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IN THE CIRCUIT COURT OF BALDWIN COUNTY ALABAMA.

STATE OF ALABAMA
BALDWIN COUNTY

HOWARD BISHOP,)
Complainant,)
VS.)
LAURA POWELL, et al.,)
Respondents.)

THE DEPOSITIONS TAKEN UPON ORAL EXAMINATION OF HOWARD BISHOP AND GEORGE LAY, WITNESSES FOR THE COMPLAINANT IN THE ABOVE ENTITLED CAUSE, BEFORE BERNARD A. CARLIN, COMMISSIONER, UNDER AND BY VIRTUE OF THE ANNEXED COMMISSION ISSUED OUT OF THE HON. CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, AT THE OFFICE OF JESSE F. HOGAN, FIRST NATIONAL BANK BUILDING, MOBILE, ALABAMA, ON MARCH THE 11TH 1929.

APPEARANCES:

Hon. Jesse F. Hogan, Solicitor for the Complainant.
Messrs. Gordon, Edington and Leigh, Hon. Robert E. Gordon, Solicitors for the Respondents.

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HOWARD BISHOP,)
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VS.)
LAURA POWELL, et al.,)
Respondents.)

STIPULATION

IT IS STIPULATED AND AGREED BY AND BETWEEN THE
COMPLAINANT AND THE RESPONDENTS IN THE ABOVE
ENTITLED CAUSE THROUGH THEIR RESPECTIVE COUNSEL
THAT THE DEPOSITIONS OF HOWARD BISHOP AND GEORGE
LAY, WITNESSES FOR COMPLAINANT MAY BE RETURNED
TO THE CLERK OF THE CIRCUIT COURT OF BALDWIN
COUNTY ALABAMA BY THE COMMISSIONER WITHOUT THE
RESPECTIVE SIGNATURES OF SAID WITNESSES AND THAT
THE SAID DEPOSITIONS MAY BE TREATED AS HAVING
BEEN READ OVER BY SAID WITNESSES AND SIGNED BY
THEM; THE READING BY THE WITNESSES OF THEIR DEPO-
SITIONS AND THEIR SIGNATURES THERETO BEING HEREBY
EXPRESSLY WAIVED.

Jesse F. Hogan
SOLICITOR FOR COMPLAINANT
Barney Eugene Skiff
SOLICITORS FOR RESPONDENTS

HOWARD BISHOP, called as a witness in behalf of the Complainant, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Hogan.

My name is Howard Bishop. I am the complainant in this suit. I live in Baldwin County, Alabama, and I lived there at the time this suit was filed. I am over twenty-one (21) years old.

I had a transaction with R. F. Powell with regard to certain lands that I own in Baldwin County. That transaction is the one about which this case arises. That is the only land transaction I ever had with R. F. Powell. That transaction was about the 12th day of October 1917. As well as I remember that was about the time, - the 12th day of October 1917.

You ask me whether I had any agreement with Mr. Powell at that time with regard to certain lands in Baldwin County. He came to me and offered to mortgage me the land and told me that he wanted to help me out. He saw that I was in trouble and he said that he would like to help me, and I told him I would be glad to have a little help; so in a short while after that he came down with a mortgage and says, "I brought this mortgage down for you to sign this morning, and let you have the money". He was supposed to let me have \$600.00 on the mortgage. He was supposed to let me have all of that \$600.00 in cash, but then I got it in stuff through Mr. Grove, - I got oakum and paint and stuff like that.

At the time I had this arrangement with Mr. Powell, I had a mortgage on my land to Mr. Albert Thompson. That mortgage was for \$150.00, I think.

I did not have any arrangement with Mr. Powell about that, with reference to the Thompson mortgage; only he just agreed, himself, to take it up. He took that mortgage up, - that is, I suppose he took it up.

That \$600.00 included the \$150.00 for the Thompson mortgage. When Mr. Powell brought that mortgage to me I did not read the mortgage. I cannot read enough to understand anything like that. I can just read my name, or something like that. I can read but very little. Mr. Powell did not read the mortgage over to me. He never read it. Nobody else there read it to me. I did not know what was in that paper. I only supposed it to be a mortgage calling for \$600.00, payable in twelve (12) months. Mr. Powell said, "Make it six months", and I said, "No, Mr. Powell, if you can't make it for twelve months we won't make it", and he said, "Well, all right, we will make it for twelve months". He said that right there that morning at the boat. He said that right there when I signed the paper.

He said that before I signed the paper, - that we would make it for six months, and I said, "No, if you can't make it for twelve we won't sign it", and he said, "All right, we will make it for twelve". There was nobody with Mr. Powell at that time. At that time there was present, with me, Domi Cook. Domi Cook is now dead. I do not remember what year it was that he died.

He died sometime after this suit was filed. He died, I suppose, three or four years after that, after the suit was filed.

I did not have any agreement with Mr. Powell as to what land should be included in that mortgage, only the seventy six (76) acres was all that was supposed to be in it, and my interest in the estate land wasn't mentioned at all, and he put that in. The mortgage was to include only the lands that I owned, individually, - the seventy six (76) acres, - that was all that I owned individually.

When I signed that writing Mr. Powell did not say anything about Laura Powell or Ora Powell having any interest in the transaction. He did not mention their names at all. It was supposed to be mortgaging it to him.

I did not find out that that paper that I signed was not a mortgage until he failed to accept his money. That was, I suppose, about six months after that, after I executed the writing.

When I called him up to pay the mortgage in six months he refused to settle and said he had a deed to it, - a warranty deed, - that he did not have any mortgage and that I had given him a Warranty Deed. That was the first time that I knew he had a deed to the property. He did not say anything about Ora Powell or Laura Powell having any interest in that property then.

When he told me that I got Mr. Mitchell to file a suit for settlement. Mr. Powell has been in possession of that land. He has had it rented out since the suit was filed. I had it rented out a year to my brother. My brother had it rented the first year after I had this transaction with Mr. Powell. The second year, Mr. Powell got possession of the land from George Lay. He did not

get possession of it from me. He has had possession of the land ever since.

You ask me if it is the seventy six (76) acres that I mean he had possession of and not the estate land, - he had possession of the whole thing, - seventy six (76) acres, - the estate land is not divided.

You ask me what the rental value of that seventy six (76) acres of land is per year, - he has had it rented out this year for \$125.00. That is what his renter says he pays for it. I suppose that is the reasonable rental value of the land. In my best judgment I consider that to be the reasonable rental value of that land per year, - the seventy six (76) acres. Counting the turpentine timber he sold and the wood and everything he has cut off the land and sold, - it would be extra.

I would consider that \$125.00 per year would be the reasonable rental for that farm, - the seventy six (76) acres. Mr. Powell also got off of that land, the turpentine. As to how many years he has turpented that land, - it has been turpented right along, ever since he had it, - one year or another.

You ask me what would be the reasonable value of that land for a lease for turpentine purposes, - I don't exactly know how many boxes there were. I never kept track of that. I don't know exactly how much wood there was, either. I could not tell you, approximately, how much there was. You would have to find that out from the Turpentine men. I could not give you an idea of how

much wood and turpentine there was. I know though, there was stove wood and blocks and one thing or another.

You ask me the question, whether when I signed that writing I acknowledged the execution of that writing before Mr. Powell, but I don't understand you.

