CITATION OF APPEAL

Moore Printing Company, Bay Minette, Alabama

THE STATE OF ALABAMA
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the ..... ~~Monday in~~ October 21, ... 19 72, in a certain cause in said Court wherein Ray E. Loper Lumber Company, Inc. a Corporation ..... Plaintiff, and Choyce E. Windham, N. S. Whitman, N. S. Whitman, Jr., & N. S. Whitman Timber Co., Inc., a Corporation, Jointly & Severally, Defendant, a judgement was rendered against said Ray E. Loper Lumber Company, Inc. A Corporation ..... to reverse which Judgment ..... the said Ray E. Loper Lumber Company, Inc. a Corporation .....

applied for and obtained from this office an APPEAL, returnable to the next ..... Term of our Supreme ..... Court of the State of Alabama, to be held at Montgomery, on the ..... day of ..... 19..... next, and the necessary bond having been given by the said Ray E. Loper ~~xxxxx~~ ..... with ..... sureties, ...

Now, You Are Hereby Commanded, without delay, to cite the said Choyce E. Windham, N. S. Whitman N. S. Whitman, Jr. & N. S. Whitman Timber Co. Inc., a Corporation, Jointly & Severally or Wilters & Brantley, & Chason, Stone, & Chason ....., attorney, to appear at the next ..... Term of our said Supreme Court, to defend against the said Appeal, if they ..... think proper.

Witness, ~~XXXXXXXXXX~~ EUNICE B. BLACKMON Clerk of the Circuit Court of said County, this 14th ..... day of April ....., A. D., 19 72

Attest:

Eunice B. Blackmon Clerk.

Served: Tolbert Brantley - 4-19-72
Marbury Stone - 4-20-72

Received 19 day of April 19 72
and on 20 day of April 19 72
I served a copy of the within Citation on Appeal
on Firstame Stone

By service on

TAYLOR WILKINS, Sheriff
By Willard Hallmark D.S.

Received 19 day of April 19 72
and on 19 day of April 19 72
I served a copy of the within Cit. on Appeal
on Willis Brantley

By service on

TAYLOR WILKINS, Sheriff
By [illegible] D.S.

B 9542

CIRCUIT COURT
Baldwin County, Alabama

Ray E. Loper Lumber Co.

Vs. } **Citation in Appeal**

Choyce E. Windham et al

APR 19 1972
TAYLOR WILKINS
SHERIFF

Issued _____ day of _____, 19____

serve
Chason, Stone & Chason
&
Wilters & Brantley

RAY E. LOPER LUMBER COMPANY, INC., a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, ET AL., Defendants.	)	AT LAW NO. 9542

DEMURRER TO PLEAS OF DEFENDANT, CHOYCE E. WINDHAM

Now comes the plaintiff, by its attorneys, and demurs to Plea 4 to Count 1, Plea 3 to Count 2, Plea 4 to Count 3, and Plea 4 to Count 4 to plaintiff's complaint as last amended, each separately and severally, and as grounds of such demurrer assigns, separately and severally, the following:

1. The allegations of each of the said pleas are conclusions of the pleader.

2. The allegations of each of the said pleas are vague, indefinite and uncertain.

3. The facts alleged in each of the said pleas do not constitute a defense to any count of the plaintiff's amended complaint and raise immaterial issues.

4. No facts are alleged to show that the defendant, Choyce E. Windham, had authority to sell timber belonging to the plaintiff.

5. No facts are alleged to show that the defendant, Choyce E. Windham, had authority to receive payment on behalf of the plaintiff for any of its timber.

6. No facts are alleged to show that the defendant, Choyce E. Windham, had authority to sell plaintiff's timber to the defendants Whitman, or any of them.

7. The allegations of the pleas are vague, indefinite and uncertain and no facts are alleged to show why the alleged

money was received by the defendant, Choyce E. Windham.

8. The allegations of each of the pleas are vague, indefinite and uncertain and no facts are alleged to show for what the alleged money was paid.

9. The allegations of the pleas are vague, indefinite and uncertain and no facts are alleged to show what agents of the defendant, N. S. Whitman Timber Company, Inc., authorized the cutting of the plaintiff's timber.

10. The allegations of the pleas are vague, indefinite and uncertain and no facts are alleged to show who authorized the cutting of the plaintiff's timber.

11. No facts are alleged to show that the said agents of the defendant, N. S. Whitman Timber Company, Inc., or others, had authority to direct the cutting of the plaintiff's timber.

12. No facts are alleged to show that the plaintiff sold any timber to the defendants, or any of them.

13. No facts are alleged to show that the plaintiff authorized the defendants, or any of them, to cut and remove timber belonging to it.

14. The allegations of the pleas are vague, indefinite and uncertain and no facts are alleged to show when, how, or in what way Ray E. Loper, President of the plaintiff, Ray E. Loper Lumber Company, Inc., a corporation, consented to the cutting of its timber.

J. B. Blackburn

Attorneys for Plaintiff

I hereby certify that I delivered a copy of the foregoing demurrer to Chason, Stone and Chason, and to Tolbert M. Brantley, Esquire, on this the 24th day of September, 1971.

Of ~~Counsel for~~ Plaintiff

RAY E. LOPER LUMBER COMPANY, INC., a Corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a Corporation, jointly and severally, Defendants.	)	AT LAW NO. 9452

ORDER EXTENDING TIME FOR FILING TRANSCRIPT OF EVIDENCE

On application of the appellant (plaintiff), acting by and through its attorneys, and good cause being shown, the time for filing the transcript of the evidence in this cause with the Clerk of the Circuit Court shall be and it is hereby extended until the 10th day of August, 1972.

This extension is granted pursuant to the authority vested in the trial court by Title 7, Section 827(1a), of the Code of Alabama.

Dated this 12th day of June, 1972.

Joseph J. Mahoney
Judge

FILED

JUN 12 1972

EUNICE B. BLACKMON CIRCUIT CLERK

_____DIV. NO._____ CERTIFICATE OF APPEAL. (Civil Cases.)

No. 9542

THE STATE OF ALABAMA

BALDWIN County.

I, Eunice B. Blackmon, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein Ray E. Loper Lumber Co. Inc. was plaintiff, and Choyce E. Windham, N. S. Whitman, N. S. Whitman, Jr., & N. S. Whitman Timber Company, Inc. A Corporation, jointly & severally, was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said Ray E. Loper Lumber Company did on the 14th day of April, 19 72, pray for and obtain an appeal from the judgment of said Court to the Supreme Court of Alabama to reverse said judgment of said Court upon entering into bond with Ray E. Loper as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Baldwin County is hereto affixed, this the 14th day of April, 19 72

Eunice B. Blackmon

Clerk of the Circuit Court of

Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)

Ray E. Roper Lumber Co.
vs Windham

JURY LIST - OCTOBER CIVIL TERM - OCTOBER 11, 1971

1. ~~Hammond, Karen, Mach Opr., St. Regis Paper, 407 E. 1st St., Bay Minette-Mobile~~ D16
2. ~~Harvey, Eddie L., Standard Furn. Co., Stockton, Bay Minette~~ P3
3. Hough, Fred A., Barber, Rt. 2, Foley, Foley
4. ~~Williams, Willie, Waiter Lakewood Golf Club, P.O.Box 434, Point Clear, Pt. Clear~~ P9
5. ~~Ackum, George, Laborer, Latham, McMillan Sawmill, Stockton~~ D3
6. ~~Allen, Dan, Grader McMillan Sawmill, 915 Carroll Bay Minette, Stockton~~ P4
7. ~~Bartley, George A., Jr., Electrician Int. Paper Co., Spanish Fort, Mobile~~ P13
8. ~~Coleman, Helen, Housewife, Stockton~~ P10
9. ~~Moore, Byrd E., Design Eng. Ala. Dry Dock, Fairhope, Mobile~~ D15
10. ~~Moody, Raymond D., Fish & Wild Life Dir. Int. Paper Co., Fairhope~~ D11
11. ~~Mohler, John A., Electrician Scott Paper Co., Fairhope, Mobile~~
12. ~~Mitchell, Phillip, Mitchell Self Laundry, Young St., Fairhope~~ P5
13. Middleton, Joseph D., Counselor Allied Personal, Seminole Av., Fairhope
14. ~~Means, Frank M., Jr., Agt. Int. Rev. Serv., Battles Wharf, Mobile~~ D10
15. ~~Jeffers, Wanda H., Housewife, 508 W. 16th St., Bay Minette~~ D4
16. ~~Jeffers, Lloyd B., International Paper Co., 16th St., Bay Minette~~ D5
17. Ikner, John W., Mech. Scott Paper Co., Old Spanish Trail, Daphne, Mobile
18. Ikner, Nancy H., Housewife, 2516 Old Spanish Trail, Daphne
19. ~~Hall, Patrician Mason, Housewife, 203 Gaston Av., Fairhope~~ P15
20. ~~Guy, Mary M., Housewife, 519 Collier Av., Bay Minette~~ P14
21. ~~Dorothy D. Grimes, Gkpr, Grimes Ind. Brady Rd., Bay Minette~~ D1
22. ~~Griffith, Franklin J., Draftsman St., Hwy Dept., 165 Pinecrest La., Fairhope~~ D9
23. Gremillion, Will J., Dept. Mgr., Gulf Fiber Product, Fairhope, Mobile
24. Gremillion, Janet T., Housewife, 414 Barclay Ave., Fairhope
25. Crampton, Polly W., Housewife, 615 McAdams Ave., Daphne
26. Crampton, Kenneth W., Emp. U.S. Customs, 615 McAdams Ave., Daphne
27. Crumpton, Joe T., Safety Insp. Addsco 499 Belrose Ave., Daphne
28. ~~Day, Mrs. Robbie M., Bay Slacks, Stockton, Bay Minette~~ D13
29. ~~Boston, Johnnie L., Standard Furniture Co., Stockton, Bay Minette~~ P6
30. ~~Brooks, Benjamin, Trk. Dr., Hale Mfg., Foley, Foley~~ P7
31. ~~Sanders, Lonnie, Tech. Bob White Chev., Bay Minette~~ D12
32. ~~Grace, Ernest, Logger E.C. Johnson, 916 ½ W., Hurricane Rd., Bay Minette~~ P8
33. Watkins, Jack W., Formn Newman Indus., 853 Sea Cliff Dr., Fairhope,Mobile
34. ~~Wilcox, Jerry C., Tech, T.V. Tower, Robertsdale~~ P11
35. ~~Higgins, Lurby, Crosby Lbr. Co., 207 E. Ellis St., Bay Minette~~
36. Hicks, Edna E., Bkpr. White's Auto Store, 101 Mitchell, Bay Minette
37. ~~Headley, Jeanette E., Clk., ASCS 600 W. 3rd St., Bay Minette~~ D2
38. ~~Huffman, Haywood, Laborer, Crosby Lbr. Co., 1109 Newport Parkway, Bay Minette, Ala.~~ D8
39. Quinley, David, Farmer Rt. Bay Minette, Ala, Bay Minette, Ala.
40. ~~Ryba, Frances Y., Ofc. International Paper Co., 100 E. 5th St. Bay Minette, Ala.~~ D6
41. ~~Roye, Sally L., Clk, S. Kahalley's, 105 W. 5th St. Bay Minette, Ala.~~ D14
42. ~~Trawick, Barbara P., Supervisor SCB Tele., 1801 Elaine Av. Bay Minette, Bay Minette~~ P12
43. ~~Corte, Forest F., Farmer, Loxley, Ala., Loxley, Alabama~~ P1
44. ~~Hudson, Homer, Standard Furniture Bay Minette~~ D7
45. ~~King, Albert, Callaway's Seafood - Gulf Shores~~ P2
46. ~~Taylor, Leon, So. Cent. Bell Tele. Loxley, Bay Minette~~ P16

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RHETT P. WALKER, M. D.
CARDIOLOGY AND CHEST MEDICINE

DIPLOMATE OF AMERICAN
BOARD OF INTERNAL MEDICINE

168 LOUISELLE STREET
TELEPHONE 438-4794
MOBILE, ALABAMA

March 30, 1971

Judge Telfair J. Mashburn

Bay Minette, Alabama

RE: Noel S. Whitman

Dear Judge Mashburn:

The above patient has been under my care for several years. because of serious heart disease with angina pectoris. I believe that a court trial would be a very real physical threat to his health.

Very sincerely,

Rhett P. Walker, M.D.

RPW:dmc

FILED

MAR 31 1971

EUNICE B. BLACKMON CIRCUIT CLERK

COST BILL—CIRCUIT COURT, IN EQUITY (Form No. 6316-2—Revised 1-19-59) Printed and for Sale by Roberts & Son, Birmingham

The State of Alabama, Baldwin County

No. 10,016 **CIRCUIT COURT, IN EQUITY**

To Transferred to Civil No-

Dear Sir: At the ..... Term, 19..., by a decree of this Court .....

recovered of .....

the sum ..... Dollars,

and ..... Dollars, costs of suit.

Following is an itemized statement of costs in this cause, and I request you to remit the amount so as to save an additional expense of an execution.

Please enclose this Cost Bill with remittance to be receipted and returned to you.

Respectfully yours,

....., Register

REGISTER'S FEES:		AMOUNT
1. Docketing Cause	$ 2.00	2 00
2. Issuing Subpoena	.95	95
3. Per copy	.65	2 60
4. Entering Return	.20	40
5. Entering Appearance	.65	1 30
6. Filing Bills or other papers	.20	2 60
7. Decree pro confesso	1.55	
8. Noting all Testimony	.65	
9. Recording Questions and Answers per 100 words	.30	
10. For all other services relating to such proceedings	1.25	
11. Final Record, 100 words	.25	21 60
12. Entering Decree	1.25	1 25
13. Order of Publication	1.55	
14. Abstract of Publication, 100 words	.20	
15. Decree appointing Guardian ad Litem	1.55	
16. Issuing Attachment writ	1.15	
17. Entering return	.20	
18. Issuing injunction writ or ne exeat	1.75	
19. Per Copy	.65	
20. Entering Return	.20	
21. Entering order submitting cause for decree	.65	
22. Any other order	.30	
23. Copy of Bill or other paper, per 100 words	.20	
24. Issuing commission to take testimony	.95	
25. Receiving and filing each package of testimony	.15	
26. Endorsing each package of depositions published	.15	
27. Taking accounts, swearing witness, etc., per day	3.75	
28. Taking testimony on reference, 100 words	.20	
29. Report of Register	3.75	
30. Issuing subpoena, each witness	.30	30
31. Witness certificate	.30	
32. Hearing application for appointment of Receiver or Trustee	3.75	
33. Settlement with Receiver, Trustee, Adm. or Exec.	5.00	
34. Examining Vouchers	.20	
35. Examining Answer or exception	3.75	
36. Commissions on sale		
37. For Receiving, keeping and paying out money other than that arising from sale		
38. Deed to property sold	5.00	
39. Notices sent by mail to creditors	.20	
40. Filing, Receipting for and docketing each claim	.30	
41. Entries on subpoena docket	.65	
42. Entries on commission docket	.65	
43. Issuing certificate of Judgment to be recorded in Probate Court	.30	
44. Taking and approving Bond	1.25	
45. Each certificate or affidavit with seal	.95	
46. Each certificate or affidavit without seal	.65	
47. Each Notice not otherwise provided for	.95	
48. Entering orders by the Register	.65	
49. Recording resignation, removal, or suggestion of death of trustee	.95	

REGISTER'S FEES—Continued		AMOUNT
50. Entering each certificate of Supreme Court	.65	
51. Transcript, per 100 words	.20	
State certificate	.65	
Relieving minors of disability of non-age	8.00	
Answer and Waiver Divorce case, 2 copies of Decree	12.00	
Decree Pro Confesso on Personal service, Divorce case, 1 copy of decree	20.00	
Decree Pro Confesso on Registered mail service, Divorce case, 1 copy of decree	20.00	
Decree Pro Confesso on Publication, divorce Case with 1 copy of decree	20.00	
Certified copy of Divorce decree	1.25	
Issuing execution	.95	
Entering return	.20	
Total Register's Fees		32 00
SHERIFF'S FEES: 3 -		
Summoning on Bill, Each Defendant	$ 1.50	4 50
Executing Subpoenas for Witnesses, ea. 1	.75	75
Executing Writs of Possession, each	5.00	
Executing Scire Facias or Notice, each	1.50	
Taking and Approving Bonds, each	2.00	
Impaneling Jury	.75	
Collection Execution for Costs only, ea.	1.50	
Sheriff's Commissions		
Mileage (except Witness Subpoenas) 0		
Total Sheriff's Fees		5 25
Summary of Fees, Costs and Judgment—		
Fees in Circuit Court:		
1. Register's Fees		32 00
2. Ex-Register's Fees		
3. Sheriff's Fees		5 25
4. Ex-Sheriff's Fees		
5. Witness Fees		
6. Commissioner's Fees		
7. Guardian Ad Litem		
8. Publisher's Fees		
9. Solicitor's Fees		
10. Court Reporter's Fees, Per Day or Fraction Thereof	5.00	
11. Trial Tax	3.00	4 50
Fees and Costs in Inferior Court:		
15. Clerk of Inferior Court, Fees		
16. Sheriff's Fees		
17. Witness Fees		
18. C. M		101
19. Costs in Probate Court		
20. Total Fees and Costs in Inferior Court		
21. Total Fees and Costs		
22. Judgment		
23.		
24.		
25. **Total Fees, Costs and Judgment**		43 76

No. 10,016 Page.....

