didn't give him any more money until he signed the deed and on the day that he signed the deed it was suggested by Cook that the material be ordered through Dana Grove at Grove's Store, just below where they were building the boat on Fish River, and that I agree to pay Grove the balance of the money - the $60.00 that was due Bishop - and we went down to Grove's, Bishop, Cook and myself, and gave him an order for the $60.00 worth of material and he was to 'phone to Mobile and get the material over by the next boat, and I was to pay Grove his money when the material came. When the material came I was notified and went down to see Grove to pay him the money for it and he wanted $75.00 instead of $60.00 saying that Bishop owed him $15.00 and that he wouldn't give the material up until he got the whole bill. I knew that Grove was not entitled to hold this material for Bishop's other bill, but rather than have an argument I gave Grove the check for $75.00, and delivered the material at once to Cook. It was on the same day that I paid Grove this bill that Bishop signed the deed at the boat, we were down at the boat, and I had come down there for the purpose of closing up the transaction with Grove and also closing it up with Bishop, and at the boat the deed was signed by Bishop. The two Cooks were present and they are all that were present, Dommie Cook and his brother, John Cook, and they are both now dead. I think I drafted the deed. I was at home in Fairhope when it was drawn. I had drawn it a couple of days before it was signed. The deed bears the correct date on which it was signed by Mr. Howard Bishop. I have the original deed with me and herewith present it to the commissioner to be attached to my deposition, and marked Exhibit "C", said deed bearing date of the 12th day of October, 1917, and executed by Howard Bishop and acknowledged on the same date before R. F. Powell and conveying the lands described in the complaint to Laura A. Powell and my daughter, Ola Powell, two of the respondents in this cause, said deed

being recorded in Baldwin County, on the 15th day of October, 1917, in Deed Book 26 N. S., page 402. It was paid for with money that belonged to my wife and daughter jointly. The deed expresses the right consideration - the extra $15.00 being the money I paid to Grove which he charged in excess of the $60.00 for the material for the boat. This was done with the knowledge of Howard Bishop. Before it was signed by Howard Bishop I read this deed over to him. I never at any time told him that it was a mortgage. I never at any time stated to or had any agreement with Howard Bishop that the deed just introduced and described was to be a mortgage. On the contrary, the day that he executed that deed he delivered to me the deed which he had from his father and mother to that land and turned over to me possession of the land, subject to a verbal rent contract which he had with his brother, Harold Bishop, who was cultivating a part of the land that year. I herewith present to the commissioner the deed which Howard Bishop turned over to me wherein his father and mother, William Bishop and Mary Ann Bishop, conveyed to him the seventy-six acres in question, and which deed bears date of the 21st day of September, 1911, acknowledged before P. Y. Allbright, Notary Public, Baldwin County, Alabama, on the same date, and recorded in the Probate Records of Baldwin County, in Deed Book 18 N. S., page 324-325, said deed to be marked Exhibit "D". He had this old deed at the boat and turned it over to me there when he signed the new deed.

After he had borrowed the $125.00 from my wife and gave the mortgage to secure same, which is heretofore introduced in evidence, he never at any time borrowed any money from me, or from Laura A. Powell or Ola Powell, on said lands. I at no time ever told Howard Bishop he owed anything on a mortgage after he executed the deed in question, but some time after that, in I think 1918, I had a letter from John Mitchell, a lawyer in Mobile, in which he said that Howard Bishop had requested him to write to me in reference to a mortgage which I, R. F. Powell, held on his seventy-six

acres of land at Fish River. He said that he owed me about six hundred dollars and that he had twelve months from the date of the mortgage within which to pay the claim. I made no reply in writing to Mr. Mitchell, but I saw Mr. Mitchell in person in Mobile and told him that I had no mortgage of any kind against Howard Bishop, except the two mortgages that have been mentioned heretofore, which had been paid off in the purchase of the land. Since that time Howard Bishop has claimed that he thought the deed which he signed in October, 1917, was a mortgage but he never made such a claim until after I got the letter from Mr. Mitchell in June of 1918. I went in actual possession of the land early in November of 1917 - I don't remember the exact date, but early in November, 1917. Harold Bishop, brother to Howard Bishop, had cultivated a part of the land during the year 1917 and had finished gathering all of his crops, except a little corn, and he had a bunch of hogs in the field eating the corn he had failed to gather - cleaning up the land he said - and I bought the hogs from Harold Bishop, including the pasturage in the field that he owned and came into absolute possession of the land. Harold Bishop left the land and turned it over to me with everything on it. I rented a part of the land the following year, 1918, beginning the first of January was when the rent contract began, to Howard Bishop's brother-in-law, George Lay, and he cultivated a part of the land during the year 1918. At the time that I went into possession of the land I was acting for my wife and daughter. I have had possession of the land for them ever since, have never been out of the possession of the land since that time - about November 1st, 1917. I am now in possession of the land. Howard Bishop has never been to see me about the land or ever made demand for possession of the land in person - and the only reference that has been made to the land was the letter of Mr. Mitchell. I did not on the 12th day of October, 1917, present to Howard Bishop a certain written instrument which I represented to be a mortgage on the land described in the complaint, for $600.00, payable in twelve months. Not a word was said on that occasion

6

about the instrument being a mortgage. On the contrary immediately after signing the deed, Bishop turned to Cook and said, "Now my land is sold and if this money don't finish the boat you can see where I'll be." He made no comment that I can remember when I read the deed over to him. I administered to him the question that he knew the contents of the instrument and that he freely and voluntarily signed the same of his own free will and accord. I did not say or do a thing at any time to lead him to believe that the instrument which he signed on the 12th day of October, 1917, was a mortgage. On the contrary what conversation we had after August 30th, 1917, when he gave the $125.00 mortgage - all the conversation we had from that time on was on the question of selling me the land - not on the question of a further mortgage on the land, but on the question of his selling me the land for my wife and daughter. At the time of the signing of the deed there was nothing said about a mortgage and my wife had one mortgage and my daughter had another mortgage on the property at the time and both were unpaid.

Question: Was it ever agreed between Howard Bishop and you that this deed or paper executed on the 12th day of October, 1917, and upon which this suit is based, was a mortgage to you in the sum of $600.00 on the property described therein and that Bishop was to have twelve months from that date in which same was to be paid?

Complainant objected to this question upon the following several grounds: (1) The question is leading. (2) It calls for the legal conclusion of the witness. (3) It calls for the bare conclusion of the witness.

Answer: There was never anything said about this instrument being a mortgage at any time between me and Bishop.

Howard Bishop has at no time since the execution of the paper on the 12th day of October, 1917, asked me how much he owed me, or how much he owed Laura A. Powell, or how much he owed Ola Powell on any mortgage or on any paper. Howard Bishop has never offered to pay me a cent on any paper, mortgage or deed, since October 12, 1917. He has never offered to pay me any money for my wife, Laura A. Powell, or daughter, Ola Powell, since that date on any paper, deed or mortgage.

I heard Howard Bishop testify, when his deposition was being taken in this cause at the office of Judge Jesse F. Hogan, in the First National Bank Building, and before Mr. Bernard Carlin, that he had offered to pay me some money on this transaction and I say that he never did offer to make any payment whatsoever. I sent the instrument which is now in question in this case out to the Probate Court of Baldwin County, Alabama, to be recorded in a day or so after it was executed. The only thing that I ever had from anybody from the 12th of October, 1917, to the filing of the bill of complaint in this cause, stating that the instrument which I claimed to be a deed and which is the basis of this litigation, was considered by anybody or claimed by anybody to be a mortgage, was a letter from Mr. John Mitchell.

CROSS EXAMINATION BY JUDGE JESSE F. HOGAN.

