

TESTIMONY FOR RESPONDENTS ON REFERENCE:

EXAMINATION OF FRANK B. NIHART, BY MR. GORDON.

My name is Frank B. Nihart, I am a resident of Bay Minette, Baldwin County, Alabama, I have been such a resident for a period of 14 years. I am in the Real Estate business, and have been for about 10 years. Nearly my entire experience during that time has been with Country land. I am acquainted with the reasonable market value of farm land in Baldwin County, and have been familiar with such land since I have been in the business. I am familiar with the land involved, and have known this land since about 1918. The land involved in this case in my judgment is worth about Eight (\$8.00) or Nine (\$9.00) an acre. I became acquainted with the land adjoining the land where these lands are located in about 1914. There was no change in the value of the land in the Community where these lands are located from the time which I first knew the land in 1914 up to the year 1918. In about 1925 the land in this community enhanced in value double and triple in 1926, the prices were up for about two or three years and then broke. I don't think the land today is worth very much more than it was in 1918. This land in my opinion was not much farm land, that is the way I am figuring the value.

CROSS EXAMINATION OF FRANK B. NIHART, BY MR. HOGAN.

In 1917 I didn't know very much about the land in that vicinity, I didn't sell very much land in there. I think that I know what land was worth in 1917, it was about Ten (\$10.00) or Twelve (\$12.00) an acre. It was about 10 or 12 acres of the Bishop land that was clear I don't know whether that was on Howard Bishop's land or the Estate land, I was told that it was on the Bishop land. The Bishop land was kind of sandy, and I don't figure it was worth very much for timber land, it was not much farm land. I know that this cleared land is not good farm land, that is the cleared land that I saw, this was on a 40. I don't know whether that land I was talking about was on Howard Bishop's land or not, they just told me it was Bishop's land. An old man, I think he is dead now, told me that this was Bishop's land. I Couldn't



swear that this is Bishop's land, only I was told that it was Bishop's land. This old man lived there and he gave me a good description of the land, he didn't say which was Bishop's, as a matter of fact, I was not so interested in that. I don't know whether this was Howard Bishop's land or not, I wouldn't swear. I don't think there has been any change in value of the land in 1914 and 1918. The World War, which was fought from 1914 to 1918 didn't effect the value of the land very much, the value didn't increase until 1924 and 1925. It would make some difference in the value of the land where there was timber. On the Bishop's land, there was some Turpentine trees, I don't know whether or not it was Howard Bishop's land, I don't think it was being turpented at that time, I don't remember. I couldn't tell exactly about the value of the land at that time, I wasn't interested in buying the land. The value would be effected by trees, as they are valuable for timber or turpentine. I don't know how many trees there were. When I say the value of land was worth Eight (\$8.00) or Nine (\$9.00) an acre, I mean the trees not being large enough for timber or turpentine. Turpentine was a fairly good price in 1917. I am not acquainted with the N. W.  $\frac{1}{4}$  of the N. W.  $\frac{1}{4}$  and all of the S. E.  $\frac{1}{4}$  of the N. W.  $\frac{1}{4}$  of Section 30 Tp. 6 S. R. 3 E. In the best of my judgment there was not, or I don't remember of there being any old timber on the land. I didn't know the worth of any of this land. Howard Bishop did not point out any of that land to me. The Barkley land was sold during 1926. A couple of miles toward Fairhope some land was sold for Thirty Five Dollars (\$35.00) or Forty Dollars (\$40.00) an acre, this was good farm land.

RE-DIRECT EXAMINATION OF FRANK B. NIHART, BY MR. GORDON.

The land that I pointed out on the map as being in Section 30, Tp. 6 S. R. 3 E, was the same land that had been pointed to me as the Bishop land. I personally know where the Barkley land is, it is Section 25 Tp. 6 S. R. 2 E. The Barkley land just described is just west of the Bishop's land. I think that Judge W. D. Stapleton bought the land that I have been speaking about.

EXAMINATION OF JUDGE. W. D. STAPLETON, BY MR. GORDON.



My name is W. D. Stapleton, and I reside at Bay Minette, Baldwin County, Alabama. I am familiar with the reasonable market value of the land in and around the Bishop's land in this vicinity. In my opinion the land in controversy, and known as the Bishop land, and which is in question today between Howard Bishop and Mr. Powell, was worth between Six Dollars (\$6.00) and Seven Dollars (\$7.00) an acre between 1918 and 1919. I do not know the exact description of this Bishop land, but I know it when I get on it. The land that I am testifying about is the same land that Mr. Powell is in possession of, and claims to have bought from Howard Bishop. I bought the land adjoining the Bishop land from the Barkley heirs, I paid a little less than Eight Dollars (\$8.00) an acre for the same, this I bought in 1926. These lands are of as good market value as the Bishop land. During the boom of 1927, the prices of the land advanced some. I couldn't tell how much land was cleared during 1917.

CROSS-EXAMINATION OF JUDGE W. D. STAPLETON, BY MR. HOGAN.

If the land was all cleared, it would be a little more than Six Dollars (\$6.00) or Seven Dollars (\$7.00) an acre, some was cleared and some uncleared. The more of the land cleared, the greater the value. The cleared land wouldn't be more than Ten Dollars (\$10.00) an acre. I think the land could have been cleared in those days for Five Dollars (\$5.00) an acre. The number of trees and cleared land make a difference if you want it for timber or for farming. I think there was some small timber, I don't think there was any big enough for turpentine, that was all taken into consideration in the land that I bought adjoining the Bishop land. The Barkley heirs do not live here, they live in Camden, New Jersey. They had no personal knowledge of the value of this land. I had a warranty deed to this land. I did not know that Mr. Foley was selling land in that vicinity, I never heard of any land being sold there for Thirty Five Dollars (\$35.00) or Forty Dollars (\$40.00) an acre, I never heard of any being sold for Twenty Five Dollars (\$25.00) an acre.

RE-DIRECT EXAMINATION OF JUDGE W. D. STAPLETON, BY MR. GORDON.



I have been buying and selling land in Baldwin County, for thirty years. I do not own the Barkley land now, I sold it for Ten & 50/100 Dollars (\$10.50) an acre, I sold them during the boom a few months after I bought it.

EXAMINATION OF MR. P. A. PARKER, BY MR. GORDON.

My name is P. A. Parker. I live at Montrose, Baldwin County, Alabama, I have been living there for 17 years. My occupation is that of a Surveyor, I have been a Surveyor in Baldwin County for Thirty years. I know the land located in Section 30 Tp. 6 S. R. 3 E, I haven't seen the land for 15 years, this is the land where Mr. Howard Bishop used to live. The Bishop land, and being the same land in discussion, during the year 1916 was worth from Five Dollars (\$5.00) to Ten Dollars (\$10.00) an acre, depending more or less upon the timber on the land.

CROSS EXAMINATION OF MR. P. A. PARKER, BY MR. HOGAN.

I don't remember of this land being sold in this vicinity in 1917, I couldn't say, I couldn't say anything about the sale in 1917. Land was all about the same price in Baldwin County, improved land is worth more. Level land is worth more than rolling land. To the best of my judgment, the Bishop's land was worth no more than Five Dollars (\$5.00) or Ten Dollars (\$10.00) an acre. I do not know how much timber was on the Bishop land. Land that is in a high state of cultivation is worth more than land in the natural state. It cost money to clear the land, it cost from Fifteen (\$15.00) Dollars to Twenty Dollars (\$20.00) an acre for clearing land, it depends upon how much is on the land, some pay more. The last time I saw the land it was pretty thick with saplings. My judgment is that there is no market value of land in this vicinity.

EXAMINATION OF G. W. JOHNSON, BY MR. GORDON.