The State of Alabama

.....COUNTY

CIRCUIT COURT, IN EQUITY

.....

.....

vs. Complainant

.....

.....

Defendant

COST BILL, CIRCUIT COURT, IN EQUITY

Received of.....

.....Dollars

in payment of the above, this the.....day of

....., 19.....

.....

Register

RAY E. LOPER LUMBER COMPANY, INC., a Corporation,

Complainant,

VS.

CHOYCE E. WINDHAM, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 10,016

DECREE TRANSFERRING CASE FROM EQUITY TO LAW SIDE OF THE COURT

This cause coming on again to be heard is submitted on the motion filed in this case by the complainant on October 23, 1970, to remove this cause from the Equity to the Law Side of this court, and the order of this court dated October 23, 1970, setting this motion for hearing at 8:00 o'clock A. M., on October 29, 1970, on which date the attorney for the respondents, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., requested that this cause be continued until October 30, 1970, at which time the motion was heard; upon consideration of all of which, it is, therefore, ORDERED, ADJUDGED AND DECREED by the court as follows:

This cause shall be and it is hereby transferred from the Equity Side of the Circuit Court of Baldwin County, Alabama, to the Law Side of the said court.

The removal of this cause from the Equity to the Law Side of the said court has been consented to by the attorneys for all of the respondents.

ORDERED, ADJUDGED AND DECREED on this the 30th day of October, 1970.

Telfair J. Washburn
Judge

FILED

NOV 3 1970

VOL 106 PAGE 161 ALICE J. DUCK CLERK REGISTER

VOL 68 PAGE 812

RAY E. LOPER LUMBER COMPANY INC., a corporation,	X	IN THE CIRCUIT COURT
Plaintiff,	X	OF BALDWIN COUNTY
VS.	X	AT LAW
CHOYCE E. WINDHAM, et al	X	No. 9542
Defendants	X	

MOTION TO REQUIRE PRODUCTION OF BOOKS PAPERS, DOCUMENTS AND RECORDS

Come now the Defendants in the above styled cause, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation and move this Honorable Court to compel, by order, the Plaintiff to produce, prior to the trial of this cause, for examination by the named Defendants the following papers, books, documents and records in its possession or power, which papers, books, documents and records are necessary and material to the trial of said cause and contain evidence pertinent to the issues of said trial, to-wit:

1. All receipts, receipt books, ledgers, cash books or other records kept by the Plaintiff during the years 1964, 1965, 1966, 1967 and 1968 pertaining to any and all transactions between the Plaintiff, its servants, agents or employees and the named Defendants during these years.

2. All correspondence or copies thereof from and to the Plaintiff during the above years, pertaining in any way to transactions between it and the named Defendants.

The Defendants named above further move the Court to set this motion for hearing and provide for reasonable notice of the filing, thereof and of the date set for its hearing to be

given to the Plaintiff or its Attorney as provided for by Title 7, Section 426, Code of Alabama, 1940 (Recompiled, 1958).

Respectfully Submitted

CHASON, STONE & CHASON

By Eberhard E. Ball
Attorneys For Defendants,
N. S. Whitman, N. S. Whitman, Jr.,
and N. S. Whitman Timber Company,
Inc., a corporation

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority, appeared Eberhard E. Ball, who being first duly and legally sworn, deposes and says:

That he is one of the Attorneys for the Defendants, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., in the above styled cause, and that the books, papers, documents and records referred to in the above motion to require the production of such books, papers, documents and records, are necessary and material to the trial of this cause.

Sworn to and subscribed before me this 11 day of June 1971.

Eberhard E. Ball
Eberhard E. Ball

Julia H. Brock
Notary Public, Baldwin County, Alabama

FILED

JUN 16 1971

EUNICE B. BLACKMON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
	X	
vs.	X	BALDWIN COUNTY, ALABAMA
	X	
CHOYCE E. WINDHAM, et al.,	X	AT LAW CASE NO. 9542
Defendants.	X	

ORDER SETTING DATE FOR HEARING MOTION

This day came the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., and filed their motion to require the production of certain books, records, papers and documents by the Plaintiff in the above styled cause and the Court having considered the same is of the opinion that the said motion should be set down for hearing; it is, therefore,

ORDERED and DECREED that the said motion is hereby set for hearing at 10:00 o'clock A.M. on the 28th day of June, 1971.

Done this the 16th day of June, 1971.

Jefferson A. Mobley
Circuit Judge

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 16th day of June, 1971.

Eberhard E. Ball

FILED

JUN 16 1971

EUNICE B. BLACKMON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY, INC., A Corporation,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
CHOYCE W. WINDHAM, et al.,	X	AT LAW NO. 9542
Defendants.	X	

ORDER GRANTING MOTION TO REQUIRE PRODUCTION OF BOOKS, PAPERS, DOCUMENTS AND RECORDS

This being the day heretofore appointed for the hearing of the motion filed on behalf of the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., to require the production of books, papers, documents and records by the Plaintiff in this cause; now come the Movants, by their attorneys, and the Plaintiff by its attorney and the Court having considered said Motion and the arguments of counsel with respect thereto is of the opinion that said Motion should be granted; it is, therefore,

ORDERED, ADJUDGED and DECREED by the Circuit Court of Baldwin County, Alabama, that the Plaintiff shall produce within thirty (30) days from the date hereof, for examination by the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., or their agents or attorneys, at reasonable times, in a reasonable location and under reasonable circumstances, the following:

1. All receipts, receipt books, ledgers, cash books or other records kept by the Plaintiff during the years 1964, 1965, 1966, 1967 and 1968 pertaining to any and all transactions between the Plaintiff, its servants, agents or employees and the named Defendants during these years.

2. All correspondence or copies thereof from and to the Plaintiff during the above years, pertaining in any way to transactions between it and the named Defendants.

Done this 28th day of June, 1971.

Jefferson A. Marlebury
Circuit Judge

FILED

JUL 2 1971

EUNICE B. BLACKMON CIRCUIT CLERK

9542

RAY E. LOPER LUMBER COMPANY, INC., a Corporation,

Plaintiff,

VS.

CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a Corporation, jointly and severally,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 9452

APPEAL

Now comes the plaintiff in the above styled cause, by its attorneys, and appeals to the Supreme Court of Alabama from the judgment of the Circuit Court of Baldwin County, Alabama, rendered on October 21, 1971, and also from the judgment or order of the court overruling the plaintiff's motion for a new trial on, to-wit, December 1, 1971, as to the defendants, Choyce E. Windham, N. S. Whitman and N. S. Whitman, Jr., and granting the motion as to N. S. Whitman Timber Company, Inc., unless it shall pay into court for the benefit of the plaintiff $1656.10 and interest from October 7, 1967, within ten days; and from the order or judgment of the court dated December 6, 1971, denying plaintiff's motion for a new trial as to the defendant, N. S. Whitman Timber Company, Inc.

Dated this 14th day of April, 1972.

J. B. Blackburn

Joseph R. Owen

Attorneys for Plaintiff

STATE OF ALABAMA
*
BALDWIN COUNTY

I hereby acknowledge myself as security for costs of the above appeal.

Dated this 14th day of April, 1972.

Taken and approved on this the
14 day of April, 1972.

Eunice B. Blackmon

Circuit Clerk

CERTIFICATE OF SERVICE

I hereby certify that I did on this date mail a copy of the above and foregoing appeal and security for costs to Tolbert M. Brantley, Esquire, attorney for the defendant, Choyce E. Windham, and to Norborne C. Stone, Esquire, attorney for N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., defendants, on this the 14th day of April, 1972.

J. T. B. Blackburn

Of counsel for appellant

FILED

APR 14 1972

EUNICE B. BLACKMON CIRCUIT CLERK

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM, 1973

Ray E. Loper Lumber Co., Inc., a Corp.

S.C. 48 v.

Choyce E. Windham, et al., Etc.

Appeal from Baldwin Circuit Court

COLEMAN, JUSTICE.

Plaintiff appeals from judgment for defendants in action to recover payment for trees on land of plaintiff which defendants had allegedly cut and sold.

For prior connected case, see Whitman v. Mashburn, 286 Ala. 209, 238 So. 2d 709.

Plaintiff is Ray E. Loper Lumber Company, Inc., a corporation. Defendants are Choyce E. Windham, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., a corporation.

In count 1, plaintiff claims $148,467.28 for that the defendants entered into an agreement by which they would unlawfully enter on lands of plaintiff and cut and remove and convert the timber to use of defendants. Count 2 is for money had and received. Counts 3 and 4 are for trespass.

Defendants pleaded the general issue and special pleas.

As hereafter noted, the principal issue developed on the trial was whether defendants had paid plaintiff for the timber cut. The case was tried to a jury and verdict was for defendants. Plaintiff argues two assignments of error.

1.

In Assignment of Error 2, plaintiff asserts that the trial court erred in overruling plaintiff's demurrer to plea 2 filed by defendants N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc. These three defendants will sometimes be referred to as the Whitmans or the Whitman defendants.

The substance of the controversy is summarized by plaintiff in its brief as follows:

> "Briefly, the undisputed facts in this case are that the appellant, Loper, owned large tracts of timbered land in Mobile County and Baldwin County, Alabama; that

> the defendant, Windham, cut and removed 26,694 cords of paperwood from lands belonging to the appellant during the period of time complained of in the complaint; that the total amount of all of the checks issued by the defendants, Whitman, and made payable to cash was $94,283.70 or 55% of the value of the said paperwood and that the value of the paperwood as shown by the records of the defendants, Whitmans, was $148,467.28.
>
> "The question to be answered then, is whether or not the appellant, Loper, ever received payment for the timber or paperwood. . . ."

The Whitman defendants, among other pleas, filed plea 2 wherein they allege that they dealt with defendant Windham as the agent of plaintiff, that Windham was authorized to sell timber belonging to plaintiff and receive monies from the Whitmans in payment for the timber, and that the Whitmans paid to Windham as such agent all sums due plaintiff for the timber sold to the Whitmans.[1]

---

1. Plea 2 recites:

"2. For further answer to Counts 1, 3 and 4 of the Complaint as last amended, the Defendants, N. S. Whitman,

Plaintiff argues that plea 2 is defective and that demurrer of plaintiff to plea 2 should have been sustained. Plaintiff says in brief:

"The case of Waugaman vs. Skyline Country Club cited as Proposition of Law

---

N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, say that at all times since April 8, 1964, or during the several months prior thereto and continuing thereafter, the Defendant, Choyce E. Windham, was the duly authorized agent, servant or employee of the Plaintiff, Ray E. Loper Lumber Company, Inc., a corporation, and as such duly authorized agent, servant or employee was authorized to sell timber belonging to the said Plaintiff and receive monies from the Defendant N. S. Whitman Timber Company, Inc., in payment thereof and that at all times pertinent hereto, the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation dealt with him as such. That the Defendant N. S. Whitman Timber Company, Inc., a corporation, paid to the Defendant Choyce E. Whindham, as such duly authorized agent for Ray E. Loper Lumber Company, Inc., a corporation, acting within the line and scope of his employment as aforesaid, all sums due the Plaintiff for the timber sold to N. S. Whitman Timber Company, Inc., a corporation, by the Plaintiff acting by and through the said Choyce E. Windham as the duly authorized agent, servant or employee as aforesaid."

No. 1, 277 Ala. 495, 172 So. 2d 381, holds that:

> "'When it is alleged that the agent did some primary act which he was duly authorized to do, and a secondary and distinct effect is imputed to such act, it is not sufficient to allege the authority of the agent to do the primary act merely, but the secondary effect must be charged directly upon the principal or it must be alleged that the agent was authorized to bind the principal as to the secondary effect.'

"The appellant's demurrer aptly pointed out this error in the appellees', Whitmans', amended plea 2 and the demurrer should have been sustained. Particularly, in paragraph numbered 8 of the demurrer, the appellant points out that no facts are alleged to show that the defendants, Whitmans, or any of them, ascertained or made any effort to ascertain from the plaintiff (appellant) the nature and extent of the authority of the alleged agent, Choyce E. Windham. . . ."

Plaintiff's argument appears to be that, although plea 2 is sufficient to show that Windham was authorized to

sell timber owned by plaintiff, the plea is insufficient to show that Windham had authority to receive monies in payment for the timber sold. Stated differently, the argument appears to be that although the plea is sufficient to allege that Windham had authority, as plaintiff's agent, to sell the timber, which is regarded as the primary act, the plea is not sufficient to show that Windham had authority, as plaintiff's agent, to receive money in payment for the timber, which is to be regarded as the secondary act.

In Waugaman, plaintiff undertook to charge that a defendant corporation was liable for the act of one Croom, an agent of the corporation whereby the agent caused, aided, or participated in the wrongful and malicious expulsion of the plaintiff from a social club. The plaintiff alleged that the agent of the corporation, while acting within the line and scope of his authority as such, had sold a liability insurance policy of the defendant corporation to the social club. Plaintiff alleged further that Croom, "an agent, servant or employee of said" defendant corporation, while acting within the line and scope of his authority as such, caused, aided or participated in the wrongful and malicious expulsion of plaintiff from the club.

It was alleged that Croom was also a member of the governing board of the social club. The holding of this court was, in effect, that the allegations of the complaint, even though sufficient to show Croom's authority as agent for the defendant corporation in selling the insurance policy

to the club, which was the primary act, the allegations were insufficient to show that Croom had authority to act as agent for the defendant corporation when, as a member of the governing board of the club, he allegedly participated in causing plaintiff's expulsion from the club, which was the secondary effect or act.

In plea 2 in the case at bar, the Whitman defendants allege that Windham ". . . was the duly authorized agent . . . of the Plaintiff . . . and as such duly authorized agent . . . <u>was authorized to sell timber belonging to the said Plaintiff and receive monies from the Defendant N. S. Whitman Timber Company, Inc., in payment thereof</u> and that at all times pertinent hereto, the Defendants (Whitmans) . . . dealt with him as such. That the Defendant N. S. Whitman Timber Company, Inc., . . . paid to the Defendant Choyce E. Whindham, as such duly authorized agent for (Plaintiff) . . . acting within the line and scope of his employment as aforesaid, all sums due the Plaintiff for the timber sold to N. S. Whitman Timber Company, Inc., . . . by the Plaintiff acting by and through the said . . . Windham as the duly authorized agent, servant or employee as aforesaid." (Emphasis Supplied)

In plea 2, the Whitman defendants plainly allege that Windham, as agent for plaintiff, ". . . was authorized to sell timber belonging to the said Plaintiff and receive monies from the Defendant . . . in payment thereof . . ." The authority to sell and the authority to receive monies are both "charged directly upon the principal" and it is alleged ". . .

that the agent was authorized to bind the principal . . ." as to the effect of both acts. The allegations, that the agent had authority to sell and authority to receive payment, are made conjunctively and consecutively in the same sentence. It is difficult if not illogical to regard either authority as primary and the other authority as secondary. With respect to the manner in which the allegations showing the agent's authority to act for the principal are made, the two authorities are coordinate and equal. The grant of both authorities is charged directly upon the principal. The rule followed in Waugaman has no application to plea 2.

In its argument quoted above, plaintiff refers to "paragraph numbered 8 of the demurrer." Ground 8 of the Whitmans' demurrer recites:

> "8. No facts are alleged to show that the defendants Whitman, or any of them, ascertained or made any effort to ascertain from the plaintiff the nature and extent of the authority of the alleged agent, Choyce E. Windham."

Plaintiff, apparently in support of ground 8 of its demurrer, states Proposition of Law No. 4, which recites:

> "PROPOSITION OF LAW NO. 4
>
> "Generally, one dealing with a known agent is not authorized blindly to trust the agent's statements as to the extent of his powers, and such person must use

reasonable diligence to ascertain whether the agent acts within the scope of his powers.

"Johnson vs. Shook and Fletcher Supply Company 245 Ala. 123; 16 So. 2d 406"

Proposition 4 is a copy of Headnote 4 in the report of Johnson v. Shook & Fletcher, supra. Proposition 4 is sound, as a general proposition of law, and we know of no decision of this court to the contrary. It does not appear, however, that Proposition 4 is pertinent to the question whether plea 2 is sufficient when challenged by ground 8 of plaintiff's demurrer. In Johnson v. Shook & Fletcher, supra, the opinion contains a number of citations and quotations which pertain to the authority of agents, but it does not appear that the writer of the opinion was concerned with the sufficiency of pleading or the sustaining of a demurrer to a pleading. In the last paragraph of the opinion, the writer concludes as follows:

"There being no dispute in the evidence, the question of whether the alleged contract was a reasonable one or within the statute of fraud, was for the court, and we hold that the defendants were entitled to the affirmative charge, duly requested in writing, and which was given. The judgment of the circuit court is affirmed." (245 Ala. at 133)

While a third party dealing with an agent is held to be subject to the burden of ascertaining the extent of the

powers of the agent, it seems that where the agent is, in fact, acting within the scope of the authority granted to him, the principal ought to be bound for the acts of the agent, whether the third party made any inquiry as to the extent of the agent's authority or not. The decision as to the principal's liability ought to rest and, so far as we are advised, does rest on the actual extent of the authority granted to the agent and not on the fact that the third party dealing with the agent made inquiry to ascertain the agent's authority. We are not cited to or aware of any decision or statute which holds that, because a third party made no inquiry to ascertain the extent of an agent's authority, the principal is not bound by acts of the agent which were done by him while he was acting within the line and scope of his authority as the principal's agent.

Plea 2 is not subject to demurrer for any reason argued by plaintiff and Assignment 2 is without merit.

2.