I went to Bay Minette and saw Mr. Thompson and paid him $154.40 for the transfer of his mortgage. The $4.40 being interest accumulated on the mortgage. I paid this by check that my wife had given me for that purpose. It was really my daughter's check but she had left it with my wife when she went on to Washington and that was the check that I took up the mortgage with. It was signed by my daughter to my wife and endorsed by my wife and that was the check I gave to Thompson. The check was filled out by my daughter against the Washington

10

Bank and signed by her for $150.00, and I paid the extra $4.40. It was my daughter's check and it went to her in Washington and I haven't got it. Mr. Bishop was present when this transaction was had. In August, 1917, Mr. Bishop applied to me again for a loan. He wanted $125.00. I told him I didn't have the money myself to make the loan but it was in the presence of my wife and she offered to make the loan. That was about the latter part of August, 1917. That was in our home in Fairhope. My home is about six and one-half miles from Bishop's home. No one that I remember of was present besides myself, my wife and Bishop. When she offered to make that loan I drew the mortgage and the note and we went to the notary public and he signed the mortgage and note and she drew her check and delivered to Bishop for the amount of the mortgage on that day. Mrs. Powell's check went to pay Bishop. I gave him the check. I don't remember what bank the check was drawn on. I am positive it was Mrs. Powell's check.

Ten or fifteen days after the foregoing transaction, Howard Bishop accosted me again on the streets of Fairhope for an additional loan to build his boat. I told him that I had discovered that his title to that land was not good - not a clear title. The defect to Howard Bishop's land was that it was a squatter's title, Mr. Bishop's father had no title to the land and he deeded it to Howard Bishop and Howard's deed came to me. He had been in possession of a part of the land for a very long time - possibly twenty-five or thirty years - but not on all of it - only a little part was under fence and cultivated. Howard Bishop, I think, had been in possession since 1921 when William Bishop deeded it to him. It may have been 1911. I correct it now and say it was 1911. The deed itself shows when it was executed. I told him when he wanted additional money that we wouldn't loan him any additional money on the land to be applied on the building of the boat - that if he wanted to clear the title to his land we would assist him and perhaps let him have some

more, but would not advance him any more money under the title that he had. Although I was not willing to advance any more money on the title to build a boat, yet I was willing to buy the land at a price. I agreed to pay Howard Bishop, for my wife and daughter, $600.00 for such title as he had to the seventy-six acres and to the interest which he had in his mother's estate. This $600.00 was to be first applied to cancel the mortgages which my daughter and wife held against the land already - $275.00 - and the balance to be paid to Bishop cash. It was actually paid that way, that is, that there was paid first $50.00 to Cook and $15.00 to Bishop and then $75.00 to Grove and then $150.00 to Cook and $50.00 to Bishop. I think that makes $325.00. Howard Bishop was anxious to sell me the land at $900.00 but I said this was too much and I would give him $600.00 for it and take such title as he had. He didn't seem to object to taking the $600.00 - except that $600.00 wouldn't pay the mortgages against the land and pay Cook what he owed him to finish the boat - he wanted money to finish that boat. At the start he didn't accept this proposition. The boat was about seven and one-half or eight miles from where I live at Fairhope. I went down to the boat with Bishop to see Cook. No one else went with us. I saw Cook. Cook offered to knock off $150.00. He wanted $550.00 and he offered to settle for $400.00. We did not make a trade that day. I wouldn't raise the offer that I had made for the land above $600.00 and $600.00 wouldn't pay Cook the $400.00 and pay us the $275.00 - so we didn't trade that day. I came back to Fairhope and Bishop stopped at his home.

A few days later Bishop again came to Fairhope to see me and wanted me to go down with him to see Cook and said that Cook would take less than $400.00 - would make another reduction on his claim. I asked Bishop how much he thought Cook would knock off and he said "Cook will

settle for $250.00 and finish the boat". And he further said that it required $75.00 to buy the material which he needed to finish the boat "so the $600.00 that you have offered for the land will pay off the mortgages, pay off Cook and get my material - it will let me out on the boat." He wanted me to go down to see Cook and see if any kind of a trade could be confirmed or made, and we went to see Cook and he agreed to it. Bishop went with me and Cook agreed to take $250.00 provided he got $50.00 that day. I gave him the $50.00 and after a contract between Bishop and Cook had been made and after Bishop had verbally agreed with me to sell me the land at the $600.00, I gave Bishop $15.00 and gave Cook the $50.00 and agreed with Bishop that I would draw the deed and get everything ready in the next day or so, that the transaction might be closed up. Nobody but Bishop and Cook and Cook's brother, John Cook, and myself were present. I went back home after giving them the money - I gave Bishop the money - one ten dollar bill and a five dollar bill - I gave Cook a check - my own check but it was a check that my wife refunded to me - it was a check for my wife and daughter. It was my own check that I gave Cook - on my personal account - but it was refunded to me by my wife immediately when I went home by check on her account. She gave me a check for $50.00, the amount I gave Cook. She later gave me a check for $15.00. A letter went forward to the daughter in Washington explaining to her the trade that had been made and she sent forward her check for her part of this transaction - which was $150.00. She didn't send the $150.00 until I was negotiating with Bishop for this deal for the purchase of the land. The date of this letter to my daughter was about October 11th or 12th, 1917. This $150.00 was to pay the balance on her part due Howard Bishop for the purchase of the land - she had already loaned Bishop $150.00 on a mortgage on that land and now that she and my wife had bought the land she owed another $150.00 toward the purchase of it and that check was to pay her balance on the purchase. I know when my wife gave

me the check for the $50.00 I gave Cook. I don't remember for sure if she ever gave me a check for the $15.00 I gave Bishop. The day that he signed the deed I went down to Grove's and gave Grove an order for $60.00 worth of material for the boat, but didn't give him any money that day at all. When the material came Grove called me over the telephone from his store telling me that the material was there but that he wouldn't deliver it unless we paid him $75.00. I took my wife's check and went down to Grove's Store and gave Grove the $75.00 instead of $60.00. That was my wife's check that I took to Grove. I didn't carry any other checks with me that belonged to her. I paid Cook three or four days later. After Cook got that material Cook fell sick - very sick - and they sent for me to come to the boat and I went down there and Cook and Howard Bishop were wanting to cancel the contract that had been made by Cook and Howard Bishop about the finishing of the boat and Cook had agreed to take $150.00 for the balance due him, instead of $200.00, so he agreed to take $150.00 for the balance due him and throw up his contract - be released from his contract - and Bishop agreed to do it and the contract between them was cancelled and I gave Cook $150.00 that day - a check I gave him against my own account and my wife gave me her check to cover it when I went home. That day I didn't pay Howard Bishop anything. Later I paid him $50.00. I don't remember just where or how this money was paid. I know that I did pay it. I don't know that I have anything in hand - receipt or check - but I think I could find the check. It was on the day I gave Grove the order for the material is the day that he signed the deed. It was not signed on the day that I gave the order but it was signed on the day that I paid Grove for the material. I am pretty sure that that is how it was. I don't say absolutely it was because it was a good long way off - twelve years ago, and it is pretty hard to remember everything but I am quite positive that the deed was signed the day that

