

of the NW $\frac{1}{4}$  and the S $\frac{1}{2}$  of the NW $\frac{1}{4}$  and the E $\frac{1}{2}$  of the NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  and the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  all in Section 19 Township 6 South Range 3 East Baldwin County, Alabama, being in all 81 acres more or less. Mr. Powell claimed to own the following land individually. On one lease we have the following, the W $\frac{1}{2}$  of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  and the W $\frac{1}{2}$  of the NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  and the N $\frac{1}{2}$  of the N $\frac{1}{2}$  of the SW $\frac{1}{4}$  of the SW $\frac{1}{4}$ , Section 19, Township 6, South Range 3 East, also S $\frac{1}{2}$  of NW $\frac{1}{4}$  of NW $\frac{1}{4}$  and E $\frac{1}{2}$  of NE $\frac{1}{4}$  of NW $\frac{1}{4}$  and SE $\frac{1}{4}$  of NW $\frac{1}{4}$  less 4 acres in the SW Corner all in section 30, Township 6 South Range 3 East, this land is included in the same lease with the 3/7 interest land. This lease was made in 1923, the early part. We also have a lease from Mr. Powell on the S $\frac{1}{2}$  of the SE $\frac{1}{4}$  and the NE $\frac{1}{4}$  of Section 19, South Range 3 East, Township 6. This lease was taken for 1925, 1926, 1927. Our records show when the first payment was made to Mr. Powell on the lease that I have first referred to here. On November 21st., 1922, the first payment was made, the amount was Two Hundred Dollars (\$200.00). The Two Hundred Dollars (\$200.00) payment covered the lease on the 3/7 interest and on Mr. Powell's individual owned land for 1923, 1924, 1925. Under this same lease, we paid the following payments, namely, in February 19th., 1923, One Hundred Seventy Eight Dollars (\$178.00), March 12th., 1923, One Hundred Forty-Eight Dollars, making a grand total of Three Hundred Twenty-six Dollars (\$326.00). The lease was renewed for 1926 and 1927, and we paid according to the record on February 20th., 1926 the sum of Twenty Five Dollars & 50/100 (\$25.50) representing a draft given Mr. Powell, with a notation on said draft, lease on E $\frac{1}{2}$  of SE $\frac{1}{4}$  of NE $\frac{1}{4}$  Section 19 Township 6 South Range 3 East, on February 23rd, 1916, we paid Mr. Powell by draft on Taylor-Lowenstein and Company, Sixty-Six Dollars & 53/100 (\$66.53), with notation, 3/7 interest Bishop Estate. On September 25th., 1925 we paid a draft given Mr. R. F. Powell for Two Hundred Seventy-five & 59/100 Dollars (\$275.59) on this same land, the first described lease. That seems to be all that was paid on that particular lease for 1926 and 1927. The lease was again renewed but the payment made from then and were made in lump sums, and I am unable to tell which payments were made on Mr. Powell's individual lease and which go on the lease involved with the 3/7 interest, however it appears,

Mr. Gordon-----"The Respondent objects to what it appears, the witness having testified that he did not know of his own knowledge as to the subdivision of the land in the lease, it being nearly the opinion of the witness."

It appears from the record that on the two mentioned leases Mr. Powell was paid Four Hundred Dollars (\$400.00) cash. On February 5th., 1925, those land are the S $\frac{1}{2}$  of the SE $\frac{1}{4}$  and the NE $\frac{1}{4}$  of Section 19, and the lease was made with R. F. and Ola Powell (Daughter)(Laura A. Powell-wife). On February 14th., 1928 we paid a draft, given Mr. R. F. Powell for 2 Hundred Dollars (\$200.00). The payment was partly made on both leases, as far as I am able to find. On March 22nd., I paid a draft given Mr. R. F. Powell for Two Hundred Dollars (\$200.00), that is a partly on both leases.

Mr. Gordon-----"I move the Court to strike this out, the witness is not testifying on his own knowledge, it is incompetent, irrelevant and immaterial."

On December 3rd., 1929, we gave Ola Powell a draft on Taylor-Lowenstein Company for Five Hundred Dollars (\$500.00) on the following land, all of the N $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 19, Township 6, South Range 3 East, except 10 acres in a quarter in the SE Corner of said tract and that part of the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$ , that is on the west side of Fish River in Section 19 South Range 3 East, Township 6. The S $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 19, Township 6 South Range 3 East, the NE $\frac{1}{4}$  of Section 19, Township 6, South of Range 3 East.

Mr. Gordon-----"I move to rule out testimony, as to the last payments and leases, as it has no bearing on any issue in this lease, is for entirely different land for turpentine leases, on land that is not involved in this suit."

The sum of the payments hereinabove described are on a lease dated February 1928 for a period of three years made by R. F. Powell and Ola Powell by R. F. Powell on the following described lands, the W $\frac{1}{2}$  of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$ , and the W $\frac{1}{2}$  of the NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  and the N $\frac{1}{2}$  of the N $\frac{1}{2}$  of the SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  Section 19, Township 6 South Range 3 East, also S $\frac{1}{2}$  of the NW $\frac{1}{4}$  of NW $\frac{1}{4}$  and SE $\frac{1}{4}$  of NW $\frac{1}{4}$  less 4 acres in SW Corner, Section 30 Township 6 South Range 3 East, some 106 acres more or less, also a 3/7 interest in the E $\frac{1}{2}$  of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  and S $\frac{1}{2}$  of NW $\frac{1}{4}$  and 3/7

of  $1/2$  interest in  $SE\frac{1}{4}$  of  $SW\frac{1}{4}$ , Section 19, Township 7 South Range 3 East. There is a notation on this, that the  $3/7$  interest, as above described shall receive  $3/7$  of Seventy Dollars (\$70.00) or Thirty Dollars (\$30.00) per thousand cups, the payment being involved on account of this lease being involved with payment made on Mr. Powell's individually owned land. I am unable to tell from these records how much was paid on the  $3/7$  interest. I can't tell what payment was made on this particular lease, I can't tell what amount of the foregoing payments were made according to these records. I have testified that the Four Hundred Dollars (\$400.00) cash paid in February, 1925 was on the  $S\frac{1}{2}$  of the  $SE\frac{1}{4}$  and the  $NE\frac{1}{4}$  of Section 19. I cannot tell what payment was made on account of the lease of 1925, but the lease which I have just read on which we paid Five Hundred Dollars (\$500.00) shows just what the Five Hundred Dollar (\$500.00) payment covers.

CROSS EXAMINATION OF MR. LUCAS BY MR. GORDON.