In Assignment of Error 7, plaintiff asserts that the trial court erred in overruling plaintiff's motion for new trial. Plaintiff argues that the verdict is against the great preponderance of the evidence. Plaintiff says in brief:

> ". . . As stated above, the only matters to consider are whether or not the defendants, Whitman, paid the plaintiff, Loper, for the timber and we feel that after consideration of all the evidence in this case and after allowing all reasonable presumptions of the

correctness of the verdict, the preponderance of the evidence is so decidedly against the verdict that the court will clearly be convinced that it was wrong and unjust and will reverse and remand this case for a new trial."

This court has consistently followed the rule stated as follows:

> ". . . When the presiding judge refuses to grant a new trial, the presumption in favor of the correctness of the verdict is thereby strengthened. He is selected because of his legal learning, sound judgment, and the confidence of the public in his impartiality, and the courage of his convictions of right and justice. He has heard and seen the witnesses testify, observed their tone and demeanor, and noticed their candor, or convenient failure of memory, to avoid impeachment, or for other improper purpose. The appellate court, possessing none of these aids and advantages, and receiving the evidence on paper only, is less qualified to determine what evidence is unworthy of belief, or what weight should be given to that which has been rejected by the jury, and may give undue weight to the testimony of some of the witnesses. . . .

". . . . . .

"When there is no evidence to support the verdict, it is clearly the duty of the court to grant a new trial; no court, possessed of a proper sense of justice, and a due regard for a fair and impartial administration of the law, can afford to allow such a verdict to stand. But, when there is evidence on both sides, or some evidence to support the verdict, it should not be set aside, because it may not correspond with the opinion of the court, as to the weight of the testimony, or because it is against the mere preponderance of the evidence. Comparing the analogous rules above stated, and the rules established by other appellate courts, we deduce therefrom, and lay down as rules for the guidance of this court, that the decision of the trial court, refusing to grant a new trial on the ground of the insufficiency of the evidence, or that the verdict is contrary to the evidence, will not be reversed, unless, after allowing all reasonable presumptions of its correctness, the preponderance of the evidence against the verdict is so decided as to clearly

convince the court that it is wrong and unjust. . . ." Cobb v. Malone & Collins, 92 Ala. 630, 633, 634, 635, 9 So. 738.

See: Smart v. Wambles, ¶ [6], 271 Ala. 651, 127 So. 2d 611; and many other cases cited in Alabama Digest, Appeal & Error, Key Number 930(1) and Key No. 1003.

As stated above, the question to be answered by the jury was whether plaintiff ever received payment for its timber. The evidence offered by plaintiff tended to show that plaintiff had not received payment in full. On the other hand, the evidence for the defendants tended to show that plaintiff had been paid in full for the timber cut by defendants. Under the rule of review stated above this court will not substitute its judgment for that of the jury and judge who saw and heard the witnesses testify. Assignment 7 is not sustained.

AFFIRMED.

All Justices concur.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

Special 73
~~October~~ Term, 19__
SC 48
Div. No.

To the Clerk ~~Register~~/of the Circuit Court,
Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court of said county, in a certain cause lately pending in said Court between Ray E. Loper Lumber Company, Appellant, and Choyce E. Windham, et al, Appellees, wherein by said Court it was considered adversely to said appellant, were brought before the Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That upon consideration thereof the Supreme Court, on the 30th day of August, 19 73, affirmed said cause, in all respects, and ordered that appellant, Ray E. Loper Lumber Company, Inc., a Corporation

and Ray E. Loper

sureties for the costs of appeal, pay the costs of appeal in this Court and in the Court below for which costs let execution issue.

~~It is further certified that, it appearing that said parties have waived their rights of exemption under the laws of Alabama, it was ordered that execution issue accordingly.~~

Witness, J. O. Sentell, Clerk of the Supreme Court of Alabama, this the 30 day of August, 19 73

J. O. Sentell
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

Special 73

October Term, 19____

_____ Div., No. SC 48

Ray E. Loper Lumber Co.

_____ Appellant,

vs.

Choyce E. Windham, et al

_____ Appellee.

From Baldwin Circuit A Court.
No. 9542

CERTIFICATE OF AFFIRMANCE

The State of Alabama,
_____ County. } Filed

this _____ day of FILED _____ 19____

AUG 31 1973

EUNICE B. BLACKMON CIRCUIT CLERK

BROWN PRINTING CO., MONTGOMERY 1969

STATE OF ALABAMA :

BALDWIN COUNTY :

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, to appear within thirty (30) days from the service of this writ in the Circuit Court to be held for said County at the place of holding the same, then and there to answer the complaint of RAY E. LOPER LUMBER COMPANY, INC., a corporation.

WITNESS my hand this 24 day of June, 1968.

Register

* *

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	:	IN THE CIRCUIT COURT OF
Complainant,	:	BALDWIN COUNTY, ALABAMA,
VS:	:	IN EQUITY
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally,	:	
Respondents	:	NO. 10016

BILL OF COMPLAINT

TO THE HONORABLE TELFAIR J. MASHBURN, JUDGE
OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA,
IN EQUITY SITTING:

Comes now RAY E. LOPER LUMBER COMPANY, INC., an Alabama corporation, and respectfully presents this Bill of Complaint against CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., an Alabama corporation, Respondents herein, and complains and shows unto the Court and Your Honor as follows:

1. Your Complainant is a corporation organized and existing under the laws of the State of Alabama, with a place of business in Bay Minette, Alabama. The Respondent CHOYCE E. WINDHAM is over the age of twenty-one (21) years and is a resident of Baldwin County, Alabama. The Respondent N. S. WHITMAN is over the age of twenty-one (21) years and is a resident of Mobile County, Alabama. The Respondent N. S. WHITMAN, JR. is over the age of twenty-one (21) years and is a resident of Mobile County, Alabama. The Respondent N. S. WHITMAN TIMBER COMPANY, INC., is an Alabama corporation, which does business in Baldwin County, Alabama.

2. On, to-wit: April 8, 1964, and at all times since that said date, the Complainant has owned timber situated in Baldwin County and Mobile County, in the State of Alabama. On, to-wit: April 8, 1964, or during the several months prior thereto and continuing thereafter, the exact dates at this time unknown to Complainant, the Respondents CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR. and N. S. WHITMAN TIMBER COMPANY, INC. conspired together to unlawfully enter on lands located in Baldwin County, Alabama, and Mobile County, Alabama, upon which timber belonging to the Complainant was situated, and to unlawfully cut and remove said timber. And, after said date, the Respondents, acting either individually or through their respective agents, servants or employees, did unlawfully cut and remove, or cause to be cut and removed from said lands, timber belonging to Complainant and did sell, or cause to be sold, such timber and did convert the proceeds therefrom to their own use.

3. On, to-wit: February 18, 1964, and at all times since that date, the Complainant has owned timber situated in Baldwin County, Alabama, and in Mobile County, Alabama. On, to-wit: February 18, 1964; February 26, 1964; March 3, 1964; March 11, 1964; March 18, 1964; March 25, 1964; and April 1, 1964, Respondent N. S. WHITMAN TIMBER COMPANY, INC. caused to be executed against funds deposited in its name at The First National Bank of Mobile, Mobile, Alabama, checks payable to your Complainant, said checks being numbered 21748, 21816, 21861, 21962, 22019, 22076, and 22142, in the respective amounts of $1,971.34, $423.64, $217.04, $539.61, $2,117.19, $134.28, and $82.50, each of said checks being attached to an invoice reflecting timber taken from and belonging to your Complainant. The total of these checks was the sum of FIVE THOUSAND FOUR HUNDRED EIGHTY FIVE AND 60/100 ($5,485.60) DOLLARS. None of these checks were delivered to your Complainant.

On, to-wit: April 8, 1964, or at a time prior thereto, the exact time being unknown to your Complainant, the Respondents conspired together to defraud Complainant of the aforesaid sum of FIVE THOUSAND FOUR HUNDRED EIGHTY FIVE AND 60/100 ($5,485.60) DOLLARS and did cancel, or cause to be canceled, all of the aforesaid checks which had been executed payable to Complainant and subsequent to which on, to-wit: April 8, 1964, Respondent N. S. WHITMAN TIMBER COMPANY, INC. issued its check number 22221, payable to Cash in the sum of TWO THOUSAND NINE HUNDRED FIFTY AND 91/100 ($2,950.91) DOLLARS, which check bore the endorsement of N. S. WHITMAN and on, to-wit: April 9, 1964, Respondent N. S. WHITMAN TIMBER COMPANY, INC. caused to be issued its check number 22224, payable to cash, in the sum of SIXTY SIX AND 09/100 ($66.09) DOLLARS, to which they attached a statement bearing the legend "Corrected Statement 4-8-64 (22221)", the sum of the two said checks, numbered 22221 and 22224 is

fifty-five (55%) percent of FIVE THOUSAND FOUR HUNDRED EIGHTY FIVE AND 60/100 ($5,485.60) DOLLARS. None of the proceeds of these checks was tendered to Complainant in payment for its timber.

During the period from, to-wit: April 8, 1964, to, to-wit: October 9, 1967, Respondent N. S. WHITMAN TIMBER COMPANY, INC. caused certain checks to be issued payable to cash, drawn on its funds deposited in The First National Bank of Mobile, Mobile, Alabama. The face amount of said checks was computed at fifty-five (55%) percent of Respondents invoice price for Complainant's timber. The total sum of said checks being SIXTY SIX THOUSAND TWO HUNDRED TWENTY FOUR AND 38/100 ($66,224.38) DOLLARS. According to said invoices, Respondent N. S. WHITMAN TIMBER COMPANY, INC. retained forty-five (45%) percent of said invoice price, or the sum of FIFTY FOUR THOUSAND ONE HUNDRED EIGHTY THREE AND 58/100 ($54,183.58) DOLLARS, in the corporate treasury.

During the period from, to-wit: January 3, 1966, to, to-wit: September 9, 1967, the Respondent N. S. WHITMAN TIMBER COMPANY, INC. caused certain checks to be drawn on its funds in The First National Bank of Mobile, Mobile, Alabama. The face amount of these checks was computed at the Respondent's invoice price for Complainant's timber of $4.00 and $5.00 per cord. The total sum of these checks was TWENTY EIGHT THOUSAND FIFTY NINE AND 32/100 ($28,059.32) DOLLARS. These checks, or the proceeds from these checks, were never tendered or paid to your Complainant.

The total sum of the checks issued to cash and to Taylor-Windham, a proprietorship, partnership or corporation, whose correct designation or identity is unknown to Complainant at this time, in the two categories above described was NINETY FOUR THOUSAND TWO HUNDRED EIGHTY THREE AND 70/100 ($94,283.70) DOLLARS, none of which was tendered to Complainant

in payment of its timber as listed, described and priced in the invoices of Respondent N. S. WHITMAN TIMBER COMPANY, INC. and, if added to the FIFTY FOUR THOUSAND ONE HUNDRED EIGHTY THREE AND 58/100 ($54,183.58) DOLLARS retained by Respondent N. S. WHITMAN TIMBER COMPANY, INC., it totals ONE HUNDRED FORTY EIGHT THOUSAND FOUR HUNDRED SIXTY SEVEN AND 28/100 ($148,467.28) DOLLARS, which belonged to Complainant and which was unlawfully converted by the Respondents to their own use. A list of these checks described above and aggregating NINETY FOUR THOUSAND TWO HUNDRED EIGHTY THREE AND 70/100 ($94,283.70) DOLLARS, is set out in full as Exhibit "A", attached hereto and made a part hereof and incorporated herein.

The list of checks in Exhibit "A" was furnished to Complainant's auditor by the Respondent N. S. WHITMAN TIMBER COMPANY, INC. and by N. S. WHITMAN, who is the managing officer of said corporation. The Respondent N. S. WHITMAN TIMBER COMPANY, INC. and the Respondent N. S. WHITMAN have failed and refused to make available to the Complainant and its auditor all applicable records showing the amount of timber belonging to the Complainant which was wrongfully cut and removed by Respondents and which was sold by them and the proceeds converted to their own use, or to account for such timber or to make payment to your Complainant.

Complainant avers that the timber belonging to your Complainant unlawfully cut and removed by the Respondents is of many species, sizes and locations, and that the worth of said timber is measured by the most economical use to which it may be put, and the distance it stands from its market.

Complainant alleges, on information and belief, that if all of the applicable records of the Respondent N. S. WHITMAN TIMBER COMPANY, INC. had been or are made available to the Complainant, the records would,

or will show that a further and additional amount of timber belonging to the Complainant has been unlawfully cut and removed by Respondents, and that the cash proceeds unmeasured by the list of checks shown hereinabove have been received by the Respondent therefor and have been converted to their own use, and Complainant further alleges that said applicable records will also show that timber belonging to your Complainant cut and removed by the Respondents was not all sold in its most profitable market as to species and size, and that the invoice prices shown on the records of Respondent N. S. WHITMAN TIMBER COMPANY, INC. do not properly reflect price differentials that would ordinarily inure to the benefit of the Complainant in its normal transactions, because of which discovery is necessary to enable Complainant to show the true value of the timber belonging to it which has been cut, removed and disposed of by the Respondents.

4. Complainant offers to do equity and avers there is a justiciable controversy between it and the Respondents.

PRAYER FOR PROCESS

WHEREFORE, Complainant prays that upon the filing of this bill of complaint, that this Court will take jurisdiction of this cause and order process to forthwith issue to Respondents and each of them, demanding and requiring them to appear and plead, answer or demur to the allegations contained herein within the time prescribed by law and the rules of this Honorable Court.

PRAYER FOR RELIEF

WHEREFORE, THE PREMISES CONSIDERED, your Complainant prays that this Honorable Court set this cause down for a preliminary hearing on that aspect of this Bill of Complaint seeking discovery and accounting and upon such preliminary hearing will make or render a decree requiring

the Respondents to produce all books, records, checks, invoices, ledger sheets, and all other evidence relating to timber belonging to your Complainant which was cut, removed or purchased by the Respondents during the hereinbefore mentioned periods of time; that an accounting be had under the direction of this Honorable Court to determine the exact amount of timber belonging to the Complainant which has been unlawfully cut, removed and sold by Respondents, including but not limited to, the date hauled, the point of origin, the point of destination, quantities, species, prices received, cost of cutting, cost of hauling, names of persons, firms or corporations to whom sold, producing all books of record, invoices, delivery tickets, settlement sheets, canceled checks and all other data connected with or required by Complainants in order to establish or verify the total amount due Complainant by Respondents for timber belonging to your Complainant unlawfully cut and removed by Respondents.

That such orders, temporary and permanent, be issued and decrees rendered by this Court as may be necessary and proper to force Respondents to comply with such decrees issued by this Court with regard to the production of records for the purpose of a proper accounting, said records to be made available to and accessible to such person or persons as might be appointed by this Court to audit or inspect the same.

That upon a final hearing of this cause, the Court will make or render a decree awarding the Complainant the sum of ONE HUNDRED FORTY EIGHT THOUSAND FOUR HUNDRED SIXTY SEVEN AND 28/100 ($148,467.28) DOLLARS and the further sum which the Court may find to which the Complainant is entitled to recover as compensatory damages and, in addition, to fix the sum of money which Complainant is entitled to recover for interest on its withheld sales proceeds, and for the profit it has been denied by the abridgement of a natural resource basic to its profitable operations, and for the profit it has been denied by having its timber

sold without regard to its proper use and most profitable market; and further, Complainant prays for TWO HUNDRED FIFTY THOUSAND AND NO/100 ($250,000.00) DOLLARS punitive damages.

Your Complainant prays for such other, further or different relief as it may, in equity in good conscience, be entitled.

RAY E. LOPER LUMBER COMPANY, INC.

By: _____
RAY E. LOPER, Its President

STATE OF ALABAMA :

COUNTY OF BALDWIN :

Before me, the undersigned Notary Public, personally appeared RAY E. LOPER, whose name as President of RAY E. LOPER LUMBER COMPANY, INC., a corporation, Complainant in the above entitled cause, is signed to the foregoing complaint, and who, being by me first duly sworn, deposes and says that he is informed and believes, and upon such information and belief, states that the facts set forth in the foregoing Bill of Complaint are true and correct.

_____
RAY E. LOPER

Sworn to and subscribed before me on this the 21st day of June, 1968.

