bishop and Mrs. Bishop.

A. I knew that Mrs. Bishop -----

Q. But the same notary took Mr. and Mrs. Bishop's acknowledgement ---

A. I don't know ---

MR. BROOKS: I object to the argument with the witness.

Q. You don't know whether Gladys Lohr lives in Fairhope, or not?

A. No Sir.

Q. You don't know Gladys Lohr?

A. No Sir.

Q. You didn't know her at that time?

A. No Sir. I might have known her when I saw her, but I didn't know her name.

J. W. ANTHONY, recalled for further cross-examination, testified as follows:

MR. HOGAN:

Q. Did you make any further credit investigation of Mr. Bishop besides the examination of his title?

A. Yes Sir.

Q. What further examination did you make?

A. We wrote, as reflected by the file, we wrote to the bank at Fairhope, - at least, they wrote to us.

Q. When was that?

A. It doesn't appear, the date, because they tore the upper portion of the sheet. We wrote to attorneys Beebe & Hall.

Q. May I ask you what you wrote to them?

MR. BROOKS: Just introduce those in evidence if you want to. That's all you know (to the witness)?

THE WITNESS: That's all I know, is what I get out of the file.

Q. All of those inquiries were made before that contract was signed, were they not; this copy from the bank was received on January 13, 1932, was it not?

A. Yes. These are dated January 8th.

Q. And all of your credit investigations were made before this order for fertilizer was signed by Mr. Bishop; isn't that right?

A. No, not all of them. There were subsequent questions asked about it.

Q. Asked about what?

A. About the man's credit standing.

Q. Have you got any evidence of that?

A. Yes, we have there in the file the fact that we asked these folks,- Now, what is it you wanted to know?

Q. ~~What~~ other credit investigation you made in addition to these which are all dated prior to the execution of the sale?

A. We made an investigation through a man named Rickerby.

Q. What investigation have you made through Mr. Rickerby?

A. (Witness examines file). I am looking for,- under date of January 27th, Mr. Elliott G.- a letter signed by Elliott G. Rickerby, addressed to Mr. P. J. Burg: "James A. Bishop mortgage. Supplementing my letter of yesterday, I am forwarding to you bill of Messrs J. A. Ertzwinger & Sons for continuation of the Bishop abstract, with which item, of course, Mr. Bishop should be charged, and I hold this continuation subject to your order, but under Mr. Smith's direction will return the original abstract to Mr. Bishop. I also enclose my bill for services which I presume is also an item of expense"-----

Q. That letter was concerning the investigation of the title, was it not?

A. That is quite true, which is, of course, the basis of his credit.

Q. Well, this is what I am trying to find out, whether or not, other than this investigation of title, you made any other credit investigation of Mr. Bishop before that proposed contract of

Fairhope?

A. Yes Sir.

MR. BROOKS: We introduce in evidence documents marked "Respondent's Exhibits 2, 3 and 4", exhibits to the testimony of J. W. Anthony.

Q. And these reports were received by the company from the persons whose names are signed to them?

A. Yes Sir.

DEWITT SMITH, recalled by Solicitor for Respondent, testified as follows:

MR. BROOKS:

Q. Now, Mr. Smith, I will ask you to state when you began negotiations with Mr. Bishop in 1932 with regard to selling fertilizers to him during that year?

A. I saw Mr. Bishop ever so often, due to the fact that he had a carry-over for the previous year, and we were driving for money all the time to liquidate carry-overs.

Q. When did you discuss selling fertilizers to him for the 1932 season?

A. It seems to me like it was in January.

Q. Did he state to you he would like to purchase fertilizers from Swift & Company?

A. Yes Sir.

Q. Did you report that to the company?

A. Yes Sir, when we were starting to make contracts, in fact, I had correspondence with the credit department in regard to Mr. Bishop's new purchase and his carry-over before this contract

was filled, to determine on what basis they could sell to Mr. Bishop.

Q. When did you begin to have that sort of correspondence with the company?

A. The last of December, or the first of January.

Q. That is your best recollection?

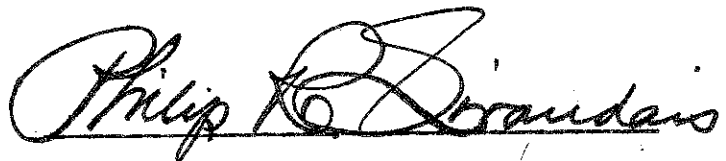
A. Yes Sir. There is correspondence in the file to show that.

STATE OF LOUISIANA,
PARISH OF ORLEANS,
CITY OF NEW ORLEANS.

I, Philip R. Livaudais, as Commissioner appointed by agreement between the Solicitors for the parties, hereby certify that the foregoing depositions on oral examination were taken down by me in writing in the words of the witnesses at the time and place herein mentioned; that I have personal knowledge of the identity of the said witnesses, or had proof made before me of the identity of said witnesses; that I am not of counsel or kin to any of the parties to said cause; or in any manner interested in the result thereof; and that by agreement between the Solicitors for the parties the signing of their testimony by said witnesses was waived.

I enclose the oral examination in an envelope to the Register of said Court.

GIVEN UNDER MY HAND AND SEAL this the Ninth day of October, 1934.



Commissioner.

RE-DIRECT EXAMINATION

MR. BROOKS:

Q. Mr. Smith, all during this time you have testified about, you lived at Fairhope?

A. Yes Sir.

Q. How far away from you did Mr. Bishop live?

A. Four miles, I think.

Q. How far was Robertsdale from where you lived?

A. It is about eight miles.

Q. And then, how far was Bay Minette?

A. From Fairhope?

Q. Fairhope?

A. About twenty-two, or three, miles.

Q. Robertsdale is in the same direction as Fairhope, is it?

A. No Sir.

Q. What direction is it?

A. Robertsdale is due East.

Q. And that is where Mr. Rickerby was?

A. That's where Mr. Rickerby was.

Q. And Bay Minette is the county seat?

A. Yes Sir.

Q. Where the court house was?

A. Due North of Robertsdale.

Q. And, is that where Beebe & Hall had their office?

A. Yes Sir.

Q. Now, Mr. Smith, how many counties did you travel over?

A. Nine.

Q. Nine, in Alabama?

A. Four in Florida.

Q. When you found out about this uncanceled mortgage, I believe you said you went and told Mr. Bishop about it?

A. Yes Sir.

Q. And you later went to see, - paid him additional visits about this mortgage?

A. One other additional visit.

Q. And did you at any time go to the bank at Fairhope and discuss it with any of the officers there?

A. I discussed it with one of the employees of the bank, - not in the bank.

Q. Did you say anything to him about having it taken off the record?

A. Yes Sir, I asked him if they would push it, if he would go and have it canceled so we could ship Mr. Bishop's fertilizer out.

Q. Do you know that man's name?

A. No Sir. He is a little short fellow.

Q. Well, how many people work in the bank?

MR. HOGAN: Was his name Kirby Wharton.

THE WITNESS: His first name was Kirby, I don't recollect his last name.

Q. Now, Mr. Smith, you say also that you went to Bay Minette and was there when the mortgage was actually canceled on the record?

A. Yes Sir.

Q. Well, how did you know that, did you have any part in getting the cancellation up there?

A. It seems to me that I did, but just how I don't recall. Anyway, I was there when the mortgage was canceled. It seems to me I said something to Kirby out on the street the same day that the cancellation was carried to Bay Minette. It seems to me that

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WG27 13 COLLECT (VIA WG)=BAYMINETTE ALA 16 1022A

P J BURG=

C 332 CARE SWIFT AND CO MASONIC TEMPLE NEWORLEANS LA=

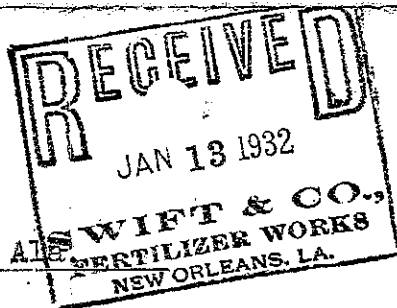
BISHOP FAIRHOPE MORTGAGE EAST HALF SOUTHEAST QUARTER FOURTEEN

SEVEN TWO CANCELLED TODAY=

BEEBE AND HALL.

Respondents Exhibit 1

Swift & Company



Gentlemen:

James A. Bishop, Barnwell, Ala

In answer to the inquiry regarding the above mentioned party, we wish to say that we have known Mr. Bishop for around fifteen years. We have made him a number of loans secured by Real Estate Mortgages all of which have been paid promptly with the exception of one which we made last Spring, however this loan is well secured and we believe that Mr. Bishop will be able to take it up as well as any other debts which he may see fit to incur.

Bank of Fairhope,

By K.W.

*Respondents Exhibit
no 2*

*Respondents to Bishop
No 3*

Swift & Company

New Orleans, La., Jan. 8th, 1923.

Beebe & Hall,
Attorneys at Law,
Bay Minette, Ala.

*file
3*

We shall appreciate a report on

Name James A. Bishop
Street _____ Town Barnwell State Alabama
Business Farmer

Kindly answer such of the following questions as you can without expense to yourself.

Yours respectfully,

Swift & Company

Per PJB

Individual names, ages, married or single? _____

Temperate? _____ Economical? Yes Attentive to business? Yes

Inclined to speculate? No Business ability? Good Ever fail or compromise with creditors? No

Prompt, fair or slow pay? Prompt Is capital invested result of own industry? Yes

How is the moral risk? Good Good Collector? Yes

Is business location good? Yes Rent reasonable? Yes

Value of stock? - - - - \$ _____ Mortgaged? _____

Value of fixtures? - - - - \$ 4,000 Mortgaged? _____

Value of real estate? - - - - \$ 16,000 Mortgaged? _____

Estimated net worth? - - - - \$ 20,000

Any home debts to bank or friends? None

Any evidence of overdue indebtedness? No Any suits or judgments? No

Getting ahead? _____ Holding own? Yes Falling behind? _____

Who is there, with financial responsibility, who would be likely to assist him if necessary?