MR. HOGAN: Whenever you sign a deed, the Notary Public always asks you whether or not you sign the deed freely and of your own accord, - whenever you sign a deed, a Notary Public will ask you whether or not, knowing the contents of the instrument, you executed it on the day it bears date, - did Mr. Powell ask you anything about that?

THE WITNESS: I don't remember whether he did or not.

CROSS EXAMINATION
By Mr. Gordon.

I do not know what year this transaction was in. I don't really know, exactly, what month it was in.

Q. When was it you went to see Mr. Mitchell?

Ans. Well, it was right around about six months after this deed was made, - - this mortgage was made.

THE WITNESS Cont'd.: Mr. Mitchell filed suit immediately after that. I know that he filed suit immediately after that. As to how long I kept Mr. Mitchell as my lawyer, - he was not here but a very short time. I don't know exactly how long it was. Mr. Mitchell then turned my case over to Mr. Rikarby. Then, after Mr.

land for some money to help me out. I don't remember exactly where we were when this land was first mentioned between us, but we were around in the woods, somewhere near the old place. We were about six or seven miles from Mr. Powell's home in Fairhope. I don't think anybody was there but me and him, at that time.

He said he wanted to help me out. He seen that I was in trouble and he said he would like to loan me some money and if I would mortgage the land he would let me have some money. Up to that time I had never said a word to him about borrowing money. I only put this one mortgage on this property to Mr. Powell. That was before the deed, - I mean, that was the time. It was the same time that I made the mortgage, which he calls a deed.

You ask me if I know that prior to that I had already given him a mortgage on this same property and that he had advanced me \$150.00, but that was the mortgage he took up from Thompson. He never mortgaged it but one time. That was the Thompson mortgage, for \$150.00.

It is not a fact that subsequent to that and at the time he agreed to take up the Thompson Mortgage, I made another mortgage to him for \$125.00. It is not a fact that I made any such mortgage. I state, as a fact, that there was only one mortgage. That mortgage was for \$600.00 all told. The mortgage, taxes and he had an abstract made, too.

You ask me if, at Mr. Powell's house in Fairhope, I did not, during the year 1917, borrow from Mr. Powell, \$125.00. I never

borrowed a cent from him.

It is not a fact that I signed a mortgage to him at the time it was agreed that he would take the Thompson mortgage up for me for \$150.00. That is not true. Mrs. Powell was not there when it happened. I never did have a conversation with him at all, in the presence of Mrs. Powell, relative to this paper or this transaction. I never had a conversation with him at all, at his home in Fairhope, relative to this paper or these mortgages. It is not a fact that at that time we discussed the condition of my title and that he told me he would not loan me any more money because of the defective condition of my title. That is not a fact. I do not remember what year it was in. He did not do that at all. You ask me if I went to him and told him that I wanted to get this money to have my boat finished, but he came to me. I do not know how he knew that I was in the hole and wanted some money for a boat. He had been down there talking to this man, I guess. He said, all told, he would loan me the \$600.00 on it. That was all I wanted to borrow.

It is not a fact that at that time I tried to get \$900.00 from him for the tract of land. That is not a fact. I never mentioned \$900.00 to him.

I do not know anything about getting him to go to see Cook and getting Cook to reduce his charge against me. I don't know whether that happened, or not. I don't know anything about that. As to what Cook had me charged with when we were having this

transaction with Powell, I don't remember exactly what Cook's bill was. It was not \$550.00, - it was about \$250.00 or something like that. It was somewhere around there.

I don't remember that Mr. Powell went to see Mr. Cook and Mr. Powell came back to me and said that Cook said, for a quick settlement he would take \$450.00, and that I told him I could get it done cheaper than that, - I don't remember that. I won't swear either way whether that happened or not. I do not remember whether I told Powell that besides what I owed Cook and owed Thompson, that it would take \$75.00 more to buy materials to finish my boat. I don't remember that I asked him to go back to Cook and then Cook told him he would take \$250.00 for a cash settlement and go on and finish the boat. I don't remember that. I know Cook's bill was about \$250.00. I know who paid Cook. I think it was taken out of this mortgage money. I paid him out of this mortgage money. You ask me if I carried the money to him, but he was right there.

As to how Mr. Powell gave me the \$600.00, - he gave it to me in a little oakum and paint. I don't remember how much oakum and how much paint. The stuff was gotten down at Mr. Grove's. I don't remember what my bill was with Mr. Grove. As to how else he paid me, - that is all. He paid me just what I got through Mr. Grove. I suppose Mr. Powell paid Mr. Grove out of that mortgage money for that bill.

I was supposed to get \$600.00 and all told, I never got but \$515.00. As to giving you the items of that \$515.00, - I just had

it figured up. As to my giving you the figures, I don't remember now, about them. As to who figured that up for me, - I kept it in my head, figured up.

Q. How much did you pay Thompson?

Ans. The man that had the mortgage on the land?

Q. Yes.

Ans. He paid him \$150.00.

Q. Do you know that?

Ans. Yes, that is what the mortgage calls for.

Q. Who else did he pay?

Ans. He just paid Dormi, and that is all.

Q. Who was that, - Cook?

Ans. Yes sir.

THE WITNESS Cont'd.: I think he paid him \$250.00. As to how I make the \$515.00 figure, - that is \$400.00 and I got the other \$115.00 through oakum and paint. I suppose I got \$115.00 worth of oakum and paint, but I don't know exactly. As to what became of the other money out of the other \$600.00, I don't know. What became of it? I didn't get it.

You ask me if I alleged in my Bill of Complaint that I didn't know how much I had gotten from him, but I would say that, yes, I kept it pretty straight.

Q. I will ask you if you didn't tell your lawyers, you didn't know how much you got, but Mr. Powell told you about \$600.00.

Ans. That is what it was supposed to be.

THE WITNESS Con'd. : I knew it was to be \$600.00. As to whether I knew that the allegations in my bill of complaint was a mistake, - I knew the mortgage was to be \$600.00. And I knew about how much money I got from Mr. Powell on that. I got about \$515.00 from him, - somewhere around there. As to whether I ever asked him for the other \$85.00, - I think I told him what he owed me and he said he didn't owe me any more. I think I asked him for the other \$85.00. I don't remember where I was when I asked him for it and I don't remember when it was I asked him. As to who finished my boat, - what work was done on it after that, - after Dormi left, - I done it, myself. Mr. Cook done a little more work after this, but very little. I don't know how long it was after Mr. Powell talked to me about this mortgage or deed, before he came down to where the boat was with a paper, but it wasn't very long. I don't know exactly how long it was. I don't really know whether it was a week or a month. I don't know what time of day it was that he came down there. I didn't have any watch. When he came down there with me, there was Dormi Cook and Bezan Cook. I don't know whether Bezan Cook is dead or not. He is at Bon Secour, if he isn't dead.

As to what Mr. Powell told me on this trip, I don't remember his words, only about the business part of it. He says, "I brought this mortgage down for you to sign this morning, to let you have that money", and I said, "All right", and he threw it down there

and he said, "We will make this mortgage out for six (6) months", and I said, "No, if we can't make it for twelve (12) months I won't sign it, because I am liable not to raise the money in six (6) months".

You ask me, if, at the time I said that I made that offer to pay him within six months for that mortgage, I was there offering that myself, but I was not. I got Mr. Mitchell to make him that offer. I gave Mr. Mitchell the money. I had the money.