Mary Lou Blackburn
Notary Public, Baldwin County, Alabama

J. B. Blackburn
J. B. BLACKBURN, Solicitor for Complainant

McDERMOTT & SLEPIAN, Solicitors for Complainant

By: _____
RONALD P. SLEPIAN

FILED
JUN 24 1968
ALICE J. BUCK CLERK REGISTER

Address of Respondents:

Choyce E. Windham
U.S. Highway 31
Bay Minette, Alabama

N. S. Whitman
209 Bellview Circle
Mobile, Alabama, 36608

or

c/o N. S. Whitman Timber Company, Inc.
2761 Springhill Avenue
Mobile, Alabama, 36607

N. S. Whitman, Jr.
600 East Cumberland Road
Mobile, Alabama, 36608

or

c/o N. S. Whitman Timber Company, Inc.
2761 Springhill Avenue
Mobile, Alabama, 36607

N. S. Whitman Timber Company, Inc.
2761 Springhill Avenue
Mobile, Alabama, 36607

Date of Check, or date of cancellation(*)	Check Number	Amount	Payee	Endorser
4- 8-64	22221	$ 2,950.91	Cash	N. S. Whitman
4- 9-64	22224	66.09	Cash	D & R Ser. Stn
5- 8-64	22487	1,051.16	Cash	N. S. Whitman
5-15-64	22601	65.72	Cash	N. S. Whitman
5-22-64	22622	392.96	Cash	N. S. Whitman
5-19-64	22673	1,530.63	Cash	N. S. Whitman
6- 5-64	22756	26.33	Cash	N. S. Whitman
6-12-64	22883	191.72	Cash. Whitman	N. S. Whitman
6-26-64	22949	211.95	Cash	N. S. Whitman
7- 3-64	23007	328.02	Cash	N. S. Whitman
7-10-64	23068	562.60	Cash	N. S. Whitman
9- 4-64	23440	2,847.33	Cash	N. S. Whitman
10- 9-64	23765	2,319.07	Cash	N. S. Whitman
11-13-64	24175	6,131.58	Cash	N. S. Whitman
1- 8-65	24457	1,117.11	Cash	N. S. Whitman
2-19-65	24834	2,284.13	Cash	N. S. Whitman
2-23-65	25322	3,479.26	Cash	N. S. Whitman
4-23-65	25919	1,326.46	Cash	N. S. Whitman

EXHIBIT "A"

Date of Check or date of cancellation (*)	Check Number	Amount	Payee	Endorser
8-13-65	26303	$ 698.45	Cash	N. S. Whitman
10-15-65	26642	6,684.28	Cash	N. S. Whitman
10-20-65	26426	2,214.17	Cash	Fletcher
11-5-65	26891	1,875.82	Cash	N. S. Whitman
11-26-65	26971	2,135.25	Cash	N. S. Whitman
12-10-65	27073	1,603.43	Cash	Fletcher
12-17-65	27104	1,119.99	Cash	N. S. Whitman
12/23/65	27167	391.97	Cash	N. S. Whitman
12/31/65	9	774.70	Cash	N. S. Whitman
1-14-66	70	960.47	Cash	N. S. Whitman
1-14-66	223	3,114.09	Cash	N. S. Whitman
1-31-66 *	218	895.35	Cash	Mobile Check Exc.
2-11-66	317	2,462.90	Cash	Fletcher
2-21-66	380	2,230.97	Cash	Fletcher
3- 7-66	403	355.24	Cash	Fletcher
3- 7-66 *	402	360.76	Cash	Fletcher
3- 7-66 *	405	337.84	Cash	Fletcher
3- 7-66 *	407	367.44	Cash	Fletcher
3- 7-66 *	409	313.80	Cash	Fletcher
3- 7-66 *	467	197.20	Cash	N.S.Whitman, Jr.
3- 7-66 *	404	131.88	Cash	Fletcher
3- 7-66 *	406	145.00	Cash	Fletcher
3- 7-66 *	408	132.48	Cash	Fletcher
4-29-66 *	518	307.56	Cash	N.S.Whitman, Jr.
4-29-66 *	1037	211.00	Cash	N.S.Whitman, Jr.

Date of Check or date of Cancellation(*)	Check Number	Amount	Payee	Endorser
4-29-66 *	651	$ 507.68	Cash	N.S.Whitman, Jr.
4-29-66 *	713	406.48	Cash	N. S. Whitman, Jr.
4-29-66 *	820	294.32	Cash	N. S. Whitman, Jr.
4-29-66 *	880	359.28	Cash	N. S. Whitman, Jr.
4-29-66 *	941	400.72	Cash	N. S. Whitman, Jr.
4-29-66 *	1016	141.64	Cash	N. S. Whitman, Jr.
5-13-66 *	1079	265.60	Cash	Fletcher
5-13-66	1142	219.44	Cash	"
5-24-66	2833	358.68	"	"
5-30-66 *	1208	362.44	"	"
5-30-66	1300	434.32	"	"
6-30-66 *	1404	301.64	"	"
6-30-66 *	1426	297.12	"	"
6-30-66 *	1483	339.60	"	"
6-30-66 *	1557	328.92	"	"
6-30-66 *	1648	116.84	"	"
7- 8-66	1792	441.58	"	"
7-15-66	1833	2,350.35	"	N. S. Whitman
7-18-66	1848	842.60	"	Fletcher
7-26-66	1917	138.44	"	"
7-30-66	1973	97.84	"	"
7-30-66	1974	563.16	"	"
8- 5-66	2005	2,145.50	"	"
8- 8-66	2023	119.44	"	"
8-12-66	2098	1,503.57	"	"

Date of Check or date of Cancellation	Check Number	Amount	Payee	Endorser
8-15-66	2115	$ 178.48	Cash	Fletcher
8-22-66*	2154	2,867.25	"	N. S. Whitman
9- 6-66	2288	187.64	"	Fletcher
9- 7-66	2308	224.17	"	"
8-22-66	2176	113.24	"	"
9-19-66	2424	90.79	"	"
9-22-66	2443	125.47	"	"
9-26-66 *	1708	125.48	"	"
9-28-66	2546	270.64	Cash	Fletcher
9-30-66	2599	428.16	"	"
10-10-66 *	2601	106.80	"	"
10-10-66	2697	301.28	"	"
10-17-66	2762	292.84	"	"
10-31-66	2893	265.04	"	"
11-7-66	2963	358.44	"	"
11-14-66	3067	343.68	"	"
1-27-67	3503	1,370.85	Taylor-Windham	C. E. Windham
1-27-67	3504	1,675.49	Cash	N. S. Whitman
1-30-67	3544	36.64	"	Whitman Timber Co.
1-30-67	3865	1,519.31	"	Fletcher
1-30-67	3874	630.59	Taylor-Windham	C.E.Windham
3-10-67	4035	411.92	Cash	Fletcher
3-10-67	4036	337.03	Taylor-Windham	C. E. Windham
3-20-67	4293	1,567.99	Cash	Fletcher
3-31-67	4294	772.81	Taylor-Windham	C. E. Windham

Date of Check or date of Cancellation *	Check Number	Amount	Payee	Endorser
4-10-67	4422	$ 547.40	Cash	F.D.Wheeler
4-17-67	4531	300.90	"	Fletcher
4-24-67	4605	572.35	"	"
4-26-67	4635	276.23.	Taylor-Windham	C. E. Windham
4-28-67	4636	347.52	Cash	Wheeler
4-29-67	4634	555.75	Cash	Fletcher
5- 8-67	4756	343.15	Cash	Fletcher
5-15-68	4856	359.70	Cash	Fletcher
5-22-67	4932	347.85	"	"
5-29-67	5013	552.05	"	"
6- 5-67	5090	295.15	"	"
6-12-67	5215	254.40	"	"
6-19-67	5274	435.80	"	"
6-26-67	5356	261.00	"	"
6-30-67	5423	276.60	"	"
7-10-67	5502	149.40	"	"
7-17-67	5599	254.05	"	"
7-24-67	5681	346.25	"	"
7-31-67	5749	243.90	"	"
8- 7-67	5830	454.35	"	"
8-14-67	5943	289.65	"	"
8-21-67	6031	409.15	"	"
8-28-67	6111	379.05	"	"
9- 4-67	6185	360.90	"	"
9-11-67	6265	321.25	"	"

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Clerk

Date of Check or date of cancellation *	Check	Amount	Payee	Endorser
9-25-67	6434	$ 352.45	Cash	Fletcher
9-30-67	6509	332.50	"	"
10- 9-67	6558	259.40	"	"
9-18-67	6365	140.65	"	"

No. 10016 Bus. 9/8 61 Page 62

STATE OF ALABAMA
Baldwin County

CIRCUIT COURT

RAY E. LOPER LUMBER COMPANY, INC., a corp

Plaintiffs

vs.

CHOYCE E. WINDHAM, et als

Defendants

SUMMONS AND COMPLAINT

Filed 6-24-68 19

Alice J. Duck Clerk

J. B. Blackburn
Plaintiff's Attorney

Defendant's Attorney

Received on the 27th day of June, 1968, and on the 12th day of July, 1968 I executed the [illegible] of Complaint and Summons on N S Whitman, individually, and [illegible] of [illegible] N.S.Whitman as co-owner of N.S.Whitman Timber Company, Inc., and on the 25th day of July, 1968 by serving a copy of Complaint on N,S.Whitman, Jr.,. This writ is hereto returned for further action by the court.

RAY D. BRIDGES, SHERIFF
MOBILE COUNTY, ALABAMA
BY M. Bradley D.S.

RECD SHERIFF OF MOBILE COUNTY, A
JUN 27 9 38 AM
BY

VOL 106 PAGE 143

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	)	
Complainant,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, ET AL.,	)	IN EQUITY NO. 10016
Respondents.	)	

STATE OF ALABAMA)
*
BALDWIN COUNTY)

Before me, the undersigned authority, within and for said County in said State, personally appeared J. B. Blackburn, who, after being by me first duly and legally sworn, deposes and says:

That he is one of the attorneys for the complainant in the above entitled cause; that a summons directed to the respondent, Choyce E. Windham, residing in this State, has been returned "Not Found," and the said respondent, in the belief of Affiant, has concealed himself by accepting employment and by temporarily residing in Pineville, Louisiana, so that process cannot be served upon him.

Affiant further deposes and says that it is necessary that service be had upon the said respondent, Choyce E. Windham, as if he were a nonresident, under the provisions of Equity Rule 5(d) of the Equity Rules of the State of Alabama, and that the above named respondent's mailing address is C/o Colfax Creosoting Company, Pineville, Louisiana.

J. B. Blackburn

Sworn to and subscribed before me on this the 25th day of July, 1968.

Ernestine R. Sims

Notary Public, Baldwin County, Alabama

FILED

JUL 25 1968

ALICE J. BUCK CLERK REGISTER

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	X	
		IN THE CIRCUIT COURT OF
Complainant,	X	
	X	BALDWIN COUNTY, ALABAMA
vs.		
	X	
		IN EQUITY NO: 10016
N. S. WHITMAN, et al.,	X	
	X	
Respondents.		
	X	

DEMURRER

Come now the Respondents, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Co., Inc., by their Solicitors, and demur to the Bill of Complaint heretofore filed against them and to each aspect thereof, separately and severally, and assign the following separate and several grounds in support thereof:

1. There is no equity in the Bill.

2. The Complainant has an adequate remedy at law.

3. It affirmatively appears from the allegations of the Bill of Complaint that the Complainant has an adequate remedy at law.

4. It affirmatively appears from the Bill of Complaint that the matters complained of are not of equitable cognizance.

5. It affirmatively appears from the allegations of the Bill of Complaint that the matters complained of are not of equitable cognizance and that the Complainant has an adequate remedy at law.

6. The allegation of the Bill of Complaint that a justiciable controversy exists between the Complainant and these Respondents is but a conclusion of the pleader and no facts are alleged to support such conclusion.

7. No facts are alleged in the Bill of Complaint which, if proven, would entitle the Complainant to the relief therein

prayed for in equity.

8. It affirmatively appears from the allegations of the Bill of Complaint that the Complainant does not seek a declaration of rights or a declaratory judgment.

9. It affirmatively appears from the allegations of the Bill of Complaint that the Complainant does not seek a declaration of rights or a declaratory judgment and that all of the relief prayed for is available to the Complainant at law.

10. It affirmatively appears from the allegations of the Bill of Complaint that the Complainant does not seek any relief to enforce an equitable power.

11. No relief is sought in the Bill of Complaint which, if the allegations of the Bill of Complaint are true, would not be available to the Complainant at law.

12. No facts are alleged in the Bill of Complaint which would entitle the Complainant to an accounting.

13. The allegations of the Bill of Complaint that the Respondents conspired together are mere conclusions of the pleader and no facts are alleged which, if true, would constitute a conspiracy.

14. No facts are alleged in the Bill of Complaint to show the nature of any alleged conspiracy between these Respondents and the Respondent Choyce E. Windham.

15. The Bill of Complaint does not allege that there was any agreement or understanding between these Respondents and the Respondent Choyce E. Windham to do and perform the allegedly unlawful acts set forth in the Bill of Complaint.

16. No facts are alleged in the Bill of Complaint which, if true, would establish a combination of two or more persons by concerted action to accomplish an unlawful purpose.

17. No facts are alleged in the Bill of Complaint which, if true, would establish a combination of two or more persons by concerted action to accomplish some purpose not in itself unlaw-

ful but by unlawful means.

18. It affirmatively appears from the allegations of the Bill of Complaint that the Complainant is complaining of a tort allegedly committed by the Respondents as joint tort-feasors and that its remedy, if any, is at law.

19. The Bill of Complaint fails to allege who cut and removed timber from lands belonging to the Complainant.

20. The Bill of Complaint fails to allege who sold timber which was allegedly cut and removed from lands belonging to the Complainant.

21. The allegations of the Bill of Complaint that the Respondents conspired together to defraud the Complainant is but a conclusion of the pleader and no facts are alleged which establish any fraudulent conduct on the part of these Respondents.

22. The allegation of the Bill of Complaint that these Respondents converted monies to their own use is a conclusion of the pleader and no facts are alleged to support such conclusion.

23. For aught that appears from the allegations of the Bill of Complaint all of the sums of money allegedly withheld from the Complainant were delivered by these Respondents to an agent, servant or employee of the Complainant.

24. The Bill of Complaint fails to allege that there was any conspiracy between these Respondents to unlawfully enter and cut and remove timber from lands belonging to the Complainant.

25. The Bill of Complaint fails to allege that there was any conspiracy between the Respondent N. S. Whitman and the other Respondents to unlawfully enter and cut and remove timber from lands belonging to the Complainant.

26. The Bill of Complaint fails to allege that there was any conspiracy between the Respondent N. S. Whitman, Jr. and the other Respondents to unlawfully enter and cut and remove timber from lands belonging to the Complainant.

27. The Bill of Complaint fails to allege that there was any conspiracy between the Respondent N. S. Whitman Timber Company, Inc. and the other Respondents to unlawfully enter and cut and remove timber from lands belonging to the Complainant.

28. The Bill of Complaint fails to allege any conspiracy between the Respondent N. S. Whitman and the Respondent Choyce E. Windham to unlawfully enter lands belonging to the Complainant and to cut and remove timber located thereon.

29. The Bill of Complaint fails to allege any conspiracy between the Respondent N. S. Whitman, Jr. and the Respondent Choyce E. Windham to unlawfully enter lands belonging to the Complainant and to cut and remove timber located thereon.

30. The Bill of Complaint fails to allege any conspiracy between the Respondent N. S. Whitman Timber Company, Inc. and the Respondent Choyce E. Windham to unlawfully enter lands belonging to the Complainant and to cut and remove timber located thereon.

31. It affirmatively appears from the allegations of the Bill of Complaint that there is a lack of necessary parties.

32. It affirmatively appears from the allegations of the Bill of Complaint that there is a lack of necessary parties in that the Complainant did not join as Respondents the agents, servants or employees of the individual Respondents N. S. Whitman or N. S. Whitman, Jr. who allegedly entered lands belonging to the Complainant and unlawfully cut and removed timber located thereon.

33. The Bill of Complaint fails to allege that the Complainant had no notice or knowledge of the cutting and removing of timber allegedly belonging to it.

34. For aught that appears from the allegations of the Bill of Complaint the Complainant, acting by and through its agents, servants or employees authorized the cutting and removing of timber from lands belonging to the Complainant.

35. The allegations of the Bill of Complaint fail to establish any relationship between these Respondents and the Complainant which, In Equity, would require these Respondents to account to the Complainant.

36. The Bill of Complaint attempts to establish an alleged conspiracy between these Respondents and the Respondent Choyce E. Windham to committ a trespass to the lands of and against the Complainant, but fails to allege by whom the trespass was actually committed.

37. The allegation of the Bill of Complaint that the Respondent N. S. Whitman Timber Company, Inc. retained any sum of money in its corporate treasury is but a conclusion of the pleader and no facts are alleged to support such conclusion.

Come now the Respondents N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc. and demur to that aspect to the Bill of Complaint seeking discovery and accounting and assign, separately and severally, in support thereof each of the separate and several grounds hereinabove assigned to the Bill of Complaint as a whole as if each of said grounds were specifically herein set forth.

Come now the Respondents N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc. and demur to that aspect to the Bill of Complaint in which the Complainant seeks a money judgment against these Respondents and assigns, separately and severally, the separate and several grounds hereinabove assigned to the Bill of Complaint as a whole as if the same was specifically set forth herein, and in addition thereto the following separate and several grounds of demur.

a. The Bill of Complaint seeks damages to which the Complainant is not entitled.

b. The damages sought by the Complainant are speculative.

c. The allegations of said aspect are vague, indefinite and uncertain.

Come now the Respondents N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc. and demur to that aspect of the Bill of Complaint wherein the Complainant seeks punitive damages and assigns, separately and severally, all of the grounds of demur heretofore assigned, separately and severally, to the Bill of Complaint as a whole or to any aspect thereof as though the same was specifically set forth herein.

Respectfully submitted,

CHASON, STONE & CHASON

By: _____
Attorneys for Respondents N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc.

The Respondents N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc. demand a trial of this cause by a jury.

CHASON, STONE & CHASON

By: _____
Attorneys for Respondents N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc.

FILED

AUG 5 1968

ALICE J. DUCK CLERK REGISTER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 5 day of August, 1968.

_____

10016

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	)
Complainant,	)
VS.	) IN THE CIRCUIT COURT OF
	) BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally,	) IN EQUITY
	) CASE NO. 10016
Respondents.	)

Comes now the Respondent, Choyce E. Windham, and files the following demurrers to the Complainant's Bill of Complaint:

1.

For aught appearing, the Complainant has an adequate remedy at law.

2.

The Complaint is multifarious.

3.

From the pleading the Respondent can not determine what he has been called on to defend.