Miss Branche Johnson, Niece, Barnwell, Alabama.

Mr. Clifford Bishop, Barnwell, Alabama.

ADDITIONAL REMARKS IF ANY

This information was furnished us by a person who personally knows Mr. Bishop, and has known him for a number of years. He is a surveyor and knows that Mr. Bishop owns 800 acres of land that is unincumbered which is of the value of \$20.00 per acre.

Please make a record of this inquiry and if you learn anything materially detrimental to the credit of the above, telegraph us at our expense so that we may forward you the account.

We are members of the Attorney's National Clearing House, use their Quarterly, and will reciprocate for this report with collections as occasions exist.

Swift & Company

Respondents Exhibit
No 4

Place New Orleans, La. Date Jan. 8th, 1932.

J. I. Pittman & Co.,

Fairhope, Ala.

Dear Sir(s):

file
(3)

James A. Bishop, Barnwell, Ala.

We would appreciate any information you may be able to give us regarding the financial responsibility and reputation of the above, and will be glad to reciprocate at first opportunity. Please answer on this sheet.

Awaiting your reply,

Yours respectfully,

SWIFT & COMPANY
Per PJB

Swift & Company

Gentlemen:

James A. Bishop, Barnwell, Ala.

This man owns considerable Real Estate. But is one not in a position to pay just what his worth. He does run a business. Except his farm, no more business.

Yours truly

J. I. Pittman

February 12, 1932.

Elliott G. Fiskarby,
Attorney at Law,
Robertsdale, Ala.

Dear Sir:

JAMES A. BISHOP, BARWELL, ALABAMA.

Under date of January 27th you sent us a bill from J.A. Ertzinger & Son in the amount of \$12.00; and your personal bill for \$25.00 covering charges in connection with the above stated matter.

We presented these to our Legal Department for review and approval, as is customary, and have been advised that, under conditions existing, they consider the charges somewhat high, and have asked that yourself, as well as J.A. Ertzinger & Son, kindly reconsider the bills submitted and send us new bills on a reasonable basis.

We might add, in this connection, that Mr. Bishop's bill has not been approved for the credit applied for, for the reason that it develops that the land embraced in the mortgage which you drew up was covered by prior mortgage in favor of the Bank of Fairhope, which, in fact, has not been paid, and that their mortgage still rested against the land in question.

Will you kindly let us hear from you further in the matter, and oblige.

Yours respectfully,

SWIFT & COMPANY.

CREDIT DEPT.

PJB:LL

CC- DE WIFE SMITH

Aug 21 1934
Swift & Company
Dept. of Credit
By [Signature]



PO Plate No. 5188

STATEMENT

Season _____

4

In Account with

Swift & Company

FERTILIZER WORKS

1711 Masonic Temple

New Orleans, La., 5/13/ 1932

Terms: _____

M

James Bishop
Barnwell
Ala.

NOTE # 330	due 6/1/32	657 29	
✓ 331	✓ 8/1/32	657 29	
		1314 58	
8% from 1/19/32 to 5/19/32		35 04	
		1349 62	
Other less title examination		30 00	
		1379 62	
			1379 62
Order & Notes taken at full prices	→	938 65	
Goods billed at Spring prices		872 70	
credit			65.95
Balance due as of 5/19	→	1303 67	



Swift & Company

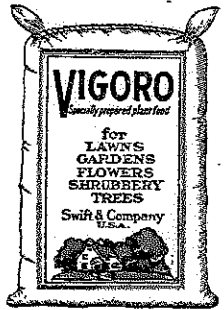
Fertilizer Works

Red Steer Fertilizers

and

VIGORO

Specialty prepared plant food



1711 Masonic Temple
New Orleans, La. May 13, 1932.

Mr. James Bishop,
Barnwell, Alabama.

Dear Sir:

We are today forwarding to our representative, Mr. DeWitt Smith, your two notes for collection, and attach copy of statement showing a balance due after adding interest of \$35.04 plus attorney's fees, etc. of \$30.00, and allowing you credit of \$65.95, being the difference between the fall price and spring price of fertilizer shipped on February 17th.

In this connection, wish to remind you, Mr. Bishop, that the invoice covering fertilizer shipped this year, in the amount of \$872.70, is subject to a discount of 7%, provided payment of it is made by May 17th. This discount amounts to \$61.09, and if you are in position to avail yourself of this, you may deduct the amount from the statement, which will leave you owing a net balance of \$1242.58. If you can only pay, say, the amount of \$872.70, you may deduct \$61.09 from this, which will then leave you owing a balance of \$430.97.

Awaiting your reply, we are

Yours respectfully,

SWIFT & COMPANY.

CREDIT DEPT.
PJB:LL

Aug 27/32
In evidence of both G.
Complainants
W. Carter
Comm

STATE OF ALABAMA
BALDWIN COUNTY

Before me, Carl L. Boxham, duly appointed Commissioner, by the Register of the Circuit Court of Baldwin County, Alabama, on the 10th. day of August, 1935, for the purpose of taking depositions of Gladys Lowell and Kirby Wharton, of Fairhope, Alabama, in behalf of the Complainants in the case of James A. Bishop and Ida Bishop, Complainants and Swift & Company, Defendant, personally appeared Kirby Wharton, who being duly sworn deposes and says, in answer to the following Interrogatories:

QUESTION: What is your name? Did you, or not, have any connection with the Bank of Fairhope during the month of February, 1932? What connection did you have then? ANSWER: My name is Kirby Wharton. I did have connection with the said bank at time stated. I was Cashier.

QUESTION: Do you remember anything about the cancellation of a mortgage to the Bank of Fairhope dated Dec. 31st. 1917, and executed by James A. Bishop and Ida Bishop? If you have the original cancellation, please attach it to your deposition, properly marked by the Commissioner for identification.

ANSWER: Yes, I remember about this cancellation. I do not have the original cancellation.

QUESTION: Did you carry this cancellation to the Probate Court, at Bay Minette to be recorded, or did you send it? If you sent it, please state how by whom you sent it. ANSWER: I mailed mailed this cancellation thru the United States mail.

QUESTION: Please state whether you saw DeWitt Smith, a salesman for Swift & Company, in Bay Minette, on the day this cancellation was filed for record. Did you see him at any time, in Bay Minette, in connection with the filing or recording of this cancellation or release? If so, when?

ANSWER: I did not see DeWitt Smith in Bay Minette in connection with the filing of this release, because I was not in Bay Minette at this time.

Kirby Wharton

Witness.

Subscribed and sworn to before me this 12th. day of August, 1935.

Carl L. Boxham

Commissioner.

PK 10/10

\$ 657.29 Baldwin COUNTY, ALABAMA

January 19 32 Fairhope P.

On or before the 1st day of August, 19 32, I, we, or either of us, jointly and severally

promise to pay to SWIFT AND COMPANY,

or order SIX HUNDRED FIFTY SEVEN AND 29/100 DOLLARS

with interest at the rate of eight per cent (8%) per annum from date until paid

at the office of the said payee Baldwin County Bank, Bay Minette, for value received in fertilizers, as stated below

Sacks Sacks

Sacks Sacks

Sacks Sacks

Should this note be unpaid at maturity and placed in the hands of an attorney for collection, then there shall also become due as a part of the principal and

hereof reasonable attorney's fees. The consideration of this note is commercial fertilizers which I (or we) hereby acknowledge were sold and delivered with the guaranty only of analysis printed on the sacks and not any warranty of results from use nor of effect thereof upon crops, nor any other warranty or guaranty whatsoever, whether the same kind or not. Said fertilizers were inspected, tagged and branded according to the laws of this State and were sold and delivered upon a waiver of all claims, objections, damages or reclamations of every kind whatsoever, except claim for the actual commercial value (or if this is unlawful then amount prescribed by statute) of deficiency in analysis when and only when determined by analysis by the State Chemist (or other authorized official) from sample taken in the presence of the Seller or its duly authorized agent (or in other legally prescribed manner) from fertilizers on which claim is made.

I (or we) waive and renounce my (or our) rights to the benefits of any exemptions or homestead under any laws, State or Federal, except as to property as to which the laws aforesaid may prohibit a waiver. I (or we) waive presentment, demand, notice of demand, protest and non-payment.

And to secure the payment of this note and any other sums I (or we) may owe the payee before this note is paid, I (or we) mortgage, sell and assign to said payee unencumbered property, as follows: the E 1/2 of the S 1/4 of Section 14, Tp 7, south of range 2 East, being 80 acres.

my (or our) entire crops of corn, cotton and produce, and all rents accruing to me (or us), for the calendar year appearing at the head hereof, in the County

named at the head hereof and Baldwin county, State of Alabama

until paid, and empower said payee or his endorsee to take possession of the same whenever he deems himself insecure and may thereafter sell same at either public or private sale after ten days notice of time, place and terms of sale by posting in three public places in the County in which the mortgaged property is situated. If sold at public sale said payee or its assigns shall have the right to purchase said property at said sale. Time of payment of note may be extended without notice to or consent of endorsers or sureties.

WITNESS _____ James H. Bishop

WITNESS _____ Ida Bishop

WITNESS _____ In witness

Aug 2/34
Compliments Exhibit E
J. Calhoun

Swift & Company

Fertilizer Works

New Orleans, La.