I live near Fairhope, and have been living there for about 4 years, I have been living in Baldwin County about 10 years, I resided in Mobile County before I came to Baldwin County, I know where the Howard Bishop property is in Section 30 Tp. 6 S. R. 3 E. The lease you hand me



is the lease that was made for Turpentine purposes on the property of the N. W.  $\frac{1}{4}$  of Section 30 Tp. 6 S. R. 3 E, which said lease was made on the 21st day of September, 1925. I know that there are 1100 cups on the N. W.  $\frac{1}{4}$  of Section 30 Tp. 6 S. R. 3 E. This lease was made to Marlow Turpentine Company, which is the same as Everett & Boykin, we have had leases on the land for eight years, I do not know what has been made from the cups on the Bishop land, I do not know how much of this N. W.  $\frac{1}{4}$  of Tp. 6 S. R. 3 E. was the Bishop property or what was owned by Mr. Powell or what prices were paid in the lease, but they were extremely high for the turpentine business. This is the same property that Mr. Gore had managed for the Marlow Turpentine Company, or Everett & Boykin, which I took over after, or from Mr. Best, who took it over from Mr. Gore. I never knew the lines between the Bishop property <sup>and the Powell lands</sup> well enough to give the exact number of cups on <sup>each of</sup> this property.

CROSS EXAMINATION OF MR. G. W. JOHNSON, BY MR. HOGAN.

I am renting the Bishop land from Mr. Powell. I am paying Sixty Dollars (\$60.00) for the Bishop land; <sup>and 10 acres adjoining on the east</sup> this is the same land that Howard Bishop use to be in possession of, on the South side of the Road in Section 30, that is the land in the Howard Bishop property, the land that Howard Bishop use <sup>ed</sup> to be in possession of. I don't know whether there were 100 or 200 boxes on <sup>ed</sup> Powell's <sup>the</sup> land, there might have been more or less, I didn't know the lines on the lease of September-21, 1925. I can't tell how many of these boxes there was on the land other than the Bishop land, I didn't know the lines. We counted the boxes on the land I do not remember the number of boxes, I have the correct count on every piece of this property. I am not very familiar in Real Estate, I have bought and sold some in that vicinity, in my opinion the land in cultivation should be worth more than woods land, at the present prices of things I couldn't see whether the land was worth very much or not, I don't know what the land was worth in 1917.

RE-DIRECT EXAMINATION OF MR. G. W. JOHNSON, BY MR. GORDON.

Mr. Gordon---"Mr. Hogan considers you as experienced as to the value of such land, what is the reasonable market value of this



land of Howard Bishop."

Ten Dollars (\$10.00) an acre would be a reasonable value of the land in my estimation, but I really don't know the value of land.

The Witness excused until Friday.

EXAMINATION OF R. F. POWELL, ONE OF THE RESPONDENTS IN THIS CASE, BY MR. GORDON.

I am familiar with the property in the N. W.  $\frac{1}{4}$  of Tp. 6 S. R. 3 E, and know there is 76 acres in this property. I am testifying about the same property as in the Bill of Complaint in the Howard Bishop vs Laura A. Powell and Ola Powell case. I took possession of the property on October 12th., 1917. I was familiar with that property at that time, there was approximately ten acres of this land clear at the time I took possession of the land, since then I have cleared more of that land, I have cleared 10 acres since that time. The clearing of that land increased the value of the land. When I took possession of the property, there was a broken down rail fence and woven wire fence which was worthless. I took possession of that property for my wife and daughter, Mrs. Laura A. Powell and Ola Powell. The other portion of that land was just cut over land that had been turpentine considerably for a number of years, and was under turpentine lease for three years at that time I took it to the Marlow Turpentine Company, and that lease covered 1917, 1918, and 1919. I didn't collect any pay for the turpentine right during that time. The Turpentine Lease was made by Mr. Bishop before I came into possession. The Turpentine operation was going on prior to the time I took possession. When I bought the land for my wife and daughter from Mr. Bishop, I bought it subject to this turpentine lease. I do not know exactly, but I think the Marlow Turpentine Company was owned by Mr. Gus Stapleton and George Baldwin at that time. I made my first lease on the property for turpentine operation in 1922, 1923, 1924 and 1925, I leased this land to Everett & Boykin or known as the Marlow Turpentine Company. This is the original lease which is attached, marked Exhibit "A". This lease involves other land besides Howard Bishop land. There were 1200 boxes on the Howard Bishop land, containing 76 acres on the



lease. When this lease expired, I re-leased the land for two years to the same people, that was in 1926 and 1927, and which lease is hereto attached marked Exhibit "B". On the 76 acres there were 1100 boxes, the entire lease was made for Two Hundred Seventy Five & 59/100 Dollars (\$275.59), there was 7968 boxes in the entire lease.

The total amount collected by me on the estate land in 1923, 1924, 1925, <sup>\$66.53</sup> and for the years 1926 and 1927 when leased to Everett & Boykin was ~~Sixty Six & 53/100 Dollars (\$66.53)~~ <sup>\$52.50</sup>. I made a subsequent lease that was made from February 10th., in the year of 1928 which lease is hereto attached marked Exhibit "C". I do not know exactly the number of boxes on the 76 acres. The 76 acres and the 20 acres that I own made approximately 1300 boxes, on the land known as the Howard Bishop land. <sup>were 900 boxes</sup> The balance on my individual land that Howard Bishop is not interested in, a lease was made on a basis of Seventy Dollars (\$70.00) a thousand for a period of three years, and I collected <sup>17</sup> Ten & 50/100 Dollars (<sup>17</sup>\$10.50) for those years under that lease. On the 1/7 interest in the Bishop Estate, that which Howard Bishop sold to my wife and daughter, I want to state that under this lease, the 1/7 interest only contained 15 acres, because <sup>their</sup> Attorney found that the estate did not own 210 acres, but only 120 acres. All that I have testified to, relative to the Turpentine Rights to the land as described in the Bill of Complaint. I have rented the cleared land, I rented that for cultivation. The first year to George Lay, a Brother-in-law to <sup>Howard</sup> George Bishop, this was in 1918, I leased about 20 acres on the adjoining land, the other land was not involved in this litigation. I didn't receive anything for the land that I rented for 1918. I leased this land for 1919, and got Twenty-Four Dollars (\$24.00) rent for 1919. There was about 12 acres rented in 1920, for this I got Thirty-four Dollars (\$34.00), I cannot say exactly to whom I rented it to that year, there was 17 acres cleared that year. The next year, I rented it for Forty Dollars (\$40.00) this was in 1921, to J. R. Horton, there was 20 acres cleared. In 1922, it was rented to Frank Lay, 20 acres cleared. In 1923, I rented it first to a Mr. Weekley and a little later rented it to S



Taylor for Forty Dollars (\$40.00) and 20 acres were cleared in this year. In 1924, I rented it for Forty Dollars (\$40.00), same number of acres were cleared, no additional number of acres cleared since 1919. In 1925 I did not get any rent at all, on account of trouble with the lease, and not being <sup>able</sup> ~~about~~ to get any one to lease the land in time for a crop, and a man fell down on his lease. In 1926, I got Twenty Dollars (\$20.00) from Dan Thompson, he didn't come on the land until late, and he made a complete failure, and he didn't pay me. In 1928, again I rented the land to J. R. Horton for Forty Dollars (\$40.00). In 1929, I rented it to Mr. George Johnson for Forty Dollars (\$40.00), I haven't collected the rent yet.

I have made improvements since 1917. In the winter of 1917, and January of 1918, I put a new woven wire fence around 20 acres, building a fence on the north side, west side and south side. The fence for this land cost me ~~One Hundred Thirty Four & 06/100 Dollars (\$134.06)~~ <sup>\$ 211.75</sup>. There were 300 post, cost Twenty Five Cents (25¢) to the post; to have the labor done, <sup>\$ 25.00</sup> that was done in December of 1917, and January of 1918. The fence is in good condition now. In the same winter, I had 12 acres cleared, that cost Twenty Dollars (\$20.00) an acre, this was a cost of Forty Dollars (\$40.00). I have not received any wood or trees from clearing this land. The next winter, I cleared 5 acres of land. <sup>a cost of \$100.00</sup> The wood and trees were not of any market value at all, at least, I could find no market value for them. The following winter, I had 3 more acres cleared which was Sixty Dollars (\$60.00). This was all the improvements I made on the land.