I could not say how many boxes were cut for or under any lease about which I have testified on the  $NW\frac{1}{4}$  of the  $NW\frac{1}{4}$  and  $SE\frac{1}{4}$  of the  $NW\frac{1}{4}$  less 4 acres in Section 20 Township 7 South Range 3 East. I cannot state how much was paid to Mr. Powell for said lease, or for anyone else for any year. In fact in every case in the above leases that I have testified about provide for payment, so much a cup. I cannot give you the number of cups for any year on the  $NW\frac{1}{4}$  of the  $NW\frac{1}{4}$  and the  $SE\frac{1}{4}$  of the  $NW\frac{1}{4}$  less 4 acres of Section 30 Township 6 South Range 3 East. I cannot find that the cups on the land referred to as the  $3/7$  interest was ever counted, they were partly estimated. When Mr. Powell was paid for this, the payment on this  $3/7$  interest land, as above described, were to be paid for so much per cup. Our records do not show the number of cups on this particular <sup>land</sup>. A 2 year renewal lease was made on the land for 1926 and 1927 on the  $3/7$  interest. The first year that I have record of is in 1923 that the lands were operated under the Powell lease, however, they may have been operated before this time, but I do not have a record of it.

DIRECT EXAMINATION OF MR. LUCAS BY MR. HOGAN.

Our records show the entire number of boxes in the first lease, that I have hereinabove described. The total number of boxes on the first described lease, and a lease with Marcus Bishop and Mollie Bishop, Howard Bishop, Hattie Bishop, heirs of the Bishop Estate, and William Bishop, with whom it is involved, is Seven Thousand Nine Hundred Sixty Eight (27,968). The lands described in said lease, which said lease was for a period of 3 years, and expired January 1st., 1926, or equal interest of all heirs of Mary and Williams Bishop in the following land in Baldwin County, Alabama, all SE $\frac{1}{4}$  of SW $\frac{1}{4}$  Section 19 Township 6, South Range 3 East 40 acres E $\frac{1}{2}$  of NW $\frac{1}{4}$  of SW $\frac{1}{4}$ , 20 acres NE $\frac{1}{4}$  of SW $\frac{1}{4}$ , 40 acres S $\frac{1}{2}$  of NW $\frac{1}{4}$ , 80 acres E $\frac{1}{2}$  of NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , 20 acres all in Section 19 Township 7 South Range 3 East.

EXAMINATION OF MARSHALL LAY, BY MR. HOGAN.

My name is Marshall Lay. I know the land that Howard Bishop claims in Baldwin County, Alabama, this is the same land involved in this litigation. I have known this land about 8 years. I was following turpentine work in and around that settlement. I did not do any turpentine work on that tract, I worked on the Estate Land, it has been about 4 years since I worked on the Estate Land, I shipped some boxes for W. C. Best. I only worked on the Estate Land for W. C. Best.

Mr. Hogan----"How many boxes did you ship on the land?"

Mr. Gordon---"I object to this question, it is irrelevant, incompetent and immaterial."

I don't remember exactly how many boxes I shipped for Mr. Best, there was somewhere in the neighborhood of Five Thousand on the Estate Land. Mr. Best was working for Everett & Boykin. I cut 19 cords of wood on the 76 acres, this was on the Howard Bishop tract, I cut this for Mr. W. C. Best. No paper wood was gotten from the Howard Bishop land, there was some wood cut from the Bishop Estate land, there was somewhere around 120 cords cut for the paper mills. George Johnson had the wood cut, I don't know for whom he cut the wood. Mr. Johnson is the one who is in possession now of the Howard Bishop land. There was no charcoal burned on the Howard Bishop land, there was some burned on the Estate Land, there was two kilns on it, I don't know how much was burned.

Mr. Peacock didn't burn any charcoal on Howard Bishop's land.

CROSS EXAMINATION OF MR. LAY BY MR. GORDON.

I am not any relation to Mr. Howard Bishop, I live in the Bishop settlement, I have been living there for about 6 years. I don't <sup>know</sup> /who told Mr. Johnson to have that wood cut, this wood was cut on the Estate Land. I don't remember the year that the wood was cut, there was somewhere in the neighborhood of 120 cords cut, I don't remember what year it was cut in, it was cut for paper wood, I don't know where it was carried. There is a paper mill in Moss Point Mississippi. I did not help cut the wood, I was overseer, George Johnson employed me. George Johnson lives at Marlow, Baldwin County, Alabama. I never counted the cups on the Bishop Land. The cups were on the South half of the Estate Land. I have not talked with Mr. Howard Bishop about any testimony, Mr. Howard Bishop just asked me to come over and assist him, he only said he wanted me to testify about how many boxes there was on this 40 I am talking about. There is 1300 on the 40, and 31 on Mr. Powell's land, I only counted it once, that was on Mr. Powell's place, and took Mr. Johnson's word for the number on the Bishop place. I counted the 31 across the line day before yesterday, I took Mr. Johnson's word for the 1300 on the rest. Mr. Johnson gave me his word that there were 1300 boxes there, along the first of the Spring. Mr. Bishop had not spoken to me then about testifying. Mr. Bishop asked me if I knew how many boxes there was across the line. I am working the timber for George Johnson on the Bishop place. I don't know who has the land leased now, George Johnson has the land leased so far as I know, I was working there yesterday afternoon at this time of the day. I don't know how many shares the Bishop land is divided in.

RE-DIRECT EXAMINATION OF MR. LAY BY MR. HOGAN.

I don't know how much they were getting for the paper wood a cord..

EXAMINATION OF MR. GEORGE LAY BY MR. HOGAN.

My name is George Lay, I know the Bishop lands involved in this

litigation. I have been knowing this land for 35 or 36 years. I know how many boxes on the Bishop Estate land and on Howard Bishop's land. I cut between 10 and 12 cords of wood, this was stove wood for Mr. Powell, I cut that on Howard Bishop's land. The wood sold for about Six Dollars (\$6.00) a cord, I got Three Dollars (\$3.00) a cord for cutting the wood. I don't know how many trees have been cut on Howard Bishop's land by Mr. Powell, I know there was 2 or 3 kilns burned on the land.

CROSS EXAMINATION OF MR. GEORGE LAY BY MR. GORDON.

I am a brother-in-law of Howard Bishop, I married his half sister. There were 13 acres <sup>of the Bishop Estate Land belonging</sup> to each one. I never heard of Mr. Powell cutting any wood from the land. I cut it for Mr. Gunnison. I don't know what he did with the wood, I don't know anything about that wood. I don't know that Mr. Powell authorized him to cut that wood. I have been living near the Estate Land for about 21 years. George Johnson cut some wood from the Bishop Estate Land, he cut on the Howard Bishop land and Estate land after the storm. I don't know whether Mr. Powell got any money for that wood or not, I do know that I saw Mr. Powell over there while they were cutting the wood. Mr. Johnson loaded the wood at Fish River. All of the wood was not cut on the Bishop Estate land. I don't know how many cords were cut on the Howard Bishop Land. I question that Mr. Powell had the land in 1917, I lived right adjoining the land. I bought some land in 1917, I bought some land from Babe Bishop. I was living on the old place, Mr. Powell told me there was a mortgage on it for One Thousand Dollars (\$1,000.00), and I sold the land for Four Hundred Dollars (\$400.00) rather than to lose it, this was for Ten Dollars (\$10.00) an acre, this was back in 1917. I bought some land from Babe Bishop, I paid ten Dollars (\$10.00) an acre for the land.