I had the \$600.00 to pay the mortgage off.

As to how much interest he was going to charge me, I don't know nothing about how much interest. As to whether I never offered Mr. Powell any money myself, my lawyer offered him the money. I never, personally, offered Mr. Powell the money to pay this mortgage, but I got my lawyer to do that. I was not present when my lawyer offered Mr. Powell the money.

When I saw Mr. Mitchell about the case, I was right here at Mobile, at his office, I guess. I know that I was here. As to who was with me, I don't remember anybody being with me. I had the money in cash.

Q. In your pocket?

Ans. Well, I had it.

Q. Answer whether you had it in your pocket or at home?

Ans. Well, I had it at home.

Q. Whereabouts at home?

Ans. In my trunk.

Q. Where did you get it from?

Ans. I got it.

Q. Where did you get it from?

Ans. I got it by working for it.

Q. Who for?

Ans. All these ship yards and things.

Q. In Mobile?

Ans. Yes sir.

THE WITNESS Cont'd.: I worked over here for all of these Ship yards at Mobile during the year 1917. I worked for the Alabama. I don't know just when it was that I worked for the Alabama, now. I made about \$7.50 a day. I don't know how many days I worked for them. I don't know how many months I worked for them. I worked also, for the Concrete Ship Yards. I made about the same thing there. I don't know how many days I worked for them, and I don't know how many months I worked for them. I also worked for this fellow across the river over here, - Murnan. I don't remember how many days I worked for him. I think my name was on their pay-roll as Howard Bishop. I know it was.

Q. Do you mean to tell the Court that within six (6) months after you had made this mortgage to Mr. Powell, that you had made \$600.00 and saved it?

Ans. I don't say I made it all that way.

Q. How else did you make it?

Ans. I have always had a little money.

Q. How did you make it if you didn't make it at the Ship Yards, - where did you make it?

Ans. I already had it for years.

Q. How much did you have in the Bank already and at your home?

Ans. I don't remember just how much I did have.

Q. Give us your best recollection?

Ans. I don't remember.

THE WITNESS Cont'd.: I don't remember whether I had \$50.00. I don't remember whether I had \$100.00. I don't remember whether I had \$25.00. I don't remember how much I had.

Q. So you refuse to answer?

Ans. Well, I had the money.

Q. So you refuse to answer?

Ans. I had the money.

Q. How much did you have?

Ans. As long as I had the money, that's all right.

THE WITNESS CONT'D.: As to how much cash I had on hand before I started working for the Shipyards, - I just told you I didn't remember how much. I might have had four or five hundred dollars or seven hundred dollars.

Q. If you had that much money on hand, why were you in a hard straight and wanted Mr. Powell to get your boat out of hock?

Ans. I might have been in a tight at that time.

Q. Well, were you?

Ans. I needed a little money.

THE WITNESS Cont'd.: I did not have the \$400.00 when I was talking to Mr. Powell. I don't think I had any money when I was talking to him. I don't remember how long it was after I had that talk with Mr. Powell, before I had the four or five hundred dollars. I don't remember who I got that money from. I just kept the money when I got it. I kept that money all around. I kept some of the money in the house and some in the Banks. I do not know how, in particular, I made the \$400.00. I told you how I made some of the money, working around and scheming about. I don't know exactly, whether any part of that four or five hundred dollars was made while I was at the Ship-yards. I made money all along. Whether it was that money or wasn't that money, I don't know.

It is not a fact, that when I was down there talking to Mr. Powell about borrowing this money or selling this land, that he refused to loan me the money that I wanted to borrow and then that he told me he would buy the land. That is not so.

It is not a fact that I told him that besides what I owed Mr. Cook for it, and what I owed Mr. Powell, it would take seventy-five or a hundred dollars more to finish that boat. I never told him what I owed him, because I didn't owe him anything. He came and taken up that mortgage without me authorizing him to take it up.

You ask me if I signed my name to that paper. I signed that mortgage. I don't think that I ever signed but that one paper, in

my life, for Mr. Powell. I state, positively, that I did not sign a mortgage for him before that. I never signed but one mortgage for Powell.

Q. I will ask you if Mr. Powell didn't take up Thompson's mortgage in the spring and that you then borrowed \$125.00 from him and gave him another mortgage, and then, later on, you came along and gave him this deed for the extra money?

Ans. Not that I remember.

Q. Do you remember that that happened?

Ans. I don't remember whether it happened, or not.

Q. I will ask you whether, or not, Mr. Powell, to cinch it with Mr. Cook for his \$250.00 charge, didn't give Mr. Cook \$50.00, right there?

Ans. The day that mortgage was made?

Q. The day that you al~~l~~made your agreement at the boat, if he didn't hand Mr. Cook \$50.00 to cinch the trade, so Mr. Cook would go on and finish it?

Ans. I don't remember whether he did, or not.

Q. I will ask you if it wasn't also stated there, between you, that Mr. Cook was to finish that boat in thirty (30) days, and you were to furnish the oakum and other material necessary at the time Mr. Powell handed Mr. Cook this \$50.00, and at the time the trade was closed?

Ans. I don't remember anything about when he was to finish the boat. I did not pay that no attention.

THE WITNESS Cont'd: I don't remember how long after that I stayed over there with Mr. Cook and saw about that boat. I don't know how long it was. I don't know whether I stayed there a month. I don't know how long he was finishing that boat. He never did finish the boat. I don't remember how long it was after this trade with Mr. Powell, before he turned the boat over to me. I could not tell you how long I stayed and worked on that boat after he turned that boat over to me. I don't remember when it was I started to working in Mobile. As to whether I knew Mr. Powell was the husband of Mrs. Powell at that time, - I only knew it by hearsay. I heard that he had a daughter by the name of Miss Ola Powell. I knew Mrs. Powell at that time. I had seen her. None of these transactions took place at Mrs. Powell's house. They took place down in the woods where he mentioned it to me, and then we closed the deal up at the boat.

I do not remember what Mr. Powell said to me when he took the acknowledgement. I don't remember whether I asked him to read that paper to me, or not. I just thought it was all right. I just trusted to Mr. Powell that the thing was to be a mortgage and that it was just all right, - that there wasn't going to be nothing crooked about it.

At the time of these transactions, the brother that I spoke of is called Babe. I don't remember whether he had any hogs on his place. It is not a fact that Mr. Powell, immediately after this trade, went up there and bought his hogs and took possession

of all this whole thing right after this transaction down on the river. That is not so. As to when it was that he took possession, - it was the next spring that he took possession from Mr. Lay.

RE DIRECT EXAMINATION
By Mr. Hogan.

I rented that property to my brother before this transaction with Mr. Powell. I do not know the value of that land, - the value of the seventy six (76) acres. That is, I do not know what it could be sold for or what it would bring.

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GEORGE LAY, a witness called on behalf of the Complainant, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION
By Mr. Hogan.

My name is George Lay. I know Mr. Powell, the defendant in this case. I don't know exactly how long I have known him, but I suppose I have been knowing Mr. Powell, I reckon, fourteen years or so. As to whether I have known him ever since 1917, - I don't know exactly how long, but I have been knowing him ever since before the War.

I remember the time when Howard Bishop had his transaction with him regarding his farm in Baldwin County. I have had a conversation with Mr. Powell after that, regarding that transaction. It was when I was working for him. I was working for him on his farm. That farm is on the old Bishop Place. I have had more than one conversation with Mr. Powell about it. I remember some of those conversations, especially.