ORDER NO. ^{2/16/32} CO 1552

SHIP RUSH

ROUTE L&N TO MOBILE, NEW MAGNOLIA TO DESTINATION

2/18/32

FOR ACCT OF

JAMES BISHOP,
BARNWELL, ALA.

CAR *AP 23201*

CONTRACT NOTES
TERMS IN ADVANCE DUE
6/1 & 8/1 32
FREIGHT PREPAY

SHIP TO SAME, BISHOP WAREHOUSE, TURKEY BRANCH, ALA. CAF

NO. BAGS	SIZE BAGS	BRAND	ANALYSIS	WEIGHT	PRICE PER TON	AMOUNT
100	100	SWIFTS RED STEER	15/4.11/5	10000	33.00	165.00
20	100	" " "	20/8.22/10	2000	52.00	52.00
80	100	" " "	8/3.20/4	8000	25.15	100.60
300	100	" " "	10/3.29/7	30000	29.50	447.50
80	100	" " "	12/3.29/4	8000	28.15	112.60
				<u>38000</u>		<u>872.70</u>

Aug 2/32
In evidence
Complainant's Exh. B
B. C. Carr
Comm

BLOCK NO. 8 DS

CLAIMS: All claims of whatever nature must be made within ten (10) days after receipt of fertilizer, or they will not be recognized.
MAKE ALL REMITTANCES PAYABLE TO SWIFT & COMPANY.
See reverse side for important information.



Swift & Company

Fertilizer Works

Red Steer Fertilizers

and

VIGORO

Specially prepared plant food



308 Whitney Building

New Orleans, La. January 29, 1932.

Mr. James A. Bishop,
Barnwell, Alabama.

Dear Sir:

We recently received from our representative, Mr. Smith, proposed sales contract and order for 30 tons of fertilizer, together with mortgage covering 80 acres of land including all crops; however, find upon examining the abstracts that there is a mortgage in favor of the Bank of Fairhope for the amount of \$1000.00, resting against this farm. We have been informed, however, that this amount has been paid to the bank in full, but presumably through oversight, you failed to obtain from the bank proper cancellation.

Before we can make any shipments to you we will have to submit your application to our headquarters office for review and consideration; however, meanwhile we request that you obtain from the Bank of Fairhope, official cancellation of the mortgage, taking it to the County records of Baldwin County so as to remove it from the records. When you do this, have the Judge of the Probate Court give you something in writing that the cancellation has been effected, and send it to us so that we may have it in our file.

In this connect, we also attach two bills that we received; one for \$12.00 from J.A. Ertzinger & Son, Bay Minette, and the other from Attorney Elliott G. Rickarby, Robertsdale, in the amount of \$25.00, representing their cost and fees in this matter. Attorney Rickarby has the supplemental abstract in his office and will return it to you upon payment of the attached bill. Please advise us whether you will arrange to make payment direct to them.

Awaiting your reply, we are

Yours respectfully,

SWIFT & COMPANY.

CREDIT DEPT.
PJB:LL

Enc.

Aug 2/34
in evidence exhibit F
Compliments
Calcutt
Comm

ORAL EXAMINATION

I, Anna Belle Hand as Register and Commissioner hereby certify that the foregoing deposition s on Oral Examination was taken down in writing by me in the words of the witness~~s~~ and read over to them and they signed the same in the presence of myself and each other, at the time and place herein mentioned; that I have personal knowledge of personal identity of said witness~~s~~ or had proof made before me of the identity of said witness~~s~~; that I am not of counsel or of kin to any of the parties to said cause, or any manner interested in the result thereof.

I enclose the said Oral Examination in an envelope to the Register of said Court.

Given under my hand and seal, this 14th day of August 19 35.

Anna Belle Hand (L. S.)

No. 4 Page

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN CIRCUIT COURT, IN EQUITY

James C. Bishop
John Bishop
COMPLAINANT

VS.

Smith & Co
RESPONDENT

ORAL DEPOSITION

Filed August 14, 1935

Robert S. Mucke, Register.
RECORDED IN

Record
Page

Register

Witness - 5.70

Commissioner 5.00

\$ 18.70

The State of Alabama }
Baldwin County

Circuit Court of Baldwin County, Alabama,
(In Equity)

JAMES A. BISHOP _____ COMPLAINANT
AND IDA BISHOP, His Wife
vs.

SWIFT & COMPANY, _____ RESPONDENT

I, Anna Belle Hand

as ~~Register and~~ Commissioner _____

have called and caused to come before me Mr. W.C. Beebe, Mr. James A.

Bishop, and Mr. J. R. Childress,

witnesses named in the requirement for Oral Examination, on the 14th day of August,

1935, at the office of Robert S. Duck, Register,

in Bay Minette, Alabama, and having first sworn said witnesses to speak the

truth, the whole truth, and nothing but the truth, the said W.C. Beebe,

James A. Bishop, and J.R. Childress depose and say as follows:

TESTIMONY OF W.C.BEEBE FOR THE RESPONDENT

I am an attorney of Bay Minette., a member of the firm of BEEBE & HALL . I was practicing in Bay Minette during the year 1932. I was engaged by Swift & Company/defendant in this suit in the early part of 1932, to investigate the record with reference to the cancellation of a mortgage given by James A. Bishop, plaintiff of this suit to the Bank of Fairhope. Mr. Smith representing the Swift & Company came to my office and ask me to examine the records and to wire Swift & Company whether or not the mortgage had been cancelled . This was on Feb. 16th, 1932. At this request I investigated the records and found that the mortgage being a mortgage on the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Sec. 14 T.7 S. R. 2 E. had been cancelled. I then sent them a telegram, advising them of this fact. I have examined the telegram marked Exhibit "1", to the deposition of J. W. Anthony in the court file ; this exhibit is the telegram sent by me. This had reference to a mortgage recorded in the office of the Judge of Probate in Mortgage Book 18 , page 235 -6 .

CROSS EXAMINATION

My recollection is that they asked me to examine the records one or twice before that.; several days before I made the report. Mr. Smith is the one who requested me to make these examinations. The Cancellation was filed for record as shown by the record itself on Feb. 8th, 1932. Sometimes the papers are sent without the recording fees and they lie there and no one knows anything about it, until the money is sent for recording. This original cancellation was filed for record Feb. 8th, 1932, as shown by the original cancellation

This mortgage was cancelled on the day I sent the telegram.

CROSS
the day of
I mean by/cancellation ~~that the date~~ of the day it was written on the margin of the mortgate.

Direct

I do know that I daily watched the records. I do know that the cancellation of this mortgage on the record of the mortgage was entered the day the telegram was sent, Feb. 16, 1932.

CROSS

Cancellation presented is sufficient to show payment in my opinion, but of itself is not the form of cancellation required by our statutes. There is no cancellation on the margin of the record, merely a reference to the page where this cancellation is recorded.

Re DIRECT

It is my legal opinion that the reference on the margin of the mortgage was necessary to complete the record.

W. C. Beche

FOR COMPLAINANT
TESTIMONY OF JAMES A. BISHOP

My name is James A. Bishop, I am the Complainant in this case. If I had planted my potatoes on the first of Feb. 1932, they would have come in ~~and would have come in~~ and been ready to ship in aboutt 2 months and a half or 2 months and three weeks. The market price would have been \$3.00 a hundred when those potatoes would have been ready for market, the first day the market opened, if planted on the first day of Feb. 1932, they would have been ready for market on the first day the market opened. I would have gotten around 800 sacks of potatoes if I had planted on the 1st day of Feb., under those conditions that season. Three-fourth of the potatoes would have been number ones, and one-fourth number 2's. The Three Dollar^{per 100 lbs}, which I have referred to was for number One Potatoes. I received for my potatoes, in the spring of 1932, altogether \$200.00 perhaps not that much. I do not know how long the \$2.00 market lasted, and I do not know when the market went to \$3.00.

James A. Bishop

FOR COMPLAINT/TESTIMONY OF J. R. CHILDRESS

My name is J. R. Childress. I have been growing potatoes approximately 20 years, in South Baldwin. I am familiar in a general way with the prices which were obtained for potatoes during the season in 1932. The market opened around the first of May, or a little later. The market opened at \$3.00. That lasted no time, probably one day. Then it dropped 25¢ or 50¢ sometimes in a couple of days. The price dropped to 45¢ a hundred, during the season.

CROSS.

None

J. R. Childress

Barnwell
attendance 1.50
Milage (54) each way 4.20
\$ 5.70

STATE OF ALABAMA
BALDWIN COUNTY

Before me, Carl L. Bloxham, duly appointed Commissioner, by the
Resister of the Circuit Court of Baldwin County, Alabama, on the 10th.
day of August, 1935 for the purpose of taking depositions of Gladys
Lowell and Kirby Wharton, of Fairhope, Alabama, in behalf of the
Complainants in the case of James A. Bishop and Ida Bishop,
Complainants and Swift & Company, Defendant, personally appeared
Gladys Lowell, who being duly sworn deposes and says; in answer to
the following Interrogatories:

Question: What is your name? State whether or not you held the office
of Notary Public in and for Baldwin County, in Alabama, during the months
of January and February, 1932. ANSWER: My name is Gladys Lowell. Yes, I
did hold such office at that time.

QUESTION: State whether or not Mr. James A. Bishop and Ida Bishop, or
either of them, acknowledged before you on January 20th. , 1932, the ex-
ecution of a mortgage on certain lands in Baldwin County in Favor of Swift
& Company. How many mortgages in favor of Swift & Company did they
acknowledge before you on that date? ANSWER: I have acknowledged various
papers for James A. and Ida Bishop numerous times, but do not recollect
having acknowledged this particular paper at the time mentioned.