Grove got the order for the material and it was two or three days later that Grove was paid for the material. On the day that I gave the order for the material from Grove Howard Bishop and myself were present. We went to Grove's together. I took the acknowledgment to the deed that Bishop signed. I was representing my wife and daughter. All that were present were myself and Howard Bishop and the two Cooks on the day the deed was signed. I drew this deed at home. The deed was dated the day that he signed it and acknowledged it. I knew the description of the land. I had a mortgage on the land which Bishop had given Thompson, and there was another mortgage Bishop had given to my wife for the second mortgage which gave a description of the seventy-six acres and of the two hundred ten acres. I was acting as agent for my wife and daughter. I handled their money in making this mortgage. They relied to a certain extend on my judgment - when Howard Bishop wanted the loan from me personally and I said I couldn't give it to him, my daughter offered to make the loan if I thought it was all right - my wife and daughter left up to me the question of the title and the sufficiency of the securities. They each ratified what I did in this connection and were satisfied. After Howard Bishop signed the deed Dommie Cook and John Cook were both standing present and saw him sign it, he turned to Dommie Cook and said, "Now, Dommie, my land is sold and if you don't finish this boat for me with this money I'm done for - I haven't got any land - the boat is all I have got left." I don't know of any other except ordinary conversation that went on. I took his acknowledgment. I read him the deed and asked him if he was signing this for the purposes and the consideration expressed and understood what he was doing and he said he did and then signed the deed and it was after that he made the remark to Dommie Cook that"now my land is gone, if I don't finish the boat I'm done for." The usual custom when taking a mortgage is to get some kind of evidence - an abstract of title or some kind of evidence to the land. The deeds in

15

his chain of title or something to show that he really has a title to the land that he is offering to mortgage. Howard Bishop delivered the land to me, subject to a verbal lease which his brother, Harold Bishop, had to the land that year - 1917. He delivered possession by simply handing me the deed his father and mother had given him to the land and saying now it is your land, except that Babe - we called him Babe - has some cotton on there and some corn which you will allow him to gather and take from the land, and I said, "of course". By delivering possession I mean the delivery of the deed and saying"the land is yours but don't try to take Babe's crop away from him." I didn't do anything on the land for a couple or three weeks and then I bought Babe's hogs and what remained in the field of his crop and took possession of the land, crops and hogs and everything. Howard Bishop never offered to pay me any of these mortgages. I have read the bill of complaint. He didn't offer to pay a penny in the first bill of complaint, and I don't remember whether he offered to pay any in the amended bill of complaint or not.

RE-DIRECT EXAMINATION BY MR. GORDON.

I know the land described in the bill of complaint in this cause. I knew it on October 12th, 1917. At that time I knew something of the values of land in and about the location where the property in question is situated. I made several inquiries about the values of land in and around the property and also the land in question and talked to Mr. Thompson and Mr. Gus Stapleton about the value of this particular land. With a good title back of the land in question, at that time it could not have been sold for a cash consideration of more than ten ($10.00) dollars an acre. At that time there was very little demand for land of that character in that locality. The taxes on this property in question, and which is described in the bill of complaint, have been paid by Laura A. Powell and Ola Powell, who is now Ola Powell Malcolm, ever

since the year 1917, it being assessed in their names. The deed from Howard Bishop, bearing date of October 12th, 1917, conveying the lands described in the bill of complaint to Laura A. Powell and Ola Powell, and which is attached to my deposition as Exhibit "C", is the deed to which I referred in my testimony as the instrument upon which this suit is based and which deed was executed by Howard Bishop before me as a Notary Public, in the presence of the two Mr. Cooks on Fish River where Howard Bishop was having a boat built. I have never had any other transaction with Howard Bishop embracing or touching a mortgage or a deed, except those which I have attached to my deposition and marked as Exhibits "A", "B", "C" and "D". I now have an interest in the land in question for that, I think it was in 1919, I had a contract with Baldwin County, Alabama, to build a road from Stapleton south eight miles - the contract amounted to eight thousand ($8000.00) dollars - I needed to use some security with the bank to borrow some money on which to carry out that contract and I made a trade with my wife whereby I bought her interest in all that land and since then I have owned a one-half interest in it and Ola Powell Malcolm owns the other half. During the year 1918 and subsequent to October 12th, 1917, up until the time I purchased my wife's undivided interest in said property, I had no interest in the land whatever.

RE-CROSS EXAMINATION BY JUDGE JESSE F. HOGAN.

I have paid the taxes on these lands for my self and daughter since I purchased my wife's interest and prior to that time I attended to the paying of the taxes for my wife and daughter. Usually I gave my own check to pay those taxes - sometimes my daughter would send her check and I would use it. The deed from my wife to me conveying her undivided one-half interest in these lands to me is now of record. I believe the consideration expressed therein is one dollar and other good and valuable considerations. The principal consideration was a piece of bay front property on Mobile Bay in North Seacliff. That was nine (9) acres of land. I possibly could have used that land

as security at the bank if I had wanted to but the other land was more available. All of the land described in the deed was worth more than the land on the bay front. There was very close to three hundred (300) acres described in the deed from my wife to me, which included this seventy-six (76) acres from Howard Bishop.

TESTIMONY OF MRS. LAURA A. POWELL.

My name is Laura A. Powell. I am a bona fide resident of Baldwin County, State of Alabama. I am over the age of twenty-one years and the wife of Mr. R. F. Powell, and the mother of Mrs. Ola Powell Malcolm. I am one of the respondents in this cause. I do not own any interest in any of the land described in the bill of complaint in this cause at this time. I sold it to Mr. R. F. Powell some years ago, giving him a deed therefor. I was living in Fairhope, Baldwin County, Alabama, in 1917 and then knew Mr. Howard Bishop. I heard conversations during this year between Mr. Powell and Mr. Howard Bishop and also talked some myself to Mr. Bishop. The first time was in March in 1917 when he wanted to borrow some money and he wanted to borrow it from Mr. Powell and he didn't have it. My daughter was with us at the time and she told her father that if he thought it was all right that she would lend Bishop the $150.00 that he wanted to take up a mortgage to Mr. Thompson, and after she had talked with her father about it she agreed to let him have the $150.00 and take a mortgage on the seventy-six acres of land - this $150.00 was to take up the Thompson mortgage. Then my daughter went away and Howard Bishop kept wanting to borrow more money fromMr. Powell and every time we would pass his place he would flag us down and he came to our home - we would find him on the front porch mornings wanting to borrow money. Then Howard

Bishop asked me if I would lend him some money and I loaned him $125.00 and took a second mortgage, I believe it was. My daughter had a first mortgage. After he got that money he didn't bother us for a while - this was in August, but in September he wanted some money to finish a boat and he wanted to borrow more from us and in the meantime we had learned that the title was not just right and we wouldn't make another mortgage with the title like it was and we had this money in the land and we offered to buy it and take the title as it was. He wanted the money but we couldn't lend him any more unless he would use the money to clear up the title and he wanted it to build a boat. This was in September, and in October of the same year we made him an offer to buy the land - we wouldn't take a mortgage in the condition it was in - and offered him six hundred ($600.00) dollars and pay the difference in cash - the difference in what we had loaned him and pay --- at the time that I am talking about I was with Mr. Powell -- I was with him when we agreed to let him have the $125.00 and I was with him when we bought the land and Howard Bishop accepted the six hundred ($600.00) dollars for the land. I was not with him at the time the deed was made. I was with him when the trade was closed. I was with him at the time the agreement was made and at the time the $15.00 was paid to him by Mr. Powell and at the same time Mr. Powell paid for me this Cook - Dommie Cook - $50.00. When he made the trade with Howard Bishop we were down where he was building the boat and we went home after this. We did not go down to Grove's on that trip - we went home. At the time that the matter was discussed with Mr. Bishop at the boat and when the agreement was made to sell the property, there was not a word said about a mortgage. I did not know that Mr. Bishop ever claimed this to be a mortgage until Mr. Powell got the letter from Mr. Mitchell. I never did tell Mr. Powell to lend Mr. Bishop any money and take a mortgage at any time. With reference to the agreement between us and Mr. Bishop, there was not one word said about a mortgage. There was not a thing

said about it being a mortgage for six hundred ($600.00) dollars and payable in twelve months. Mr. Bishop has never offered to pay me any money since that time to pay anything. At the time the trade was made he told us about his brother Harold - or Babe - he said the land was ours, subject to this agreement with his brother - his brother had rented the land from him and had a crop growing on it. I don't know whether Babe Bishop had anything planted there or not. When we bought out his interest and got possession of the land by buying his stock that he had on there that he was pasturing on what he had, I suppose, raised on it - we went into possession. Myself and daughter were in possession. Since that time Mr. Lay, a brother-in-law of Howard Bishop's, was in possession of the property and we leased it to him. We have been leasing it ever since. We had a man by the name of Horton on there - and there were others. No one has ever disputed our right to possession of that property since then that I know of. I saw the property last about two or three weeks ago. It is fenced. We put the fence around it. A man by the name of Horton is cultivating it now. Mr. Horton is paying a cash rental for it to Mr. Powell and my daughter, Ola Powell Malcolm, as they now own it. There was nothing said at all about a mortgage at the time we were down at the boat with the Mr. Cooks and Mr. Howard Bishop.