One of those conversations was, when I was chopping down a tree near my mail-box on a road one evening, and me and him was talking about the mortgage he made to Howard and he told me that "any time that Howard would pay me back the money and the interest that he can get his land back", - those are just the words he said.

As to whether he said he had a deed or a mortgage, - he said he had a mortgage. I don't exactly recollect how long that was

after Mr. Powell's transactions with Mr. Bishop. It must have been three or four months.

CROSS EXAMINATION
By Mr. Gordon.

I am a brother-in-law of Mr. Howard Bishop. I married his half-sister. I don't know just what year the transaction was had between Mr. Bishop and Mr. Powell. I never put down the date, and it has been nine or ten years ago. I was living on my place there, then. I was living then, within a quarter of a mile of Howard Bishop. I did not see him every day after that. I did not see him nearly every day. Sometimes he would be in Mobile.

I remember Mr. Bishop having a boat build down there, by Mr. Cook. I do not know how long after that transaction it was that that boat was finished. I don't know how long it was after Mr. Cook quit working on that boat that Mr. Bishop started working on it. I never kept track of it. I just saw them working on the boat, and I worked on it, myself. I don't know what time of year it was that this transaction was had between him and Mr. Powell. I know that it was after the transaction that I had the conversation with Mr. Powell. I don't remember what year it was, but it was in the spring of the year, when we were talking. I never put it down, what year it was.

Mr. Bishop was living on his place when I had that conversation with Mr. Powell. At that time, he was working on his place and working on his boat. I suppose that I am sure of that. I do not know just exactly what Mr. Bishop was doing. I know he was working

on that boat and around his place. He farmed his place, where he was living. He and his brother worked on that farm where he was living. His place is the place that I traded to his mother for the place Mr. Powell bought from me. I don't know just when I told Mr. Bishop about my conversation with Mr. Powell. I didn't put it down. I told several people about that. As to whether I knew there was any misunderstanding between them then, I didn't know anything about the deal. Mr. Bishop did not say how much he owed him. Mr. Powell did not say how much Mr. Bishop owed him.

I am sure that it was in the spring of the year.

As to whether that was the time that Mr. Bishop owed Mr. Thompson \$150.00 on a mortgage, - I don't know anything about the Thompson business, at all.

At the time of this transaction, nobody was living on the land that Mr. Powell had the mortgage for. Babe Bishop was working it. I don't know how long it was before this transaction, that Babe quit working it. I do not think that he was working it at the time of this transaction. I do not remember whether Babe was on the place at the time that Mr. Powell and I had the conversation. Babe is my brother-in-law, too. He lived about a quarter of a mile from us. He lived with his brother, here.

Q. Who lived on the place after Babe, - who worked the place after Babe?

Ans. The place Mr. Powell owned?

Q. Yes.

Ans. I don't know, but I know Charlie Lowell rented it after Babe.

Q. Who rented it to him?

Ans. Mr. Powell. I don't know about Mr. Powell having a suit to

put him off. I think Babe made a cotton crop on it, but I don't know why he gave it up. I did not see him when he moved off the place, but I saw him make a cotton crop on the land.

The year after Babe worked that place and then got off, Lowell was the next man to go into possession of the place. That is, he was the next man that I knew about. Besides Lowell, there has been another man in there in possession of the land, named Mr. Horton. I suppose Mr. Powell put him in possession of the place. I have gone on the place, myself. They rented it to me, and I started, and Mr. Powell told me to stop. Lowell rented it to me.

During all that time, Mr. Bishop was farming and working on a boat and he also worked at the Ship-yards. I don't know how long he worked at the ship-yards.

I don't know whether they ever had a transaction, of my own knowledge. I only know what Mr. Powell told me, and what Mr. Bishop told me, too. Mr. Bishop told me about it first, when the mortgage was first made. He never told me how much he got or told me a thing about that. I never asked him. He said he borrowed it to work on his boat. It was in the spring when I was talking to Mr. Powell. You ask me if he didn't tell me that he borrowed \$125.00 from him, - I didn't ask him and he didn't tell me.

There was nobody present, at all, at the mail box, when Mr. Powell made that remark to me.

RE DIRECT EXAMINATION
By Mr. Hogan.

I don't think that I know the value of that seventy six (76)

acres of land. I should think that the value of the land that is cleared, was, at that time, worth \$50.00 an acre, but the outside land, of course, is not worth as much, but that is what I think of the twenty acres that are cleared.

As to the fifty six acres that are not cleared, I think it is worth about twenty or twenty-five dollars an acre. It is all fair land. As to whether that was the value at the time of their transaction with each other, - I don't know what land was worth then, but I think the land would be worth that now. Land, in cultivation, ought to be worth \$50.00 an acre. I cannot say that I know what it was worth at the time of this transaction with Mr. Powell.

RE CROSS EXAMINATION
By Mr. Gordon.

I could not tell you anything about whether there were ten (10) acres of that land that is cleared that was already Mr. Powell's and was never in dispute. I don't know about that. That land was worth more then than it is now. It was worth more then than it is now. I did not sell any land. I bought ten (10) acres around there. I gave \$100.00 for ten (10) acres right out in the rough woods.

RE RE DIRECT EXAMINATION
By Mr. Hogan.

I don't know what the value of the Bishop Estate is. I should think it ought to be worth \$10.00 an acre. There were

acres of land. I should think that the value of the land that is cleared, was, at that time, worth \$50.00 an acre, but the outside land, of course, is not worth as much, but that is what I think of the twenty acres that are cleared.

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RE RE DIRECT EXAMINATION
By Mr. Hogan.

I don't know what the value of the Bishop Estate is. I should think it ought to be worth \$10.00 an acre. There were

two hundred and ten (210) acres in the Bishop Estate, and I think there were some deeds that Mr. Jenkins found for sixty (60) acres, and that cut it down. I think Mr. Howard Bishop had a one seventh ($1/7$) interest in the Bishop Estate. As to whether it was a fifth interest, - I don't know.

- - - - -

C E R T I F I C A T E.

I, Bernard A. Carlin, a Notary Public in and for the County of Mobile,, State of Alabama, and the Commissioner named in the attached commission, issued out of the Honorable Circuit Court of Baldwin County, Alabama, do hereby certify that in that certain cause pending in the Circuit Court of Baldwin County, Alabama, in Equity, wherein Howard Bishop is the Complainant and Laura Powell, et al. are Respondents, under and by virtue of the powers conferred upon me by the aforesaid commission issued out of said Court, I caused the witnesses named in said Commission, Howard Bishop and George Lay, witnesses, who are known to me and who are known to me to be the identical witnesses named in said commission hereto attached, to come before me in the office of Hon. Jesse F. Hogan, First National Bank Building, Mobile, Alabama, -that said witnesses came before me at the following time, namely: March the 11th, 1929, - the said witnesses were duly sworn by me to speak the truth, the whole truth and nothing but the truth, as stated hereinbefore; that said witnesses were then and there carefully examined by Mr. Jesse F. Hogan, Counsel for the Complainant, and cross-examined by Mr. Robert E. Gordon, Solicitor for the Respondents, and said witnesses, in response to said examination , testified as is hereinabove and before written. That the said witnesses, in response to said examination, testified as is hereinabove and before written; that the testimony of the said witnesses was taken down by me in shorthand and was

then caused by me to be reduced to typewriting in narrative form, in as near as might be the identical language of the said witnesses; and that under stipulation of counsel hereto attached said depositions are herewith returned to the Court without the signatures of said witnesses, the said signatures being thereby waived.