4.

From the pleading the Respondent can not determine whether the Complainant is filing a suit for declaratory judgment, accounting, discovery or conspiracy.

5.

If the cause of action sued on is conspiracy, it is not alleged with sufficient particularity.

6.

From the allegations of this Bill of Complaint, the

Respondent can not determine which Respondent is alleged to have done the wrongful act.

7.

For aught appearing, this is a fishing expedition.

WILTERS & BRANTLEY

BY: Tolbert M. Brantley
Attorneys for Respondent, Choyce E. Windham

The Respondent demands a trial by jury.

WILTERS & BRANTLEY

BY: Tolbert M. Brantley
Tolbert M. Brantley

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 13th day of August, 1968 served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.

WILTERS & BRANTLEY

By: Tolbert M. Brantley

FILED

AUG 15 1968

ALICE J. BUCK CLERK REGISTER

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	)	
Complainant,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
	)	IN EQUITY NO. 10016
CHOYCE E. WINDHAM, ET AL.,	)	
Respondents.	)	

DECREE OVERRULING DEMURRERS TO ORIGINAL BILL OF COMPLAINT

This cause came on to be heard on January 6, 1969, and was submitted on the demurrer to the original bill of complaint which was filed in this cause on August 5, 1968, by the respondents, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Company, Inc.; and on the demurrer to the original bill of complaint filed in this cause on August 13, 1968, by the respondent, Choyce E. Windham, which matters were argued by the attorneys for the complainant and the said respondents, taken under advisement and considered by the court; upon consideration of all of which it is, therefore, ORDERED, ADJUDGED AND DECREED by the court as follows:

1. The demurrer of the respondents, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Company, Inc., shall be and it is hereby overruled.

2. The demurrer of the respondent, Choyce E. Windham, shall be and it is hereby overruled.

3. The said parties are allowed thirty (30) days from the date of this decree to file further pleadings.

ORDERED, ADJUDGED AND DECREED on this the 9th day of January, 1969.

Jefferson J. Mashburn
Judge

FILED
JAN 14 1969

RAY E. LOPER LUMBER COMPANY, INC., A Corporation,	X	
Complainant,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, ET AL.,	X	IN EQUITY NO. 10016
Respondents.	X	
	X	

ANSWER OF RESPONDENTS N. S. WHITMAN, N. S. WHITMAN, JR., AND N. S. WHITMAN TIMBER COMPANY, INC.

Come now the Respondents, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., by their solicitors, and for answer to the bill of complaint heretofore filed against them in this cause and to each paragraph or section thereof, separately and severally, say as follows:

1. They admit the allegations of paragraph "1" of the bill of complaint except the allegations with respect to the age and residence of the Respondent Choyce E. Windham.

2. They deny the allegations of paragraph "2" of the bill of complaint.

3. They deny the allegations of paragraph "3" of the bill of complaint.

4. They deny the allegations of paragraph "4" of the bill of complaint.

Respectfully submitted,

CHASON, STONE & CHASON

By: _____

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 19 day of February, 1969.

_____

FILED

FEB 19 1969

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	:	IN THE CIRCUIT COURT
Complainant,	:	OF BALDWIN COUNTY,
VS:	:	ALABAMA
CHOYCE E. WINDHAM, et al	:	IN EQUITY
Respondents.	:	CASE NUMBER 10016

NOTICE OF DEPOSITION

To: Honorable Norborne C. Stone, Jr.
Messrs. Chason, Stone & Chason
Bay Minette, Alabama

Hon. Tolbert M. Brantley
Messrs. Wilters & Brantley
Bay Minette, Alabama

Please take notice that on the 23rd day of October, 1969, in the offices of McDermott and Slepian, 211 North Conception Street, Mobile, Alabama, the Complainant, Ray E. Loper Lumber Company, Inc., a corporation, will take the deposition of A. N. Beville, Hume and Company, 2754 Mauvilla Drive, Mobile, Alabama, at 2:00 P.M., upon oral examination pursuant to an Act of the Legislature of the State of Alabama, designated as Act No. 375, Regular Session 1955, Approved September 8, 1955, before Charles A. Howard, or other officer authorized to take depositions and swear witnesses in said County in said State. The oral examination will continue from day to day until completed and you are invited to attend and cross-examine.

McDermott & Slepian
Attorneys for Complainant

By: Edward B. McDermott
Edward B. McDermott

FILED
OCT 11 1969
ALICE J. BUCK CLERK REGISTER

Please issue a subpoena to the said
A. N. Beville at:
Hume and Company
2754 Mauvilla Drive, Mobile, Alabama

Duces Tecum:

All records of conversations between A. N. Beville and Choyce E. Windham.

RAY E. LOPER LUMBER COMPANY, INC., a corporation,

Complainant,

VS.

CHOYCE E. WINDHAM, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 10,016

MOTION TO STRIKE RESPONDENTS' DEMANDS FOR A JURY TRIAL

Now comes the complainant, by its attorneys, and moves the court to strike the demand for a jury trial which was heretofore filed in this cause by the respondent, Choyce E. Windham, and the demand for a jury trial which was heretofore filed in this cause by the respondents, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., and as grounds of such motion assigns, separately and severally, the following:

1. The said respondents are not entitled to a jury trial in this cause as a matter of right.

2. The right of a trial by jury as a constitutional right does not extend to cases of original jurisdiction in equity.

3. The accounting and discovery which the complainant is seeking in this case will consist of numerous transactions wholly impractical, if not impossible, for proper determination by a jury.

WHEREFORE, complainant moves the court to strike the demands for a jury trial heretofore filed in this cause by the respondents named above.

J. B. Blackburn

J. B. Blackburn

McDERMOTT & SLEPIAN

By Ronald P. Slepian (TS)

Attorneys for Complainant

FILED

OCT 27 1969

ALICE J. DUCK CLERK REGISTER

VOL 106 PAGE 156

I hereby certify that I mailed a copy of the foregoing motion to Norborne C. Stone and a copy of the said motion to Tolbert M. Brantley, attorneys for above named respondents, by first class mail, properly addressed and postage prepaid, on this the 27th day of October, 1969.

J. B. Blackburn

Of Counsel for Complainant

FILED

OCT 27 1969

ALICE J. DUCK CLERK REGISTER

RAY E. LOPER LUMBER COMPANY, INC., a Corporation, Complainant, VS. CHOYCE E. WINDHAM, ET AL., Respondents.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY NO. 10,016

This cause coming on to be heard is submitted on the Complainant's motion to strike Respondents' demand for a jury trial, and the Court having considered the arguments on the part of the Solicitors for the various parties, and the Court being of the opinion that this is not one of those cases where the law gives the Respondents the right to a trial by jury and the Court being further of the opinion that if a jury trial were granted in this case the verdict of the jury would be advisory only and would have no binding effect upon the Court's decision, the Court is, therefore, of the opinion that Complainant's motion to strike Respondents' demand for a jury trial should be granted; it is, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that the demand for a jury trial heretofore filed in this cause by the Respondent, Choyce E. Windham, and the demand for a jury trial which was heretofore filed in this cause by the Respondents, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc. be, and they are hereby struck.

DONE AND ORDERED this 15th day of December, 1969.

Jeffair J. Mashburn
Judge, 28th Judicial Circuit of Alabama

FILED
DEC 1 5 1969
ALICE J. BECK CLERK REGISTER

Copies Mailed 12-15-69

ANSWER

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	)	
Complainant,	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
VS.	)	IN EQUITY
CHOYCE E. WINDHAM, et al,	)	CASE NO. 10,016
Respondents.	)	

Comes now the Respondent, Choyce E. Windham, and for answer to the Complainant's Bill of Complaint, says:

1.

That he admits the allegations of Section 1.

2.

He denies the allegations of Section 2 and demands strict proof of the same.

3.

He denies the allegations of Section 3 and demands strict proof of the same.

4.

He denies the allegations of Section 4 and demands strict proof of the same.

WILTERS & BRANTLEY

BY: Tolbert M. Brantley

Tolbert M. Brantley

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 18 day of Dec, 1969 served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.

WILTERS & BRANTLEY

By: Tolbert M. Brantley

FILED

DEC 18 1969

ALICE J. BUCK CLERK REGISTER

RAY E. LOPER LUMBER COMPANY, INC., a corporation,

Complainant,

VS.

CHOYCE E. WINDHAM, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 10,016

MOTION TO TRANSFER CASE FROM EQUITY TO LAW SIDE OF COURT

Now comes the complainant, by its attorney, and shows unto the court that the Supreme Court of Alabama, in its opinion dated August 20, 1970, in the case of Ex Parte: N. S. Whitman, et al., vs. Honorable Telfair J. Mashburn, as Judge of the Circuit Court of Baldwin County, Alabama, in Equity, First Division, No. 618, and in the case of Ex Parte: Choyce E. Windham vs. Honorable Telfair J. Mashburn, as Judge of the Circuit Court of Baldwin County, Alabama, in Equity, First Division, No. 619, held that the bill of complaint in this suit is without equity.

Complainant's cause of action is a legal question or right, the decision of which should dispose of this suit which cannot be disposed of on the Equity Side of the court.

WHEREFORE, complainant moves the court to set this motion for hearing, and on the hearing of this motion that a decree be rendered removing this case from the Equity Side of the Circuit Court of Baldwin County, Alabama, to the Law Side of the Circuit Court of Baldwin County, Alabama, in the manner provided by Article 3 of Title 13 of the Code of Alabama.

J. B. Blackburn

Attorney for Complainant

The above motion having been presented to me, it is hereby set for hearing at 8:00 o'clock A. M. on the 29th day of October, 1970.

Dated this 23rd day of October, 1970.

Judge

MOTION TO STRIKE

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	)	
Plaintiff,	)	
VS.	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally,	)	AT LAW
	)	CASE NO. 9542
Defendants.	)	

The Defendant, Choyce E. Windham, moves the Court to strike a part of the Plaintiff's Amended Complaint, and as grounds for said Motion, says as follows:

1.

All of Count One, except the first paragraph thereof, should be stricken because the allegations contained therein are superfluous and immaterial.

2.

The Defendant, Choyce E. Windham, moves the Court to strike the following from Count One of the Plaintiff's Amended Complaint, to-wit:

> "On, to-wit, February 18, 1964, February 26, 1964, March 3, 1964, March 11, 1964, March 18, 1964, March 25, 1964, and April 1, 1964, defendant N. S. Whitman Timber Company, Inc., drew checks on the First National Bank of Mobile, Alabama, payable to the plaintiff, said checks being numbered 21748, 21816, 21861, 21962, 22019, 22076, and 22142, in the respective amounts of $1971.34, $423.64, $217.04, $539.61, $2117.19, $134.28, and $82.50, each of the said checks being attached to stumpage statements reflecting timber belonging to or taken from the plaintiff. The total of these checks was the sum of $5485.60. None of these said checks were delivered to the plaintiff.
>
> On, to-wit, April 8, 1964, or at a time prior thereto, the exact time being unknown to the plaintiff, the defendants, as a part of their agreement or arrangement to defraud the plaintiff of the aforesaid sum of $5485.60, did cancel or cause to be canceled all of the aforesaid checks which had been executed payable to the plaintiff, and subsequent to which on, to-wit, April 8, 1964, defendant N. S. Whitman Timber

Company, Inc., issued its check No. 22221, payable to cash in the sum of $2950.91, which check was endorsed by N.S. WHitman before being paid; and on, to-wit, April 9, 1964, defendant N. S. Whitman Timber Company, Inc., caused to be issued its check No. 22224, payable to cash in the sum of $66.09, to which was attached a statement bearing the legend "Corrected statement 4-8-64 (22221)." The sum of the two said checks numbered 22221 and 22224 is 55% of $5485.60, which was the total of the said checks which were not delivered to the plaintiff and were subsequently canceled. None of the proceeds of these two said checks was paid to the plaintiff for its timber."

and, as grounds for said Motion, the Defendant says that these allegations are immaterial to the Complaint. These allegations are foreign to the thrust of the cause of action here stated. They allege no wrong done by the Defendants and allege no duty owing from the Defendants to the Plaintiff.

3.

The Defendant, Choyce E. Windham, moves the Court to strike the following from Count One of the Plaintiff's Amended Complaint, to-wit:

"During the period from April 8, 1964, to, to-wit, October 9, 1967, other timber belonging to the plaintiff was cut and sold by the defendants and N. S. Whitman Timber Company, Inc., caused a number of checks to be issued payable to cash, drawn on its funds deposited in the First National Bank of Mobile, Mobile, Alabama. The fact amount of the said checks was computed at 55% of the defendant's invoice price for plaintiff's timber, as shown by stumpage statements issued in connection with the said checks, the total of which said checks was $66,224.38. According to the said stumpage statements, defendant N. S. Whitman Timber Company, Inc., retained 45% of the invoice price, or the sum of $54,183.58, in its corporate treasury."

and, as grounds for said Motion, the Defendant says that these allegations are immaterial to the Complaint. These allegations are foreign to the thrust of the cause of action here stated. They allege no wrong done by the Defendants and allege no duty owing from the Defendants to the Plaintiff.

4.

The Defendant, Choyce E. Windham, moves the Court to strike the following from Count One of the Plaintiff's Amended Complaint, to-wit:

"During the period from, to-wit, January 3, 1966, to, to-wit, September 9, 1967, the defendant N. S. Whitman Timber Company, Inc., caused certain checks, which totaled $28,059.32, to be drawn on its funds in the First National Bank of Mobile, Mobile, Alabama. The amount of each of these checks was computed at the defendant's invoice price for plaintiff's timber of $4.00 or $5.00 per cord, when its true value was $8.00 per cord or more. None of these checks or the proceeds from these checks were delivered to the plaintiff."

and, as grounds for said Motion, the Defendant says that these allegations are immaterial to the Complaint. These allegations are foreign to the thrust of the cause of action here stated. They allege no wrong done by the Defendants and allege no duty owing from the Defendants to the Plaintiff.

5.

The Defendant, Choyce E. Windham, moves the Court to strike the following from Count One of the Plaintiff's Amended Complaint, to-wit:

"The total sum of the said checks issued to cash and to Taylor-Windham, a partnership composed of the defendant Choyce E. Windham and Tom Taylor, in the two categories above described was $94,283.70, none of which was paid to the plaintiff in payment of its timber as listed and priced on the stumpage statements of defendant N. S. Whitman Timber Company, Inc., and when added to the $54,183.58 retained by defendant N. S. Whitman Timber Company, Inc., it totals $148,467.28 which belonged to the plaintiff and which was unlawfully converted by the defendants to their own use.

A list of the checks described above and aggregating $94,283.70 is set out in full in Exhibit A hereto attached, and by reference made a part hereof as though fully incorporated herein; all to plaintiff's damages as aforesaid, hence this suit."

and, as grounds for said Motion, the Defendant says that these allegations are immaterial to the Complaint. These allegations are foreign to the thrust of the cause of action here stated. They allege no wrong done by the Defendants and allege no duty owing from the Defendants to the Plaintiff.

WILTERS & BRANTLEY

BY: [signature]
Attorneys for Defendant, Choyce E. Windham

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 3 day of Dec, 1970 served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.

WILTERS & BRANTLEY

By: [signature]

FILED

DEC 3 1970

ALICE J. DUCK CLERK REGISTER

VOL 88 PG 327

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	)	
Plaintiff,	)	
VS.	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally,	)	AT LAW NO. _____
Defendants.	)	

MOTION TO REQUIRE PRODUCTION OF BOOKS, PAPERS AND RECORDS

Now comes the plaintiff in the above entitled cause, by its attorneys, and shows unto the court that it is necessary that books, papers and records hereinafter described be produced by the defendants for examination by the plaintiff prior to the trial of this case and for use during the trial of this case, all of which are material evidence in this said cause.

Plaintiff moves the court to make an order, as provided in and by Title 7, Section 426 of the Code of Alabama, requiring the defendants to produce each and all of the following books, papers and records:

1. All checks drawn by the defendant, N. S. Whitman Timber Company, Inc., a corporation, all of which checks were drawn on the First National Bank of Mobile, a National Banking Association, against funds on deposit in the said bank belonging to N. S. Whitman Timber Company, Inc., which checks are specifically described in Exhibit A hereto attached.

2. All stumpage statements, producers' weekly statements and truck wood scale tickets issued by Scott Paper Company, The Ruberoid Company, or by N. S. Whitman Timber Company, Inc., in connection with the checks described in Paragraph Numbered 1 above.

3. The written schedule prepared by Frank S. Shipp while employed by N. S. Whitman Timber Company, Inc., consisting of seven (7) pages covering the period of time from January 17, 1966, through October 16, 1967.

4. A copy of the income tax return of each defendant for the tax years of 1964, 1965, 1966, and 1967.

Plaintiff further moves the court to set this motion for hearing and provide for reasonable notice of the filing of this motion and of the date set for its hearing to the defendants or their attorneys, as provided by Title 7, Section 426 of the Code of Alabama.

Respectfully submitted,

RAY E. LOPER LUMBER COMPANY, INC.

By J. B. Blackburn

As its Attorneys

I hereby certify that I delivered a copy of the above and foregoing motion to the office of Tolbert M. Brantley, Esquire, attorney for Choyce E. Windham, and to the office of Norborne C. Stone, Esquire, attorney for N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., on this the 17th day of December, 1970.

FILED

DEC 17 1970

ALICE J. DUCK CLERK REGISTER

(8)

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	)	
	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally,	)	AT LAW
	)	CASE NO. 9,542
	)	
Defendants.	)	
	)	

Comes now Choyce E. Windham, one of the Defendants in the above styled cause and respectfully request a trial by jury.