CROSS-EXAMINATION BY JUDGE JESSE F. HOGAN.

When Howard Bishop approached us for the third loan we were not willing to lend him any money unless he used it to clear the title. No amount was mentioned that we were willing to lend for that purpose. He just told us he wouldn't use it that way. Subsequent to this we offered to buy the place. I was with Mr. Powell when he made the offer. We were down on Fish River at the boat. The offer was made in the presence of myself and Mr. Powell and Howard Bishop and these other two men - - I never did know their names. Howard Bishop said nobody else would want the land with that title

and he might just as well sell it. At this time that the trade was made there was the $15.00 given to Howard Bishop to buy material for the boat and there was $50.00 given to these men - Cook was their name. We were willing to pay $225.00 for Howard Bishop's bad title - we didn't see any other way out because we had loaned this money on the land. We went into possession of the land and Mr. Powell finished paying for it. We didn't do anything to go into the possession of the land except that we were told that it was ours. Mr. Horton has the lease now for 1929. I couldn't tell when we leased it to him before - about two years before this, I guess. We leased it to him then for one year. There was a man by the name of Henderson from Bay Minette, I think, that we leased it to. I couldn't tell you just the year - I don't remember those things - it was prior to the leasing of it to Mr. Horton for the first time. I just couldn't tell you when he was there - I can count it up. I can't remember just the years that certain persons had the land. I might study it out - but I know we were in possession and we have had the land leased every year - it has not been idle a year since we have had possession. We leased Horton a field that is cleared in the seventy-six acres that is now in question in Section Thirty (30), Township Six (6). Henderson cultivated the same land. We have leased it every year. I didn't come in contact with those people who leased it very much - Mr. Powell acted as our agent. I remember some of their names - there was a man by the name of Johnson who cultivated a part of it one time. he leased it one year. I think Johnson cultivated a part of the land that Mr. Powell got from Mrs. Lay - I think it was the Howard Bishop land. I guess I will just say I don't know. I would be willing to swear that we have been in possession of the land and leased it and collected the rents - now what difference does it make about who did it? I don't know who else we leased the land to. Mr. Powell acted as my agent in handling this land when we leased it. I think it was in 1919 that I sold the land to

Mr. Powell. I don't know what date it was. I believe it was in 1919. I don't know whether it was or not but the deed will show it. There was no money consideration - I just traded it for some Seacliff property - there were several acres at Seacliff. It fronted on the bay. I don't know what this frontage is. I made this conveyance to Mr. Powell for the purpose of enabling him to get credit on his road contract.

RE-DIRECT EXAMINATION BY MR. R. E. GORDON.

I am the wife of Mr. R. F. Powell. He usually transacts my business for me. In the transaction with Mr. Howard Bishop about the deals we both talked. Mr. Powell finally closed the deal. I knew before that that he was going to make the deal for Ola and myself. Mr. Bishop told us his brother, Harold Bishop, was cultivating this land. I went out there while Harold was cultivating it. I saw him cultivate it and I heard the trade that was made - I was with Mr. Powell when he bought Harold out - his hogs,and I laughed at him for buying the hogs. Then Harold moved off. The next year Mr. Lay cultivated it. He was my tenant.

RE-CROSS EXAMINATION BY JUDGE JESSE F. HOGAN.

We bought the land in 1917 and in 1918 we built a road through there and a fence on either side of the road. The Howard Bishop land is on one side of the road and this new fence that we put up ------ We built and re-built the other fences. I don't remember just how much we did built - but I know we built all of that on the line where the road is and I am quite positive across one end of it and we may have re-built some of it - I think we did. I am talking about the seventy-six acres.

Further testimony of Mr. R. F. Powell.

(The Plaintiff reserves the right to object to re-direct examination of Mr. Powell on the following several grounds: (1) That he has already been examined by the Respondents. (2) Since testifying he has read the testimony of Complainant's witnesses.)

I know George Lay. He is a brother-in-law to Howard Bishop. I had conversations off and on with George Lay in regard to the Bishop deal. I did not at any time tell George Lay that it was a mortgage. I never did tell George Lay that at any time Howard Bishop would pay the six hundred dollars and interest that he could get his land. I do not remember of having any conversation with George Lay touching this matter at any time from the date the deed was executed to the date of the filing of the suit. I did not at any time, while George Lay was chopping down a tree near a mail box on the land, have a conversation with him about this matter, or tell him that any time Howard Bishop would pay me back the money and the interest that he could get his land back. Mr. John E. Mitchell never did offer me any money to pay up this deed or what Mr. Bishop says was a mortgage. I never did have any money offered me by anybody for myself, or Mrs. Powell or my daughter in payment of any debt claimed to be owed me by Howard Bishop. I don't remember of ever having any conversation with George Lay at the time he was cutting a tree down by the mail box - I don't remember his ever cutting down a tree by the mail box. I might say further that there was no tree near the mail box, the mail box stands near the corner of the farm and it is cleared around to the northeast, to the southeast and to the southwest from that mail box, all cleared land - no trees near it, and the land to the north of the mail box don't belong to Bishop or Lay or any of them, belonging to a man by the name of Shelton.

Cross-examination by Judge Hogan.

I read a little of George Lay's testimony just a little while ago. I scanned over a few pages of Bishop's testimony.

Mr. Mitchell never tendered me any money on account of this controversy. He never offered to pay me any money. He wrote to me, and I still have the letter, and said that Howard Bishop claimed that he owed me a mortgage of about six hundred dollars and he would like for me to write to him and tell him all about the mortgage, what the amount due was, etc. It was just a little short letter. I have the letter in my car, and that is all I ever had from Mitchell in regard to any mortgage from Howard Bishop, or any money of any kind. I have the letter but I find I haven't it here. I will attach it to my deposition, marked Exhibit "G". I made a verbal reply to Mr. Mitchell in regard to this letter. It was to the effect that I didn't hold a mortgage against Howard Bishop. That my wife and daughter didn't hold a mortgage against him, except the two mortgage which had been taken, one from Thompson by my daughter for $150.00 and a second mortgage that my wife had taken from Bishop for $125.00, but that Bishop didn't give me any mortgage at the time the deed was given or there wasn't anything said about that being a mortgage. There was never any sum tendered me by either Bishop or Mitchell. Mr. Mitchell didn't tell me that he wanted me to reconvey the land. He said very little other than what I have told you that he said. I told him I didn't hold any six hundred dollar mortgage against Bishop, that I had a deed from Bishop to the land. I told him that I had a deed to the land, and didn't have a mortgage. I told him there had never been any controversy between me and Bishop with regard to the nature of that instrument. I don't remember that I talked with Mr. Mitchell about reconveying the land and being paid six hundred dollars by Bishop. He wrote to me asking me to let him know the amount of the mortgage which

24

Bishop claimed that I held against him. He didn't tell me Howard Bishop wanted to redeem the mortgage. He just wanted to know about the mortgage and about six hundred dollars which Howard Bishop claimed that he owed me. He asked me for a statement of I think he said when the thing was due and the amount that he claimed. I never furnished him that except verbally when I told him that I didn't have any mortgage of any kind against Bishop. I didn't furnish him any written statement.