I further certify that I am not of counsel nor of kin to any of the parties to the cause, nor am I in any wise interested in the result thereof.

Witness my hand this the 29th day of July, 1929.



Commissioner and Notary Public.

The State of Alabama, }
Baldwin County

CIRCUIT COURT.

To Hon. Bernard A. Carlin

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 Howard Bishop and George Play

as witnesses in behalf of Complainant, in a cause pending in our Circuit Court of County, of said State, wherein

Howard Bishop,

Laura Powell et al, Complainant

and

Laura Powell et al, Defendant,

on oath to be by you administered, upon ~~interrogatories~~ oral examination to take and certify the deposition of the witness^{es} and return the same to our Court, with all convenient speed, under your hand.

Witness 11th day of March 1929

T. W. [Signature]
Register.

Commissioners Fee \$ *50*
Paid by Complainant
Witness Fee's \$

09.

STATE OF ALABAMA,

Lawin County.

CIRCUIT COURT.

Howard Bishop

Complainant.....

vs.

Laura Powell et al,

Defendant.....

COMMISSION TO TAKE DEPOSITION
ON INTERROGATORIES & oral

examination
COMMISSIONER:

Hon. Bernard A. Carlin.

WITNESSES:

Howard Bishop

George Lay,

8568
Commission to

State of Alabama,
Baldwin County.

Know all men by these presents, that for and in consideration of the sum of \$154⁴⁰ to me in hand paid by Miss. Ola Powell, receipt of which is hereby acknowledged, I hereby transfer, and assign, grant, bargain, sell and convey unto said Miss. Ola Powell who has paid said sum, all my right, title and interest in and to one certain mortgage and the note thereto belonging, which are dated November 3rd, 1915 and executed by Howard Bishop, a single man, which said mortgage is due and payable twelve months after date, with interest at the rate of 8% from date, which said mortgage covers the following described land in Baldwin County, to-wit:

NW¹/₄ of NW¹/₄ and SE¹/₄ of NW¹/₄ (except 4 acres in the extreme southwest corner sold to Isaac King) All being in Sec 30, Tp 6 So., Rge 3 East, together with the improvements thereon.

To have and to hold forever unto the said Miss Ola Powell, her heirs or assigns, with all the rights and privileges thereunder, without recourse upon me.

Witness my hand this ⁹~~10~~ day of March, 1917.
C A Thompson

State of Alabama,
Baldwin County.

I, Ort H. Ertzinger a Notary Public, in and for said State and County, hereby certify that C. A. Thompson, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand this 9 day of March, 1917.

Ort H. Ertzinger
Notary Public, Baldwin County Ala
My commission expires June 9-1919.



OK
29
C.A. Thompson
To
Ola Powell
Transfer of Mtg.

THE STATE OF ALABAMA, Office of the Judge of
BALDWIN COUNTY, the Probate Court.

I, JAMES M. VOLTZ, Judge of said Court in and for
said County, do hereby certify that the within instru-
ment was filed in this office for record on the

day of April 1917, at

o'clock a.m. and I further certify that the

same is duly recorded in Record Book No. 17 Vol 1

Page 186-7 and duly examined.

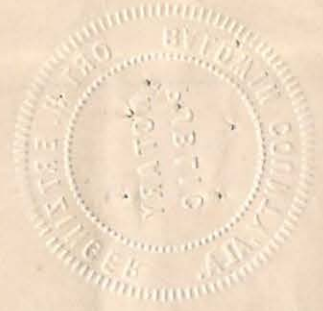
Witness my hand this April day of 1917

James M. Voltz Judge of Probate Court

By _____

O. H. Powell
Fairhope Ala

4/18/17 8 a.m.



Alabama, to-wit: North West quarter of the North West quarter, also the South East quarter of the North West quarter (except 4 acres in extreme SW corner sold to Isaac King) all being in Section 30 Township 6 South of Range 3 East, containing in all 76 acres more or less - together with all the improvements thereon.

TO HAVE AND TO HOLD, the above granted and described premises with the appurtenances unto the said part y of the second part and to his heirs and assigns and to their sole and only proper use, benefit and behoof forever.

PROVIDED ALWAYS, and these Presents are upon the express condition, that if the said part y of the first part shall well and truly pay to the said part y of the second part the sum of One hundred and fifty dollars according to the tenor and effect of one certain promissory note bearing even date herewith and due and payable twelve months after date with interest @ 8% from date

then these Present shall cease, determine and to be void, otherwise to remain in full force.

And the said part y of the first part do es hereby vest the said part y of the second part or his assigns, with full power and authority upon the happening of a default in the payment of the note ~~or notes~~ above described, to sell his interest in the said real estate at public sale for cash, giving 30 days notice in a newspaper published in Baldwin County, Ala., and the proceeds to apply, first, to the payment of the amount due on said note ~~or notes~~ with interest on same; second, to the payment of the costs of sale, including a reasonable attorney's fee, and if there shall be a surplus, then the balance to be paid over to the said part y of the first part, and ~~they~~ he do authorize the said part y of the second part to conduct the sale, and to make Deed to purchaser, and the title so made he hereby agree s to defend against all persons. It is agreed that the mortgagee herein may bid at said sale as if he were a stranger to this instrument.

Given under my hands and seals this 3rd day of Nov - in the year of our Lord one thousand nine hundred and fifteen.

Howard Bishop

State of Alabama, County.

I,

in and for said County and State, do hereby certify that on the ... day of ... 191... came before me the within named ..., known to me to be the wife of the within named ..., who being examined separate and apart from her husband, touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of her husband.

IN WITNESS WHEREOF, I hereunto set my hand this

STATE OF ALABAMA, Baldwin County, J. J. H. Smith, Judge of Probate

for said county, hereby certify that the following privilege tax has been paid on the within instrument, as 191... day of ...

collected by Acts 1902 & 1903 via ...

J. J. H. Smith, Judge of Probate
J. S. Hoodler, Clerk

MORTGAGE DEED.

FROM

Howard Bishop

TO

E. M. Thompson

Received of School
Trust
\$1000.00
January 4th 1930
J. J. H. Smith
Judge of Probate

RECORDED.

STATE OF ALABAMA, PROBATE COURT, COUNTY.

Filed in my office for record this ... day

of ... 191... and recorded

in Mortgage Book No. ... Pages

JUDGE OF PROBATE.

PROGRESSIVE JOB PRINT

E. M. Thompson, 90
debt tax 113115
city 400

4-1-942-3
lsc
THE STATE OF ALABAMA, } Office of the Judge of
BALDWIN COUNTY, } the Probate Court,

I, J. J. H. SMITH, Judge of said Court in and for said County, do hereby certify that the within instrument was filed in this office for record on the ... day of ... at ...

'clock ... and I further certify that the me is duly recorded in Record Book No. ...

... and duly ...

... my hand this ... day of ...