QUESTION: Where were you, that is were you in Fairhope, or Robertsdale,
when you took said acknowledgment? State whether the said James A. Bishop
and Ida Bishop, or either of them, appeared before you personally at the
time you took said acknowledgment. ANSWER: If I took the acknowledgment
referred to, it was in Fairhope, and both parties were present before me
at the time of so taking it.

Gladys Lowell.
Witness

Subscribed and sworn to before me this 12th. day of August, 1935.

Carl L. Bloxham
Commissioner.

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FACTORIES:

Harvey, La. Shreveport, La.
Houston, Texas

RECEIVED
JAN 21 1931
SWIFT & CO.
FERTILIZER WORKS
NEW ORLEANS, LA.

Swift & Company

(Fertilizer Works)

New Orleans, La., 1/19

1932

This Agreement Witnesseth, That SWIFT & COMPANY, hereinafter designated as Seller, agrees to sell, and James A. Bisher, of Baldwin, County or Baldwin, State of Ala, hereinafter designated as Buyer, agree to buy the following merchandise at prices set opposite thereto and on terms and conditions hereinafter mentioned, for shipment to Baldwin, County to Baldwin, State of Ala, on or before at once 1932.

Tons of 2000 lbs.	BRANDS	GRADE	Price Per Ton of 2000 lbs.	
			Cash with order or S. D. B. L.	Note Settlement
	Swift's			
	Swift's			
	Swift's			
	Swift's			
	Swift's			

The above prices are C. A. F. in 100-pound bags for shipment in carload lots. On shipments of less than carload lots the Buyer agrees to pay extra freight and shipping expenses. Should changes be made in freight rates, increase shall be added to above prices decrease, if any, to be deducted from said prices.

TERMS:

- (a) All fertilizers to be shipped on order notify terms with sight draft attached to bill of lading, at the Cash with Order or S.D.B.L. prices shown above.
 - (b) If credit arrangements satisfactory to Seller are made, fertilizers will be invoiced at Note Settlement prices shown above, and will be shipped with crop lien note for full amount of invoice attached to bill of lading, and bank will surrender bill of lading and invoice upon proper execution of note by Buyer. Bank will be authorized, however, to accept cash payment at the Cash with Order or S.D.B.L. prices shown above in the event Buyer makes cash payment in exchange for invoice and bill of lading.
 - (c) Notes shall be on form prescribed and furnished by Seller dated date of invoice and to be payable 1930, until paid.
 - (d) Should Buyer desire to pay cash, after having given his note to Seller, Seller will allow following discounts only:
~~For cash received on May 1st, 1930, 5% flat on the principal amount of note.~~
~~For cash received prior to May 1st, 1930, discount will be allowed at the rate of 1/2 or 1% per month in addition to the flat discount of 5% allowed for payment on May 1st, as stated above.~~
- In the event the Buyer should fail to execute and deliver to the said Seller at its request said note or notes, as herein provided, purchase price of all fertilizer shipped hereunder shall, at the option of said Seller, become at once due and payable, together with eight (8) per cent interest per annum from invoice date, until paid, with all costs of collection including ten (10) per cent attorney's fees if collected by law or through an attorney.

TONS	GRADE	TONS	GRADE
------	-------	------	-------

As a basis for credit to be extended hereunder the Buyer offers the following as a correct statement of his (or their) financial condition:

ASSETS		LIABILITIES	
Real Estate -	<u>\$ 22,000.00</u>	Mortgage on Real Estate	<u>\$ 27,000.00</u>
Live Stock -	<u>1,000.00</u>	Due Bank -	<u>3,750.00</u>
Other Assets -	<u> </u>	Owing for Fertilizer -	<u>none</u>
		Other Debts -	<u> </u>
TOTAL,	<u>23,000.00</u>	TOTAL,	<u>27,750.00</u>

The real estate shown above consists of 1120 acres located at Baldwin, recorded in the name (or names) of James A. Bisher, of which 125 acres are under cultivation.

If any credit deliveries are made hereunder Buyer hereby assigns, transfers, conveys and sets over unto the Seller as security, and shall send to Seller promptly all accounts, notes or other evidences of indebtedness resulting from sales thereof by Buyer. Buyer hereby makes, constitutes and appoints Seller or any of Seller's authorized agents, his true and lawful attorney, irrevocable and every of them, and to Seller's own use and benefit to ask, demand, sue for and recover the said debts, debts, or any of them, which may seem bad or doubtful, and to give time for payment thereof with full power to compromise the said merchandise to be shipped within the time hereinbefore provided, and the Seller shall have a reasonable time within which to make all deliveries hereunder.

Seller's weights at point of shipment shall control. The Seller hereby reserves the right to cancel this contract or any undelivered portion thereof or withhold further deliveries whether on unfinished or new business in the event it receives any information regarded by it as unfavorable to the credit of the Buyer.

The Seller shall not be liable in any respect for failure or delay in the fulfillment or the performance of this contract, or any sales or orders taken hereunder, if prevented or hindered directly or indirectly by war, conditions of war, inadequate transportation facilities, fire, flood, cyclone or other agency or strikes or inability to obtain raw materials or supplies (Foreign or Domestic) or Governmental interference, embargoes or any cause beyond its reasonable control whether of the same kind or not.

Any additional fertilizers shipped by the Seller to the Buyer and all fertilizers not ordered out by the Buyer within the time herein specified but which at his request with consent of Seller is subsequently shipped at prices mutually agreed upon between the parties, and all fertilizers above mentioned, the grade or quality of which may with the consent of the Seller be changed, shall be construed to be embraced within this contract, subject to all its terms and conditions and the same in all respects, except as provided in this paragraph, as if all such fertilizers were specifically mentioned; and any price or change of price mutually agreed upon on any of the fertilizers embraced in this agreement shall not affect the other terms and conditions of the agreement, but shall be subject to the same.

It is agreed that all sales and deliveries of fertilizer hereunder are made with the guaranty only of analysis printed on the sacks and not any warranty nor guaranty of results from use, nor of effect thereof on crops, nor any other warranty or guaranty whatsoever whether of the same kind or not. Such sales and deliveries are made upon waiver of all claims or objections, damages, or reclamations of every kind whatsoever, except claim for the actual commercial value (or if this is unlawful then amount prescribed by valid statute) of deficiency in analysis when and only when determined by analysis made by the State Chemist (or other official authorized by law) from samples taken in the presence of the Seller (or in any other manner prescribed by valid statute) from fertilizer on which claim is made.

The Seller shall not be liable for delays in transportation or delivery of shipment or shipments hereunder or loss or damage thereto while the same are in transit. Settlement offered by other manufacturers shall have no effect upon the settlement prices or terms named herein.

Written and printed this agreement is binding only when confirmed in writing by Seller at New Orleans, La., and no verbal or written qualification affecting prices, terms or any other provision whatsoever will be binding unless confirmed in writing by Swift & Company at its office in New Orleans, La.

Executed in duplicate this 16th day of February, A. D. 1932.

Confirmed at New Orleans, La.
Swift & Company
By J. W. Anthony J.B.

Swift & Company
By De Witt Smith Field Representative

James A. Bisher Buyer.

ok AS
7/16/32

Dr.

GUARANTY.

IN CONSIDERATION THAT, and as an inducement to Swift & Company, (hereinafter designated as Principal), to execute the contract appearing on the reverse side of this sheet, without which it is understood said Principal would not have signed the same and the sum of One Dollar (\$1.00) to each of the undersigned in hand paid by said Principal, and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned, jointly and severally hereby guarantee the full, prompt

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and complete performance by said (hereinafter designated as Agent) of all the terms and conditions contained in contract appearing on the reverse side of this sheet, to be by said Agent kept and performed, and the undersigned hereby jointly and severally further promise and guarantee the unconditional payment at maturity of all accounts receivable, acceptances, notes and other obligations of every nature and kind arising out of or in connection with the said contract, whether now owing or due, or which may hereafter from time to time be owing or due by whomsoever or howsoever, heretofore or hereafter, created, or arising, or evidenced, and hereby waive demand, protest and notice of non-payment of any and all said indebtedness, liabilities and obligations

Authority and consent are hereby expressly given said Principal from time to time, and without any notice to the undersigned, to give and make such extensions, renewals, indulgencies, settlements and compromises as it may deem proper with respect to any of the indebtedness, liabilities and obligations covered by this guaranty. This guaranty shall bind the party (or parties) by whom it is signed, whether the same be signed by one or more guarantors.

IT IS UNDERSTOOD that this is a continuing, absolute and unconditional guaranty, co-extensive with said contract between said Principal and said Agent, and the undersigned and each of them hereby expressly waives notice of acceptance of this guaranty and of all defaults by said Agent and of non-payment and non-fulfillment of any and all of said indebtedness, liabilities and obligations.

SIGNED AND SEALED by the undersigned this _____ day of _____ A. D. 193_____

WITNESS:

_____ as to _____ (SEAL)
(Guarantor Sign Here)

WITNESS:

_____ as to _____ (SEAL)

1 Div. 954

James A. Bishop

v.

Swift and Company

)
:
)
:
)
:
)
:
)

Baldwin Circuit Court, In Equity

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the Court, it is considered that the decree of the Circuit Court be corrected so as to eliminate the attorney's fee of \$125.00, thus making the mortgage indebtedness, as of the date of the decree, \$830.04 instead of \$955.04. As thus corrected the decree of the Circuit Court is affirmed.