RE-DIRECT EXAMINATION OF GEORGE LAY BY MR. HOGAN.

Well he told his half sister that he was sorry that she had to lose her place, and he would sell her the land at Ten Dollars (\$10.00) an acre, and he did ~~it~~ .

CROSS EXAMINATION OF MR GEORGE LAY BY MR. GORDON.

I don't know what Mr. Babe Bishop sold the land to Mr. Powell for, it was none of my business.

DIRECT EXAMINATION OF E. F. CLAY BY MR. HOGAN.

I know the Howard Bishop land. Mr. Bryant and I counted the turpentine boxes on the land. They showed me the Howard Bishop land. There were 3 parts of the land, from the Old place back North there were 2 parts, they called that the Estate Land. There were Six Thousand and fourteen boxes on one strip, this was the undivided land. On the land on the South we counted Twenty nine hundred and eighty four trees and stumps where trees had blown down.

CROSS EXAMINATION OF E. F. CLAY BY MR. GORDON.

I first counted the boxes about 2 weeks ago, one day last week we again counted. Howard Bishop sent for me to come over there and count it. I couldn't tell how many boxes were now on the Bishop tract, when I counted it week before last, I estimated it at Six thousand on the Bishop Estate land. We estimated it by the timber blown down. I didn't say there were boxes there, Howard Bishop said there were boxes there, I don't know.

DIRECT EXAMINATION OF MR. NOAH BISHOP BY MR. HOGAN.

My name is Noah Bishop. I know the Bishop land involved in this litigation, I have known the land for 35 years. I know the value of lands in that vicinity. I know the value of Howard Bishop's 76 acres of land. The South East 40 I value it at Twenty Five Dollars (\$25.00) an acre, and the other on the hill, Thirty-Five Dollars (\$35.00) an acre. The Estate Land I would value at Twenty-Five Dollars (\$25.00) an acre. The Marlow Turpentine Company has turpented that land. The Marlow Turpentine Company had the lease in about 1900, they bought it from my Father and Mother. Everett & Boykin have also turpented the land. I don't know how many boxes on the Estate Land is being turpented now. There is 1200 boxes now being turpented on the

Howard Bishop land. There are 31 boxes on Mr. Powell's 20 acres, this adjoins Howard Bishop's tract. There are about Six Thousand boxes being operated on the Estate Land. To the best of my knowledge, Mr. Powell took possession about 1916, that was before the War ended, I think the War was going on, but I don't think it had ended. When Mr. Powell took possession of Howard Bishop's land, it was good turpentine land. We counted about Twenty-nine hundred eighty stumps and a few trees that didn't blow away in the storm. I could see where there had been wood cut, but I was not there when they cut. The total number of trees cut down and blown down was Twenty-nine Hundred, the difference between the ones cut down and blown down, I don't know.

CROSS EXAMINATION OF NOAH BISHOP BY MR. GORDON.

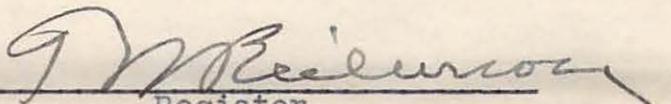
I did not sell any interest to Mr. Powell, I don't own any interest. Mr. Powell took my interest away from me, I didn't pay me anything. He gave me Forty Dollars(\$40.00) but he got me to give Fifteen Dollars (\$15.00) to Mr. Gordon. I will swear that I gave you,(Mr. Gordon) some money, but I don't remember when. The Fifteen Dollars (\$15.00) was to employ Mr. Gordon to fight a case for Mr. Powell, a Lightning Rod Case against me. I don't know what Court it was in, it was in the court at Bay Minette. I gave it to you (Mr. Gordon) in money, your office was in Mobile, I don't remember what building, and I don't remember who was your partner. I came with Mr. Powell from Fairhope, I don't remember what street I went on, or what building I went in. This was in 1921. I didn't go to Bay Minette. The case went into Chancery Court, I guess it has been destroyed. It was a Lightning Rod case. My Mother didn't have anything to do with my property. I am a half brother, there were eight children in the Bishop Estate. Mr. Howard Bishop was in the Estate. One of my sister's married an Ard. I don't know how much my brother had in the Estate. All the children were not living when Mother and Father died. There are seven children living now. The land has never been divided between them. I don't know who cut the wood, I don't know how many cords were cut, I don't know whether George Johnson cut

it or not. The 76 acres of Howard Bishop's land was turpented in 1917, it has been turpented every since then. I never kept the amount of the trees on the land that was cut from 1917. I never saw Mr. Powell cut a tree, I saw some negros cutting trees, I don't know how many cords of wood was cut.

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 6th day of August, 1930.

  
Register.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

I, J. W. Richardson, as Register hereby certify that the

Deposition of the within named witness taken on the 1st day of August, 1930,

is a true and correct copy of the original as the same appears in the files of the Court and is not a copy of a copy.

Deposition

Filed August 1930  
D. W. Richardson  
Register

Given under my hand and seal, this 1st day of August, 1930.

*[Faint signature]*



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

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

INTERROGATORIES PROPOUNDED TO DR. R. A. HALL, A WITNESS FOR  
COMPLAINANT

First Interrogatory:

Q. Where do you reside?

A. In Robertsedale, Alabama.

Q. How long have you resided in the community in which you are now living?

A. I have been in this community and in Mobile County for thirty (30) years.

Q. How far do you live from Fairhope, Baldwin County, Alabama?

A. Fifteen (15) miles.

Second Interrogatory:

Q. Are you acquainted with R. F. Powell, who lives at Fairhope?

A. Yes.

Q. How long have you known him?

A. Twenty-eight or twenty-nine years.

Q. Do you know his general reputation in the community in which he lives, if you do state whether or not that reputation is good or bad?

A. Bad. His moral reputation is fairly good, but his business reputation is seriously bad.

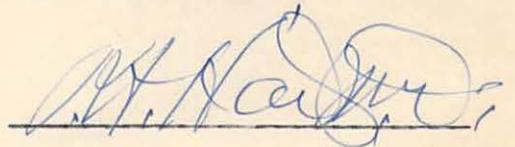
Third Interrogatory:

Q. If you know, state what the reputation of R. F. Powell is for truth and veracity?

A. Bad. I have heard people say that they wouldn't believe him on oath.

Q. Based on Mr. Powell's reputation, state whether or not you would believe him on oath if he were testifying concerning a matter in which he was personally interested.