J. J. H. Smith, Judge of Probate Court

J. S. Hoodler, Clerk

\$150⁰⁰

Exhibit "E"

BAY MINETTE, ALA., Nov 3rd 1915

I, Twelve months after date, without grace, I promise to pay to

the order of C. A. Chapman

One hundred and fifty DOLLARS,

for value received, in gold coin of the United States of the present standard of weight and fineness, with interest from date @ 8% until paid. Payable at Baldwin County Bank

The parties to this instrument, whether maker, endorser, surety or guarantor, each for himself, hereby severally waive as to this debt, or any renewal thereof, all right to exemption under the Constitution and Laws of Alabama, as to personal property, and they each severally agree to pay all costs of collecting, or securing, or attempting to collect or secure this note, including a reasonable attorney's fee, whether the same be collected or secured by suits or otherwise. And the maker, endorser, surety or guarantor, of this note severally waives demand, presentment, protest, notice of protest, suit and all other requirements necessary to hold them, and they agree that time of payment may be extended without notice to them of such extension.

Howard Bishop

Due

No.



The undersigned endorser assume the contract shown by the face of this note.

C. A. Thompson
with out Recourse

note Extended for
six month with
interest Paid to
march 12th 1917

C. A. Thompson

interest Paid
to Mar 3 1916

Exhibit "E"

STATE OF ALABAMA,

Baldwin

COUNTY

Know All Men By These Presents: That Howard Bishop

a single man

part of the first part, in consideration of the sum of

one hundred and fifty 00/100 DOLLARS,

to him in hand paid, by C A Thompson

part of the second part, the receipt whereof is hereby

acknowledged, do es grant, bargain, sell and convey unto the said part of the second part

State of Alabama, Baldwin County.

I, Ira B Thompson a Notary Public

in and for said County and State, hereby certify that Howard Bishop

a single man whose name is signed to the foregoing conveyance, and who is

known to me, acknowledged before me on this day that being informed of the contents of the conveyance he executed

the same voluntarily on the day the same bears date.

Given under my hand this 3rd day of November 1915

Ira B Thompson
Notary Public Baldwin Co. Ala

MERCHANTS BANK
MOBILE, ALABAMA.

\$ 125 ⁰⁰/_{XX}

Exhibit B Fairhope

MOBILE, ALA. August 30th 1917

Waverly first

AFTER DATE, WITHOUT GRACE, I PROMISE TO PAY TO

THE ORDER OF

Luna A. Correll

One Hundred Twenty five and ^{no}/₄ DOLLARS
with 8% interest

FOR VALUE RECEIVED. PAYABLE AT THE MERCHANTS BANK, IN MOBILE, ALA.

THE PARTIES TO THIS INSTRUMENT WHETHER MAKER, ENDORSER, OR GUARANTOR, EACH FOR HIMSELF, HEREBY SEVERALLY AGREES TO PAY THIS NOTE AND WAIVES AS TO THIS DEBT, ALL RIGHT OF EXEMPTION UNDER THE CONSTITUTION AND LAWS OF ALABAMA, OR ANY OTHER STATE, AND THEY EACH SEVERALLY AGREE TO PAY ALL COSTS OF COLLECTING, OR SECURING, OR ATTEMPTING TO COLLECT OR SECURE THIS NOTE, INCLUDING A REASONABLE ATTORNEY'S FEE, WHETHER THE SAME BE COLLECTED OR SECURED BY SUIT OR OTHERWISE. AND THE MAKER, ENDORSER, SURETY OR GUARANTOR, OF THIS NOTE SEVERALLY WAIVES DEMAND, PRESENTMENT, PROTEST, NOTICE OF PROTEST, SUIT AND ALL OTHER REQUIREMENTS NECESSARY TO HOLD THEM.

Howard Bishop

DUE

Nov 1st 1917

The undersigned endorsers assume the contract shown by the face of this note.

Saura A. Powell
R. F. Powell

Exhibit B

Know All Men by These Presents, That

Howard Bishop

hereinafter called mortgagor

in consideration of the sum of One Hundred Twenty five

DOLLARS, to him

in hand paid by Lanna A. Carwell

hereinafter called mortgagee

the receipt whereof is hereby acknowledged, do as - by these presents grant, bargain, sell and convey unto said mortgagee

her heirs and assigns forever,

All that Certain tract or parcel of land described as follows to wit all of the NW 1/4 of the NW 1/4 of Sec 30. T6S. R3E and all of the SE 1/4 of the NW 1/4 of Sec 30 T6S R3E. except four (4) acres in the SW corner sold to Isaac King -

also all my right title and interest as heir in the Mary Ann Bishop estate consisting of 210 acres more or less in Sec 19 T6S R3E - Baldwin Co Ala

Together with all and singular the tenements, rights, privileges and appurtenances, to said described premises in anywise belonging, TO HAVE AND TO HOLD the same forever. PROVIDED ALWAYS, and these presents are upon

the express condition that if the said mortgagor shall well and truly pay to the mortgagee The sum of One Hundred Twenty five dollars on November first 1917 - as evidenced by a promissory note of even date here with with interest at 8% from date until paid

and shall also discharge all the duties imposed upon said mortgagee by this mortgage, then these presents shall become void, otherwise to remain in full force.

In event of default in the payment at maturity of said mortgage debt, or any amount secured hereby, mortgagee

is hereby authorized to sell said property, at auction, for cash, after giving notice by advertisement, once a week for three consecutive weeks, in any newspaper then published in Baldwin County, Alabama

to make proper conveyance to purchaser, and the proceeds of sale to apply first, to the payment of the costs of said sale, including a reasonable attorney's fee; second, to the payment of said mortgage debt and any sums herein provided for, the balance, if any, to be paid over to the said mortgagor. Mortgagee may purchase said property at such sale and, in that event, the auctioneer conducting the sale is authorized in the name of the mortgagor, and as his

attorney in fact, to make deed to mortgagee. Mortgagor agrees to pay such reasonable attorney's fees as may be incurred by the mortgagee, in the collection of said mortgage debt, or otherwise by reason of any default on the part of the mortgagor. Mortgagor covenants that he

seized in fee simple of said property, that it is free from all encumbrances, that he will warrant the same to mortgagee, and to the purchaser thereof, against the lawful claims of all persons.

IN WITNESS WHEREOF, the said mortgagor has hereunto set his hand and seal this 30th

day of August A. D. 1917

Howard Bishop (Seal)

(Seal)

THE STATE OF ALABAMA,

Baldwin County

I, *Alfred J. Melville* a Notary Public
Howard Bishop

in and for said County and State, hereby certify that

whose name *is* signed to the foregoing conveyance, and who *is* known to me, acknowledged before me on this day that, being informed of the contents of the said conveyance,

he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this *30th* day of *August*, 191*7*

Alfred J. Melville
Notary Public
In and for County of Baldwin

THE STATE OF ALABAMA

County

in and for said County and State, do hereby certify that on

the _____ day of _____, 191____, came before me the within named _____, known to me to be the wife of the within

named _____, who being examined separate and apart ~~and~~ from the husband touching her signature to the within conveyance acknowledged that she signed the same of her own free will and accord, and without fear, constraints, or threats on the part of the husband.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this

_____ day of _____, 191____

30
I, *James M. Veltz*, Judge of Probate, certify that the following mortgage for said county, hereby certified that the following privilege tax has been paid in the within instrument as required by Acts 1902 and 1904, viz: \$ _____

James M. Veltz
Judge of Probate
Clerk.