Mr. Bishop got all total Six Hundred Forty-four & 39/100 Dollars (\$644.39). First we took up a mortgage from C. A. Thompson, and paid One Hundred Fifty-four & 40/100 Dollars (\$154.40), that mortgage was introduced in the testimony of the original suit in this cause. The time we took up this mortgage and the taxes for 1916, <sup>was not paid</sup> we bought the land in 1917, on the 12th day of October. On this day I



paid Fifty Dollars (\$50.00) in cash to <sup>Sammie Cook and \$15.00 to</sup> Mr. Bishop, just a few days later, not over three or four, I paid D. Z. Grove Seventy-five Dollars (\$75.00) for paint, material, etc. A very few days later, two or three maybe, I paid Cook One Hundred <sup>Seventy-five</sup> ~~Fifty & 00/100~~ Dollars (<sup>175.60</sup> ~~\$150.00~~) for work on the boat.

Q--- "Mr. Powell, have you paid out any other money on this property for the purpose of perfecting the title thereto?"

Mr. Hogan-" I object to this question in that it is irrelevant and immaterial. It is not inclosed in the references."

A. "I paid Gertrude Scott Fifty Dollars (\$50.00) and Fifteen Dollars (\$15.00) for Attorneys fees for getting that deed, all total Sixty Five Dollars (\$65.00)."

The clearing of the property, and the fence that I put around the property enhanced the market value of the property. The land was from Seven & 50/100 Dollars (\$7.50) to Ten Dollars (\$10.00) an acre, that is the cut over pine land, not the cultivated land. The cultivated land was worth from Twenty Dollars (\$20.00) to Twenty Five Dollars (\$25.00) an acre. This land has been rented every since we have owned it, we have also rented the house, this house is known as the William Bishop old place, it is across the road, and a different piece of land from this, and also a bit of cleared land with the house. There has been 10 acres cleared on the last tract, and has been rented together with the twenty acres of Howard Bishop land. I have received from One Hundred (\$100.00) to One Hundred Twenty Five Dollars (\$125.00) a year for the house and land, the house and garden usually rents for Sixty Dollars (\$60.00) a year. Two Dollars (\$2.00) an acre is as high as I have ever been able to rent the land for. The trade that I made with Mr. Taylor was that he was to have the house and land for One Hundred Dollars (\$100.00) and if we got a tenant for the house, it would be rented for Sixty Dollars (\$60.00). This was readily rented to Mr. George Johnson for Sixty Dollars (\$60.00). George Johnson



paid Sixty Dollars (\$60.00) for the house and garden, and Taylor paid Forty Dollars (\$40.00) for the 20 acres of land. I do not know of any land that rents for more than Two Dollars (\$2.00) an acre. I know of no land that was sold for more than Ten Dollars (\$10.00) an acre. The money that has been testified as having been made from renting, for the Respondents, and the improvements are as described in the Bill of Complaint, this is the N. W.  $\frac{1}{4}$  of the N.W.  $\frac{1}{4}$  of Section 30 <sup>and</sup> ~~are~~ the <sup>10 acres of</sup> lands that I have testified of.

CROSS EXAMINATION OF MR. R. F. POWELL, BY MR. HOGAN.

I took possession of the land about October 12th., 1917, I simply took possession the same as any man would have. Babe Bishop was cultivating on the 10 acres of land. His corn had not been gathered and his hogs were running over his field and our own field. Babe Bishop was not on that land in 1918. The land was ~~leased~~ <sup>bought</sup> subject to Turpentine <sup>lease</sup> operation. The leases took effect in 1923, 1924, and 1925, all total, I received Five Hundred Thirty-two & 08/100 Dollars (\$532.08). I don't remember the correct date that I got this lease from George Johnson, a year ago perhaps two years ago. The figures are Five Hundred Thirty-two & 08/100 Dollars (\$532.08) These figures are correct, I know that these figures agree with mine, I can produce my figures. The date of this is the 20th day of November, 1922, marked 100 in Everett & Boykin office, it is their office number of the lease. There were 7968 boxes, the boxes were put up on fifty acres of that land in Section 19 described in Howard Bishop's land, and not in the estate land. The land not in Howard Bishop's land is the  $W\frac{1}{2}$  of the  $NE\frac{1}{4}$  of  $NW\frac{1}{4}$  of  $W\frac{1}{2}$  of  $NW\frac{1}{4}$  of  $SW\frac{1}{4}$  and  $N\frac{1}{2}$  of  $SW\frac{1}{4}$  of  $SW\frac{1}{4}$  all in Section 19 TP 6 S R 3 E makes 50 acres in Section 30.  $E\frac{1}{2}$  of  $NE\frac{1}{4}$  of  $NW\frac{1}{4}$ , 20 acres on the 76. I know how many boxes there were on Howard Bishop's land, but I don't have the figures with me, it was made in 1923 when the boxes were hung. Mr. Gore and I made the count. I know there are 1200 boxes were counted on that land, I do not remember the number of boxes, <sup>in state court</sup> without figuring, I can figure it in 5 minutes and tell you exactly how many boxes there are. Sixty Six & 53/100 Dollars (\$66.53) was the amount I received for the 3 years



*my interest in*  
estate  
that I leased the land, and I can figure the number of boxes from the price as stated in the lease. I was paid Sixty-Six & 53/100 Dollars (\$66.53) for the lease of the estate land, paid by check. When you rent land for turpentine operation, they usually give you so much for the thousand boxes, and they pay you the final payment when they are put up and counted, so when the final payment was made, by counting the number of boxes on the estate, at that time they did not give me a separate check. I have that record, I have it at home, Everett & Boykin have a record in ~~their~~ office. I can produce that record. The difference between the number of boxes upon <sup>my land and</sup> the estate land and Howard Bishop's land, I don't remember, I have a record of the exact number, that is of Howard Bishop's land, my land, and the estate land. I can figure the amount of these lands. I cannot remember ~~any~~ <sup>every</sup> little thing that happened ten or fifteen years ago, I will figure it out for you. I can figure the exact amount in five minutes for you. I <sup>can</sup> have the number of boxes by figuring it out, that is how we derived at it at the time the boxes were cut on my land, at the time the boxes were counted. Mr. Garr and his men counted the boxes and gave me a record of it. In 1925, I re-leased those same lands. Personally, I did not count the boxes, the men that were in charge of the turpentine, George Johnson, counted the boxes, he gave me a memorandum. I have the record that he and I made out together, I have the papers, and Mr. Johnson has them too. We made the record out together and he kept one copy, and I kept one. He had the number of boxes on the land, this 110 acre piece. I have the record of who I rented the house to in the year of 1920. I rented the land to J. R. Horton together with the other land. The entire contract with Horton is in writing, I will bring you the lease. I specified what was to be paid for all the land and building and improvements. The building is a nice resident with a garden. That is the William Bishop old place. The house is in good repair, but unpainted. I have had to put a new roof on the house, the house is ceiled, there is four rooms and a big hall way, and a separate building for the kitchen. The house rents separately for Sixty Dollars (\$60.00) a year. I have received this amount for a



a number of years. I rented the house to Johnson separate from the land. I rented the house to Johnson another year. The year that Sam Taylor rented the land, the house was rented. I rented the house to Gore when he was there for Sixty Dollars (\$60.00).

<sup>twice</sup> I put down 300 post, one rod apart, I inclosed a 20 acre tract as long as it is wide, half of a 40 tract, 80 rods long and 40 rods wide. The post went around the entire fence. I made no new fence on the east line. The State or County did not wire it, I paid for the entire fence, I paid 25¢ to set them in place.

It is doubtful if there could be Thirty Dollars (\$30.00) an acre gotten out of the land at the present conditions, I think that it would be a reasonable price. In 1917, the land would have cost Twenty Dollars (\$20.00) for clearing in that vicinity. I think the Howard Bishop land, when I took possession of it was worth <sup>20</sup> Thirty Dollars (\$30.00) an acre <sup>10</sup> for the open land, and \$30.00 an acre for the cleared land.