Question: Did you ever furnish Mr. Mitchell or Mr. Bishop any statement in reply to Mr. Mitchell's letter?

Answer: There was no indebtedness.

I did not furnish Mr. Mitchell any statement either orally or written of any indebtedness due from Howard Bishop to me. I told Mr. Mitchell there wasn't any indebtedness. The question of reconveying the land was not raised.

Question: Were you willing or not at that time to reconvey that land to Howard Bishop?

Answer: The land was not mine, it belonged to my wife and daughter.

My wife never did convey that land to me. I testified the other day that she did but I was mistaken in regard to it. I don't know whether my wife and daughter would have been willing to reconvey at the time I talked with Mr. Mitchell because I had not discussed it with them. My wife was in Fairhope, my daughter in Washington and I was in Mobile. I got the letter in Fairhope. I did not discuss this matter with my wife when I got the letter. I don't remember if my wife saw the letter. That has been twelve years ago, Mr. Hogan, and it is absolutely impossible to remember every little conversation. I don't remember if I told her about the letter or not. I do not know whether she was willing at that time to reconvey the land - not before I talked to Mitchell. The land is for

sale if Mr. Bishop wants to buy it.

Question: What would you want for it?

Answer: He would have to ask my wife and daughter who own the land for I could not answer that question. They have not told me the price they want for the land. The land really has not been in the market since this suit was filed because of the condition of the title. They did not tell me how much they wanted for it. They did not tell me directly that the land was for sale. I have a very general authority to contract business for them. I told you that I couldn't sell that land and I haven't been offering it for sale because of the fact that this suit puts it really out of the market. We would be very glad to get rid of it if the title was in such shape that we could.

Question: Would you accept six hundred dollars and interest from the date of the transaction with Howard Bishop for the land?

Answer: I would have to consult them. I don't think I have ever discussed with either Mrs. Powell or my daughter whether they would reconvey these lands upon being repaid the amount of money they were out, with interest. They have never said whether they would be willing to reconvey these lands to Howard Bishop upon being repaid all that they were out, with interest. I don't know whether they would be willing to so reconvey the lands or not. I know that we have all of us been very sorry that we ever put any money into it.

Question: You would be perfectly satisfied to get your money back with interest, would you not?

Answer: It would take a good deal more than six hundred dollars, and the interest on six hundred dollars, to give us back our money.

Question: How much more would it take?

Answer: At the time my wife and daughter bought that land the fence around the place was down, worthless almost. We put a fence up. I don't remember off hand how much it cost. There is three quarters of a mile of good fence there now, which cost at least three hundred dollars. There has been more than ten acres of land cleared on the place, in addition to what was cleared at the time that they bought it and the clearing of that land is worth at least twenty-five dollars an acre - two hundred fifty dollars at least for the clearing. Since they bought the land we have cleared the title to the land. My wife and daughter bought the title of record. They bought this from a woman by the name of Gertrude Scott and from her nephew, whose last name is Burgess, I don't remember his first name. We paid two hundred dollars for it. The fence was built before the suit was filed. It was built during the winter of 1917 and the spring of 1918. The land has been cleared from time to time and the beginning was made that winter of 1917 and 1918. That winter we cleared something like two acres. I am not sure whether the two acres were cleared in 1917 or 1918, it was cleared in the winter of 1917 and 1918. Just off hand it is pretty hard to say just when the next piece was cleared. My best recollection is two more acres in the fall of 1919. The rest of it has been cleared since that time. I couldn't give you the exact date we bought the record title. My recollection is that it was in the winter of 1917 or the spring of 1918. I did not have any agreement with Howard Bishop to buy that title. I offered to loan Howard Bishop the money to buy those titles in if he would clear up his title, before I bought the land.

ATTORNEYS AT LAW
511-15 MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA

Filed Feb 25 1930
Pardue Register

Honorable T. W. Richerson,

Register in Chancery,

Bay Minette, Alabama.

ARD BISHOP)Circuit Court
VS.)Baldwin County
RA A. POWELL, ET AL)Alabama.
- -
ositions of:
tie Louise Schaaf
ert J. Taylor,
nesses on behalf of Respondents.

Maree Layton
Commissioner

SEAL

Marie Layton
COMMISSIONER

SEAL

Marie Layton
COMMISSIONER

SEAL

Marie Layton
COMMISSIONER

HOWARD BISHOP, Complainant vs. LAURA A. POWELL, et al, Respondents.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.

AGREEMENT BETWEEN COUNSEL

Comes now Jesse F. Hogan, Esq., Solicitor for the Complainant, and Gordon, Edington & Leigh, Esqrs., Solicitors for the Respondents, and agree that the testimony of Mattie Louise Schaaf and Albert J. Taylor, witnesses for the Respondents, may be taken by Marie Layton without a commission, and that she shall swear said witnesses and take their testimony in narrative form, and that said depositions of said witnesses may be used by said parties just as though they had been taken under a commission duly issued out of the Circuit Court of Baldwin County, Alabama. And that no objection shall be taken to any of said depositions upon the ground that no commission was issued to take such depositions, nor that they were not signed by the respective witnesses, nor that said depositions were not read over to the respective witnesses by the Commissioner.

Jesse F. Hogan
Solicitor for Complainant

Gordon Edington Leigh
Solicitors for Respondents

TESTIMONY OF MATTIE LOUISE SCHAAF

My name is Mattie Louise Schaaf. I have been living at Fairhope sixteen years. I know Mr. Powell and have known him for a period of sixteen years. I know his general reputation in the community in which he lives. His reputation is good. Upon that reputation, I would believe him on oath.

CROSS-EXAMINATION

I took care of Mr. Powell when he was sick about nine years. I have had deals with him since then. I have heard somebody discuss his reputation. Discussing politics was the only time I heard anything against him. I heard something against him then. They advised me not to believe what he was telling me. That was the only time I have ever heard his character discussed. Since that time, I have spied on Mr. Powell for four years and set traps for him. What I am saying about Mr. Powell's reputation depends on my knowledge of him.

Mr. Hogan -- "I move to exclude that his reputation is good, on the ground that she has no knowledge of his reputation, and on the further ground that this testimony is all her own knowledge."

I am an osteopath, and have been practicing there sixteen years. Mr. Powell was one of my patients for nine years.

RE-DIRECT EXAMINATION

Mr. Gaston was the one who told me to watch him in politics. They were not friendly at that time.

Mr. Gordon -- "At the time and during the time which you were spying on him and laying traps for him, did you ever find anything wrong that he had done?"

Mr. Hogan -- "I object to that in that it is irrelevant and immaterial. It does not call for the reputation of the party."

I never found a thing wrong. During the time I was laying traps and making investigations, I talked to others about him. These people with whom I talked were residents of Fairhope.

HOWARD BISHOP,	)	
-vs-	)	IN THE CIRCUIT COURT OF
LAURA A. POWELL, et al.,	)	BALDWIN COUNTY, ALABAMA.
Respondents.	)	

AGREEMENT BETWEEN COUNSEL

Come now Jesse F. Hogan, Esq., Solicitor for the
Co[illegible]n, Edington & Leigh, Esqrs., Solicitors
fo[illegible]imony of T. J.
L[illegible]tnesses for the
[illegible] Boyd, witnesses for
[illegible]rt without a commission,
[illegible]d take their testimony
[illegible]ns of said witnesses
[illegible]gh they had been taken
[illegible]e Circuit Court of
[illegible]objection shall be taken
[illegible]ound that no commission
[illegible]or that they were not signed
[illegible] said depositions were not
[illegible] by the Commissioner.