Mortgage deed with power of sale Howard Bishop
Laura A. Powell

Mortgage Deed with Power of Sale

FROM

Howard Bishop

TO

Laura A. Powell

State of Alabama, } Probate Court

Baldwin County

Filed in my office for record this *30th* day of *September*, 191*7*, and

recorded in Mortgage Book No. *17* page *481-82*

N. S. Pages *481-82*
James M. Veltz
Judge of Probate

Bank of Granite
Granite
add 177
9/17/17

Exhibit "D"

WARRANTY DEED.

STATE OF ALABAMA, }
Baldwin County. }



Know all Men by these Presents, That for and in consideration of the sum of One dollar and other valuable consideration Dollars, to me in hand paid by Howard Bishop

the receipt whereof is hereby acknowledged we, William Bishop and Mary Ann Bishop his wife, do grant, bargain, sell and convey unto the said Howard Bishop

the following described lands situated in Baldwin County, Alabama, to wit:
North West 1/4 of the North West 1/4, and S. E. 1/4 of N. W. 1/4 less 4 acres deceded to Isaac King off the south side of the etc, one acre deep and mooring west and west, in Section 30, Twp 6. S. R. 3 East containing 76 acres

TO HAVE AND TO HOLD to the said Howard Bishop his heirs and assigns forever.

And we do covenant with the said Howard Bishop

that we are seized in fee of the above described premises; that we have the right to sell and convey the same; that the said premises are free from all incumbrances; and that we will, and our heirs, executors and administrators shall forever WARRANT AND DEFEND the same to the said Howard Bishop

heirs and assigns, against the lawful claims of all persons whomsoever.

WITNESS our hand and seal this 21 day of Sept 1911

WITNESS:

Maurice Stapleton
A. R. Finckle

William Bishop L. S.
Mary Ann Bishop L. S.

STATE OF ALABAMA, }
Baldwin County, }

I, *P. Y. Albright*

a *Notary Public* in and for said State and County, hereby certify that
William Bishop and Mary Ann Bishop his wife
whose names *are* signed to the foregoing conveyance, and who *are* known to me, acknowledged
before me, on this day that being informed of the contents of the said conveyance *They* executed the
same voluntarily on the day the same bears date.

Given under my hand this *21* day of *Sept* 191*1*

By Albright
Notary Public, Baldwin Co., Ala.

STATE OF ALABAMA, }
County. }

I, _____

a _____ in and for said State and County, do hereby certify
that on the _____ day of _____ 191_____, came before me the within named
_____, known to me to be the wife of the within named
_____, who being examined separate and apart from
her husband in reference to her signature to the within conveyance, acknowledged that she signed the same of
her own free will and accord, and without fear, constraint or threats, on the part of the husband.

In witness whereof, I hereunto set my hand, this _____ day of _____ 191_____

Warrant filed
Wm Bishop and
Mary Anne Bishop
to
Harward Bishop

P. Y. Albright,
Return to Mrs Bishop,
P. O. Summitdale,
65 Rd
Ala.
10/6/11

The State of Alabama } Office of the Judge of
Baldwin County, } the Probate Court,

I, J. H. SMITH, Judge of said Court
in and for said County, do hereby cer-
tify that the within instrument was filed
in this office for record on the *6th*
day of *Oct* 191*1*, at

o'clock _____, and I further
certify that the same is duly recorded in

Record Book No. *18 N.S. Page 324-25*
and duly examined.

Witness my hand this the day of *6th*
Oct. 191*1*

J. H. Smith
Judge of Probate Court, Baldwin County
W. S.

Yot 9 Oct 15 - 3^v

TAXES ON HOWARD BISHOP LANDS

Yot
7.97

Year	Assessed value	Taxes pd. 4/16/17
1916	\$451.00	\$7.22
1917	" "	9.02
1918	" "	9.02
1919	" "	9.02
1920	" "	9.02
1921	" "	9.02
1922	" "	9.02
1923	" "	9.02
1924	" "	9.02
1925	" "	9.02
1926	" "	9.02
1927	" "	9.02
1928	668.00	14.36
1929	" "	14.36
1930	" "	14.36

9/cent
72.96
49
10 1/15
345
7

All of above taxes, except 1916, paid on January 1st of year payable.

~~sevent~~ (1/7)
One-half of Estate Lands

Taxes total

\$17.00

\$166.52

7296
12) 34364 485
48
103
96
70

49
12
588

After proper notice and service on the parties, said evidence was held on the 17th day of July, 1930, July 23rd, 1930, August 6th, 1930.

The testimony of the witnesses for the complainant and defendant were duly examined and the testimony reduced to writing, it being agreed by the parties that the signatures of the witnesses be waived, which testimony is hereto attached, that said reference was attended by the solicitors for the Complainant and Defendant and by both the Complainant and the defendant in person.

Upon a careful consideration of the testimony before him the Register finds and reports as follows:

First: That the amount of Complainant's indebtedness to Mrs. Laura Powell and her daughter, Ole Powell, on August 30th, 1917, was \$565.00 excluding 265.00 R.F. Powell claims he paid to effect title.

(B) That the accrued interest on the total of such indebtedness amounts to 13 1/2 years at 8% on \$565.00 \$598.90

598.90
166.52
73.45

SECOND: (A) That the respondents took possession of the real estate deeded to them by Howard Bishop, on August 30th, 1917, was Oct 12th, 1917.

(B) The fair rental value of said real estate for each year the respondents had possession thereof, was per acre per year \$3.00 per acre for cleared land,

(C) The rents that was actually collected on said real estate by the respondents was according to statement rendered by R.F. Powell

\$314.65. also Turpentine lease Sept 20, 1922, \$72.00
Sept 25th, 1925. 38.50 February 10th, 1928 \$63.00
Making a total for rent and Turpentine leases \$488.15

THIRD: The fair market value of the real estate described in the deed from Bishop to Powell on the date of the conveyance, to-wit, August 30th, 1917, was \$30.00 or 35.00 for the 10 acres cleared, land and \$12.00 or 15.00 for the uncleared land,

565
45.20
135.80
45.20
22.60
610.20
565
666.52
73.45
1415.17
444.15
927.02

565
45.20
135.80
45.20
22.60
610.20

1415.17
565
852.17
350
900
1340
660
330
990

FOURTH: The amount of taxes including interest by respondents, as taxes on said real estate amount to
Amount of taxes \$166.52 and interest on amounts to \$73.45.

FIFTH: Respondents have erected permanent improvements on said real estate and the value of each separately is set forth as follows:
About 230 post at 25 1/4 rolls wire \$8.00 each, \$32.00
Putting up wire \$15.00 Clearing 10 acres land \$150.00
Total amt of improvements \$253.85

Submitted ~~10/28/30~~ 10/28/30
D. W. McCreary
Register

no maintenance to be made in timber land...
I had a timbering in timber land...
3 3 1 8 2 1 1 4 8
timber of timber in timber land...

timber of timber in timber land...
timber of timber in timber land...
timber of timber in timber land...

HOWARD BISHOP,
Complainant,

vs.

LAURA POWELL, ET AL,
Respondents.