A. I would not believe him on oath. I do not believe he would swear the truth. If I were on a jury and he came and swore, it does not make any difference what he swore, I would not believe him if there were half a dozen witnesses. If there were five cents in his favor, he would lie for it.





James A. ...  
...

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...

Typed 2/22/930  
D. W. ...  
Rogers

...

...

HOWARD BISHOP,  
Plaintiff,

VS

LARUA A. POWELL, et al.,  
Defendants.

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

CROSS-INTERROGATORIES PROPOUNDED TO DR. R. A. HAIL

First Cross-Interrogatory:

Q. Please state whom you heard discuss the reputation of R. F. Powell, stating the time when, the place where, and the conversation in full.

A. For twenty (20) years at various places I have heard numbers of people talk of this man. I cannot recall them all now.

Q. Please state why the question of Mr. Powell's reputation was brought up.

A. I have heard any number of people talk about the rascality of this man in the last twenty (20) years that I have known him. I have lived in the community and so many people talked about it that I do not know just how these talks came up, but I remember it.

Second Cross-Interrogatory:

Q. Please state if you are friendly with Mr. R. F. Powell.

A. I guess I am. I have never been anything otherwise.

Q. Please state if you ever had any personal dealings with Mr. Powell.

A. I never dealt with him. I was afraid of him.

Q. Please give a detailed list of all of the parties whom you heard discussing the reputation of R. F. Powell, giving the places of their residence.

A. I have heard quite a number of people discussing the reputation of R. F. Powell, among whom are: Jack Lowell, of Fairhope, George Gay, of Fairhope, Alabama, Nowell Bishop, Fairhope, Alabama, Harold Bishop, Fairhope, Alabama, Hubbert Gable, Fairhope, Alabama, and various others too numerous to name.

Q. Please state if you ever heard anyone say that they would not believe R. F. Powell on oath, and if you say you have, please give the name or names of such person or persons, the place where the statement was made, the time when the statement was made and what brought up the conversation.

A. I have heard people say that they would not believe him on oath. Various times during twenty (20) years I have heard that and discusses it with many people.

Third Cross-Interrogatory:

Q. Please state if you and R. F. Powell are friends and, if so, when was the last time that you had a conversation with him?

A. I have not had a conversation with him for years.

Q. Please state if there has not been some difference between you and R. F. Powell for some time, and, if you say yes, please state the nature of the difference and whether or not it has affected your friendship for Mr. Powell.

A. I have never had a cross word with the man. He and I

neither one spoke. I am telling from his general reputation--just what I have seen and heard of him for these years.

M. W. Hays

COMMISSIONER'S CERTIFICATE

I, F. F. Nelson, commissioner under and by virtue of a commission heretofore issued out of the Circuit Court of Baldwin County, Alabama, do hereby certify that, under the power conferred upon me by said commission, I caused the said Dr. R. A. Hail, a witness for the complainant, in said cause, who is known to me and known to me to be the identical witness named in said commission, to come before me at my office in Robertsdale, Alabama Robertsdale, Alabama, on the 25<sup>th</sup> day of February, 1930, at the hour of 9<sup>10</sup> o'clock a M.; that said witness was by me first duly sworn before testifying, as aforesaid, and that in response to the interrogatories and cross interrogatories propounded to him, he testified thereto as hereinabove written; that his testimony was by me reduced to writing as given by said witness, and that said witness signed his name thereto in my presence.

I further certify that I am not of counsel or of kin to any of the parties to this cause, and that I am not in anywise interested in the result thereof.

Dated this 25<sup>th</sup> day of February, 1930

F. F. Nelson

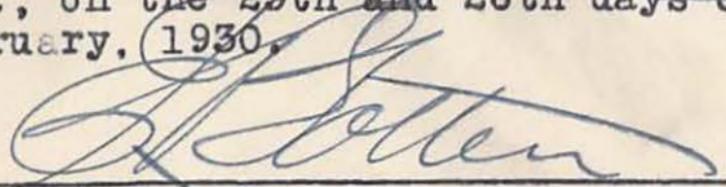
COMMISSIONER.

STATE OF ALABAMA  
COUNTY OF BALDWIN

IN CIRCUIT COURT  
IN EQUITY

HOWARD BISHOP, Complainant,  
vs.  
LAURA POWELL, et al., Respondents.

Answers to Interrogatories and Cross-  
Interrogatories propounded by counsel  
for respective parties to E. B. Gaston  
and Jack Titus, submitted before me at  
my office in Bank Building, Fairhope,  
Ala., on the ~~25th and 26th days of~~  
February, 1930.



Commissioner.

*Filed  
T. W. Richerson  
Register  
Feb 27/1930*

T. W. Richerson, Esq.,

Register of Circuit Court.

BAY MINETTE

ALA





HOWARD BISHOP,

Plaintiff

vs.

LAURA A POWELL, et al,

Defendants.

IN THE CIRCUIT COURT OF

BLADWIN COUNTY, ALABAMA.

AT LAW.

Cross-Interrogatories propounded to

*Jack Titus.*

**First Cross-Interrogatory:**

Please state whom you heard discuss the reputation of R. F. Powell, stating the time when, the place where, and the conversation in full. Please state why the question of Mr. Powell's reputation was brought up.

**Second Cross-Interrogatory:**

Please state if you are friendly with Mr. R. F. Powell. Please state if you ever had any personal dealings with Mr. Powell. Please give a detailed list of all of the parties whom you heard discussing the reputation of R. F. Powell, giving the places of their residence. Please state if you ever heard anyone say that they would not believe R. F. Powell on oath, and if you say you have, please give the name or names of such person or persons, the place where the statement was made, the time when the statement was made and what brought up the conversation.

**Third Cross-Interrogatory:**

Please state if you and R. F. Powell are friends and if so, when was the last time that you had a conversation with him. Please state if there has not been some difference between you and R. F. Powell for some time, and if you say yes, please state the nature of the difference and whether or not it has effected your friendship for Mr. Powell.

*Gordon Clayton Sizig*  
SOLICITORS FOR RESPONDENT.

STATE OF ALABAMA  
COUNTY OF BALDWIN

IN CIRCUIT COURT  
IN EQUITY

HOWARD BISHOP, Complainant,

vs.

DEPOSITION  
OF  
E. B. GASTON

LAURA A. POWELL, et al.

First Interrogatory:

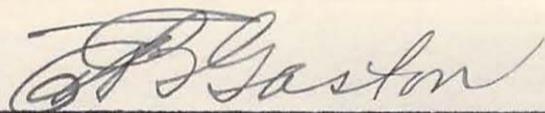
ANSWER: I live in Fairhope, Baldwin county, Alabama, and have lived here for over thirty five years.