[illegible] F. Hogan
[illegible]olicitor for Complainant

[illegible] Edington & Leigh
Solicitors for Respondents.

Filed Jan 3

TESTIMONY ON BEHALF OF PLAINTIFF.

EXAMINATION OF T. J. LOWELL, A WITNESS FOR PLAINTIFF, BY MR. HOGAN.

My name is T. J. Lowell. I am a resident of Fairhope, Baldwin County, Alabama. I have lived right in Fairhope going on seven years. I have lived just outside of Fairhope over thirty years. I know Mr. R. F. Powell. I have known him every since he has been in Fairhope, I reckon it is over twenty years. I know his general reputatio in the community in which he lives. I know his reputation for truth and veracity. His reputation for truth and veracity is bad. In a case in which Mr. Powell was interested I would not believe him on oath.

CROSS EXAMINATION OF T. J. LOWELL, A WITNESS FOR PLAINTIFF, BY MR. GORDON.

I would believe Mr. Powell ordinarily. I heard E. B. Gaston Earl Perkins, Jack Titus and others, I could not give you the names of all. Just in a conversation with Mr. Gaston I heard him say that Mr. Powell would not do. I never heard him say that he would not believe Mr. Powell on oath. I never heard him call him to that point. I have heard Mr. Titus say that he would not believe him on oath. Since I have been notified that I was to testify as a character witness against Mr. Powell I have heard Mr. Titus say that he would not believe him on oath. I don't remember exactly how the conversation came up. I couldn't say what I said to him. This is kind of a bitter pill for a man to swallow, whenever he is called on to tell the truth he has got to tell the truth. Mr. Powell and I have never been at outs. We have always been good friends. I have never visited his home, neither has he been in mine. When I worked for him he treated me fairly and squarely. He paid me what he owed me. I have heard about his cheating a good many, among them the Bishop's in this case and the other Bishops. I am a good

friend of Mr. Howard Bishop. He brought me up here as his witness and I was subpoenaed by him to be a witness here today. (He produces subpoena.) Mr. Gaston and Mr. Powell are not very friendly. His moral character is all right, ordinarily I wouldbelieve him but not in a business deal. Is a man's moral character all right if he will swear to a lie? I object. Irrelevant and immaterial, calls for the bare conclusion of the witness. I don't think it would exactly. He has never lied to me that I know of. I am swearing what the community says about him. I state that his wife, Mrs. Powell, is worthy of belief. I haven't heard a thing about her in my life. I have never heard Mrs. Powell's reputation for truth and veracity discussed.

EXAMINATION OF CHARLES LOWELL, A WITNESS FOR PLAINTIFF, BY MR. HOGAN.

My name is Charles Lowell. I am a resident of Fairhope, Baldwin County, Alabama. I have lieved in Fairhope all my life. I know Mr. R. F. Powell. I have known him every since he has been in Fairhope I don't know just how long it has been. I know his general reputation in the community in which he lives. I know his reputation for truth and veracity. His reputation for truth and veracity in a transaction in which he is interested is bad. I would not believe him on oath in a matter in which he was personally interested.

CROSS EXAMINATION OF CHARLES LOWELL, A WITNESS FOR PLAINTIFF, BY MR. GORDAN.

My business is farming. I have heard a number of people, Earl Perkins, Jack Titus, E. B. Gaston, Walter Walthall, I believe that is his name. Mr. Gaston said he would crook you in a business deal if you did not watch him. I don't know whether they are friendly or not. Mr. Titus has never said anything directly to me about him. Mr. Walthall said you would have to watch him in a business deal. I

do not remember all that Mr. Walthall did say. I don't suppose it has been over a year since I had that conversation. The conversation was in Fairhope. Do you know what your own general reputation is? I will not answer the question. I am the same Mr. Lowell that was in the vehicle with Mr. Keller when he was shot and killed when arrested for violating the prohibition law. I am friendly with Mr. Powell. Mr. Powell has never crooked me out of anything. I do not absolutly know that he has crooked anybody out of anything, it is the general talk of the community. I have not had a conversation with Bishop about this case say for about two years. Mr. Bishop asked me sometime last year if I would come and testify that I would not believe Mr. Powell on oath. I don't remember where I was when Mr. Bishop asked me. I was in Mobile last Friday to testify. I was subpoenaed here today. Howard Bishop brought me here. I came freely and voluntarily on the strength of the summons and have never received any pay from Mr. Bishop. I was arrested for violating the prohibition law but they had no evidence against me and when the case came up it was thrown out. I am forty years old, have been arrested three times, twice for nothing and put in jail and the other time for cussing before women folks. That time I paid a fine of five dollars.

EXAMINATION OF DAN THOMPSON, A WITNESS FOR PLAINTIFF, BY MR. HOGAN.

My name is Dan Thompson. I live in Baldwin County, Alabama, near Fairhope. I have lived at my present residence one month, but I have lived on Mr. Powell's premises two years. I know Mr. Powell. I have known Mr. Powell two years. I do not know his general reputation in the community in which he lives. Do you know what people say about him in the community in which he lives? Objection on the ground that it calls for irrelevant,immaterial and incompetent testimony, the witness already having testified that he did not know his general

reputation. I do. Do you know what people say about him with reference to truth and veracity in the community in which he lives? The Respondent objects to the question on the ground that it calls for irrelevant, immaterial and incompetent testimony, the witness already having testified that he did not know what the general reputation was. I do. What do they say about his reputation for truth and veracity? Objection on the same grounds as above stated. They say that he would defraud and not tell the truth. The Respondent moves to rule out the answer to the question on the ground that it is the opinion of the witness and is irrelevant, immaterial and incompetent testimony. Knowing his reputation would you believe him on oath in a matter in which he is interested? Respondent objects to the question on the ground that it calls for irrelevant, immaterial and incompetent testimony and the witness has testified that he did not know his general reputation, neither did it show how extensive is his acquaintance with Mr. Powell's reputation. I would believe him on oath.

CROSS EXAMINATION OF DAN THOMPSON, A WITNESS FOR PLAINTIFF, BY MR. GORDAN.

I worked with him two years on his property. He did not treat me right. The last year he endorsed a note on a pair of mules and foreclosed before it came due. That was on the 13th., of December, and I left the first of this year. The note I have reference to was made payable to the Bank of Fairhope and payable on November 28, 1929, and was endorsed by Mr. R. F. Powell. When it became due I had it extended by the Bank until December 28, 1929, by paying nine dollars and interest. Mr. Powell paid that note. He paid it on the 13th., of December. I have another note that I gave Mr. Powell which noteis at home. That note was for a mare I bought from Mr. Powell and which is included in the notes I gave to the Bank of Fairhope. That note was due June 23, 1929. He foreclosed on his note which was a second mortgage.

Mr. Powell sent the law after the animals I speak of and attached them. He sent Mr. Steele of Fairhope. He is a wood-rider for Mr. Gooden and marshall of the town of Fairhope. The note I owed him due last June was never paid. That note covered the mules described in the notes which I gave to the Bank of Fairhope and they were covered in the same mortgage. Did you have an understanding with Mr. Powell about your note due him last June? Yes, it was a second mortgage.

TESTIMONY ON BEHALF OF RESPONDENT.

EXAMINATION OF V. M. REYNOLDS, A WITNESS FOR RESPONDENT, BY MR. GORDAN.