It is further ordered, adjudged and decreed that the complainant is hereby allowed ninety (90) days from this date within which to pay appellee the amount above fixed, as still due and owing on said mortgage, together with interest at the rate of six per centum (6%) per annum from December 1st, 1936.

It is also considered that the appellant and Charles T. Bishop and J. R. Childress, sureties on the appeal bond, pay the amount of said corrected decree, to-wit, \$830.04, with interest at six per centum (6%) per annum from December 1st, 1936, and the costs of appeal of this Court and of the Circuit Court.

STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 954

James A. Bishop, Appellant,

v.

Swift and Company, Appellee,

From Baldwin Circuit Court.
In Equity

The State of Alabama,
City and County of Montgomery. }

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered from one to _____ inclusive, contains a full, true, and correct copy of the decree rendered May 13, 1937 by _____

said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, this the 13th day of

May 1937
Robt. F. Ligon
Clerk of the Supreme Court of Alabama.

Answers
2-271

The Supreme Court of Alabama.

1
Dist. No. 954

James A. Beckett

Appellant,

v.

Smith and Company

Appellee.

From Baldwin Circuit Court.

in Equity.

Certified Copy of

Decree

BROWN PRINTING CO., MONTGOMERY, 1931

Filed May 15/1937
Per Clerk
Reynolds

The State of Alabama, }
Baldwin County

CIRCUIT COURT

To _____ MARY LOU FORTENBERRY:

KNOW YE: That we, having full faith in your prudence and competency, have appointed you Commissioner, and by these presents do authorize you, at such time and place as you may appoint, to call before you and examine _____ J. B. BLACKBURN

as witnesses in behalf of _____ DEFENDANT _____ in a cause pending in our Circuit Court of Baldwin County, of said State, wherein _____ JAMES A. BISHOP, et al, are

_____ Complainant.s
and _____ SWIFT & COMPANY is

_____ Defendant,
on oath to be by you administered, upon _____ oral examination _____
to take and certify the deposition... of the witness.... and return the same to our Court, with all convenient speed, under your hand.

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No. _____ Page _____

**THE STATE OF ALABAMA,
BALDWIN COUNTY**

IN CIRCUIT COURT, IN EQUITY

JAMES A. BISHOP, et al,

COMPLAINANT

vs.

SWIFT & COMPANY,

RESPONDENT

ORAL DEPOSITION

Filed August 20th, _____, 193 6

Robert S. Duck, Register.

RECORDED IN

_____ Record

Vol. _____ Page _____

_____, Register

The State of Alabama }
Baldwin County

Circuit Court of Baldwin County, Alabama,
(In Equity)

JAMES A. BISHOP, et al, COMPLAINANTS

VS.

SWIFT & COMPANY RESPONDENT

I, MARY LOU FORTENBERRY,

as ~~Register and~~ Commissioner

have called and caused to come before me J. B. BLACKBURN, witness for the
Defendant,

witness named in the requirement for Oral Examination, on the 19th day of August
1936, at the office of the Clerk of the Circuit Court

in Bay Minette, Alabama, and having first sworn said witness to speak the
truth, the whole truth, and nothing but the truth, the said

J. B. BLACKBURN doth depose and say as follows:

EXAMINATION OF J. B. BLACKBURN, WITNESS FOR DEFENDANT,
BY HON. LEON G. BROOKS, SOLICITOR FOR RESPONDENT.

Q. Your name is J. B. Blackburn?

A. Yes.

Q. Mr. Blackburn, are you a practicing attorney in Baldwin County, Alabama?

A. Yes.

Q. Have you or not, at my suggestion when I asked you if you would become a witness in this case, examined the file of papers in this case of James A. Bishop, et al, vs. Swift & Company?

A. Yes.

Q. Assuming that the amount claimed by the plaintiff is property due from the defendant, what, in your opinion, would be a reasonable attorney's fee to be allowed to the defendant for collecting, or attempting to collect the debt and foreclosing mortgage and otherwise taking usual action to collect the debt?

Mr. HOGAN, SOLICITOR FOR COMPLAINANT: I object to that question, on the grounds that it is irrelevant, incompetent and immaterial; second, that the respondent has not filed a cross-bill.

A. What is the amount involved, \$800.00?

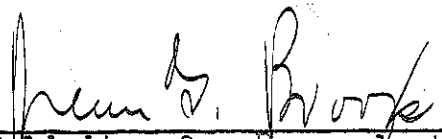
Q. Assuming \$872.70, due about February, no, March 1, 1932, with interest at 8%.

A. For representing the defendant in this suit and for foreclosing the mortgage, I think a reasonable fee would be ap-

JAMES A. BISHOP, ET AL.,)
) COMPLAINANTS,)
) VS.)
SWIFT AND COMPANY,) IN THE CIRCUIT COURT OF
) BALDWIN COUNTY, ALABAMA.
) RESPONDENT.)

Comes the respondent and resubmits this cause for final decree on the pleadings and proof following the taking of additional testimony as heretofore ordered by the court.

The respondent directs the attention of the court to the fact that the death of the complainant, Ida Bishop, was suggested on the record by the solicitor for the complainants but that her death occurred September 29, 1935 and that the cause was not revived in the name of her personal representative within one year from that date.



Solicitor for Respondent

JAMES A. BISHOP,

Complainant,

-vs-

SWIFT & COMPANY,
a Corporation,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW. No. _____

The Complainant having taken an appeal from the decree heretofore rendered in this cause upon towit, thr _____ day of November, 1936, and having requested the court to fix a supersedeas bond as provided by section 6134, Code of Alabama, 1923;

It is therefore ordered that the amount of the supersedeas bond be fixed in the sum of \$300.00 and that the Complainant give a supersedeas bond in the sum of \$300.00 if he shall desire to supersede the execution of said judgment or decree.

Dated this 19th day of December, 1936.



JUDGE OF THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

JAMES A. BISHOP,

Complainant,

-vs-

SWIFT & COMPANY,
a Corporation,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. No. _____

KNOW ALL MEN BY THESE PRESENTS, that we, James A. Bishop
and Charles T. Bishop and J.R. Childress,
are held and firmly bound unto Swift & Company in the sum of
\$300.00, for the payment of which well and truly to be made, we bind
ourselves, our heirs, executors and administrators jointly and
severally. Sealed with our seals and dated this 21st day of
December, 1936.

The condition of the above obligation is such that, whereas
the above bound James A. Bishop has this day appealed to the supreme
Court of Alabama from the decree rendered against him and in favor of
~~said~~ Swift & Company by the Honorable Francis W. Hare, as Judge of
the Circuit Court of Baldwin County, Alabama, in said cause, and has
obtained a supersedeas of said decree;

Now, if the said James A. Bishop fail in the appeal and perform
such decree as the Supreme Court may render in the premises, and pay all
such costs and damages as any party aggrieved may sustain by reason of
the wrongful delay and suspension of the execution of the decree,
then this obligation shall be void; otherwise to remain in full force
and effect.

James A. Bishop (Seal)
Charles T. Bishop (Seal)
J.R. Childress (Seal)

approved Dec 22 1936
R.D. [unclear] Register

STATE OF ALABAMA,
COUNTY OF BALDWIN.

KNOW ALL MEN BY THESE PRESENTS, that, we,
James A. Bishop and Ida Bishop, as principals, and Margia Johnson
and J. W. Johnson, as sureties, are held and firmly
bound unto Swift & Company in the sum of \$200.00, whereto we bind
ourselves, our executors and personal representatives.

The condition of the above obligation is such that, if the
said James A. Bishop and Ida Bishop shall pay all damages and costs
which the said Swift & Company may sustain by the suing out of an
injunction pendente lite in an action now pending in the Circuit Court
of Baldwin County, Alabama, wherein said James A. Bishop and Ida Bishop
are complainants and Swift & Company are the respondents, if the same
be dissolved, then this bond shall be void; otherwise it shall remain
in full force and effect.

IN WITNESS WHEREOF the said James A. Bishop and Ida Bishop
and Margia Johnson and J. W. Johnson
have hereunto set their hands and seals upon this the 14th day of
November, 1933.

James A. Bishop (Seal)
Ida Bishop (Seal)
Margia Johnson (Seal)
J. W. Johnson (Seal)

Approved 15th Nov. 1933
W. A. Stone
Registrar

[Faint handwritten notes and scribbles at the top of the page]

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RECORDED

INDEXED

FILED

APR 15 1993

FBI - MEMPHIS

MEMPHIS, TENNESSEE

APR 15 1993

FBI - MEMPHIS

MEMPHIS, TENNESSEE

APR 15 1993

FBI - MEMPHIS

MEMPHIS, TENNESSEE

APR 15 1993

FBI - MEMPHIS

MEMPHIS, TENNESSEE

APR 15 1993

FBI - MEMPHIS

MEMPHIS, TENNESSEE

APR 15 1993

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B & N D

No 4

APR 15 1993
8:00 a.m.
FBI - MEMPHIS
RECORDED
INDEXED

The State of Alabama, }
Baldwin County. }

Circuit Court, In Equity.

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

We command you that without delay you execute this Writ, and due return thereof how you have executed the same make to us immediately.