The mortgage on this property was for One Hundred Fifty Dollars (\$150.00). I don't have the check <sup>paid to</sup> from Donnie Cook. I paid Bishop <sup>15.00</sup> Fifty Dollars (\$50.00) at the same time by cash. I paid D. Z. Grove Seventy Five Dollars (\$75.00) by check, I paid Cook <sup>one hundred</sup> Seventy Five Dollars (\$75.00) by check, I may have the check now. I paid Gertrude Scott Fifty Dollars (\$50.00) for Warranty Deed by cash. I paid Two Hundred Dollars (\$200.00) to George Bourges for that same title, I couldn't get his title for less than Two Hundred Dollars (\$200.00). Bourges lived in Pensacola. There is the Deed from Gertrude Scott.

RE-DIRECT EXAMINATION OF MR. R. F. POWELL, BY MR. GORDON.

<sup>was on the Howard Bishop tract</sup>  
The lands which were cleared belonging to Bishop's Estate or to Howard Bishop or myself, I have not made a penny on any timber other than using a few cords for fire wood for my own use, and all wouldn't amount to more than 10 cords, and for more than 25¢ a cord. Never sold a dollars worth of timber. I let a poor old man cut down a few small poles to burn charcoal, and get a few pennies to get some bread for himself and wife, he didn't burn more than 5 or 10 cords of



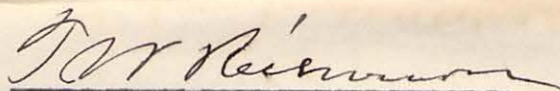
wood. I gave it to him in order that the poor old man could buy some food. Peacock was the man's name.



ORAL EXAMINATION ON REFERENCE:

I, T. W. Richerson, as Register hereby certify that the foregoing deposition on reference was taken down in writing, it was agreed by Counsel that said evidence be taken by stenographer and left unsigned by the Witnesses at the time and place herein mentioned; that I have personal knowledge of personal identity of said witnesses; that I am not of counsel or of kin to any of the parties to said cause, or any manner interested in the result thereof.

Given under my hand and seal, this 24th day of July, 1930.

  
Register.



STATE OF ALABAMA, )  
Baldwin County ) ss.

*Spheeris C*

THIS IDENTURE, made this *10<sup>th</sup>* day of *February* A.D. 1928  
between *R.F. & Ola Powell* of .....

~~and~~ ~~his~~ ~~wife~~ (hereinafter called the Lessor<sup>s</sup>) of  
*Baldwin* County, State of *Alabama* and *Marlow Turp. Co.*  
(hereinafter called the Lessee..) WITNESSETH:

That the Lessor<sup>s</sup> for the consideration hereinafter mentioned, hereby  
leases to the Lessee<sup>s</sup>, *their* heirs, successors or assigns, the pine timber  
standing on the following described lands, lying and being in *Baldwin*  
County, State of Alabama, to-wit:

*W<sup>1</sup>/<sub>2</sub> of NE<sup>1</sup>/<sub>4</sub> of NW<sup>1</sup>/<sub>4</sub> and W<sup>1</sup>/<sub>2</sub> of NW<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub> and N<sup>1</sup>/<sub>2</sub> of N<sup>1</sup>/<sub>2</sub> of SW<sup>1</sup>/<sub>4</sub>  
of SW<sup>1</sup>/<sub>4</sub>, Sec. 19, T. 6 S. R. 3 E., also S<sup>1</sup>/<sub>2</sub> of NW<sup>1</sup>/<sub>4</sub> of NW<sup>1</sup>/<sub>4</sub> and SE<sup>1</sup>/<sub>4</sub>  
of NW<sup>1</sup>/<sub>4</sub> less 4 acres in SW corner, Sec. 30, T. 6 S., R. 3 E., con-  
taining *156* acres, more or less; also an undivided three-sevenths  
interest in E<sup>1</sup>/<sub>2</sub> of NE<sup>1</sup>/<sub>4</sub> of NW<sup>1</sup>/<sub>4</sub> and S<sup>1</sup>/<sub>2</sub> of NW<sup>1</sup>/<sub>4</sub>; and three-sevenths of  
one-half interest in SE<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub>, Sec. 19, T. 6 S., R. 3 E.*

*7342 P.O. into  
PA Powell on 45 acres of land  
#31*

The Lessor<sup>s</sup> guarantee that no part of the above described lands consists  
of United States Homestead Lands not proved up.

The Lessee<sup>s</sup> to have the right of ingress and egress to and from said  
lands and the right to work the pine timber thereon, for manufacturing Rosin and  
and Spirits of Turpentine, with the right to take such of said timber as may be  
~~required to furnish cooperage for said rosin, for the full term of... 3... years~~  
or for less time at lessee<sup>s</sup> option, on all cups hung on said timber. The term  
of working each lot of cups to be gin March *Dec. 31st*, after same are hung. All rights  
of the lessee<sup>s</sup> hereunder shall terminate on or before *1930*

Any tenant hereunder may place any improvements desired on the lands  
hereinabove mentioned not inconsistent with the business for which this lease  
is made, and may remove any or all of said improvements at or before the expi-  
ration of the last of the tenant's right hereunder. Broken cups replaced or  
cups rehung on same faces, when once counted, shall not be counted again. Lessee<sup>s</sup>  
may remove cups and aprons from trees covered hereby.

The Lessee<sup>s</sup> agree to pay to the Lessor<sup>s</sup> *their* heirs, successors or  
assigns, the sum of *Seventy* Dollars per thousand cups hung on said  
timber, payment to be as follows: *Eighty* Dollars, cash receipt of  
which is hereby acknowledged, the balance as the cups are hung and counted each  
season.

For Lessess *three-sevenths* interest as above described, they shall  
receive *three-sevenths* of \$70.00, or \$30.00 per thousand cups.

The Lessor<sup>s</sup> agree that the Lessee<sup>s</sup> may assign this lease, as to  
the whole or any part of said premises for the whole or any part of said term,  
and may place any tenant or assignee thereon, or in possession thereof, without no-  
tice to, or the further assent of the Lessor<sup>s</sup>...

And the Lessor<sup>s</sup> covenant that *they* have full right to  
make this lease and a clear legal title to said premises and that *they*  
will warrant and defend the Lessee<sup>s</sup> in the possession thereof, during the con-  
tinuance of this lease.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and  
seals, the day and year first above mentioned.

Signed, Sealed and Delivered in the Presence of  
*Lewis* } *R.F. Powell* (Seal)  
} *Ola Powell* (Seal)  
} *R.F. Powell atty in fact* (Seal)  
} *Louis A. Powell* (Seal)  
} *R.F. Powell*

*66 acres of this land is on the Hamner Brothers 76 : a*



(If wife signs lease, name her in this acknowledgment)

STATE OF ALABAMA )  
County) ss. I, .....

a .....in and for said State and County, do hereby certify that.....and.....his wife whose name ...signed to the foregoing instrument, and who....known to me, acknowledged before me on this day, that, being informed of the contents of this instrument.....executed the same voluntarily on the day the same bears date.

Given under my hand, and official seal, this the .....day of..... A.D. 192

STATE OF ALABAMA )  
County) ss. I, .....

a .....in and for said State and County, do hereby certify that.....a subscribing witness to the foregoing instrument, known to me, appeared before me this day, and being sworn, stated that .....and..... the lessors therein mentioned, voluntarily executed the same in .... presence of the other subscribing witness, on the day the same bears date; that .....attested the same in the presence of said lessor.. and of the other witness, and that such other witness subscribed..... name ....as a witness in affiant's presence.

Given under my hand and official seal this the .....day of..... A.D. 192

STATE OF ALABAMA )  
County) ss. For value received.....hereby

assign, transfer and set over unto .....successors and assigns, all .....right, title and interest in and to the within lease, and any benefit to be derived therefrom.

Witness .....hand..and seal...this .....day of .....A.D.19

Signed, sealed and delivered in the presence of

.....(Seal)

.....(Seal)

.....(Seal)

TURPENTINE LEASE

FROM

TO

Date.....192

Expiration.....192

.....Acres.

At ..... per thous.