Second Interrogatory:

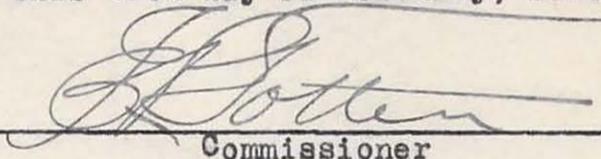
ANSWER: I am acquainted with R. F. Powell and have known him for about thirty three years. I know his general reputation in the community where he resides, Fairhope, and that reputation ~~is bad~~ is bad.

Third Interrogatory:

ANSWER: Mr. Powell's reputation for truth and veracity is bad. I would not believe him on oath if he were testifying in a matter in which he was personally interested.

  
\_\_\_\_\_

Subscribed and sworn to before me this 25th day of February, 1930.

  
\_\_\_\_\_  
Commissioner

First ~~Interrogatory~~ Cross-Interrogatory:

ANSWER: On many occasions I have heard the matter discussed but am unable to give the exact dates, places and persons at this time.

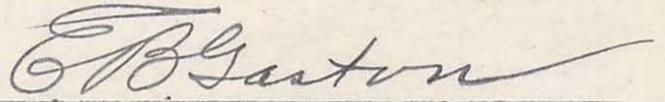
Second Cross-Interrogatory:

ANSWER: I am not personally friendly with Mr. R. F. Powell. I have never had any dealings with Mr. Powell personally, only as a representative of Fairhope Single Tax Corporation and other organizations. The following is a partial list of the parties I have heard discussing the reputation of R. F. Powell, and they all live at Fairhope, Ala.: M. A. Bown, Wm. Call, ~~XXXXXXXXXX~~, John Lawrence, T. J. Lowell, J. H. Titus, Jesse Stimpson, F. L. Brown, J. A. Patterson, A. O. Bergling, M. Dyson. At a trial before Justice da Mont

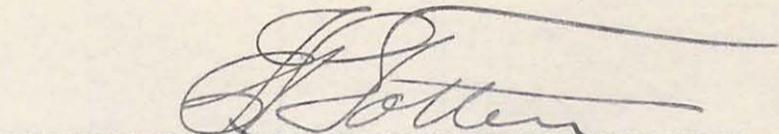
at Point Clear, Baldwin county, Ala., about twenty seven years ago, I heard J. A. Patterson, of Fairhope, and L. S. Massey, of Fairhope, since deceased, say, in their testimony before the Court, that they would not believe Mr. R. F. Powell under oath.

Third Cross-Interrogatory;

ANSWER: Mr. R. F. Powell and I are not personally friendly, but I talk with him frequently and have done so within the last few days. Yes, there have been differences between Mr. Powell and myself for some time, chiefly growing out of our membership in the Fairhope Single Tax Corporation and of the policies of the said Corporation. As an officer of the Corporation, I had dealings with Mr. Powell ~~with~~ in which his conduct was such as <sup>to</sup> destroy my confidence in his integrity. and this naturally affected our friendship.

  
\_\_\_\_\_

Subscribed and sworn to before me this 25th day of February, 1930.

  
\_\_\_\_\_ Commissioner.

STATE OF ALABAMA  
COUNTY OF BALDWIN

IN CIRCUIT COURT  
IN EQUITY

HOWARD BISHOP, Complainant,

vs.

LAURA A. POWELL, et al.,  
Respondents.

DEPOSITION  
OF  
JACK TITUS

First Interrogatory,

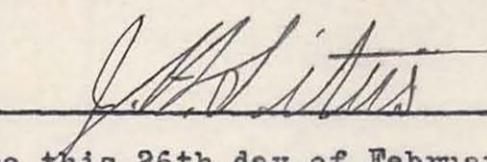
ANSWER: I LIVE AT Fairhope, Baldwin county,  
Ala., and have lived here since 1916.

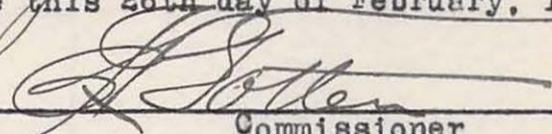
Second Interrogatory,

ANSWER: Am acquainted with R. F. Powell and  
have known him since I first came to Fairhope. As far as I  
know, his general reputation in the community is not so good.

Third Interrogatory,

ANSWER: Have been led to believe that he is  
not to be relied on. From what I ~~know~~ have heard of  
him from many sources I would not believe him under oath if he  
were testifying concerning a matter in which he was personally  
interested.

  
Subscribed and sworn to before me this 26th day of February, 1930

  
Commissioner

Cross Interrogatory, First,

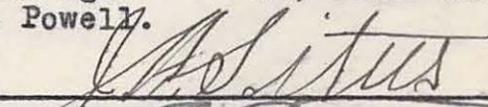
ANSWER: Have heard the reputation of R. F.  
Powell discussed a number of times but cannot now state exactly  
by whom, when or where.

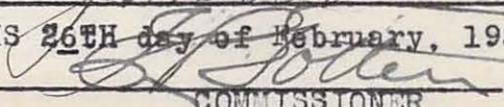
Cross Interrogatory, Second,

ANSWER: Yes, I am friendly with Mr. Powell.  
I have never had any personal dealings with him, except once about  
ten years ago we had some trouble over a horse of mine which he had  
taken up, which would now influence me in no way in statements now  
made. Do not recall sufficiently to give a list of the persons  
whom I have heard discussing Mr. Powell's reputation. I have  
heard persons state that they would not believe R. F. Powell under  
oath, but I cannot now recall the names of such persons or when  
or where such statements were made.

Third Cross-Interrogatory,

ANSWER: Yes, Mr. Powell and I are friends  
and I last talked with him about a week ago. No, there has  
been no difference between me and Mr. Powell.

  
SUBSCRIBED AND SWORN TO BEFORE ME THIS 26TH day of February, 1930.

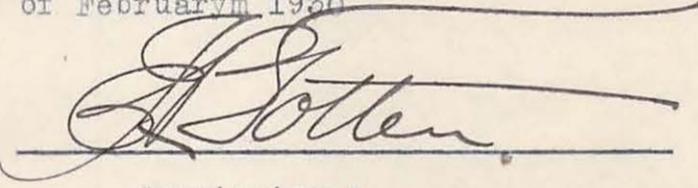
  
COMMISSIONER

COMMISSIONER'S CERTIFICATE

I, E. P. Totten, commissioner under and by virtue of a commission heretofore issued out of the Circuit Court of Baldwin County, Alabama, do hereby certify that under the power conferred upon me by said commission, I caused the said E. B. Gaston and Jack Titus, witnesses for the complainant, in said cause, who are known to me and known to me to be the identical witnesses named in said commission, to come before me at my office in Bank of Fairhope Building, at Fairhope, Ala., on the 25<sup>th</sup> and 26<sup>th</sup> day of February, 1930, at the hour of 10 o'clock A.M.; that said witnesses were by me first duly sworn before testifying, as aforesaid, and that in response to the interrogatories and cross interrogatories <sup>posed</sup> prounded to them, they testified thereto as hereinabove set out; that their testimony was by me reduced to writing as given by said witnesses, and that said witnesses signed their respective names thereto in my presence.