To ~~Swift & Company, a corporation~~

WHEREAS, ~~James A. Bishop and wife, Ida Bishop~~

has this day filed a Bill of Complaint in said Court against ~~Swift & Company, a corp.~~

praying, among other things, that ~~said Swift & Co., their servants, agents, employees or solicitors from foreclosing or attempting to foreclose a certain mortgage executed by the said James A. Bishop and Ida Bishop, his wife, in favor of said Swift & Co., said mortgage being dated upon to-wit, January 20 th. 1932, and recorded in the office of the Probate Judge of Baldwin County, Alabama, in mortgage Book No. 54 pages 167-8; or until the further orders of this Court.~~

And whereas, on said Bill of Complaint being exhibited to the Hon. ~~F. W. Hare~~ Judge of the Circuit Court of ~~Baldwin~~ County, of the State of Alabama, on the

~~8~~ th day of ~~November~~ 19~~32~~ .., he did order that, upon complainant entering into bond, with sureties, in the sum of ~~Two hundred and 00/1000~~ Dollars, payable to the Defendant and approved by the Clerk of this Court, and conditioned according to law a Writ of Injunction issue out of said Court, according to the prayer of said Bill; and whereas, bond has been given, as required by said order.

These, therefore, are to command and strictly enjoin you from ~~foreclosing~~

until futher order of this Court. And this you will in nowise omit, under penalty.

WITNESS ~~my hand and seal~~ as Clerk of said Court, at office, in

~~ate,~~ Alabama, this ~~15~~ day of ~~November~~ 19~~32~~

M. A. Stone Clerk

Abstract Page 66

Equity No. 17

No. 17

CIRCUIT COURT IN EQUITY.

Swift & Co.

~~RECORDED~~

vs.

James A. Bishop et al

Received in office on this the 15th

day of Nov 1923

at 3:30 pm

W. W. Stewart
Sheriff.

Executed by serving a copy of the

within Writ of Injunction upon

A. G. Bracker

~~RECORDED~~

on this the 16th day of

Nov 1923

W. W. Stewart
Sheriff.

NO REPTG CO

10

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FACTORIES:
Harvey, La. Shreveport, La.
Houston, Texas

RECEIVED
JAN 21 1932

Swift & Company

(Fertilizer Works)

New Orleans, La., 1/19 1932

This Agreement Witnesseth that SWIFT & COMPANY, hereinafter designated as Seller, agrees to sell, and Baldwin, of Alabama, hereinafter designated County or Baldwin, State of Alabama, hereinafter designated as Buyer, agree to buy the following merchandise at prices set opposite thereto and on terms and conditions hereinafter mentioned, for shipment to Baldwin, County Baldwin, State of Alabama, on or before at once 1932.

Tons of 2000 lbs.	BRANDS	GRADE	Price Per Ton of 2000 lbs.	
			Cash with order or S.D.B.L.	Note Settlement
<u>5</u>	Swift's	<u>15-5-5</u>		
<u>1</u>	Swift's	<u>20-10-10</u>		
<u>4</u>	Swift's	<u>8-4-4</u>		
<u>15</u>	Swift's	<u>10-4-7</u>		
<u>4</u>	Swift's	<u>12-4-4</u>		

The above prices are C. A. F. _____ in 100-pound bags for shipment in carload lots. On shipments of less than carload lots the Buyer agrees to pay extra freight and shipping expenses. Should changes be made in freight rates, increase shall be added to above prices; decrease, if any, to be deducted from said prices.

TERMS:

(a) All fertilizers to be shipped on order notify terms with sight draft attached to bill of lading, at the Cash with Order or S.D.B.L. prices shown above.

(b) If credit arrangements satisfactory to Seller are made, fertilizers will be invoiced at Note Settlement prices shown above, and will be shipped with crop lien note for full amount of bill of lading, and bank will surrender bill of lading and invoice upon proper execution of note by Buyer, Bank will be authorized, however, to accept cash payment of the Cash with Order or S.D.B.L. prices above in the event Buyer makes cash payment in exchange for invoice and bill of lading.

(c) Notes shall be on form prescribed and furnished by Seller dated date of invoice and to be payable _____ 1930, with interest at 8% per annum from _____, 1930, until paid.

(d) Should Buyer desire to pay cash, after having given his note to Seller, Seller will allow following discounts only: _____

For cash received prior to May 1st, 1930, _____
For cash received prior to May 1st, 1930, cash discount will be allowed at the rate of 1/2% or 1% per month in addition to the _____
count of 5% allowed for payment on May 1st, as stated above.

In the event the Buyer should fail to pay the amount of his note, together with eight (8) per cent interest per annum from invoice date, until paid, with _____ GRADE _____ TONS _____
(10) per cent attorney's fees if collected by law or through an attorney.

As a basis for credit to be extended hereunder the Buyer offers the following as a correct statement of his (or their) financial condition:

ASSETS	
Real Estate	<u>22,000.00</u>
Live Stock	<u>1,000.00</u>
Other Assets	
TOTAL	<u>23,000.00</u>

LIABILITIES	
Mortgage on Real Estate	<u>20,000.00</u>
Due Bank	<u>3,750.00</u>
Owing for Fertilizer	<u>none</u>
Other Debts	
TOTAL	<u>23,750.00</u>

The real estate shown above consists of 1120 acres located at Baldwin, of which 125 acres are under cultivation. name (or names) of James H. Baldwin, recorded in the _____

If any credit deliveries are made hereunder Buyer hereby assigns, transfers, conveys and sets over unto the Seller as security, and shall send to Seller promptly all accounts, notes or other evidences of indebtedness resulting from sales thereof by Buyer. Buyer hereby makes, constitutes and appoints Seller or any of Seller's authorized agents, his true and lawful attorney irrevocably in his name and stead, but to Seller's own use and benefit to ask, demand, sue for and recover the said debts so assigned and every of them, and give effectual receipts and discharges thereof together with full power to compromise the said debts, or any of them, which may seem bad or doubtful, and to give time for payment thereof with or without security.

The Buyer shall specify date and quantity of each delivery and shall give shipping instructions for all of the aforesaid merchandise to be shipped within the time hereinbefore provided, and the Seller shall have a reasonable time within which to make all deliveries hereunder.

Seller's weights at point of shipment shall control. The Seller hereby reserves the right to cancel this contract or any undelivered portion thereof or withhold further deliveries whether on unfinished or new business in the event it receives any information regarded by it as unfavorable to the credit of the Buyer.

The Seller shall not be liable in any respect for failure or delay in the fulfillment or the performance of this contract, or any sales or orders taken hereunder, if prevented or hindered directly or indirectly by war, conditions of war, inadequate transportation facilities, fire, flood, cyclone or other agency or strikes or inability to obtain raw materials or supplies (Foreign or Domestic) or Governmental interference, embargoes or any cause beyond its reasonable control whether of the same kind or not.

Any additional fertilizers shipped by the Seller to the Buyer and all fertilizers not ordered out by the Buyer within the time herein specified but which at his request with consent of Seller is subsequently shipped at prices mutually agreed upon between the parties, and all fertilizers above mentioned, the grade or quality of which may with the consent of the Seller be changed, shall be embraced within this contract, subject to all its terms and conditions and any price or change of price mutually agreed upon on any of the fertilizers embraced in this agreement shall not affect the other terms and conditions of the agreement, but shall be subject to the same.

It is agreed that all sales and deliveries of fertilizer hereunder are made with the guaranty only of analysis printed on the sacks and not any warranty nor guaranty of results from use, nor of effect thereof on crops, nor any other warranty or guaranty whatsoever whether of the same kind or not. Such sales and deliveries are made upon waiver of all claims, objections, damages, or reclamations of every kind whatsoever, except claim for the actual commercial value (or if this is unlawful then amount prescribed by valid statute) of deficiency in analysis when and only when determined by analysis made by the State Chemist (or other official authorized by law) from samples taken in the presence of the Seller (or in any other manner prescribed by valid statute) from fertilizer on which claim is made.

The Seller shall not be liable for delays in transportation or delivery of shipment or shipments hereunder or loss or damage thereto while the same are in transit.

Settlement offered by other manufacturers shall have no effect upon the settlement prices or terms named herein. Written and printed this agreement is binding only when confirmed in writing by Seller at New Orleans, La., and no verbal or written qualification affecting prices, terms or any other provision whatsoever will be binding unless confirmed in writing by Swift & Company at its office in New Orleans, La.

Executed in duplicate this 16th day of February, A. D. 1932

Swift & Company
By Dwight Smith Field Representative

Confirmed at New Orleans, La.
Swift & Company
By Anthony Buyer.

James A. Bishop
Ida Bishop
vs.

THE STATE OF ALABAMA
Baldwin County

Swift & Co

IN EQUITY
Circuit Court of Baldwin County

This cause is submitted in behalf of Complainant upon the original Bill of Complaint,

Release from Bank & Saurbuck & James A Bishop
depositions of James A Bishop, F W Geiser, C M Simpson,
Herbert Gable, B G Harrison, James A Bishop, and
Madison Bishop, Gladys Tomell, Kirby Wharton
J P Childress and supplemental deposition of James
A Bishop, and exhibits, attached thereto

and in behalf of Defendant upon *answer, Depositions of J. W. Anthony*
Dewitt Smith, W. C. Beebe

Robert S. Reed

Register.

RECORDED
Deck
6-600

4

No. _____

The State of Alabama
BALDWIN COUNTY

IN EQUITY
Circuit Court of Baldwin County

vs.

3

NOTE OF TESTIMONY

Filed in Open Court this 21

day of Aug 1935

R. S. Duck

REGISTER

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LEON G. BROOKS
ATTORNEY AT LAW
BREWTON, ALA.

November 5, 1935

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

Dear Judge: In-Re: James A. Bishop vs. Swift and Company.

Mr. Hogan has sent me a copy of his letter to you of November 4th., which supplements a former letter he wrote on the same subject, of which he also sent me a copy. I did not believe it necessary to answer Mr. Hogan's first letter but as he has cited an Alabama Supreme Court case I should like at this time to answer in brief both of the letters.