Exhibit A

# TURPENTINE LEASE.

100

STATE OF Alabama  
Baldwin COUNTY.

THIS INDENTURE, Made this 20<sup>th</sup> day of Nov A. D. 1922

between R. F. & Ala. Parrell of the  
County of Baldwin and State of Ala.

Party of the first part and Everett, Boykin and Company, (party of the second part,) of the County of Mobile and State of Alabama.

WITNESSETH, That party of the first part for and in consideration of the rents hereinafter reserved to be paid, and the covenants to be performed by the party of the second part, Has demised, leased and by these presents Do demise and lease unto the party of the second part their heirs and assigns the pine timber now standing on the following lands, to-wit:

W 1/2 of NW 1/4 of NW 1/4 and NW 1/2 of SW 1/4 of SW 1/4 all in Section 19 - T. 6 S. R. 3 E. Baldwin Co. Ala. also SE 1/4 of NW 1/4 and a 1/2 of NW 1/4 of NW 1/4 and SE 1/4 of NW 1/4 less 1/4 a in S.W. Corner, all in Section 30 T. 6 S. R. 3 E. Making 166 1/2 acres less also undivided 1/2 interest in 1/2 of NW 1/4 of NW 1/4 and 1/2 of NW 1/4 and 1/2 of NW 1/4 of SW 1/4 and NW 1/4 of SW 1/4

TO HAVE AND TO HOLD the above described property, with the right of ingress and egress to and from the same, to be used, worked and operated for the purpose of manufacturing Rosin and Spirits of Turpentine for the full term of three years from the date of hanging cups on any part of described tract. The cupping of the timber to start not later than Jan 1923 and be completed by Apr 1<sup>st</sup> 1923

The party of the first part, reserves the right, to clear off and improve any part of said lands, upon paying back the proportional part of costs, of Cupping, unearned.

And the party of the second part does covenant and agree to pay to party of the first part, this their heirs and assigns the sum of Twenty Dollars per thousand boxes, the same to be paid as follows: \$ 200 cash, receipt of which is hereby acknowledged, balance as soon as cups are up and not later than Apr 1<sup>st</sup> 1923

And the said party of the first part does further contract and agree that party of the second part shall be at liberty and have right to assign and transfer this lease, or sub-let the whole or any part of the said premises for the whole or any part of the said term, or place any tenant or assignee upon the said premises, or in charge or possession thereof, without the knowledge and consent of party of the first part.

And the said party of the first part will warrant and defend the said party of the second part in the possession of above described premises, and the right and title to use the same as herein above set forth during the continuance of this lease.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first above written.

R. F. & Ala. Parrell (L. S.)  
By R. F. Parrell (L. S.)

7968 Boxes

200.00  
178  
154.08  
530.08 out of this

6653 was set to remain on the land

46 acres of this lease is on the amount  
an which 12.00 boxes were part of  
27-11-22 a of the land.

Being in all 81 acres  
All in Section 19-46-36  
Baldwin Co Ala



TURBENTINE LEASE

Turpentine Lease

FROM

R F & Alma Parrell  
Fairhope, Ala

TO

Arnette Roy Kin & Co

LOT NO.

Baldwin COUNTY.

Expires 4/1/26

STATE OF Ala  
Baldwin COUNTY.

For value received..... hereby assign, transfer and set over unto.....  
heirs and assigns, all..... right, title and interest in the within lease or any  
benefit to be derived therefrom.

Witness..... hand and seal this..... day of..... A. D..... 19.....

Signed, sealed and delivered in the presence of

(L. S.)

(L. S.)



STATE OF ALABAMA,

*Ex. Exhib. B*

..... Baldwin ..... County )  
(ss.

THIS INDENTURE made this 21 day of September A.D. 1925

between R. F. Powell, and Laura A. Powell, his wife and Ola Powell  
..... his daughter

~~xxxx~~ ..... ~~xxxxxxx~~ (hereinafter called the Lessor.)  
of Baldwin County, State of Alabama  
..... and EVERETT & BOYKIN  
..... of Mobile County, State of Alabama (herein called  
the Lessees) WITNESSETH:

That the Lessors for the consideration hereinafter mentioned, hereby  
lease to the Lessees, their heirs, successors or assigns, the pine timber  
standing on the following described lands, lying and being in Baldwin  
County, State of Alabama, to-wit:  $W\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  and  $W\frac{1}{2}$  of  
N.W.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of N.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  all in Section  
19, T. 6 S. R. 3 E. Baldwin County, Alabama. Also S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$   
of N. W.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  and S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  less 4  
acres in S. W. corner, all in Section 30, T. 6 S., Range 3 E., making 16  
acres, more or less. Also undivided  $\frac{3}{7}$  interest in E.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  of  
N. W.  $\frac{1}{4}$  and S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  and N. E.  $\frac{1}{4}$   
of S. W.  $\frac{1}{4}$  being in all 81 acres, more or less, all in Section 19, T 6 S.  
Range 3 E. Baldwin County, Alabama.

THE LESSORS guarantee that no part of the above described lands  
consists of United States Homestead Lands not proved up.

The Lessees to have the right of ingress and egress to and from said  
lands and the right to work the pine timber thereon, for manufacturing  
Rosin and Spirits of Turpentine, with the right to take such of said  
timber as may be required to furnish cooperage for said rosin, for the  
full term of three (2) years, or for less time at lessees option, on  
all cups hung on said timber. ~~xxxxxxx~~ All rights of the lessees here-  
under shall terminate on or before December 31, 1927.

~~It is understood that in the event party of the first part, the  
lessors, should sell the above property or any part thereof during  
the Spring of 1928 the lessee shall not operate same during 1928,  
lessors, however, shall give lessees proper notice in ample time.~~

Any tenant hereunder may place any improvement desired on the lands  
hereinabove mentioned not inconsistent with the business for which this  
lease is made, and may remove any or all of said improvements at or before  
the expiration of the last of the tenant's right hereunder. Broken cups  
replaced or cups rehung on same faces, when once counted, shall not be  
counted again. Lessees may remove cups and aprons from trees covered there-  
by.

The Lessees agree to pay the Lessors their heirs, successors or assigns,  
the sum of Thirty five Dollars per thousand cups, for all cups hung on said  
timber, payment to be as follows:..... Dollars cash, receipt of which  
is hereby acknowledged, the balance as the cups are ~~xxxxxxx~~ counted ~~xxxx~~  
~~xxxxxxx~~ Payment to be \$275.59 cash. On cups owned completely by lessors  
lessees are to pay three and one half cents per cup and on other property.  
lessees are to pay  $\frac{3}{7}$  of three and one half cents per cup settlement to  
be made when all cups are counted; which is to be as soon as possible.

*Total pay owed on this land 275.59  
46 acres of this land is on the Howard Bishop 76 a. 11000 Bogue  
27 1/2 acres of this land is on Red Land*

66



The Lessors...agree...that the Lessees may assign this lease, as to the whole or any part of said premises for the whole or any part of said term, and may place any tenant or assignee thereon, or in possession thereof, without notice to, or the further assent of the Lessors.....

And the Lessors...covenant that they have full right to make this lease and a clear legal title to said premises and that they will warrant and defend the Lessees in the possession thereof, during the continuance of this lease.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above mentioned.

Signed, Sealed and Delivered in the Presence of  
.....  
.....  
.....  
.....

R. F. Fankle...SEA  
R. F. Fankle...SEA  
R. F. Fankle...SEA  
J. A. Powell...SEA

STATE OF ALABAMA, }  
.....County } SS. I. *Max J. Little*.....

a *Max J. Little*.....in and for said State and County, do hereby certify that *R. F. Fankle*.....and *Anna A. Powell*.....his wife whose name *S.* assigned to the foregoing instrument and who *is* known to me, acknowledged before me on this day, that, being informed of the contents of this instrument *she* executed the same voluntarily on the day the same bears date. Given under my hand and official seal this, the *21<sup>st</sup>* day of *September*.....A.D. 19.....