I further certify that I am not of counsel or of kin to any of the parties to this cause, and that I am not in anywise interested in the result thereof.

Dated this 26<sup>th</sup> day of February 1930

  
Commissioner

The State of Alabama, {  
Baldwin County

CIRCUIT COURT

To Hon. E. P. Totten

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 E. B. Gaston and Jack Titus

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 et al,

Defendant, S

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

Witness 22nd day of Febuary 19 30

*[Handwritten Signature]*

REGISTER

COMMISSIONER'S FEE, \$ 6.00

WITNESS' FEES, \$ 4.00

**State of Alabama**

**BALDWIN COUNTY**

**CIRCUIT COURT**

Howard Bishop

Complainant

vs.

Laura A. Powell et al

Defendant

**COMMISSION TO TAKE DEPOSITION**

**COMMISSIONER:**

Hon. E. P. Totten

**WITNESSES:**

E. B. Gaston

Jack Titus

*[Faint, illegible text from the reverse side of the page, including words like 'deposition', 'commissioner', and 'witnesses']*

STATE OF ALABAMA  
COUNTY OF BALDWIN

IN CIRCUIT COURT  
IN EQUITY

HOWARD BISHOP, Complainant

vs

LAURA A. POWELL and OLA POWELL, Respondents.

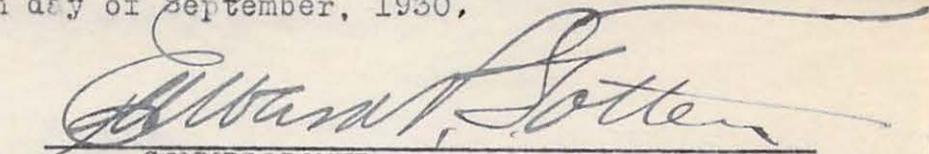
CERTIFICATE OF COMMISSIONER

I, Edward P. Totten, the commissioner named in the attached commission, hereby certify that, in pursuance of the said commission, I did on Wednesday, September 10, 1930 call and cause to come before me at my offices in the Bank of Fairhope Building at Fairhope Alabama, the witnesses named in said commission, viz.- Paul A. ~~Fréd-~~rick, J.F.Crance, and G.E.Perkins and that the first two named after having been first duly sworn did testify in answer to the written interrogatories and cross interrogatories attached as set down above their signatures and that the answers of said witnesses are set down as near as might be in their own language and that they subscribed their names thereto after having read the same in my presence.

I further certify that the witness G.E.Perkins, called and caused to come before me as aforesaid, did then and there refuse to take the oath or affirmation and to submit his testimony in the said cause or answer the interrogatories and cross interrogatories in said cause.

I further certify that I am neither of counsel nor of kin to any of the parties to this suit, nor am I in any manner interested in the result thereof.

Witness my hand this 10th day of September, 1930.

  
COMMISSIONER

HOWARD BISHOP,  
COMPLAINANT,

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY ALABAMA  
IN EQUITY

-vs-

LAURA A. POWELL AND OLA POWELL,  
RESPONDENT.

J. F. Crance, being first duly sworn, deposes as follows:

To the first interrogatory: " Yes I know those lands, and I have been acquainted with them about a year and half.

To the second interrogatory: " Real estate dealer. Have been so engaged for four years. I do not know any thing about the value of those lands at that time or now. I have not known of any lands being sold in the vicinity of the lands described."

To the third interrogatory: " Yes I know the Barkley lands. My information is that Mr. Stapleton sold these lands to Mr. H.H. Maschmeyer . I offered Mr. Maschmeyer \$20.00 an acre cash for said lands, about three years ago, which he refused, and my information is that he subsequently sold said lands at that price per acre.

J F Crance

Subscribed and sworn to before me this 10th day of Sept. 1930

Edward J. Gotten  
Commissioner

To the first cross-interrogatory witness responds:

" No I have not bought or sold any lands near the property inquired about in the first interrogatory. In 1917 I was living in New York and was in the chicken business. I did not know anything about the lands in 1917."

To the second cross interrogatory witness responds:

" I knew nothing about these lands in 1917 . "

J F Crance

Subscribed and sworn to before me this 10th day of Sept. 1930

Edward J. Gotten  
Commissioner

HOWARD BISHOP,  
COMPLAINANT.

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

-VS-

LAURA A. POWELL, And Ols Powell.  
Respondent.

Paul A. Frederick, being first duly sworn, deposes as follows:

To the first interrogatory: " My present occupation is real estate dealer and I have been engaged in such business and located at Fairhope Alabama for four years.

To the second interrogatory: " I am acquainted with the track described in section 30 and I am also acquainted with the following parts of the track described in section 19 as follows: South East quarter of the South west quarter and the south west quarter of the south east quarter.. I have known said lands for the last three years, did not know them in 1917, and live about eight miles from said lands.

To the third interrogatory: " I do not know what the value of any of the said lands were during the years 1917, or 1918 but do know the value today of the lands I have described in my answer to the second interrogatory. I can not state whether the value of said land today is greater or less than it was during those years. The north west quarter of the north west quarter of section thirty is good farming land and is reasonably worth forty dollars per acre. The remainder of the lands I have described are not very good farming lands and are of the reasonable value of \$12.00 an acre."

To the fourth interrogatory: " I am generally acquainted with the Barkley lands and have known them about four years . Parts of the Barkley tract is good farming land and part of it is poor. These lands are about the same value as the Howard Bishop lands described.

Paul A. Frederick  
Subscribed and sworn to before me this 10th day of Sept. 1930

Edward P. Gotten  
Commissioner

To the first cross-interrogatory witness responds:

" I have never bought or sold any land in the vicinity of the property inquired about in the first interrogatory of the complainant .  
I was not in the real estate business in 1917, was in the army then, and did not know said lands."

To the second interrogatory: " I knew nothing whatever about the Howards Bishop lands in 1917.

Paul A. Frederick  
Subscribed and sworn to before me this 10th day of Sept. 1930

Edward P. Gotten  
Commissioner



hereinabove described, if so, please name the tract and the purchase price and compare said lands with those hereinabove described.