My name is V. M. Reynolds, I reside at 1400 Center Street, Mobile, Alabama. I am a little over the age of twenty-one, being about forty-two. I lived at Fairhope from 1912 to four and one-half years ago. Since then I have been in the habit of going to Fairhope about twelve times a year. I know the general reputation of Mr. R. F. Powell in the community in which he lives and that his reputation is good. I would believe Mr. Powell on oath. I am now a roofing contractor in the city of Mobile. I was a farmer and citrus grower and part of the time was manager of the Peoples Co-Operative Store in Fairhope, during that time I had considerable dealings with Mr. Powell. In giving my testimony as to the general reputation of Mr. Powell, what the people say, taken in connection with what I know of him personally is the basis of my testimony.

CROSS EXAMINATION OF V. M. REYNOLDS, A WITNESS FOR RESPONDENT, BY MR. HOGAN.

I am a friend of Mr. Powell as I am a friend of most every one in Fairhope. I am not related to Mr. Powell and not connected with his family in any way. I have not discussed Mr. Powell's reputation with anyone in Fairhope during the last four years. I do not know what

people are saying about Mr. Powell in Fairhope today. It is through a man's dealings that you must judge his reputation. I have heard Mr. Gaston discuss Mr. Powell's reputation. He said that he was not a good single taxer. He said the reason he was not a good single taxer was that he bought and sold land and a good single taxer should not buy and sell land. He also said that Mr. Powell speculated in land and that no single taxer should speculate in land value. That is all I remember.

EXAMINATION OF WILLIAM BOYD, A WITNESS FOR RESPONDENT, BY MR. GORDAN.

My name is William Boyd. I reside in Fairhope, Baldwin County, Alabama, and have been such a resident for a period of about seven years. I know Mr. R. F. Powell. I have know n Mr. Powell for something like six years. I have known him intimately and seen him frequently. I don't think I could answer truthfully what his general reputation is, any more than he is a good citizen. I have never heard anybody discuss his reputation.

CROSS EXAMINATION OF WILLIAM BOYD, A WITNESS FOR RESPONDENT, BY MR. HOGAN.

His reputation for truth and veracity so far as I know is the same as anybody else. Do you know whether or not the people of Fairhope say they have to watch Mr. Powell in a business deal? Respondent objects on the ground that it calls for irrelevant, immaterial and incompetent testimony and the witness has testified that he did not know his general reputation. I have heard a few people casually mention that they would have to watch him in a business deal. I do not know that that is any different from anybody else, I think you have to watch everybody when it comes to that.

HOWARD BISHOP,	)	
Complainant,	)	
-vs-	)	IN THE CIRCUIT COURT OF
R. F. POWELL, et al.,	)	BALDWIN COUNTY, ALABAMA.
Respondents.	)	IN EQUITY. NO. _____

I, Eloise Stuart, under and by virtue of an agreement by and between Judge Jesse F. Hogan, as Solicitor for the Complainant, and Robert E. Gordon, Esq., 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 T. J. Lowell, Charles Lowell, and Dan Thompson, witnesses for the Plaintiff, and V. M. Reynolds and William Boyd, witnesses for the Respondent, on the 4th day of February, 1930, at the office of W. C. Bebee, Esq., in Bay Minette, Baldwin County, Alabama, 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 Jesse F. Hogan, Esq., as Solicitor for Complainant, and cross examined by Robert E. Gordon, Esq., as Solicitor for the Respondents, and their testimony was by me reduced to writing, as near as might be in their own language, and which testimony is hereto attached, 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 of kin to any of the parties to said cause, nor in any manner interested in the result thereof.

Witness my hand and seal this 4th day of February, 1930.

Eloise Stuart (Seal)

Commissioner's fees $2.80

HOWARD BISHOP	
-vs-	IN THE CIRCUIT COURT-EQUITY SIDE.
	STATE OF ALABAMA. BALDWIN COUNTY.
LAURA A. POWELL	
and OLA POWELL	

TESTIMONY AT REFERENCE HELD BY REGISTER ON JULY 31ST., 1930.

WITNESSES:

G. W. GORE:

CHARLES C. BRYANT.

STARK JOHNSON.

ALPHONSE LUCAS.

MARSHALL LAY.

GEORGE LAY.

E. F. CLAY.

NOAH BISHOP

TESTIMONY FOR COMPLAINANT ON REFERENCE:

EXAMINATION OF MR. G. W. GORE: BY MR. HOGAN :

My name is G. W. Gore. I am acquainted with the Howard Bishop land in Baldwin County, Alabama, subject to this suit. I worked the turpentine on that land about 1923, 1924, and 1925, I had a lease on that land, this lease got burned up when my hotel was burned up. I knew the land in the year 1916 for the first time, if I am not mistaken, I knew it during the World War. Iknew the value of lands in that vicinity in 1917, and 1918. Forty acres of the land was very good land, as good land as there is in Baldwin County. This land has a yellow clay subsoil. I think some of this land was cleared in 1917, a little right along the side of the road. I consider that land is worth Twenty-five Dollars ($25.00) an acre, that is not in respect just to the raw land, uncleared land, some of it was cleared. The land was worth Twenty-five Dollars ($25.00) an acre. The balance of the tract was worth between Ten Dollars ($10.00) and Fifteen Dollars ($15.00) an acre, considering the price I paid for land.

Mr. Hogan---"Do you know what land in small tracts were selling for in that vicinity?"

I don't know of but one little piece of twenty acres that was sold right there, it was sold for Twenty-five Dollars($25.00) an acre, I think.

Mr. Gordon---"I move to rule out that portion, that he thinks it sold for Twenty-five Dollars ($25.00) an acre, it is incompetent, irrelevant and immaterial."

Mr. Hogan----"Do you know what people were holding land for in that vicinity?"

Mr. Gordon---"I object to that in that it is irrelevant and immaterial."

Good land was kept for Twenty ($20.00) and Twenty-five Dollars ($25.00) an acre. I know the Barkley land in that vicinity, there is about five or six sections in that Barkley tract, some of this land is tolerable fair land, some of this land is as good as the Bishop land,

but I didn't consider very much of it as good as the Bishop land. The Bishop land was being turpentined by the Marlow Turpentine Company when Everett & Boykin bought the turpentine leases, the best that I can remember, it was the year before the war, it has been turpentined every since. I haven't been over there in the last year or two.

Mr. Hogan----"Do you know how many boxes were on Howard Bishop's 76 acres of land in the year 1922 or 1923?"

Mr. Gordon---"I object to the question on the ground that it is incompetent, irrelevant and immaterial."

I think there were somewhere right about Thirty-three Hundred (3300) after Mr. Powell's Twelve Hundred (1200) came off, he had twenty (20) acres in the lease. I do not know how many boxes on the Bishop Estate land. I do not remember how much I paid Mr. Powell for turpentine boxes, I paid Seven Cents (7¢) a cup for three years. I had only one lease from Mr. Powell on that land, it has been leased since then by the same company, but I had nothing to do with that.

CROSS-EXAMINATION OF MR. GORE BY MR. GORDON.

I was in the turpentine business in 1916. I was living in 1916 in Chestang, Mobile County, Alabama, I was managing a place for Everett & Boykin. I think I went over to see the Bishop land twice in 1916, that is before they got the lease. In 1916 in the best of my understanding, Marlow Turpentine and we were operating the Bishop land together.

Mr. Gordon----"From whom did the Marlow Turpentine Company lease that land ."