*Max J. Little*  
Notary Public

STATE OF ALABAMA }  
.....County } SS. I. ....

a ..... in and for said State and County, do hereby certify that ..... a subscribing witness to the foregoing instrument, known to me, appeared before me this day, and being sworn, stated that ..... and ..... the lessors therein mentioned, voluntarily executed the same in ..... presence and in the presence of the other subscribing witness, on the day the same bears date; that ..... attested the same in the presence of said lessor ..... and of the other witness, and that such other witness subscribed ..... name ..... as a witness in affiant's presence.

Given under my hand and official seal this the ..... day of ..... A.D. 19.....

STATE OF ALABAMA }  
.....County } SS. For value received, ..... hereby assign,

transfer and set over unto ..... its successors and assigns, all ..... right, title and interest in and to the within lease, and any benefit to be derived therefrom.

Witness ..... hand ..... and seal ..... this ..... day of ..... A.D. 19.....

Signed, sealed and delivered in the presence of  
..... SEAL  
..... SEAL  
..... SEAL

140  
248  
259  
280  
305  
245  
35 | 275 59  
#38.25  
7874 Box #275-69

#100  
for Renewal  
2 yrs  
R. F. Fankle



HOWARD BISHOP,

Complainant,

-vs-

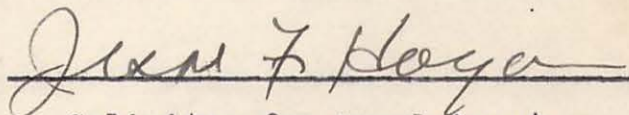
LAURA A. POWELL AND OLA POWELL,

Respondents.

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

INTERROGATORIES PROPOUNDED BY THE COMPLAINANT TO C. V. JOHNSON.

First Interrogatory: In your examination as a witness for the respondent, you testified that you have a correct count on every piece of the Howard Bishop property and the Bishop land. Please state whether or not you have in your possession the count of the turpentine boxes on Howard Bishop's land, viz: The Northwest quarter of the Northwest quarter and the Southeast quarter of the Northwest quarter of Section 30, except four acres in the Southwest corner of the Southeast quarter of said Northwest quarter of said lands, in Township 6 South, Range 3 East. State whether you have the count of the turpentine boxes cut on the Bishop land, being the East half of the Northeast quarter of the Northwest quarter, and the South half of the Northwest quarter, the East half of the Northwest quarter of the Southwest quarter, the North East quarter of the Southwest quarter, the West half of the Northwest quarter of the Southeast quarter, also the Southeast quarter of the Southwest quarter, all in Section 19, Township 6 South, Range 3 East, Baldwin County, Alabama. If you have such count or the "correct count" as you describe it, please mark it Exhibit "A" and attach it to your deposition. Please state the number of boxes cut on each subdivision hereinabove described during each year in which you operated or had charge of the turpentine operations on said lands.

  
Solicitor for Complainant



Said witness resides near Fairhope in Baldwin County, Edward P. Totten, Esq., whose address is Fairhope, Ala., is suggested as being a competent person to take the deposition of said witness.

Jose F. Hoya  
Solicitor for Complainant

30<sup>th</sup> We accept service of the foregoing interrogatories this day of August, 1930, and waive further notice thereof.

Gordon Sampson Boyer  
Solicitors for Respondents



of said witness.  
suggested as being a competent person to take the deposition  
Edward J. Totten, Esq., whose address is ... is  
... witness resides near ... in ... County,

Burleigh  
45  
Pollock

Filed Sept 15/1930  
J. W. ...  
Register

... for complaint  
... and who further ...  
...  
...  
...



The State of Alabama, {  
Baldwin County }

CIRCUIT COURT

To Hon. Edward P. Totten, Fairhope, Alabama:

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. F. Grance and C. V. Johnson~~

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

Howard Bishop

Complainant

and

Laura A. Powell and Ola Powell

Defendant,

on oath to be by you administered, upon interrogatories to take and certify the depositions of the witnesses and return the same to our Court, with all convenient speed, under your hand.

Witness 4th day of September 19 30.

*J. M. Beckwith*

REGISTER

COMMISSIONER'S FEE, \$

WITNESS' FEES, \$



NO. \_\_\_\_\_

The State of Alabama  
BALDWIN COUNTY  
CIRCUIT COURT

Howard Bishop

Complainant

vs.

Laura A. Powell and Ola Powell

Defendant

COMMISSION TO TAKE DEPOSITION

COMMISSIONER:

Hon. Edward P. Totten,

Fairhope, Ala.

WITNESSES:

~~J. F. Crane~~

C. V. Johnson

SEE OVER

Sept. 10<sup>th</sup>, 1930  
Commission  
herewith returned  
unexecuted.  
as no person  
of the name  
C. V. Johnson  
could be found  
at this place  
Edward P. Totten



se F. Hogan.  
Atto. and Counselor at Law  
VAN ANTWERP BUILDING  
Mobile, Ala.

*B. J. Powell*

Hon. F. W. Hare,

Judge Twenty-first Judicial Circuit,

Monroeville, Ala.





ROBT. E. GORDON  
DAVID H. EDINGTON  
NORVELLE R. LEIGH, JR.  
WILLIAM HAMILTON

GORDON, EDINGTON & LEIGH  
ATTORNEYS AT LAW  
1011-15 MERCHANTS NATIONAL BANK BUILDING  
MOBILE, ALABAMA

May 7, 1931

Judge F. W. Hare,  
Judge of Circuit Court,  
Monroeville, Alabama.

Dear Judge:

Mr. Hogan states that you were expecting to hear from me in response to two communications which he addressed to you sometime ago in the Bishop case, in which you had requested that he write a decree. I was fully of the impression that this cause had been submitted, that the Register had held a reference to ascertain certain amounts, that he had reported same to your Honor, that you had made up your mind as to the equities in said cause, and had requested Mr. Hogan to write a decree in conformity therewith. It seems now that he has taken the attitude that no submission has ever been had, no reference has been held by the Register for the ascertainment of certain facts and figures, and that the case is still open for discussion.

If we remember correctly, Mr. Richerson made his report and to which we filed exceptions, and as we thought, Mr. Hogan at least wrote you a letter asking that certain corrections be made in said report. In these two communications now in hand, he is questioning the correctness of certain items which were reported by the Register and which, we were informed, were passed upon by you before



#2

writing a request to Mr. Hogan for a decree.

In the first communication he asserts the proposition that the holders of the instrument in question, even though it be declared a mortgage, would not be entitled to permanent improvements upon the redemption of same. Answering this, we call attention to Section 10145 of the Code which expressly provides for permanent improvements to be embraced in the charges taxed against the party who would redeem. In construing this section, we cite the case of *Wooten vs. Vaughn*, 202 Ala. and on page 684, and quote from said decision as follows:

"Only after an offer to redeem from mortgage foreclosure, accompanied by a tender of the amount required under the statute to effectuate such redemption, and refusal on the part of the person of and to whom redemption is properly sought and tendered, does a purchaser in possession, a junior mortgagee, become liable for waste thereafter committed by him or for accruing rents thereafter collected by him from the lands as owner by purchase."

So it would seem that there are certain prerequisites, and unless they are complied with, the purchaser would be entitled to all of the rents up until the time of redemption. In this case no demand was ever made upon the owners, Mrs. Powell and Miss Powell, for any itemized statement, but a letter was written by Mr. Mitchell to Mr. R. F. Powell, who is not the purchaser, and in which it was stated that Mr. Bishop did not even know what he owed and asked for certain information. This is no demand as is required by law. Furthermore, it was not addressed to the purchasers, and above



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all, it was no offer to redeem, no tender of any money whatsoever, nor has there ever been any tender of any money. The law as to the tender is mandatory, where the mortgagor hopes to save himself from the costs of permanent improvements.

Mr. Hogan also suggests that, and cites an authority on the theory that the letter addressed to Mr. Powell by Mr. Mitchell is binding upon Mrs. Powell and her daughter, and that Mr. Powell's conduct would be a charge against the purchasers to the effect that they repudiated the relation of Mortgagor and mortgagee and denied Mr. Bishop the right of redemption. The facts in this case do not justify this theory on the part of Mr. Hogan, nor will the authority cited be stretched to that extent.