Third Interrogatory: Do you know the Barkley lands near the lands hereinabove described, and which were purchased by Mr. W. D. Stapleton of Bay Minette, Ala.? Do you know to whom Mr. Stapleton sold said lands, and the purchase price at which they were sold? If they were sold to Mr. H. H. Maschmeyer, please state whether Mr. Maschmeyer subsequently sold said lands, and the price per acre at which they were sold?

James F. Hagan  
Solicitor for Complainant

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

James F. Hagan  
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 Hampton Long  
Solicitors for Respondents



Please describe said lands fully with reference to their being good farming lands. Please state what was the reasonable market value of said lands in the year 1917; also state the reasonable market value of said lands to-day. State what was the reasonable market value of said lands during the year 1918.

Fourth Interrogatory: Are you acquainted with the Barkley lands that lie near the Bishop lands in Baldwin County? How long have you known these lands? Did you know them during the year 1917 and during the year 1918? Have you known them ever since then? Describe said Barkley lands with reference to their quality and location. State whether or not said lands are good farming lands? State whether or not said lands are level or rough and rolling? State whether or not said lands, or any part of them, are swampy, if so, about how many acres? State what in your opinion was the value of said Barkley lands in the year 1917, and also in the year 1918? State how the value of said lands, in your opinion, compares with the value of Howard Bishop's lands, viz, said Northwest quarter, of the Northwest quarter, and all of the Southeast quarter of the Northwest quarter of said section 30, except four acres in the Southwest corner of the Southeast quarter of the Northwest quarter, all in Township 6 South, Range 3 East.

Jesse F. Hagan  
Solicitor for Complainant

Said witnesses, G. E. Perkins and Paul A. Frederick, reside at Fairhope, Baldwin County, Alabama. Edward P. Totten, who also resides at Fairhope, Ala., is suggested as being a competent person to take the deposition of said witnesses.

Jesse F. Hagan  
Solicitor for Complainant.

We accept service of the foregoing interrogatories, and further notice thereof is hereby waived.  
Dated this 21st day of August, 1930.

Gordon, Edwinton Luyk  
Solicitors for Respondents.



HOWARD BISHOP,

Complainant

vs.

LAURA A. POWELL, et al,

RESPONDENTS.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Cross-interrogatories propounded by the respondents  
to *Paul A. Judnick & G. S. Perkins*, witness for complainant.

First Cross-Interrogatory:

Please state if you ever bought or sold any land near the property inquired about in the first interrogatory of the complainant. If you have, please state how near the land is to the lands inquired about, who bought said land, from whom was it bought, and what price was paid therefor. Where were you living in 1917, and what was your business then? Did you know the lands inquired about in 1917? If you say you did, do you know of any lands being bought or sold near said lands in 1917, and by whom were they sold, to whom were they sold and for what price?

Second Cross-Interrogatory:

Please state if the lands inquired about were being operated for turpentine in 1917. If you say yes, please state who was operating them. How much cleared land was there on this tract known as the Howard Bishop land in 1917. If you have testified as to reasonable market value of these lands in 1917, please state if there was any difference in the value as between cleared lands and wood lands. If you say there is, state the difference in the values as between such lands.

What was your business in 1917 and where were you living.

*Gayley Douglas DeLoach*  
SOLICITORS FOR RESPONDENTS

State of Alabama, }  
Baldwin County

CIRCUIT COURT  
IN EQUITY.

To Hon. Edward P. Totten

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 G.E. Perkins and Paul A. Frederick, J.F. Crance,

as witnesses in behalf of Complainant, in a cause pending in our Circuit

Court of Baldwin County, of said State, wherein

Howard Bishop,

is the Complainant

and

Laura Powell and Ola Powell

are Defendant, s

on oath to be by you administered, ~~and~~ Interrogatories and cross interrogatories, to take and certify the deposition... of the witness es and return the same to our Court, with all convenient speed, under your hand.

Witness 4th day of September 19 30.

D.W. Reel

REGISTER

COMMISSIONER'S FEE, \$ 9.00

WITNESS' FEES, \$ 4.00

State of Alabama  
LUDWIG COUNTY  
CIRCUIT COURT

ward Bishop.

Complainant

vs.

A. Powell and Ola Powell.

Defendant

COMMISSION TO TAKE DEPOSITION

and Interrogatories and cross  
interrogatories.

COMMISSIONER:

Hon. Edward P. Totten

WITNESSES:

Perkins

Frederick,

ance.

*[Faint, mostly illegible text from the reverse side of the page, including names like 'O. B. Perkins and Mrs. V. Frederick' and 'L. B. Bishop']*

*[Handwritten signature]*



said conveyance, believing it to be a mortgage, as represented by the said R. F. Powell.

It is a well established that, equity has jurisdiction to reform a written instrument, not only where there has been a mutual mistake on the part of both parties to the contract, but where there has been a mistake on the part of one of the parties and fraud on the other.

Hand vs. Cox 51 So., 519,  
Hammer vs. Lange, 56 So.572,  
Holland Blow Star Co. vs. Barclay, 69 So.118,  
2 Story's Equity Jurisprudence, 356, Sec.978,  
24 Cyc.920.

A court of equity also has jurisdiction in a proper case to declare a deed a mortgage. This principle applies to those cases where, by agreement, one party gives an absolute deed to another as security for a debt. Where a grantee declines to carry out the agreement that the deed is only security, the grantor may institute proceedings to have the deed declared to be a mortgage.

In a bill to declare a deed a mortgage, there is no allegation either of mistake or fraud, and it is clear that this jurisdiction is different from the jurisdiction to reform a written instrument on account of mistake or fraud. The authority of the court to reform a deed, rests upon entirely different principles from its authority to declare a deed a mortgage.

If the case made by the bill authorizes the court to reform the deed in question so as to make it a mortgage, the court may do so under the general prayer for relief. For such

specific relief is cognate to this special prayer to declare this deed a mortgage.

The fourth paragraph of the bill shows that the complainant and R. F. Powell agreed that the complainant should execute a mortgage for \$600.00 to the said R. F. Powell for twelve months. The fifth paragraph further shows that, upon, towit, the 12th day of October, 1917, the said R. F. Powell presented to the complainant a written instrument which the said Powell represented to be a mortgage, which had been agreed upon, and that the complainant, relying upon the representation of the said Powell, signed said paper under the bona fide belief that it was a mortgage. These allegations show a mistake on the part of the complainant, and fraud on the part of R. F. Powell acting as agent of Laura A. Powell and Ola Powell, and brings this case precisely within the jurisdiction of the court to reform a written instrument.

It follows therefore, that this case is governed by the principles relating to the reformation of instruments on the ground of fraud and mutual mistake, instead of principles relating to a proceeding to declare an absolute deed a mortgage.