He appears to invoke the principle of estoppel in support of the contention that Swift and Company was not justified in delaying shipment of the goods to Mr. Bishop pending a credit investigation. He says that Swift and Company "claimed interest from the 20th day of January, 1932," and that this shows that the contract became effective upon that date rather than upon the 16th day of February. I can answer this contention as follows:

1. This is not a suit where Swift and Company is undertaking to enforce the obligation of Mr. Bishop. It is a suit by Mr. Bishop to restrain action by Swift and Company and for an accounting. We have not made any claim in this suit by cross bill or otherwise. As I recall the testimony the mortgage and note were themselves introduced in evidence by Mr. Bishop and while we do not deny their validity in any respect, Swift and Company has not put forward in this suit any claim for interest or principal but has merely submitted all of the documentary evidence and facts to the court. If in this or any other proceedings we had made a specific claim for interest from January 20th., that might be a ground for arguing that an estoppel had been created, but as to that I say further:

2. The estoppel, if any, would have to be by contract or in pais. That being so the recital as to interest must be construed in connection with the whole

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LEON G. BROOKS
ATTORNEY AT LAW
BREWTON, ALA.

Judge F. W. Hare,

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11/5/35

contract and the whole contract consists not only of the mortgage and note but of the order for the fertilizers and the agreement independent of these documents that a first mortgage lien was to be given by Mr. Bishop as a condition to the making of the contract and a shipment of the fertilizers thereunder. As stated in Corpus Juris:

* In determining the effect of a recital, it must be construed in connection with the whole contract."

21 C. J., page 1113.

3. Admittedly, a large part of the debt involved was carried forward into the new paper from the preceding year. This certainly bears interest from the date of the paper. The remainder may or may not bear interest from the date of the paper itself but as to how much Mr. Bishop owes Swift and Company the court may ascertain by an accounting, which is sought at the prayer of Mr. Bishop himself. If and when Swift and Company takes an inconsistent position, that will be time enough to argue that an estoppel has occurred. The position of Mr. Bishop has not been prejudiced in any way whatsoever by the fact that the note and mortgage were taken by mutual agreement between the parties at a time when both thought the fertilizers would be shipped under the written contract within a short time. That date was definitely fixed by both parties, not by Swift and Company alone, and it cannot be said that there was any misrepresentation or that there is now any inconsistent act growing out of this agreement between the parties of which Mr. Bishop may complain, as he himself signed all of the papers and knew their contents from the beginning. The sales order, which provided for a credit investigation and that it should not be in force until approved by an authorized representative of Swift and Company, was signed by Mr. Bishop with those matters appearing therein and contemplating the possibility of a difference between the time of signing the note and mortgage and the approval of the sales contract. These documents, as we have said, must be construed together as forming the entire contract.

4. The invocation of estoppel should not be used as a means of defense against a legitimate claim but only to prevent one person from imposing upon another in

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LEON G. BROOKS
ATTORNEY AT LAW
BREWTON, ALA.

Judge F. W. Hare,

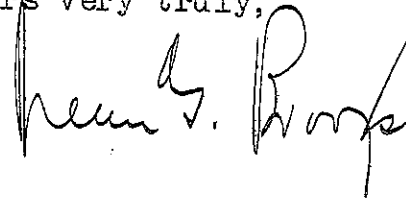
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11/5/35

cases where the first has by act, or ^{by silence} caused the second to do or fail to do something ^{against} his interest. That has not occurred here. As opposed to the technical argument that because Swift and Company has introduced in evidence a claim based on the original papers ~~which~~ has occupied such an inconsistent ground that it ought to lose all rights against this complainant for merchandise sold to him, let me suggest that the equities should be determined with respect to larger issues, - that is, whether under the contract, consisting, as I have said, of several elements, Swift and Company was justified in withholding shipment awaiting the clearing by Mr. Bishop of his admittedly bad title to the real estate offered as security.

5. In the case of Estes Lumber Company vs. Investors Syndicate, 137 So. 31, cited by Mr. Hogan, the company sought to be estopped had brought a suit to enforce a materialmen's lien after having filed a sworn statement under the statute and in this statement and in the suit had alleged a maturity date of the account. Furthermore, there were no other contractual documents as in this case. Here Swift and Company has not made a presentation in court of its claim for enforcement and, to repeat, the mortgage, note, contract of sale, and contemporaneous verbal agreements combined to make up the whole contract between these parties and not the note and mortgage alone.

Yours very truly,



LGB/E

CC. Mr. Jesse F. Hogan,
First National Bank Bldg.,
Mobile, Ala.

JAMES A BISHOP AND IDA)	
BISHOP,)	
)	IN THE CIRCUIT COURT OF
COMPLAINANTS,)	BALDWIN COUNTY, ALABAMA.
)	
VS.)	IN EQUITY.
)	
SWIFT AND COMPANY, A)	
CORPORATION,)	
)	
RESPONDENT.)	

Comes the respondent and makes answer to the bill of complaint exhibited against it in this cause and says:

1. That the allegations of the first paragraph correctly describe a mortgage executed by the complainants to the respondent with respect to the date, the property embraced therein and the book and page where recorded, but that the amount of the indebtedness thereby secured is recited in said mortgage to have been Thirteen Hundred Fourteen and 58/100 Dollars (\$1314.58).

2. That as alleged in the second paragraph, said mortgage was given to secure the payment of the purchase price of fertilizers to be shipped by the respondent to the complainant James A. Bishop and, in addition thereto, to secure the payment of a balance due from James A. Bishop to the respondent on a promissory note that matured August 15, 1931, the balance of the principal of said note being at the time of the execution of the mortgage \$354.61, and the accrued interest thereon to the date of the mortgage being \$57.27. The allegation of the second paragraph as to the total amount of the indebtedness secured by said mortgage being \$1284.11 is incorrect, as the amount due thereon was \$1284.58, exclusive of interest accruing thereafter as evidenced by the notes of James A. Bishop, executed by him to the respondent contemporaneously with the execution of said mortgage.

3. That the allegations of paragraph 3 are true, except that the credit of \$657.29 does not represent one payment by James A. Bishop on July 16, 1932, but the following payments and one discount credit, namely: June 8, 1932 -

\$150.93, June 16, 1932 - \$74.20, July 8, 1932 - \$250.00, July 19, 1932 - \$142.73, and also a six percent discount on such payments as provided and agreed between the respondent and James A. Bishop, amounting to \$39.43.

4. That the allegations of paragraph 4 are true.

5. That the allegations of paragraph 5 are true.

6. That paragraph 6 containing, as it does, a recital of the complainants' contentions with respect to the purchase of fertilizers from the respondent and apparently setting forth the gist of their defense to the payment of the balance now claimed by the respondent, cannot be categorically answered in all particulars but the respondent avers that said paragraph contains mis-statements or misconceptions on the part of complainants of the exact nature of their transactions with the respondent and the allegations of said paragraph with respect to representations made by DeWitt Smith or agreements made with him as agent for the respondent are respectfully denied so far as they conflict with the facts which the respondent will now undertake to set forth. It is true that James A. Bishop ordered fertilizers from the respondent through DeWitt Smith, its traveling salesman, but the said Smith was an agent of the respondent for the purpose of taking orders only and submitting them to the respondent at its New Orleans office for acceptance or approval, and that the said Smith had no authority whatsoever to represent to any purchaser on behalf of the respondent whether or when fertilizers would be shipped to James A. Bishop because the approval of all orders for fertilizers, including that of James A. Bishop, the investigation of credit responsibility, and all other matters except the taking of orders were reserved to the respondent at its New Orleans office and not vested in its salesman Smith. Furthermore, the

respondent avers that the order for fertilizers was in writing, signed by the respondent by DeWitt Smith, Field Representative, and by James A. Bishop, as buyer, and although dated at the time of execution, January 19, 1932, said agreement specifically sets forth that it should be binding only when confirmed in writing by Swift and Company at New Orleans, Louisiana, and that no verbal or written qualifications affecting prices, terms or any other provision whatsoever would be binding unless confirmed in writing by Swift and Company at its office in New Orleans, Louisiana, and that said agreement was not confirmed in writing by the said Swift and Company at New Orleans, Louisiana until February 16, 1932, at which time it was confirmed on behalf of the company by J. W. Anthony, the Manager of its New Orleans office. Said written agreement further provided that the said Swift and Company should have a reasonable time within which to make all deliveries thereunder and that it should have the right to cancel the contract or any undelivered portion thereof, or to withhold deliveries, on unfinished or new business, in the event it should receive any information regarded by it as unfavorable to the credit of the buyer. The respondent further avers that the purchase of said fertilizers was entirely on credit, there being no cash consideration involved, that said real estate mortgage was tendered and was to be considered ^{as} the sole security of payment for said fertilizers, that as provided in said written agreement the respondent was to have a reasonable time within which to make deliveries thereunder and particularly was it given the right and opportunity to investigate said property and the credit rating and responsibility of James A. Bishop; that immediately upon the receipt of said order in its office the respondent investigated the credit standing of James A. Bishop and employed attorneys at Bay Minette, Alabama to investigate the records to ascertain

the state of the title to the eighty acres of land offered by James A. Bishop as security, as particularly described in his said mortgage. The result of this investigation was that said attorneys reported that there was an outstanding mortgage shown by the records of Baldwin County, Alabama, which had been executed by the complainants to the Bank of Fairhope, said mortgage being in the principal sum of One Thousand Dollars (\$1,000.00), and further, that the State and County taxes for 1932 remained unpaid. The report of said attorneys was received by the respondent on January 26, 1932 and the respondent, on January 29, 1932, notified James A. Bishop by letter that it had caused the records to be examined, that said mortgage to the Bank of Fairhope was uncanceled thereon and that he should procure the cancellation thereof at the office of the Judge of Probate of Baldwin County. The next information given by the complainants to the respondent concerning said outstanding mortgage was a telegram from Beebe & Hall, attorneys of Bay Minette, Alabama, sent to the respondent at New Orleans on February 16, 1932, saying that said mortgage was cancelled on that day. The attorney who had examined the title and rendered an opinion thereon to the respondent in the beginning, Elliott G. Rickarby, notified the respondent by letter dated February 17, 1932, which was received at the New Orleans office of the respondent on February 18, 1932, that the said mortgage of the complainants to the Bank of Fairhope had been duly cancelled by the mortgagee upon the records. On February 17, 1932, acting upon the communication from Beebe & Hall that said mortgage had been cancelled, the respondent approved the order for said fertilizers and shipped the same on that day. Therefore, the respondent avers that it was diligent in investigating the security offered by the complainants and that shipment of said fertilizers was made at the earliest

practicable time after the complainants had obtained the cancellation of the outstanding mortgage for One Thousand Dollars (\$1,000.00) on their real estate; and that until the cancellation of said mortgage the respondent was wholly justified in declining to approve said order and to grant the extension of credit for said fertilizers.