In his last communication, he raises the question that the respondent would not be entitled to interest on his money. In this connection it will be noted, and in conformity with what we argued above, that Mr. Powell was not the proper party to whom said communication should have been addressed, and, as Mr. Hogan expressly says: "Powell did not furnish this information and repudiated the relation of mortgagor and mortgagee and claimed that the other respondents owned said lands free from any claim of the complainant." So it will be seen that prior to the filing of the suit, Bishop was advised that Powell did not own it but that Mrs. Powell and her daughter were claiming it, and yet, he has never made any demand upon either for the amount of the indebted-



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nor has he ever made any offer to redeem from them, nor has he ever tendered the redemption price, nor does he aver or show that Mrs. Powell or Miss Ola Powell ever repudiated Bishop's claim, ever denied claim, or did anything to prevent or excuse him from making a legal tender of money. Mr. Hogan cites no authorities to support this contention nor is there any evidence showing that Mrs. Powell or Miss Powell did or said anything to prevent a tender, and certainly they had a right to protect themselves if suit had been filed.

The case of Arrington vs. Blackwell, et al cited has no bearing or connection with the facts in this case. It is entirely different, as Mrs. Powell has been in Fairhope constantly, Mr. Bishop knew she was there, nor was it shown that Bishop ever had one dollar with which to redeem this property.

The next proposition is that Mrs. Powell and Miss Powell should be charged with rents for the lands, even though said lands were not rented during said years of their possession. In support of this, Mr. Hogan, cites Smith vs. Stringer, 220 Ala. 353, and quoting from that case:

"And if mortgagee was in possession through tenants and failed to keep the property leased, he is accountable for the loss of rents and profits to the extent only that the loss result from his wilful default or gross negligence, which, in such case, is defined as failure to use reasonable care and diligence."

There is not a scintilla of evidence to show that respondents did not use reasonable care and diligence in attempting to keep the property rented, and if they were



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unable to rent it and it was not rented, then it would be very inequitable to charge the purchaser with rent for such period of time as said property was unrented.

We respectfully submit that there is nothing new for the Court to consider in these last questions, and that said claims on the part of Mr. Hogan are without merit.

We respectfully submit that the cause has been submitted, the reference has been had, Mr. Hogan did or did not file exceptions to the Register's report, the Court has studied the case and requested Mr. Hogan to write a decree in conformity with the Court's ideas or right in the premises, and therefore, state that this should be written in accordance therewith.

Respectfully submitted,

GORDON, EDINGTON & LEIGH

By R. E. Gordon  
Attorneys for Respondents

REG/L

C.C. Mr. Hogan



HOWARD BISHOP,

Complainant,

-vs-

LAURA F. POWELL AND OLA POWELL,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

Hon. F. W. Hare,  
Judge Circuit Court,  
Bay Minette, Alabama.

Dear Sir:

The Register's report is not before the writer. For that reason we are unable to check the figures as stated in the proposed decree. We assume, however, that they are correct.

It appears from this proposed decree that the respondents ~~have been~~ <sup>would be</sup> allowed credit for permanent improvements claimed to have been made by them. We believe that the authorities support the proposition that the mortgagee in possession is not entitled to expenditures made for any permanent improvements. This is true even where the mortgagee is rightfully in possession. Such has been the holding of our Supreme Court. In the case of the American Freehold Land Mortgage Co. vs. Pollard, 32 So. 630, 132 Ala. 155, we find the following language, viz:

"The mortgagee is entitled to credit for expenditures in making repairs and paying taxes, and where there are charges for rents for lands, such expenditures should be deducted from those charges. Blum vs. Mitchell 59 Ala. 535. The mortgagee is not allowed to increase the cost of redeeming by reason of improvements as distinguished from repairs, or to be charged with rents or rental values in so far as they represent an increase from such improvements".



#2

The foregoing case was approved in the case of Harris vs. Jones, 188 Ala. 633, 65 So. 956.

A similar rule is laid down in the case of Gresham vs. Ware, 79 Ala. 192, viz:

"When a mortgagee is in possession repudiates his relation as such and claims the property as his own, denying the right of redemption, he will be treated in equity as a wrong-doer and is not entitled to compensation for permanent improvements".

The record in this case shows that the respondents have repudiated their relationship of mortgagee and how bitterly they have contested the assertion of the rights of the complainant. They have placed themselves in the category of wrong-doer, as defined by the foregoing quotation. They should therefore not be allowed any recovery for permanent improvements.

It may be noted, however, that in the case of the American Freehold Land Mortgage Co. vs. Pollard, (supra), no distinction was made between the case where the mortgagee repudiated his relationship and where he did not repudiate such relationship.

In view of the depressed financial condition now prevailing, we suggest that the complainant should be given four to six months in which to redeem the property. According to the writer's information it is very difficult to borrow money on unimproved country lands in Baldwin County at this time.

Respectfully submitted,

*Jesse F. Hogan*



HOWARD BISHOP,	:	
Complainant,	:	
	:	IN THE CIRCUIT COURT OF
	:	BALDWIN COUNTY, ALABAMA.
-VS-	:	
	:	IN EQUITY.
R. F. POWELL, ET AL,	:	
Respondents.	:	
	:	

I, Ursula Tunstall, under and by virtue of an agreement by and between Judge Jesse F. Hogan, as Solicitor for the Complainant, and Robert E. Gordon, as one of the Solicitors for the Respondents, in the above said cause, which is now pending in the Circuit Court of Baldwin County, Alabama, on the equity side, do hereby certify that there came before me, R. F. Powell and Laura A. Powell on the 19th and 23rd of July, 1929, and R. F. Powell on the 3rd day of August, 1929, at the offices of Gordon, Edington & Leigh in the Meaher Building in the City of Mobile, State of Alabama, who are witnesses for the Respondent in the above said cause, and that each of said witnesses, after being duly sworn to tell the truth, the whole truth and nothing but the truth, were examined orally before me by Robert E. Gordon, as Solicitor for the Respondents, and cross-examined by Judge Jesse F. Hogan, as Solicitor for the Complainant, and their testimony was by me reduced to writing, as near as might be in their own language, and which testimony is hereto attached, together with Exhibits "A", "B", "C", "D", "E", "F", and "G", but which is not signed by the witnesses, in conformity with the agreement of the said Solicitors of record as hereto attached. And I further certify that I am neither of counsel nor kin to any of the parties to said cause, nor in any manner interested in the result thereof.

Witness my hand and seal, this 6<sup>th</sup> day of August, 1929.

*Ursula Tunstall* (L.S.)  
Commissioner



HOWARD BISHOP,	:	
Complainant,	:	IN THE CIRCUIT COURT
-vs-	:	OF BALDWIN COUNTY,
R. F. POWELL, ET AL,	:	ALABAMA.
Respondents.	:	IN EQUITY.
	:	

Now come the parties in the above cause, by their respective attorneys of record, and hereby do agree that the testimony of R. F. Powell and Laura A. Powell, witnesses on behalf of the Respondents, may be taken without the issuance of a commission for the taking of their testimony, may be taken in narrative form, and need not be signed by the said witnesses; that such testimony may be taken by Mrs. Ursula Tunstall, and that such testimony on the part of the said witnesses, together with the exhibits thereto attached and marked "A", "B", "C", "D", and "E", respectively, shall be introduced in the submission of said cause, and same shall be taken just as if the regular form as required by law for the taking of testimony had been complied with. In short, it is mutually agreed between the said parties to this cause, acting by and through their attorneys of record, that said testimony of said witnesses shall be introduced and treated in said cause as if every requirement of the law, touching the taking of depositions in such matters, had been complied with.

*Jesse F. Hagan*  
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 SOLICITOR FOR COMPLAINANT.

*Sammy Esmylin Leigh*  
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 SOLICITORS FOR RESPONDENTS.



TESTIMONY OF MR. R. F. POWELL.