It is true that the bill does not aver that Ola Powell or Laura A. Powell made any representations to the complainant, or that they intended that said deed should be a mortgage. It does show, however, that R. F. Powell, acting as the agent of the said Laura A. Powell and Ola Powell, falsely and fraudulently represented to the complainant that the said

instrument was a mortgage, and that the complainant relied upon that representation. Laura A. Powell and Ola Powell are bound by the representations of their agent.

This proposition was expressly established in the case of Logan et. al., vs. Chastang,<sup>91 So. 867,</sup> 207 Ala. 52. It appeared in this case that Logan, as the agent for Reichert, procured the complainants to execute the deed in controversy to Reichert, as grantee, falsely and fraudulently representing to them that it was an agreement to the effect that Logan was to recover and clear up the titles to the tract described in said deed. Reichert, as a defense to this suit, set up that he did not actually participate in the fraud of his agent, Logan. Upon this point the court uses the following language:

"Nor can it avail defendant that he did not actually participate in the fraud imputed by the testimony to his agent. In both law and equity he is responsible therefor, so long as he stands as grantee and beneficiary under the fraudulent deed." Hartley vs. Frederick, 191 Ala. 175, 67 So. 983, Rowland vs. Hester, 90 So. 910.

See also the case of Fowler vs. Ala. Iron & Steele Co., 66 So. 672.

In the case of Logan vs. Chastang, the suit was to cancel the deed. The case at bar is to reform the deed. So far as the point under discussion is concerned, there can be no difference between the two cases. Furthermore, the case of Fowler vs. Ala. Iron & Steele Co., (supra) was not to cancel the deed, but to declare a trust. But the same principle was applied, viz: That the principal was responsible for the fraud of his agent so long as he stood as grantee under the fraudulent deed.

The respondents urge that there is no equity in the bill because it does not appear that notice had been given to them of the mistake, or that they were requested to correct the error.

It may be true that, where a mistake has occurred innocently the complainant must request a correction by the other party before filing suit. Such a case was Black vs. Stone Company, 33 Ala. 327, relied upon by the defendants.

But this rule does not apply where the mistake occurred through the fraud of the defendant. Where fraud intervenes notice or demand for a correction is only material as affecting the question of costs.

Perry vs. Boyd, 28 So.711,  
King vs. Livingston Mfg. Co., 66 So.897,  
Singleterry vs. Varnum, 75 So.890,  
Morgan vs. Gaiter, 80 So.876,  
Strickland vs. Strickland, 90 So.745.

The allegations of the bill of complaint as to the fraud of R. F. Powell, are as follows, viz:

First. Prior to the twelfth day of October, 1917, Complainant had mortgaged certain property in Baldwin County, Alabama, to Albert Thompson to secure an indebtedness of, to wit, One hundred and fifty dollars (\$150.00, and on said date complainant had borrowed certain sums of money from R. F. Powell; the exact amount of which is unknown to plaintiff, nor is it known to complainant whether or not the said R. F. Powell, in lending said sums of money to complainant, was acting for himself or for the said Laura A. Powell and the said Ola Powell.

Second. The said R. F. Powell took up the Thompson mortgage either individually or on behalf of one or both of the defendants, the complainant having no personal knowledge thereof, and it was agreed between complainant and the said R. F. Powell that the amount advanced by the said Powell to take up the Thompson mortgage and the amount which the said Powell had loaned complainant was to be secured by a mortgage from complainant to the said R. F. Powell on complainant's real estate in Baldwin County, Alabama,

said real estate being described as 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 except four (4) acres in the southwest corner of the said S. E.  $\frac{1}{4}$  of the N. W.  $\frac{1}{4}$ , all in Township 6 South, Range 3 East, said lands containing seventy-six (76) acres, more or less; also the one-seventh interest of complainant in that certain other property in Baldwin County, Alabama, known as the Bishop estate, and described as follows: The E.  $\frac{1}{2}$  of the N.E.  $\frac{1}{4}$  of the N.W.  $\frac{1}{4}$  and the S.  $\frac{1}{2}$  of the N.W.  $\frac{1}{4}$ , and the E.  $\frac{1}{2}$  of the N. W.  $\frac{1}{4}$  of the S. W.  $\frac{1}{4}$  and the N.E.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$ , and the W.  $\frac{1}{2}$  of the N.W.  $\frac{1}{4}$  of the S. E.  $\frac{1}{4}$ , and an undivided one-half interest in the S.E.  $\frac{1}{4}$  of the S. W.  $\frac{1}{4}$ , all in Section 19, Township 6 South, Range 3 East.

Third. Complainant does not know the exact amount of money which the said R. F. Powell loaned to complainant, as some of it was advanced for complainant and a part expended on an abstract of title, but the said Powell informed complainant that the total amount due by complainant to the said R. F. Powell on the 12th day of October, 1912, was Six Hundred Dollars (\$600.00), although said Powell had subsequently stated that the amount then due was Six hundred and fifteen dollars and sixty cents (\$615.60).

Fourth. It was understood and agreed between complainant and the said R. F. Powell that the mortgages to the said Powell was to be in the sum of Six hundred (\$600.00) Dollars on the property above described, and that complainant was to have twelve months from that date within which to repay the loan, the mortgage being for the purpose of securing a loan of Six Hundred (\$600.00) Dollars for twelve months.

Fifth. On, to wit, the said 12th day of October, 1917, the said R. F. Powell presented to complainant a certain written instrument, which the said Powell represented to be a mortgage on the above described seventy-six (76) acres of land and the interest of complainant in the other property above described, for six hundred (\$600.00) Dollars for twelve months, and complainant, relying upon the representation of the said R. F. Powell, signed said paper under the bona fide belief that it was a mortgage,

Separate demurrers were filed to the bill by R. F. Powell, raising the question that he is not a proper party, because no relief is sought against him. It appears, however, that the <sup>alleged</sup> fraud in the bill was committed by him. And while it is true that ordinarily a mere agent against whom no relief is asked, should not be made a party, yet where that agent has been guilty of fraud, he is a party proper and may be charged with the costs

of the suit.

2 Corpus Juris, 902 Section 606,  
21 Corpus Juris, 267, Section 267.

Furthermore, the bill shows that the real agreement between the Complainant and the said R. F. Powell was, that the complainant should execute a mortgage to the said R. F. Powell to secure the alleged indebtedness between complainant and the said R. F. Powell. If this deed is to be reformed by adding a defeasance clause and by changing the grantee from Laura A. Powell to R. F. Powell, then clearly the said R. F. Powell is not only a proper, but a necessary party.

Furthermore, when the court reforms this deed to correspond with the agreement alleged in the bill of complaint, it must have before it, not only the said Laura A. Powell and Ola Powell, but also the said R. F. Powell in order to adjust any equities that may exist between them.

Respectfully submitted,

*Hogan & Mitchell*