WILTERS & BRANTLEY

BY: Sellers M Brantley
Attorneys for Defendant, Choyce E. Windham

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 18 day of Dec 1970 served a copy of the foregoing pleading [illegible] parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.

WILTERS & BRANTLEY

By: S M Brantley

FILED

DEC 18 1970

ALICE J. DUCK CLERK REGISTER

(9)

DEMURRERS

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally	)	AT LAW CASE NO. 9542
Defendants.	)	

Comes now the Defendant, Choyce E. Windham, and files the following Demurrers; the same being directed to Count One of the Bill of Complaint:

1.

For aught appearing, this action is barred by the six (6) year statute of limitations.

2.

The Plaintiff alleges that the Defendants agreed to unlawfully cut the Plaintiff's timber and alleges that the Defendants cut his timber, but the Plaintiff fails to allege that the timber was cut pursuant to said agreement.

3.

Unless the Plaintiff connects his allegations of agreement to unlawfully cut timber with his allegations of unlawful cutting of timber, the allegations relating to the agreement to unlawfully cut said timber is scandalous.

WALTERS & BRANTLEY

BY: Tolbert M. Brantley
Attorneys for Defendant, Choyce E. Windham

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 22 day of December 1970 served a copy of the foregoing pleading on counsel [illegible] parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.

WALTERS & BRANTLEY

By: [illegible]

FILED

DEC 22 1970

ALICE J. DUCK CLERK REGISTER

FILED

DEC 22 1970

ALICE J. DUCK CLERK
REGISTER

RAY E. LOPER LUMBER COMPANY, A Corporation, Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N.S. WHITMAN, N. S. WHITMAN, JR. and N. S. WHITMAN TIMBER COMPANY, INC., A Corporation, Defendants.	X	AT LAW

PLEAS

Come now the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, by and through their Attorneys of Record, and for plea to the Amended Complaint heretofore filed against them and to each Count thereof, separately and severally, say, separately and severally:

1. The allegations of the amended complaint are untrue.

2. The allegations of the said Counts are untrue.

3. For further defense to the allegations contained in said Amended Complaint, the Defendants say that N. S. Whitman Timber Company, Inc., a corporation, acting by and through its duly authorized agents, servants or employees, did, during the period of time complained of, cut timber from the lands of Ray E. Loper Lumber Company, Inc., in accordance with a contract entered into by and between it and N. S. Whitman Timber Company, Inc. That all payments due under such contract were paid to the agents, servants or employees of said Ray E. Loper Lumber Company, Inc., a corporation, and that the Defendant, N. S. Whitman Timber Company, Inc., has rendered a full and complete accounting to the

said Ray E. Loper Lumber Company, Inc. in connection with these transactions.

CHASON, STONE & CHASON

By: Elbeshard E Ball
Attorneys for N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a Corporation

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 22 day of Jan, 1971.

Elbeshard E Ball

FILED

JAN 28 1971

Eunice B. Blackman
Clerk

RAY E. LOPER LUMBER COMPANY, A Corporation,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR. and N. S. WHITMAN TIMBER COMPANY, INC., A Corporation,	X	AT LAW
Defendants.	X	9542

MOTION TO COMPEL PLAINTIFF
TO AMEND COMPLAINT

Come now the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, by and through their Attorneys of Record, and move this Honorable Court to compel the Plaintiff to amend its Complaint by deleting therefrom all of the allegations of Count One, except the first paragraph thereof and as grounds therefor, assign the following, separately and severally:

1. That heretofore this Honorable Court has entered an order striking all of the allegations of Count One of the Plaintiff's Amended Complaint, save and except the first paragraph thereof, the said stricken allegations being completely irrelevant to the Plaintiff's cause of action. That even though the said objectionable allegations have been ordered stricken by this Honorable Court, there is no way the same can be kept from being exposed to a jury on a trial of this cause and that such exposure to the said irrelevant and objectionable stricken portions would be highly prejudicial to the Defendants herein.

CHASON, STONE & CHASON

By: Eberhard C. Ball
Attorneys for N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation

Filed
1-28-71
Janice B. Blackmon
Clerk

ORDER SETTING MOTION FOR HEARING

This day came the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, by and through their attorneys of record and filed their motion to compel the Plaintiff to amend its complaint and the same is hereby set down for hearing on the 1st day of February, 1971, AT 9:00 A.M.

Done this 28th day of January, 1971.

Circuit Judge

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 28 day of JAN, 1971

Eberhard E Ball

FILED

JAN 28 1971

Clerk

RAY E. LOPER LUMBER COMPANY, INC., a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 9542
VS.	)	
CHOYCE E. WINDHAM, ET AL, Defendants.	)	

AMENDMENT TO MOTION TO REQUIRE
PRODUCTION OF BOOKS, PAPERS AND RECORDS

Now comes the plaintiff in the above styled cause and amends the motion to require production of books, papers and records heretofore filed in this cause by adding to said motion the following affidavit:

"STATE OF ALABAMA)
*
BALDWIN COUNTY)

Before me, the undersigned authority, personally appeared James R. Owen, who first being duly and legally sworn deposes and says:

That he is one of the attorneys for the plaintiff in the above styled cause; that the books, papers and records referred to in the motion to require production of books, papers and records heretofore filed in said cause are necessary and material to the trial of this cause.

Sworn to and subscribed before me
on this the 15th day of February, 1971.

Ernestine R. Sims
Notary Public, Baldwin County, Alabama."

J. B. BLACKBURN and
JAMES R. OWEN

By

Attorneys for Plaintiff

FILED

FEB 15 1971

EUNICE B. BLACKMON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY, INC., a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, ET AL, Defendants.	)	AT LAW NO. 9542

CERTIFICATE

I hereby certify that I delivered a copy of the amendment to motion to require production of books, papers and records to the office of Tolbert M. Brantley, Esquire, attorney for Choyce E. Windham, and to the office of Norborne C. Stone, Esquire, attorney for N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., on this the 15th day of February, 1971.

James R. Owen
Attorney for Plaintiff

FILED
MAR 1 1971
EUNICE B. BLACKMON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY, INC., a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO._____
VS.	)	
CHOYCE E. WINDHAM, ET AL, Defendants.	)	

ORDER SETTING DATE FOR HEARING AMENDED MOTION

Plaintiff's amended motion to require the production of books, papers and records by the defendants which was filed in this cause and served on the attorneys for the defendants on February 15th, 1971, shall be and it is hereby set for hearing at 9:00 o'clock A. M. on February 22nd, 1971.

DONE on this the 15th day of February, 1971.

Isaac J. Massenburg
Judge

FILED
FEB 15 1971
EUNICE B. BLACKMON CIRCUIT CLERK

16

RAY E. LOPER LUMBER COMPANY, INC., a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, ET AL, Defendants.	)	AT LAW NO. 9542

ORDER REQUIRING PRODUCTION
OF BOOKS, PAPERS AND RECORDS

This cause coming on to be heard is submitted on the motion to require production of books, papers and records; amendment to motion to require production of books, papers and records; order setting date for hearing amended motion dated February 15, 1971, and it appearing to the court that the said motion should be granted, it is, therefore, ORDERED that the defendants be required to produce each and all of the books, papers and records described in the said motion to require production of books, papers and records heretofore filed in this cause.

ORDERED on this the 22nd day of February, 1971.

Inzer G. Marshburn
Judge

FILED

MAR 8 1971

EUNICE B. BLACKMON CIRCUIT CLERK

95-42

RAY E. LOPER LUMBER COMPANY INC., A Corporation,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., A Corporation, jointly and severally,	X	AT LAW NO. 9542
Defendants.	X	

PLEAS

Come now the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, by and through their Attorneys of Record, and for answer to the Complaint as last amended heretofore filed in the above styled cause, and to each count thereof, separately and severally, plead, separately and severally:

1. The allegations of the Complaint as last amended, and each count thereof, are untrue.

2. Non-assumpsit.

3. Not Guilty

4. The Plaintiff's claim for money had and received is barred by the Statute of Limitations of six (6) years.

5. The Plaintiff's claim for damages for the alleged trespass in taking goods is barred by the six (6) year Statute of Limitations.

6. The Plaintiff's claim for damages arising due to the alleged trespass to land is barred by the Statute of Limitations of six (6) years.

7. The Defendants, for further answer to the Complaint as last amended, say that at all times during which the acts and

transactions complained of in the Complaint as last amended, occurred, the Defendant, Choyce E. Windham, was the duly authorized agent, servant or employee of the Plaintiff, Ray E. Loper Lumber Company, Inc., a corporation, and that at all times pertinent hereto, the Defendants dealt with him as such. That the Defendant, N. S. Whitman Timber Company, Inc., a corporation, paid to the Defendant Choyce E. Windham, as agent for Ray E. Loper Company, Inc., a corporation, acting within the line and scope of him employment as such all sums due the Plaintiff for the timber sold to the Defendant, N. S. Whitman Timber Company, a corporation, by the Plaintiff acting by and through Choyce E. Windham as the duly authorized agent, servant and employee.

8. The Defendants, for further answer to the Complaint as last amended, say that all sums of money due the Plaintiff corporation were paid in cash to its duly authorized agent, acting within the line and scope of his employment as such.

CHASON, STONE & CHASON

By: Charles E. Ball
Attorney for N. S. Whitman, N. S. Whitman, Jr., N. S. Timber Company, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 16 day of June 1971

Charles E. Ball

FILED

JUN 16 1971

EUNICE B. BLACKMON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY INC.,
A Corporation,

Plaintiff,

vs.

CHOYCE E. WINDHAM, et al

Defendants.

* * * * * * * * * * * * * * * ** * *

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

* * * * * * * * * * * * * * * * *

PLEAS

* * * * * * * * * * * * * * * * * *

CHASON, STONE & CHASON
ATTORNEYS AT LAW
P. O. BOX 120
BAY MINETTE, ALABAMA

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 16 day of March 1971, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.

WILTERS & BRANTLEY

By: S M Brantley

RAY E. LOPER LUMBER COMPANY, INC., a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
Vs.	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally, Defendants.	)	AT LAW CASE NO. 9542

DEMURRER

The following demur is directed to Count 2.

1.

This count shows on its face that the Plaintiff is seeking money received by the Defendant for the use of the Plaintiff during a period of time that is barred by the Statute of Limitations. Count 2 of this Complaint was added by Amendment dated November 25, 1970, and any money received by the Defendant for use of the Plaintiff prior to November 25, 1964, is not recoverable under this count. Hence this demur.

The following demur is directed to Count 3.

1.

For aught appearing, the damages claimed are barred by the Statute of Limitations. The Plaintiff fails to allege when the Defendant wrongfully took the goods of the Plaintiff.

The following demur is directed to Count 4.

1.

Count 4 of this Complaint was added by Amendment dated March 10, 1971. This Count shows on its face that the Plaintiff is seeking to recover damages that have been barred by the Statute of Limitations. Any damages done by the Defendant to the Plaintiff prior to March 10, 1965, are not recoverable in this suit.

FILED

MAR 16 1971

EUNICE B. BLACKMON CIRCUIT CLERK

WILTERS & BRANTLEY

BY: S M Brantley

Attorney for Defendant, Choyce E. Windham

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	
	X	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N.S. WHITMAN, N.S. WHITMAN, JR., and N.S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally,	X	AT LAW NO. 9542
Defendants.	X	

DEMURRER TO AMENDED COMPLAINT

Come now the Defendants, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., a corporation, by and through their Attorneys of Record and demur to the amended complaint heretofore filed by the Plaintiff and to each count thereof, separately and severally and assign the following, separate and several grounds:

1. It affirmatively appears upon the face of the amended complaint that a portion or all of the claim for money allegedly received by the Defendants for the use of the Plaintiff is barred by the Statute of Limitations.

2. The Plaintiff fails to allege the time of the alleged wrongful taking complained of.

3. It affirmatively appears upon the face of the amended complaint that a portion or all of the claim for damages stemming from alleged trespasses of the Defendants is barred by the Statute of Limitations.

4. That the allegations contained in the amended complaint are mere conclusions of the pleader.

CHASON, STONE & CHASON

BY: Eberhard E. Ball
Attorney for the Defendants, N.S. Whitman, N.S. Whitman, Jr., and N.S. Whitman Timber Company, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 18th day of March, 1971

Eberhard E. Ball

FILED
MAR 18 1971
EUNICE B. BLACKMON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY, INC., a corporation, Plaintiff, Vs. CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally, Defendants.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW CASE NO. 9542

PLEAS

Pleas to Count One of Amended Complaint:

1.

The Defendant, Choyce E. Windham, had a license to have the Plaintiff's timber cut.

2.

This count or a part of it is barred by the six year Statute of Limitations.

3.

Not guilty.

4.

For further answer to this count, the Defendant, Choyce E. Windham, says that as agent of the Plaintiff and with its consent he sold timber belonging to the Plaintiff to the Defendant, N. S. Whitman Timber Company, Inc., a corporation. This timber was paid for by the Defendant, N. S. Whitman Timber Company, Inc., a corporation, in cash and this was picked up at their office by the Defendant, Choyce E. Windham, and delivered to Ray E. Loper, individually, in his office in Bay Minette, Alabama. This was done upon the instructions of the said Ray E. Loper who was President of the Plaintiff and that if any of the Plaintiff's money was converted, this was done by Ray E. Loper.

Pleas to Count Two of Amended Complaint:

1.

Non-assumpsit.

2.

This count or a part of it is barred by Statute of Limitations.

3.

Fur further answer to this count Defendant, Choyce E. Windham, says that during the time complained of he received from N. S. Whitman Timber Company, Inc., a corporation, a large sum of money in cash, the exact amount being unknown. This money was delivered to Ray E. Loper, individually, in his office in Bay Minette, Alabama and if any money is due the Plaintiff because of this transaction, it is due from Ray E. Loper.

Pleas to Count Three of Amended Complaint:

1.

Not guilty.

2.

The Defendant, Choyce E. Windham, had a license to have the Plaintiff's timber cut.

3.

This count or a part of it is barred by the six year Statute of Limitations.

4.

For further answer to this count, the Defendant, Choyce E. Windham, says that for several years he was in charge of the wood cutting operation for the Plaintiff. That timber was cut from part of the land described in this count, at the instructions by the agents of the Defendant, N. S. Whitman Timber Company, Inc., a corporation, and by others. This was done with the knowledge and consent of Ray E. Loper, President of Ray E. Loper Lumber Company, Inc., a corporation.

Pleas to Count Four of Amended Complaint:

1.

Not guilty.

2.

The Defendant, Choyce E. Windham, had a license to have the Plaintiff's timber cut.

3.

This count or a part of it is barred by the six year Statute of Limitations.

4.

For further answer to this count, the Defendant, Choyce E. Windham, says that for several years he was in charge of the wood cutting operation for the Plaintiff. That timber was cut from part of the land described in this count, at the instructions by the agents of the Defendant, N. S. Whitman Timber Company, Inc., a corporation, and by others. This was done with the knowledge and consent of Ray E. Loper, President of Ray E. Loper Lumber Company, Inc., a corporation.

WILTERS & BRANTLEY

BY: J. M. Brantley
Attorney for Defendant, Choyce E. Windham

FILED
APR 2 1971
EUNICE B. BLACKMON CIRCUIT CLERK

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 2 day of April, 19..., served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.

WILTERS & BRANTLEY

By: J. M. Brantley

RAY E. LOPER LUMBER COMPANY, INC., a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, ET AL, Defendants.	)	AT LAW NO. 9542

MOTION TO REQUIRE PRODUCTION
OF BOOKS, PAPERS AND RECORDS

Now comes the plaintiff in the above styled cause by its attorneys, and shows unto the court that it is necessary that books, papers and records hereinafter described be produced by the defendants, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., a corporation, for examination by the plaintiff prior to the trial of this case and for use during the trial of this case, all of which are material evidence in this cause.

Plaintiff moves the court to make an order, as provided in and by Title 7, Section 426 of the Code of Alabama, requiring the said defendants to produce each of the following books, papers and records:

1. All checks drawn by the defendant, N. S. Whitman Timber Company, Inc., a corporation, all of which checks were drawn on the First National Bank of Mobile, a National Banking Association, against funds on deposit in the said bank belonging to N. S. Whitman Timber Company, Inc., which checks were numbered as follows: 21748, 21816, 21962, 22019, 22076, 22142, 21861, 219, 220, 316, 327, 381, 394, 395, 468, 1876, 2114, 2286, 2307, 2545, 2830, 2831, 2832, 2894, 2965, 3068, 3137, 3197, 4076, 3134, 3198, 3245, 3318, 3406, 3486, 27297, 27358, 27454, 27536, 27537, 3543, 3623, 3745, 3817, 3896, 3970 and 4337.

2. The cash book or cash books of N. S. Whitman Timber Company, Inc., a corporation, for the years 1964, 1965, 1966, 1967 and 1968.

Plaintiff further moves the court to set this motion for hearing and provide for reasonable notice of the filing of the motion and of the date set for its hearing to the defendants or

their attorneys as provided by Title 7, Section 426 of the Code of Alabama.

Respectfully submitted,

RAY E. LOPER LUMBER COMPANY,
Inc., a corporation,

By _____

_____

As its Attorneys.

STATE OF ALABAMA)
*
BALDWIN COUNTY)

Before me, the undersigned authority, personally appeared James R. Owen, who first being duly and legally sworn deposes and says: That he is one of the attorneys for plaintiff in the above styled cause; that the books, papers and records referred to in the motion to require production of books, papers and records heretofore filed in said cause are necessary and material to the trial of this cause.