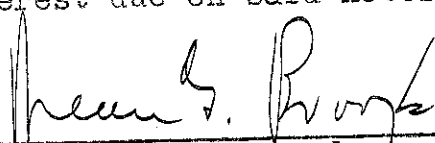
The respondent further avers that any delay in the shipment of said fertilizers to James A. Bishop was due not to any failure or refusal on its part to promptly fill said order and ship the same upon the establishment of a satisfactory credit situation by James A. Bishop but on the contrary that any such delay was entirely due to the fact that said outstanding mortgage was uncancelled of record and that the respondent could not approve another mortgage on said real estate until said first mortgage had been cancelled.

The respondents further aver that the damages which the complainants seek to set off against the indebtedness of James A. Bishop to the respondent by reason of its failure to make a profitable crop of potatoes are remote and highly speculative and so uncertain that they cannot form the basis of the set-off claimed. To inquire into the causes of economic losses by the complainants would involve, as set forth in the bill, a consideration of the effect of weather conditions upon the potato crop during the season of 1932, the fluctuating market price of potatoes and other collateral considerations into which the court is not permitted to go, as the result would be conjectural.

The respondent further avers that it was expressly set forth in said written agreement for the purchase of said fertilizers that the respondent made no warranty or guaranty of results from use nor of effect of said fertilizers on crops or any other warranty or guaranty whatsoever, whether of the same kind or not.

The respondent further avers that James A. Bishop accepted the delivery of said fertilizers when shipped to him and that he used the same for the purposes for which he purchased them, without any objection on account of delay in shipment or for any other reason whatsoever, thereby waiving any claim for damages growing out of said delay, for, as alleged in the bill, James A. Bishop had planted potatoes for many years and well knew about seasons, markets and other conditions, and he should not be permitted to accept and use said fertilizers and now hold this respondent responsible after having speculated upon the financial outcome of his potato operations for the season of 1932. In fact, James A. Bishop made no complaint of any nature to the respondent concerning the alleged delay in the shipment of said fertilizers until August, 1932, whereas the potatoes were harvested in the preceding May, and such complaint was not made until after demand had been made upon James A. Bishop for the payment of his indebtedness to the respondent.

The respondent further avers that because of the failure or refusal of the complainants to pay the indebtedness secured by said mortgage they have been required to engage the services of an attorney for the purpose of foreclosing said mortgage and/or recovering upon the notes of the complainants, that both said mortgage and said notes provide for the payment by the makers of reasonable attorneys' fees incurred by the respondent in and about the collection and enforcement thereof and that the respondent is entitled to recover from the complainants such reasonable attorneys' fees in addition to the principal and interest due on said notes.


Solicitor for Respondent.

100-1-25000

in the Circuit Court
of Baldwin County, Ala.

James C. Bishop vs
J. M. Bishop
Complainant

vs
The Swift and Company
Defendant

Answer to
Bill of Complaint

Filed Dec 20, 1913

J. M. Bishop

Clerk



CLAY OFFICES OF
LEON G. BROOKS
BREWTON, ALA.

11

An interesting case which is analogous to the one at bar, is the case of Elliott Supply Company vs. Green (N.D) 160 NW. 1002, 75 A.L.R. 1067. In that case the agent, in order to secure a contract, represented that the seller would send an expert to set up the machine, which would be the subject matter of the contract, and give instructions in its use. The Court held that the buyer might set up fraud of the agent, in making such an agreement, to effect a rescission of the contract.

It is clear that Mr. Bishop might have rescinded the contract because of the fraud of the agent in representing that shipment would be made "At once". This fraud will also support a recovery of damages. Cortwright vs. Bralley (supra), Sec. 5676 Code of 1923.

The testimony of Dewitt Smith, the salesman who took the order, shows that he did not intend to keep the promise to ship the fertilizer to arrive during the following week. He had no authority to make that promise and knew it would not be kept.

The second proposition is that ~~XXXXXXXXXXXX~~ Swift & Company breached their contract by failing to deliver fertilizer to Mr. Bishop by Feb. 1, 1932, for which breach he is entitled to receive damages. This proposition is supported by the considerations hereinafter set out.

The contract was dated Jan. 19, 1932. It was stipulated that the fertilizer should be shipped "At once". It is true that the contract was approved by Swift & Company on Feb. 16, 1932. It becomes necessary to construe that term of the contract stipulating that shipment would be made "at once".

In construing this term of the contract, it becomes necessary to consider the circumstances that surrounded the parties at the time. The buyer, Mr. Bishop, told the agent that he wanted the fertilizer in

time to plant his potatoes, beginning with the first of February, 1932. The agent promised that the fertilizer would be delivered on the "Magnolia" next week. It is clear, then, that at the time the parties made the contract, it was their ^{expressed} intention that shipment should be made and the fertilizer delivered before the 1st of February.

The legal effect is the same as though the contract had expressly provided that delivery should be made on or before Feb. 1, 1932.

While the contract recites that it was approved on Feb. 16, 1932, we submit that it became effective upon the expiration of a reasonable time after the 19th day of January.

The evidence showed that Swift & Company had completed their credit investigations prior to Jan. 19th, and had determined that they would require Mr. Bishop to give them a mortgage on the land described in the bill, as security for the purchase price. The contract itself recited that delivery should be made "at once", and the parties knew that Mr. Bishop desired delivery of the fertilizer before Feb. 1st. for his potato crop. The contract, under these circumstances known to Swift & Company's agent, required delivery on or before February 1, 1932. It was the duty of Swift & Company either to accept or reject the contract promptly.

Their agent, Dewitt Smith, employed Mr. Rickarby at once to examine the title. The letter on Jan. 25th advised that Swift & Company that there was an old, uncanceled mortgage upon the records of the Probate Court of Baldwin County, Ala., but that the mortgagee represented to him that the mortgage debt had been paid, and that the mortgage would be cancelled. This letter also showed that the mortgage had been executed, according to my recollection, in 1917 or 1919.

The evidence also showed that Mr. Bishop had the cancelled mortgage and notes in his possession, and that he exhibited them to Mr. Smith, and that Mr. Smith advised Swift & Company of this fact.

It should also be noted that Mr. Bishop, on Jan. 19, 1932, delivered to the agent of Swift & Company the notes representing the purchase price of the fertilizer and the mortgage on said lands securing the same.

Clearly, it was the duty of Swift & Company to act promptly in the acceptance or rejection of this contract. They were advised by Mr. Rickarby on Jan. 25th, that the title was clear, although there was an old mortgage which had been paid, though uncanceled on the records of the Probate Court.

In this connection it will be noticed that Swift & Company waited four days before notifying Mr. Bishop that his mortgage was uncanceled. And even then they did not advise Mr. Bishop, nor did they ever advise him, that they would not ship the fertilizer until that mortgage had been cancelled. It is true they asked Mr. Bishop to have the mortgage cancelled and furnish them with a certificate of cancellation for their files. But they did not advise him that this was a condition precedent to the shipment of the fertilizer. He had the right to assume that delivery would be made substantially as Mr. Smith had promised.


Under the circumstances of this case, ten days was a reasonable time in which to have accepted or rejected this contract. Their retention of the contract, mortgage and notes (and thereby making it impossible for Mr. Bishop to buy fertilizer from others) amounted to the acceptance of the contract. Where the circumstances impose a duty to speak, silence then gives consent, and the contract is created and becomes effective. 13 Corpus Juris 276 sec. 74.

In the case of the Bluegrass Cordage Co. vs. Luthy (Ky) 33 SW 835, an order was given to a traveling salesman of the company for the purchase of certain goods. The order stipulated that it must be approved by the principal before it could be binding. The seller kept the order for twelve days without accepting it. The Court held that the retention of the order by the company for this period of twelve days without action, was an implied acceptance of the contract.

We submit therefore that under the circumstances of this case there was an implied acceptance of the contract prior to Feb. 1, 1932, and that the endorsement of the acceptance upon Feb. 16, 1932, was supererogatory and without legal effect.

The failure, therefore, of Swift & Company to deliver fertilizer on or before February 1st, 1932, was a breach of their contract, and the complainant is entitled to recoup his damages therefrom and credit them on the mortgage and notes.

Respectfully submitted,


Solicitor for Complainant