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

REPLY BRIEF BY RESPONDENTS

We have carefully read brief and argument as filed by the complainant in the above said cause, and the first proposition that confronts us is as follows:

The complainant in 1918 or 1917 filed a bill in which it was expressly averred that the complainant had borrowed Six Hundred Dollars or more from the respondents, with the understanding, that same was to be secured by a mortgage upon certain property. That after the execution of the said paper, after same had been recorded, and after he had secured and expended all of the monies received by reason of said instrument, he alleges that he found out that the instrument rather than being a mortgage was a straight deed. And his prayer at that time was to have the said deed declared to be a mortgage, the amount of the mortgage indebtedness ascertained and complainant given the right to pay same off. After the testimony in this cause had been taken, and upon the day when this cause was submitted for final decree, the complainant amended his complaint by showing that at the time of the matters complained of there had already been execut-

ed by the complainant two mortgages , one to Thompson and one to Laura Powell, and that as a part of the agreement the Thompson mortgage was to be taken over by one of the complainants. This amendment shows upon its face that it was asked for and made "to conform to the evidence." In studying the evidence it will be ascertained that the complainant at no time, directly or inferentially, testified that the instrument of which he is complaining was anything else than a mortgage, and at no time did he ever testify that it had any connection with either of the foregoing mortgages, except that it was understood that one of the respondents would take over the Thompson mortgage, and this was to be included in the money then transferred or delivered by the respondents to the complainant. Complainant specifically denied that he had ever given Mrs. Powell any mortgage for One Hundred Twenty-five Dollars and that the only instrument that he had ever executed in favor of either of the complainants was the instrument which he is now seeking to have declared a mortgage, and which is in reality an unconditional deed. It will therefore be seen, both by allegations of the bill of complaint, as originally filed and as so many times amended, as well as by the prayer of the said bill of complaint that the only question involved is that the complainant alleges that the instrument in question was intended as a mortgage, when in fact it was a deed. The respondents have denied this allegation, therefore there is but one issue,- was the

instrument in question intended as a deed, or was it intended as a mortgage.

The above is written as a preface to the question,- what bearing has the authorities and citations given by the complainant in his brief,- that is to say- Shaw vs. Lacy, Pearsol vs. Hyde, Lott vs. Palmer and Stoutz vs. Rouse, and other authorities cited which have a bearing upon a question entirely extraneous to the one in issue. For instance, there is no allegation that Bishop ever conveyed, or ever intended to convey, his equity of redemption to the respondents, but to the contrary there is a total lack of any such allegations and Bishop's own testimony, if believed, controverts this proposition, for he says that he understood it to be a mortgage for Six Hundred Dollars. If Bishop is to be believed there never should have been given a deed for any purpose, because he specifically states in his testimony that he never agreed to give a deed, but to the contrary that it was to be a mortgage and he was to have a certain time in which to repay same. So there being no allegation of a state of facts as would make this case analogous to the above authorities as cited, nor the above authorities applicable to this case, they are absolutely without force and effect so far as the issues in this case are concerned. In the case of Shaw vs. Lacy, and which is cited by complainant, we find that the Court in that case clearly showed the distinction that we have sought to raise above, the Court

using the following language:

"The contrary conclusion of the Chancellor is evidently founded on a misapplication to this case of the rules of law that govern an impeachment of original transactions which are absolutely in form, by parole proof that they were intended to be mortgages only. But that is a different case, and is ruled by different principles."

We therefore respectfully submit that the authorities which have been cited and quoted from upon this proposition are entirely inapt, have no bearing, and should have no controlling influence in the adjudication of the one issue in this case, and that issue is whether or not the complainant and the respondents intended the instrument in question to be a mortgage, or whether they intended it to be what it is, an absolute deed.

We ask the Court to read carefully the cases as cited by Mr. Hogan on this proposition, then read the original bill of complaint, and the prayer thereof and each of the amendments as filed thereto, for we feel sure that the Court cannot escape the conclusion that the complainant has neither allegation or evidence to support the doctrines as laid down in said decisions. There can be no escape so far as this legal proposition is concerned, from the testimony of Mr. Bishop himself, that there was nothing said or done, directly or inferentially which would suggest or support the theory that the respondents purchased Mr. Bishop's equity of redemption, for he expressly swears that the understanding was that the

instrument should be another mortgage.

If we are correct in the above, and we respectfully submit that we are, then the authorities and brief as originally filed by respondents in this cause are based upon the sole issue involved in the case, and that the authorities are decisive of that issue, putting the burden upon the complainant and which he has not met.

Complainant, in his brief has a great deal to say about the inadequacy of the price, and were this a case where the mortgagor had conveyed to the mortgagee his equity of redemption there might be some logical reason for emphasizing, as best he can, this phase of the testimony. The only allegation of the bill of complaint is that R. F. Powell represented to the complainant that the instrument he was signing was a mortgage, there being no averment that there was an inadequacy of consideration, or that there was any duress or pressure, but to the contrary the sole complaint was that the respondent Powell deceived the complainant into believing that he was executing a mortgage. The basis of the bill of complaint is this one averment, the prayer of the bill of complaint is for relief upon this one issue, and no case could fit a set of facts and the allegations of a bill more perfectly than does the case of Kyle vs. Haley, 190 Ala., and on page 553, and which we quoted from in our original brief. It may not be amiss to again quote that portion which is so very adapted

to this particular case:

"The bill in this case was called for the purpose of having a conveyance, which is absolute on its face, declared to be a mortgage and to redeem. In a case like this - where the case is absolutely in form, and not in form conditional- to obtain relief, the complainant must satisfy the Court by at least a clear preponderance of the evidence that a mortgage was intended and clearly understood by the grantee as well as the grantor."

The complainant has a great deal to say in his brief about R. F. Powell being an intelligent man, being in the business of lending money, and many other things which do not appear as a matter of evidence. He also has a great deal to say about the testimony of certain individuals as to the reputation of R. F. Powell. When Dr. Hale's testimony is read it shows animosity, hatred and ill-will. So violent is he that he goes to the extent of saying that he would not believe Mr. Powell even though many other witnesses would go upon the stand and corroborate him. He went greatly beyond the purview of the question- he said that he would lie for a nickal. We respectfully submit that such testimony does not recommend itself to a Court or to a man of common sense. It is teeming with suggestion that there is some ulterior motive for such testimony or some personal feeling which is being ^{solves} criticized by the use of such wreckless language. Then when the testiment of the other character witnesses are taken, it will be seen that they all credit Mr. Powell with being

alright morally, but that he must be watched in a business deal, and one of the witnesses introduced by the complainant, who had a personal grievance and so expressed it as to Mr. Powell, yet testified that he would believe him on oath. Then too, the respondent introduced testimony from other reputable citizens saying that they would believe Mr. Powell upon oath, that they had known him for a long number of years, that they had had business dealings with him and that he bore a good reputation. But, let us say for the sake of argument, that his reputation is in the balance, and then we are confronted with the proposition that the only witness, who testified for the complainant as to the facts surrounding the execution of the instrument in question, was the complainant himself and he testified that he never did execute any other mortgage than the Thompson mortgage and the paper which he now seeks to have declared a mortgage, when as a matter of fact upon the introduction of the instrument itself, his attorneys amended his bill of complaint, all of which contradicts him flatly and shows that he has no monopoly. Further on sound memory or strict veracity. Further we respectfully submit that when the Court had read his testimony as to many matters, what he had, when he had it, where he got it from, where we respectfully submit that this would not in any way, one or the other, was not and veracity or for any reason, that it demonstrates questionable. But