_____

Sworn to and subscribed before ~~me on~~
this the 19th day of ~~April~~ May, 1971.

_____
Notary Public, Baldwin County, Alabama

I hereby certify that I delivered a copy of the above and foregoing motion to the office of Norborne C. Stone, attorney for N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, and a copy to Tolbert M. Brantley, attorney for Choyce E. Windham, on this the 19th day of ~~April~~ May, 1971.

_____
Attorney for Plaintiff

FILED

MAY 19 1971

EUNICE B. BLACKMON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY, INC., a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, ET AL, Defendants.	)	AT LAW NO. 9542

ORDER SETTING DATE FOR HEARING MOTION

Plaintiff's motion to require the production of books, papers and records by the defendants, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., which was filed in this cause and served on the attorneys for the said defendants on ~~March~~ May 19, 1971, shall be and it is hereby set for hearing at 9:00 o'clock A. M. on ~~April~~ May 28, 1971.

ORDERED on this the 19 day of ~~March,~~ May 1971.

Irvin G. Mashburn
Judge

FILED

MAY 19 1971

EUNICE B. BLACKMON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.		BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally,	)	AT LAW NO. 9542
Decendants.	)	

AMENDED COMPLAINT

COUNT ONE

The plaintiff claims of the defendants the sum of ONE HUNDRED FORTY-EIGHTY THOUSAND FOUR HUNDRED SIXTY-SEVEN AND 28/100 DOLLARS ($148,467.28) for that heretofore on, to-wit, April 8, 1964, and at all times since the said date, the plaintiff has owned timber situated in Baldwin and Mobile Counties in the State of Alabama. On, to-wit, April 8, 1964, or during the several months prior thereto and continuing thereafter, the exact dates at this time being unknown to the plaintiff, the defendants, Choyce E. Windham, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., entered into an agreement or arrangement under which and by which they or their agents, servants or employees acting for them, would unlawfully enter upon lands located in Baldwin and Mobile Counties in Alabama, upon which timber belonging to the plaintiff was situated, and would unlawfully cut and remove said timber and convert the proceeds therefrom to their own use; and after the said dates the defendants, acting either individually or through their respective agents, servants or employees, did unlawfully cut and remove or cause to be cut and removed timber belonging to the plaintiff, and did sell or cause to be sold such timber and did convert the proceeds therefrom to their own use.

COUNT TWO

The plaintiff claims of the defendants ONE HUNDRED FIFTY

THOUSAND DOLLARS ($150,000.00) due from them for money on, to-wit, at various times between April 8, 1964, and June 1, 1968, the exact dates of which are unknown to the plaintiff, received by the defendants for the use of the plaintiff, which sum of money with interest thereon is still unpaid.

COUNT THREE

The plaintiff claims of the defendants ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000.00), damages for wrongfully taking the following goods, the property of the plaintiff, viz: timber situated on the following described real property situated in Baldwin and Mobile Counties in the State of Alabama, to-wit:

IN TOWNSHIP 2 SOUTH, RANGE 2 EAST

Section 27: That part of Southwest Quarter of Southwest Quarter northeast of Stony Hill Creek

IN TOWNSHIP 3 SOUTH, RANGE 2 EAST

Section 22: Southwest Quarter of Northwest Quarter

Section 32: West Half of West Half

Section 34: East Half of Southeast Quarter
Southeast Quarter of Southwest Quarter

Section 35: West Half of West Half

IN TOWNSHIP 3 SOUTH, RANGE 3 EAST

Section 31: Southeast Quarter of Northeast Quarter
Northeast Quarter of Southeast Quarter

Section 32: West Half of Northeast Quarter

IN TOWNSHIP 4 SOUTH, RANGE 2 EAST

Section 3: Northeast Quarter of Northeast Quarter
West Half of Northwest Quarter of Northeast Quarter
East Half of Northwest Quarter

Section 10: Southeast Quarter of Northeast Quarter

Section 11: Entire section

Section 12: That part of the North Half south of Hunawell Creek
Southwest Quarter
West Half of Southeast Quarter

IN TOWNSHIP 4 SOUTH, RANGE 2 EAST (Continued)

Section 13: Northwest Quarter
West Half of Northeast Quarter
West Half of Southwest Quarter
Southeast Quarter of Southwest Quarter
Southwest Quarter of Southeast Quarter

All in Baldwin County, Alabama.

IN TOWNSHIP 1 SOUTH, RANGE 4 WEST

Section 27: Southwest Quarter
East Half of Northwest Quarter
South Half of Northeast Quarter
Northeast Quarter of Northeast Quarter

Section 28: Southeast Quarter
Northwest Quarter of Southwest Quarter
South Half of Northwest Quarter
Northeast Quarter of Northwest Quarter

Section 34: North Half of Northwest Quarter
Southeast Quarter
(Ollie Malone Tract)

IN TOWNSHIP 2 SOUTH, RANGE 1 WEST

Section 7: Southeast Quarter

Section 17: Southwest Quarter of Southwest Quarter

Section 18: Entire section

Section 19: Entire section

Section 20: Northwest Quarter of Northwest Quarter
South Half of Northwest Quarter
South Half

Section 29: Entire section

Section 30: Entire section

IN TOWNSHIP 2 SOUTH, RANGE 2 WEST

Section 13: East Half of Northeast Quarter
South Half

Section 24: West Half of Northeast Quarter
Northwest Quarter

Section 25: East Half

Section 34: That part East of Chickasaw Creek

Section 35: Northeast Quarter of Northeast Quarter
South Half of Northeast Quarter
Northwest Quarter of Northwest Quarter
South Half of Northwest Quarter
South Half east of Chickasaw Creek

IN TOWNSHIP 3 SOUTH, RANGE 2 WEST

Section 2: That part east of GM&O Railroad

Section 11: That part east of GM&O Railroad, less part to college

IN TOWNSHIP 2 SOUTH, RANGE 2 WEST

Section 33: Southeast Quarter

Section 34: Southwest Quarter of Northwest Quarter

IN TOWNSHIP 3 SOUTH, RANGE 2 WEST

Section 4: Northeast Quarter
East Half of Southeast Quarter, less part sold

Section 3: South Half (part)
Northeast Quarter (part)

Section 10: Entire section

All in Mobile County, Alabama

COUNT FOUR

The plaintiff claims of the defendants ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000.00), damages for trespasses by the defendants on the following tracts of land situated in Baldwin and Mobile Counties in the State of Alabama, to-wit:

IN TOWNSHIP 2 SOUTH, RANGE 2 EAST

Section 27: That part of Southwest Quarter of Southwest Quarter northeast of Stony Hill Creek

IN TOWNSHIP 3 SOUTH, RANGE 2 EAST

Section 22: Southwest Quarter of Northwest Quarter

Section 32: West Half of West Half

Section 34: East Half of Southeast Quarter
Southeast Quarter of Southwest Quarter

Section 35: West Half of West Half

IN TOWNSHIP 3 SOUTH, RANGE 3 EAST

Section 31: Southeast Quarter of Northeast Quarter
Northeast Quarter of Southeast Quarter

Section 32: West Half of Northeast Quarter

5

IN TOWNSHIP 4 SOUTH, RANGE 2 EAST

Section 3: Northeast Quarter of Northeast Quarter
West Half of Northwest Quarter of Northeast Quarter
East Half of Northwest Quarter

Section 10: Southeast Quarter of Northeast Quarter

Section 11: Entire section

Section 12: That part of the North Half south of Hunawell Creek
Southwest Quarter
West Half of Southeast Quarter

Section 13: Northwest Quarter
West Half of Northeast Quarter
West Half of Southwest Quarter
Southeast Quarter of Southwest Quarter
Southwest Quarter of Southeast Quarter

All in Baldwin County, Alabama

IN TOWNSHIP 1 SOUTH, RANGE 4 WEST

Section 27: Southwest Quarter
East Half of Northwest Quarter
South Half of Northeast Quarter
Northeast Quarter of Northeast Quarter

Section 28: Southeast Quarter
Northwest Quarter of Southwest Quarter
South Half of Northwest Quarter
Northeast Quarter of Northwest Quarter

Section 34: North Half of Northwest Quarter
Southeast Quarter
(Ollie Malone Tract)

IN TOWNSHIP 2 SOUTH, RANGE 1 WEST

Section 7: Southeast Quarter

Section 17: Southwest Quarter of Southwest Quarter

Section 18: Entire section

Section 19: Entire section

Section 20: Northwest Quarter of Northwest Quarter
South Half of Northwest Quarter
South Half

Section 29: Entire section

Section 30: Entire section

IN TOWNSHIP 2 SOUTH, RANGE 2 WEST

Section 13: East Half of Northeast Quarter
South Half

Section 24: West Half of Northeast Quarter
Northwest Quarter

Section 25: East Half

Section 34: That part east of Chickasaw Creek

Section 35: Northeast Quarter of Northeast Quarter
South Half of Northeast Quarter
Northwest Quarter of Northwest Quarter
South Half of Northwest Quarter
South Half east of Chickasaw Creek

IN TOWNSHIP 3 SOUTH, RANGE 2 WEST

Section 2: That part east of GM&O Railroad

Section 11: That part east of GM&O Railroad, less part to college

IN TOWNSHIP 2 SOUTH, RANGE 2 WEST

Section 33: Southeast Quarter

Section 34: Southwest Quarter of Northwest Quarter

IN TOWNSHIP 3 SOUTH, RANGE 2 WEST

Section 4: Northeast Quarter
East Half of Southeast Quarter, less part sold

Section 3: South Half (part)
Northeast Quarter (part)

Section 10: Entire section

All in Mobile County, Alabama

in the possession of the plaintiff, and for cutting timber thereon during the period of time between April 8, 1964, and June 1, 1968.

J. B. Blackburn

Attorneys for Plaintiff

I hereby certify that I delivered copies of the foregoing amended complaint to the office of Chason, Stone and Chason, and to the office of Wilters and Brantley, Bay Minette, Alabama, on this the 10th day of March, 1971.

Of Counsel for Plaintiff

FILED

MAR 10 1971

EUNICE B. BLACKMON CIRCUIT CLERK

1. We, the jury, find in favor of defendants M.S. Witman, M.S. Witman, Jr., and M.S. Witman Timber Company, Inc.

2. We, the jury, find in favor of defendant Chayce E. Windham.

Kenneth A. Cramton

Foreman of the Jury

RAY E. LOPER LUMBER COMPANY, INC., a Corporation,	)	
Plaintiff,	)	
VS.	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a Corporation, jointly and severally,	)	AT LAW NO. 9542
Defendants.	)	

MOTION TO STRIKE

I

Now comes the plaintiff, by its attorneys, and moves the court to strike Plea 2 heretofore filed in this cause by the defendants, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., insofar as the said plea purports to constitute a defense as to Counts 1, 3 and 4 of the plaintiff's complaint as last amended, and as grounds of such motion assigns, separately and severally, the following:

A. It is unnecessarily prolix.

B. It is irrelevant.

C. It is frivilous.

D. It is unnecessarily repeated.

II

Now comes the plaintiff, by its attorneys, and moves the court to strike Plea 3 heretofore filed in this cause by the defendants, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., insofar as the said plea purports to constitute a defense as to Count 2 of the plaintiff's complaint as last amended, and as grounds of such motion assigns, separately and severally, the following:

A. It is unnecessarily prolix.

B. It is irrelevant.

C. It is frivilous.

D. It is unnecessarily repeated.

E. It is not an appropriate plea to an account in assumpsit.

III

Now comes the plaintiff, by its attorneys, and moves the court to strike Pleas 4, 5 and 6 heretofore filed in this cause by the defendants, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., and as grounds of such motion assigns, separately and severally, the following:

A. The said pleas contain no single element of defense to any count of the plaintiff's complaint as last amended.

B. They are unnecessarily prolix.

C. They are irrelevant.

D. They are frivilous.

E. They are unnecessarily repeated.

WHEREFORE, plaintiff moves the court to strike the said Pleas 2 and 3 as to the counts of the plaintiff's complaint as last amended to which they do not constitute a defense, and to strike said Pleas 4, 5 and 6.

J. B. Blackburn

Attorneys for Plaintiff

I hereby certify that I delivered a copy of the foregoing motion to strike to Norborne C. Stone, Esquire, and to Tolbert M. Brantley, Esquire, on this the 16th day of September, 1971.

J. B. Blackburn

Of Counsel for Plaintiff

RAY E. LOPER LUMBER COMPANY, INC., a Corporation,	)	
Plaintiff,	)	
VS.	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a Corporation, jointly and severally,	)	AT LAW NO. 9542
Defendants.	)	

MOTION TO STRIKE

Now comes the plaintiff, by its attorneys, and moves the court to strike, each separately and severally, the following described pleas or parts of pleas heretofore filed by the defendant, Choyce E. Windham, to the plaintiff's complaint as last amended:

Plea 1 to Count 1.

Plea 2 to Count 1.

The following part of Plea 4 to Count 1: "and that if any of the plaintiff's money was converted, this was done by Ray E. Loper."

Plea 2 to Count 2.

The following part of Plea 3 to Count 2: "and if any money is due the plaintiff because of this transaction, it is due from Ray E. Loper."

Plea 2 to Count 3.

Plea 3 to Count 3.

Plea 2 to Count 4.

Plea 3 to Count 4.

As grounds of this motion, plaintiff assigns, separately and severally, the following:

1. The said pleas contain no single element of defense to the counts of the amended complaint to which they are directed.

2. They are prolix.

3. They are irrelevant.

4. They are frivilous.

5. They are unnecessarily repeated.

WHEREFORE, plaintiff moves the court to strike the said pleas.

J. B. Blackburn

Attorneys for Plaintiff

I hereby certify that I delivered a copy of the foregoing motion to strike to Tolbert M. Brantley, Esquire, and to Norborne C. Stone, Esquire, on this the 16th day of September, 1971.

J. B. Blackburn

Of Counsel for Plaintiff

RAY E. LOPER LUMBER COMPANY, INC., a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, ET AL., Defendants.	)	AT LAW NO. 9542

DEMURRER TO PLEAS OF DEFENDANTS, N. S. WHITMAN, N. S. WHITMAN, JR., AND N. S. WHITMAN TIMBER COMPANY, INC., A CORPORATION

Now comes the plaintiff, by its attorneys, and demurs to Pleas 7 and 8 heretofore filed by the said defendants to plaintiff's amended complaint, each separately and severally, and as grounds of such demurrer assigns, separately and severally, the following:

1. The allegations of each of the said pleas are conclusions of the pleader.

2. The allegations of each of the said pleas are vague, indefinite and uncertain.

3. The facts alleged in each of the said pleas do not constitute a defense to any count of the plaintiff's amended complaint and raise immaterial issues.

4. The allegations of the pleas are conclusions of the pleader and no facts are alleged to show that the defendant, Choyce E. Windham, was authorized to receive payment of any funds belonging to the plaintiff.

5. The allegations of the pleas are vague, indefinite and uncertain and no facts are alleged to show that the defendant, Choyce E. Windham, was authorized to receive payment of any funds belonging to the plaintiff.

6. The allegations of the pleas are conclusions of the pleader and no facts are alleged to show that the defendant,

Choyce E. Windham, was the authorized agent of the plaintiff to sell timber belonging to it.

7. The allegations of the pleas are vague, indefinite and uncertain and no facts are alleged to show that the defendant, Choyce E. Windham, was the authorized agent of the plaintiff to sell timber belonging to it.

8. No facts are alleged to show that payment was made to the plaintiff.

9. The allegations of the pleas are vague, indefinite and uncertain in that no facts are alleged to show to whom the alleged payment was made by the defendants Whitman.

10. No facts are alleged to show that the plaintiff sold any timber to the defendants Whitman, or any of them.

11. No facts are alleged to show that the plaintiff authorized the defendants Whitman, or any of them, to cut and remove timber belonging to it.

12. The allegations of the pleas are vague, indefinite and uncertain and no facts are alleged to show when the alleged payment or payments by the defendants Whitman were made.

13. No facts are alleged to show that the defendants Whitman, or any of them, ascertained from the plaintiff the nature and extent of the authority of the defendant Windham.

14. For aught that appears in the pleas, the defendants Whitman relied on the presumption of authority, or the assumption of authority, of the defendant Windham.

J. B. Blackburn

Attorneys for Plaintiff

I hereby certify that I delivered a copy of the foregoing demurrer to Chason, Stone and Chason, and to Tolbert M. Brantley, on this the 24th day of September, 1971.

Of Counsel for Plaintiff

FILED

SEP 24 1971

EUNICE B. BLACKMON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
	)	AT LAW NO. 9542
CHOYCE E. WINDHAM, ET AL.,	)	
Defendants.	)	

DEMURRER TO PLEAS OF DEFENDANT, CHOYCE E. WINDHAM

Now comes the plaintiff, by its attorneys, and demurs to Plea 4 to Count 1, Plea 3 to Count 2, Plea 4 to Count 3, and Plea 4 to Count 4 to plaintiff's complaint as last amended, each separately and severally, and as grounds of such demurrer assigns, separately and severally, the following:

1. The allegations of each of the said pleas are conclusions of the pleader.

2. The allegations of each of the said pleas are vague, indefinite and uncertain.

3. The facts alleged in each of the said pleas do not constitute a defense to any count of the plaintiff's amended complaint and raise immaterial issues.

4. No facts are alleged to show that the defendant, Choyce E. Windham, had authority to sell timber belonging to the plaintiff.