Mr. Hogan-----"I object on the ground that it is hear say testimony."

a fellow by the name of Knight bought it from Stapleton and Baldwin, I have reference to the leases. Mr. Stapleton and Mr. Baldwin were the Marlow Turpentine Company. It is hard to tell who was in possession of the Bishop land during 1916, I won't swear who was in possession of the Bishop land, Everett & Boykin took possession of the land in 1916. We had a one year lease on that land, I had reference to Everett & Boykin and Gore. I don't know how many cups there was on the Bishop land in

1916, I think there was about 3300 in 1916, I did not count them myself, I had my woods-rider to count them, no new ones in 1917, there was no new ones in 1918, I don't hardly think there were any new ones in 1919. I got out of this thing along there, that is in 1919, I wasn't in there in that time. I was just looking around in 1922. I was not over there in 1924, I have not been over there since 1925. I don't know what was paid in 1918, I don't know what was paid in 1919, I can't tell what was paid at any time, this was all kept in a book in the office of Everett & Boykin, this office is in the City of Mobile, in the Van Antwerp Park Store Building. I don't know who sold any land near the Bishop land in 1916, I don't remember any land right in there being sold at any time. I didn't pay much attention as to how much land was sold for. I don't know how much of the Bishop land was sold, there might have been 10 acres or more, I guess there was something like that. There is no part or strip running through the center of the 40 acres that is known as the dead line, I noticed there was a low place going through the land in 1918 which I could see from the road. I claim that the 20 acres of cleared land was worth Forty Dollars ($40.00) an acre. I don't know whether there was 20 acres cleared in the Bishop tract in 1918 or not. I cannot give you a description of the land. The Barkley land adjoined the Bishop land on the west. I don't know how many trees I turpentined on the Bishop Estate, to the best of my knowledge, and I won't be positive, but I think there was 1200 cups on the 20 acres that Mr. Powell owned, that was taken in connection with the Howard Bishop land. The Barkley land was bought by Judge Stapleton since I lived there. I remember Henderson was cultivating that 20 acres and after that Sam Taylor. They were Mr. Powell's tenants. Sam Taylor was living in the house that Mr. Powell got from Noah Bishop, and Mr. Henderson lived in the same house. I don't know what rent that was paid for that house, I never lived in that house.

DIRECT EXAMINATION OF MR. CHARLES C. BRYANT BY MR. HOGAN.

My name is Charles C. Bryant, I am acquainted with the Howard Bishop land in Baldwin County, Alabama. I have known these lands for 40 years, as far back as I can recollect. I was raised in about 5 miles

of these lands. I am acquainted with lands in that vicinity. I was acquainted with the value of land in that vicinity in 1917 and 1918. In my best judgment, Howard Bishop's 76 acres was worth Thirty Dollars ($30.00) an acre in 1917. On an average, the Bishop Estate land was worth about Twenty-five Dollars ($25.00) an acre. I was supposed to have leased that land for turpentine purposes, but Mr. Gore worked that land. I have had occasion to count or notice the number of boxes on that land. I do not know how many boxes on the Howard Bishop land, there was Six Thousand and Twelve boxes on the Estate land that was in use. It was last week when we counted the boxes, there were 31 boxes on Mr. Powell's 20 acres, these on Mr. Powell's land were in use, the others have been cut down.

CROSS EXAMINATION OF MR. BRYANT BY MR. GORDON.

I think the Howard Bishop land was wound up between this here fellow, having reference to Mr. Powell, and Howard Bishop. I never did hear that Mr. Powell bought this land. Mr. Powell has been in possession of this land about 12 years, I think that Sam Taylor farmed it the year Powell went into possession. I don't know anything about Babe Bishop farming that land. I have been in the Shipyard work since 1917. I don't know that any one has paid Thirty Dollars ($30.00) an acre for land near this Bishop land from 1916 up to this time. I know a part of the Barkley land, it lies west and south west to the Bishop tract. The Bishop land is practically level. There is no low place going through the Bishop 's cleared land that is called dead land, all that I have seen is farming land, and produces good stuff. Taylor lived on Noah Bishop's tract, I don't know whether he paid any rent for that house or not, he was farming for Powell. I never counted those boxes until last week, I never had any occasion for counting them. Mr. Hogan, Attorney for Mr. Howard Bishop, got me to count this last week. I couldn't tell how many boxes were operated on the Howard Bishop tract in 1917, some of the trees have been cut down and some have blown down, I couldn't tell how many boxes were operated on the Howard Bishop tract prior to 1928, but I do know that it is as fine a turpentine land as was in that part of the country, it

is not now, some of the trees have blown down, and some have been cut down. I worked for Everett & Boykin for 4 years. I never saw a lease that was made on that land, only the year that my brother leased that land in 1916 from old man Bishop. I do not remember when Mr. Knight bought the lease. I remember when Marlow Turpentine Company operated it, I don't remember what year that was, It was before Mr. Gore operated it, it might have been more than 5 years before Mr. Gore operated it. I don't remember Babe Bishop ever operating or cultivating this land. I base my value on the fact that I priced some for a man on the south, it adjoined the Howard Bishop tract on the south, that was about a month ago. I base my value in 1917 on the fact that it is on a highway, and a choice piece of land close to the market. I don't know what the Barkley lands sold for. I can't tell of any tract near the Bishop tract that sold for as much as Thirty Dollars ($30.00) an acre. I don't know whether there has been any sold near the Bishop land or not. I didn't know that Judge Stapleton bought the Barkley land. I know that George Lay bought 10 acres from Babe Bishop. I heard Babe Bishop say he had given George Lay 10 acres. I heard Babe Bishop say that he sold Mr. Powell 30 acres during that time, I never heard him say what he got for it, I heard him say that he got some cattle on it. I do not know what Mr. Powell was paid at any time for turpentine rights, I do not know how much rent he got. I noticed there was some wire fence put up, it looked like about 20 acres on the Howard Bishop tract. There must have been 16 acres cleared on the Howard Bishop tract in 1917. There is no low placenin that land, You can ride along the highway and see a low cleared piece of land, but I never heard anyone speak of that as being dead land. The land there which is not cleared is worth Thirty Dollars ($30.00) an acre. The uncleared land is worth as much as the cleared land, the land, that is the other 20 acres can be cleared in 5 days work, it is all cleared now. I don't know who cleared the land, I never did see anyone cutting anything from this land.

DIRECT EXAMINATION OF MR. STARK JOHNSON BY MR. HOGAN.

My name is Stark Johnson, I don't know exactly where all the lines are for Howard Bishop's land. I have lived in that vicinity for 40 years.

I know the value of land in that vicinity, I have bought land within six or seven miles of this land. I think the Howard Bishop land is worth Twenty Five Dollars ($25.00) to Thirty Dollars ($30.00) an acre.

CROSS EXAMINATION OF MR. JOHNSON BY MR. GORDON.

The land was worth more in 1917 than it is now. I don't know of anyone who bought land in 1917, in 1918 or from 1916 to 1926, I was away from here, I worked a dredge boat for the Government in the Mississippi Sound. I bought land in 1914 about 6 miles from this, I bought 40 acres from George Bryant. Part of it was partly cleared, but it has grown back up in saplings. I don't know the Barkley lands. I don't know how many acres were cleared on the Howard Bishop land in 1917, nobody told me what this land was worth in the last six years. I have not tried to buy any land.

DIRECT EXAMINATION OF MR. ALPHONSE LUCAS BY MR. HOGAN.

My name is Alphonse Lucas, I am employed by Everett & Boykin. I have been in charge of their books and records, and I am in charge of their books and records now. I have been in their employ since 1921, prior to that time also. We have the records of turpentine leases from the Bishop heirs, and Mr. R. F. Powell, I have those records with me. I record that we have shown a total payment on a lease to Mr. Powell for 3/7/ interest in some lands and a total interest in some other land.

Mr. Hogan----"Will you turn to your records and state what payment if any, and the dates thereof you made to Mr. R. F. Powell on account of turpentine leases on the land he claims to own independent of anyone else in Baldwin County, Alabama?"

Practically all of the records were made up by me. The payments that were made to Mr. Powell, not on his individual land, but on the 3/7 interest in the Estate Land. The payments were all made in a lump sum, or in lump sums, I don't know whether that included the Howard Bishop land or not, this was just the 3/7/ interest. Mr. Powell claimed to own a 3/7 interest in the land, namely, the E½ of the NE¼