My name is R. F. Powell. I am a resident of Baldwin County and I am over twenty-one years of age. Laura A. Powell, who is also a respondent in this cause, resides in Baldwin County, is over the age of twenty-one years and is my wife. Ola Powell, who is another respondent in said cause, is my daughter. She is now married and her name is Ola Powell Malcolm and she resides in Bethesda, Maryland, and she is over the age of twenty-one years.

I know Howard Bishop the complainant in this case and have known him since about 1904 or 1905. I had business transactions with Mr. Howard Bishop for my wife and my daughter touching the lands described in the bill of complaint. There were three transactions.

The first one was in March of 1917. In March of 1917 Laura A. Powell and my daughter, Ola Powell Malcolm, Ola Powell at that time, were taking a drive through the neighborhood where Bishop lives and he approached me to know if I would let him have the money to take up a mortgage that he owed to C. A. Thompson of Bay Minette of \$150.00, which was past due. Albert Thompson handled the deal. I don't know if C. A. Thompson and Albert Thompson are one and the same person or not. I told Mr. Bishop that I didn't have the money to take that mortgage up for him but my daughter, Ola Powell, spoke up and said, "Father, if you think its all right, I can let him have the money", and after talking the matter over between her and Bishop and myself, it was agreed that she would let him have the money to take that mortgage up if the title and property were all right when we saw Thompson. As I remember it, this was on March 7th. Just a few days later, possibly not over two days later, Bishop and I went together to Bay Minette and saw Thompson and after we talked with Thompson about the title and what investigation he had made - Bishop had no abstract of title -



and after talking with Thompson to find out what he knew about the title, Thompson thought the title was all right, I took the mortgage up for my daughter and paid Thompson the money that day and the mortgage was transferred to my daughter, on that day. I herewith hand to the commissioner, to be attached to this deposition, said transfer, to be marked as Exhibit "A", said transfer bearing date of the 9th day of March, 1917, and acknowledged before O. H. Ertzinger on the same date, the consideration being \$154.40 and the transfer being made by C. A. Thompson to Miss Ola Powell. I also hand to the commissioner to be attached to my deposition, the original mortgage made by Howard Bishop to C. A. Thompson, bearing date of the 3rd day of November, 1915, executed by Howard Bishop and acknowledged before Ira B. Thompson, Notary Public, Baldwin County, Alabama, and which mortgage is recorded in the Probate Records of Baldwin County, Alabama, and attached to which mortgage is the note executed by Howard Bishop in connection with said mortgage, for \$150.00, the mortgage and note being payable one year after date.

Then after this - about the first or the middle of August of the same year - Howard Bishop again applied for a loan which he said he wanted to use in the building of a boat that he had under construction on the river. He came to my house at that time and the conversation took place in the presence of my wife, Laura A. Powell. He said he wanted the money to use in the construction of a boat which he said he was building down on the river just below where this land was situated and wanted to give this same seventy-six (76) acres of land as security for a second mortgage on it and when I questioned the propriety of giving - or my wife Laura A. Powell taking - the second mortgage on that piece of land, having already a mortgage for my daughter, he said he would give his interest in the Mary Ann Bishop estate land, which consisted of two hundred ten (210) acres in Section Nineteen (19), Township Six (6)



South, Range Three (3) East, and this other tract was in Section Thirty (30), Township Six (6) South, Range Three (3) East - adjoining sections - he would give his interest in the estate land in addition as security for a second mortgage of \$125.00, and my wife, Mrs. Laura A. Powell, agreed to make that loan to him, and that mortgage was drawn and signed by Howard Bishop about the last of August. I have the original mortgage which was executed at said time by Howard Bishop to Laura A. Powell, covering the lands described in the complaint, which mortgage bears date of the 30th day of August, 1917, was acknowledged before Alex J. Melville, a Notary Public for said County on the same date, and recorded in the records of Baldwin County, Alabama, Mortgage Book 17, pages 481-482, and attached to said mortgage is the original note given as evidencing the debt, both of which are attached to my deposition and marked Exhibit "B".

Following this transaction - within a few days, possibly not over ten or fifteen days - he accosted me on the streets of Fairhope to see if I couldn't let him have additional money on that land, to be applied in the construction of the boat. I don't remember that there was anyone who heard this conversation. I told him that his title he had to this land was a defective title. I had investigated the matter and found that his title not only to this seventy-six acres but to the so called two hundred ten acres of estate land, was all defective and that I couldn't recommend to my wife and daughter to loan any more money on that land, unless it was for the purpose of perfecting his title. I wouldn't loan him any more money to go into the boat. He then proposed to sell them the land and said he would take \$900.00 for the whole thing. I told him I thought the price was too high considering the type of title that he had and made him an offer for my wife and daughter of \$600.00, they to take such title as he had and taking the risk of clearing up the title for them myself. The \$600.00 was to be applied to pay off the



two mortgages and the rest was to be given to him in cash. He declined to accept the \$600.00, saying that he owed a man by the name of Cook, who was at work on his boat, \$550.00 and that after paying the mortgages of \$275.00 - the two mortgages - that that wouldn't leave him enough money to pay off Cook and finish his boat. In fact he said it wouldn't give him enough money to even pay off Cook what he owed him. Two or three days later, I don't remember just how many days, but only a few days later, he came to the house and said that Cook would take less than \$550.00 for his claim on the boat and he wanted me to go down and talk with Cook and possibly we could get together on the price of the land, saying that whatever Cook knocked off of his bill would be taken off of the \$900.00 price that he had put on the land. I went with him down to see Cook and Cook offered to knock off \$150.00 - but \$150.00 would leave him still owing Cook \$400.00 and the \$275.00 due to my wife and daughter would still not bring it within the price that I thought the land was worth - \$600.00 - and so no trade was made on that basis. In two or three days later he came again and said that Cook would take another reduction on what was due him, and he wanted me to go with him again to see Cook. I asked him saying, "Howard, do you know how much less Cook will take?" He said, "I believe we can trade with Cook on a basis of \$250.00 and Cook agreed to finish the boat and put it in the water." He claimed that it would require \$75.00 to buy enough material to finish his boat and \$250.00 to pay Cook and the \$275.00 to pay off the two mortgages would make the \$600.00 that I had offered him for the land. So I went with him to see Cook and Cook did agree that if he could have as much as \$50.00 that day, to reduce his claim to \$250.00 and I drew up a contract between Cook and Howard Bishop to the effect that Cook would finish the boat and launch it in the water, making his

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entire claim \$250.00, \$50.00 of which was to be paid him cash that day and that he would finish the boat within thirty days and launch it, on condition that Bishop furnish him the \$75.00 worth of material at once with which to finish the boat. That trade was made and the contract was drawn between the two - between Bishop, sitting right there on the boat, we drew the contract between Bishop and Cook, conditioned that Cook was to finish the boat and take \$250.00 as payment in full for all of his claim against the boat and was to pay Howard Bishop one dollar a day for each day, after thirty days, that he failed to launch the boat, as damages. Howard Bishop agreed to furnish Cook with \$75.00 worth of material - the building material that they had made up - at once, and for each day that Howard Bishop left Cook waiting for material, he was to pay Cook one dollar. That contract between the two men I drew and they both signed it then and there and turned the contract over to me to hold. When Howard Bishop deeded the land to my wife and daughter, I gave him back that contract and I don't know what became of it. There was no one present except Dommie Cook - he was the man who had the contract on the boat - and Dommie Cook's brother - John Cook, and they are both now dead. They lived at Bon Secour. Mrs. Laura A. Powell was not with me at that time. She was with me the next day when I went down to the boat - I think it was the next day - which was before the deed was executed and delivered. On the same day the contract was drawn between Cook and Bishop I gave Cook a check for \$50.00 for Bishop. I also gave Howard Bishop \$15.00 which he was to come to Mobile at once and buy material for Cook. He was to buy it with the \$15.00 and it was verbally agreed between us that as soon as he executed the deed I would give him the balance of the \$75.00 that he needed for the purchase of material. Howard Bishop came to Mobile with the \$15.00 and got drunk and didn't buy any material for Cook - so he told me. I