5. No facts are alleged to show that the defendant, Choyce E. Windham, had authority to receive payment on behalf of the plaintiff for any of its timber.

6. No facts are alleged to show that the defendant, Choyce E. Windham, had authority to sell plaintiff's timber to the defendants Whitman, or any of them.

7. The allegations of the pleas are vague, indefinite and uncertain and no facts are alleged to show why the alleged

money was received by the defendant, Choyce E. Windham.

8. The allegations of each of the pleas are vague, indefinite and uncertain and no facts are alleged to show for what the alleged money was paid.

9. The allegations of the pleas are vague, indefinite and uncertain and no facts are alleged to show what agents of the defendant, N. S. Whitman Timber Company, Inc., authorized the cutting of the plaintiff's timber.

10. The allegations of the pleas are vague, indefinite and uncertain and no facts are alleged to show who authorized the cutting of the plaintiff's timber.

11. No facts are alleged to show that the said agents of the defendant, N. S. Whitman Timber Company, Inc., or others, had authority to direct the cutting of the plaintiff's timber.

12. No facts are alleged to show that the plaintiff sold any timber to the defendants, or any of them.

13. No facts are alleged to show that the plaintiff authorized the defendants, or any of them, to cut and remove timber belonging to it.

14. The allegations of the pleas are vague, indefinite and uncertain and no facts are alleged to show when, how, or in what way Ray E. Loper, President of the plaintiff, Ray E. Loper Lumber Company, Inc., a corporation, consented to the cutting of its timber.

J. B. Blackburn

Attorneys for Plaintiff

I hereby certify that I delivered a copy of the foregoing demurrer to Chason, Stone and Chason, and to Tolbert M. Brantley, Esquire, on this the 24th day of September, 1971.

Of Counsel for Plaintiff

FILED

SEP 24 1971

EUNICE B. BLACKMON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY, INC., A Corporation, Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., A Corporation, jointly and severally, Defendants.	X	AT LAW NO. 9542

AMENDED PLEAS

Come now the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, by and through their attorneys of record, and for answer to the Complaint as last amended heretofore filed in the above styled cause, file the following pleas:

1. As to Counts 1, 3 and 4 of said Complaint as last amended, the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, plead not guilty.

2. For further answer to Counts 1, 3 and 4 of the Complaint as last amended, the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, say that at all times during which the acts and transactions complained of in said Counts occurred, the Defendant, Choyce E. Windham, was the duly authorized agent, servant or employee of the Plaintiff, Ray E. Loper Lumber Company, Inc., a corporation, and as such duly authorized agent, servant or employee was authorized to sell timber belonging to the said Plaintiff and receive monies from the named Defendants in payment thereof and that at all times pertinent hereto, the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a

corporation, dealt with him as such. That the Defendant, N. S. Whitman Timber Company, Inc., a corporation, paid to the Defendant, Choyce E. Windham, as such duly authorized agent for Ray E. Loper Lumber Company, Inc., a corporation, acting within the line and scope of his employment as aforesaid, all sums due the Plaintiff for the timber sold to N. S. Whitman Timber Company, Inc., a corporation, by the Plaintiff acting by and through the said Choyce E. Windham as the duly authorized agent, servant or employee as aforesaid.

3. As to Court 2 of the Complaint as last amended, the Defendants, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., a corporation, plead non assumpsit.

CHASON, STONE & CHASON

By: Eberhard E. Ball

Attorneys for N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 11 day of Oct, 1971.

Eberhard E. Ball

FILED

OCT 11 1971

EUNICE D. BLACKMON CLERK

9542

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally,	)	AT LAW NO. 9542
Defendants.	)	

DEMURRER TO AMENDED PLEA 2

Now comes the plaintiff, by its attorneys, and demurs to amended Plea 2 heretofore filed in this cause by the defendants, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., and as grounds of such demurrer assigns, separately and severally, the following:

1. The allegations of the said plea are conclusions of the pleader.

2. The allegations of the said plea are vague, indefinite and uncertain.

3. The facts alleged in the said plea do not constitute a defense to any count of the plaintiff's amended complaint and raise immaterial issues.

4. The allegations of the plea are conclusions of the pleader and no facts are alleged to show that the defendant, Choyce E. Windham, was authorized to receive payment of any funds from the defendants Whitman belonging to the plaintiff.

5. The allegations of the plea are vague, indefinite and uncertain and no facts are alleged to show that the defendant, Choyce E. Windham, was authorized to receive payment of any funds belonging to the plaintiff from the defendants Whitman, or any of them.

6. The allegations of the plea are conclusions of the

pleader and no facts are alleged to show that the defendant, Choyce E. Windham, was the authorized agent of the plaintiff to sell timber belonging to it to the defendants Whitman, or any of them.

7. The allegations of the plea are conclusions of the pleader and no facts are alleged to show that the alleged payment was made to the plaintiff.

8. No facts are alleged to show that the defendants Whitman, or any of them, ascertained or made any effort to ascertain from the plaintiff the nature and extent of the authority of the alleged agent, Choyce E. Windham.

J. B. Blackburn

Attorneys for Plaintiff

I hereby certify that I delivered a copy of the foregoing demurrer to Chason, Stone and Chason, and to Tolbert M. Brantley, on this the 13th day of October, 1971.

Of Counsel for Plaintiff

FILED

OCT 13 1971

EUNICE B. BLACKMON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY, INC., a corporation,

Plaintiff,

VS.

CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally,

Defendants.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

AT LAW NO. 9542

REPLICATION

Now comes the plaintiff and files this, its general replication to the defendants', N. S. Whitman, N. W. Whitman, Jr., and N. S. Whitman Timber Company, Inc., a corporation, Plea 2 and for said replication says:

1. The plaintiff joins issue on said plea.

J. B. Blackburn

Attorneys for Plaintiff

I hereby certify that I delivered a copy of the foregoing replication to the offices of Chason, Stone & Chason and Tolbert M. Brantley at 10:10 o'clock A. M. on this 14th day of October, 1971.

Of Counsel for Plaintiff

FILED

OCT 14 1971

EUNICE B. BLACKMON CIRCUIT CLERK

39

RAY E. LOPER LUMBER COMPANY, INC., a corporation, Plaintiff,	)	
VS.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally, Defendants.	)	AT LAW NO. 9542

REPLICATION

Now comes the plaintiff and files this, its general replication to Plea 4 to Count 3 and Plea 4 to Count 4 heretofore filed by the defendant, Choyce E. Windham, and for said replication says:

1. The plaintiff joins issue on said pleas.

J. B. Blackburn

Attorneys for Plaintiff

I hereby certify that I delivered a copy of the foregoing replication to the offices of Chason, Stone & Chason and Tolbert M. Brantley at 10:10 o'clock A. M. on this 14th day of October, 1971.

Of Counsel for Plaintiff

FILED

OCT 14 1971

EUNICE B. BLACKMON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY, INC., A Corporation,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., A Corporation, jointly and severally,	X	AT LAW NO. 9542
Defendants.	X	

AMENDED PLEAS

Come now the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, by and through their attorneys of record, and for answer to the Complaint as last amended heretofore filed in the above styled cause, file the following pleas:

1. As to Counts 1, 3 and 4 of said Complaint as last amended, the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, plead not guilty.

2. For further answer to Counts 1, 3 and 4 of the Complaint as last amended, the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, say that at all times since April 8, 1964, or during the several months prior thereto and continuing thereafter, the Defendant, Choyce E. Windham, was the duly authorized agent, servant or employee of the Plaintiff, Ray E. Loper Lumber Company, Inc., a corporation, and as such duly authorized agent, servant or employee was authorized to sell timber belonging to the said Plaintiff and receive monies from the Defendant N. S. Whitman Timber Company, Inc., in payment thereof and that at all times pertinent hereto, the Defendants, N. S. Whitman, N. S. Whitman,

Jr. and N. S. Whitman Timber Company, Inc., a corporation, dealt with him as such. That the Defendant, N. S. Whitman Timber Company, Inc., a corporation, paid to the Defendant, Choyce E. Windham, as such duly authorized agent for Ray E. Loper Lumber Company, Inc., a corporation, acting within the line and scope of his employment as aforesaid, all sums due the Plaintiff for the timber sold to N. S. Whitman Timber Company, Inc., a corporation, by the Plaintiff acting by and through the said Choyce E. Windham as the duly authorized agent, servant or employee as aforesaid.

3. As to Count 2 of the Complaint as last amended, the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, plead non assumpsit.

CHASON, STONE & CHASON

By Edward E Ball
Attorneys for N. S. Whitman, N.S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a Corporation.

I hereby certify that I have served the above and foregoing Pleas upon counsel for all parties by delivering a copy of the same to them at their respective offices at Bay Minette, Alabama, on this the 14th day of October, 1971, at 11:05 o'clock A.M.

CHASON, STONE & CHASON

By Edward E Ball
Attorneys for N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a Corporation.

FILED

OCT 14 1971

EUNICE B. BLACKMON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY, INC., a corporation,

Plaintiff,

VS.

CHOYCE E. WINDHAM, ET AL.,

Defendants.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

AT LAW NO. 9542

DEMURRER TO AMENDED PLEA 2

Now comes the plaintiff, by its attorneys, and demurs to amended Plea 2 heretofore filed in this cause by the defendants, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., on October 14, 1971, and as grounds of such demurrer assigns, separately and severally, the following:

1. The allegations of the said plea are conclusions of the pleader.

2. The allegations of the said plea are vague, indefinite and uncertain.

3. The facts alleged in the said plea do not constitute a defense to any count of the plaintiff's amended complaint and raise immaterial issues.

4. The allegations of the plea are conclusions of the pleader and no facts are alleged to show that the defendant, Choyce E. Windham, was authorized to receive payment of any funds from the defendants Whitman belonging to the plaintiff.

5. The allegations of the plea are vague, indefinite and uncertain and no facts are alleged to show that the defendant, Choyce E. Windham, was authorized to receive payment of any funds belonging to the plaintiff from the defendants Whitman, or any of them.

6. The allegations of the plea are conclusions of the

pleader and no facts are alleged to show that the defendant, Choyce E. Windham, was the authorized agent of the plaintiff to sell timber belonging to it to the defendants Whitman, or any of them.

7. The allegations of the plea are conclusions of the pleader and no facts are alleged to show that the alleged payment was made to the plaintiff.

8. No facts are alleged to show that the defendants Whitman, or any of them, ascertained or made any effort to ascertain from the plaintiff the nature and extent of the authority of the alleged agent, Choyce E. Windham.

9. No facts are alleged to show that the defendant, Choyce E. Windham, was authorized to receive payment of any funds due to the plaintiff from the defendant, N. S. Whitman Timber Company, Inc., in cash.

10. The allegations of the plea are conclusions of the pleader and no facts are alleged therein to show that the defendant, Choyce E. Windham, was the alleged agent of the plaintiff, was authorized to receive payment in cash of any funds or money due to the plaintiff by the defendant, N. S. Whitman Timber Company, Inc.

11. The allegations of the plea are conclusions of the pleader and no facts are alleged to show that the defendant, Choyce E. Windham, as the alleged agent of the plaintiff, was authorized to bind the plaintiff by receiving payment in cash of any funds or money due to the plaintiff by the defendant, N. S. Whitman Timber Company, Inc.

J. B. Blackburn

Attorneys for Plaintiff

I hereby certify that I delivered a copy of the foregoing demurrer to Chason, Stone and Chason, and a copy to Tolbert M. Brantley, on this the 14th day of October, 1971.

Of Counsel for Plaintiff

FILED

OCT 14 1971

ELLIOTT D. BLACKSTON CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY INC., A Corporation,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
	X	
vs.	X	BALDWIN COUNTY, ALABAMA
	X	
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., A Corporation, jointly and severally,	X	AT LAW CASE NO. 9542
	X	
Defendants.	X	

AMENDMENT TO PLEAS

Come now the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, by and through their attorneys of record, and amend the pleas heretofore filed in answer to the Complaint as last amended in the above styled cause by adding the following plea:

4. For further answer to Count Two of the Complaint as last amended, the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, say that it affirmatively appears from the face of said Count that the claim for money had and received contained therein is barred by the three year statute of limitations.

CHASON, STONE & CHASON

BY: Eberhard E. Ball
Attorneys for N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc.

I hereby certify that I have served the above and foregoing pleading upon Counsel for all parties hereto, by delivering a copy of the same to them at their office on this the 14th day of October, 1971.

BY: Eberhard E. Ball

FILED
OCT 14 1971
EUNICE B. BLACK, CIRCUIT CLERK

RAY E. LOPER LUMBER COMPANY, INC., a corporation,

Plaintiff,

VS.

CHOYCE E. WINDHAM, ET AL.,

Defendants.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

AT LAW NO. 9542

MOTION TO STRIKE

Now comes the plaintiff, by its attorneys, and moves to strike Plea 4 filed in this cause by the defendants, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., on October 14, 1971, which plea is a plea of the three-year statute of limitations, and as grounds of said motion assigns, separately and severally, the following:

1. It is unnecessarily prolix.
2. It is irrelevant.
3. It is frivolous.
4. It is unnecessarily repeated.

WHEREFORE, plaintiff moves the court to strike the said Plea 4.

J. B. Blackburn

Attorneys for Plaintiff

FILED

OCT 15 1971

EUNICE B. BLACKMON CIRCUIT CLERK

I hereby certify that I delivered a copy of the foregoing motion to Chason, Stone and Chason, and a copy to Tolbert M. Brantley, on this the 15th day of October, 1971

J. B. Blackburn

Of Counsel for Plaintiff

Date of Check, or date of cancellation(*)	Check Number	Amount	Payee	Endorser	Folio
4- 8-64	22221	$ 2,950.91	Cash	N. S. Whitman	8/1
4- 9-64	22224	66.00	Cash	D & R Ser. Stn	8/2
5- 8-64	22487	1,051.16	Cash	N. S. Whitman	8/3
5-15-64	22601	65.72	Cash	N. S. Whitman	8/4
5-22-64	22622	392.96	Cash	N. S. Whitman	8/5
5-19-64	22673	1,530.00	Cash	N. S. Whitman	8/6
6- 5-64	22756	26.33	Cash	N. S. Whitman	8/7
6-12-64	22883	191.72	Cash	N. S. Whitman	8/8
6-26-64	22949	211.95	Cash	N. S. Whitman	8/9
7- 3-64	23007	328.02	Cash	N. S. Whitman	7/10
7-10-64	23068	562.60	Cash	N. S. Whitman	8/11
9- 4-64	23440	2,847.33	Cash	N. S. Whitman	8/11-12
10- 9-64	23765	2,319.07	Cash	N. S. Whitman	10/14
11-13-64	24175	6,131.58	Cash	N. S. Whitman	8/15
1- 8-65	24457	1,117.11	Cash	N. S. Whitman	8/17
2-19-65	24834	2,284.13	Cash	N. S. Whitman	8/18
2-23-65	25322	3,479.26	Cash	N. S. Whitman	8/19
4-23-65	25919	1,326.46	Cash	N. S. Whitman	8/20

EXHIBIT "A"

Date of Check or date of cancellation (*)	Check Number	Amount	Payee	Endorser	Folio Page and Line
8-13-65	26308	$ 698.45	Cash	N. S. Whitman	8/21
10-15-65	26642	6,684.28	Cash	N. S. Whitman	8/22
9-10-65	26426	2,214.17	Cash	Fletcher	8/35
11-5- 65	26891	1,875.82	Cash	N. S. Whitman	8/25
11-26-65	26971	2,135.25	Cash	N. S. Whitman	8/29
12-10-65	27073	1,603.43	Cash	Fletcher	8/30
12-17-65	27104	1,119.99	Cash	N. S. Whitman	8/31
12/23/65	27167	391.97	Cash	N. S. Whitman	8/32
12/31/65	9	774.70	Cash	N. S. Whitman	8/23
1-14-66	70	960.47	Cash	N. S. Whitman	1/3
1-14-66	223	3,114.89	Cash	N. S. Whitman	1/4
1-31-66 *	218	895.35	Cash	Mobile Check Exc.	5/1
2-11-66	317	2,462.90	Cash	Fletcher	1-6
2-21-66	380	2,230.97	Cash	Fletcher	1/8
3- 7-66	403	355.24	Cash	Fletcher	5/2
3- 7-66 *	402	360.76	Cash	Fletcher	2/1
3- 7-66 *	405	337.84	Cash	Fletcher	5/3
3- 7-66 *	407	367.44	Cash	Fletcher	5/4
3- 7-66 *	409	313.80	Cash	Fletcher	5/5
3- 7-66 *	467	197.20	Cash	N.S.Whitman, Jr.	5/6
3- 7-66 *	404	131.88	Cash	Fletcher	2/2
3- 7-66 *	406	145.00	Cash	Fletcher	2/3
3- 7-66 *	408	132.48	Cash	Fletcher	2/4
4-29-66 *	518	307.56	Cash	N.S.Whitman, Jr.	5/7
4-29-66 *	1037	211.80	Cash	N.S.Whitman, Jr.	5/8

Date of Check or date of Cancellation(*)	Check Number	Amount	Payee	Endorser	Folio Page and Line
4-29-66 *	651	$ 507.68	Cash	N.S.Whitman, Jr.	5/9
4-29-66 *	713	406.43	Cash	N. S. Whitman, Jr.	5/10
4-29-66 *	820	294.32	Cash	N. S. Whitman, Jr.	5/11
4-29-66 *	880	359.23	Cash	N. S. Whitman, Jr.	5/12
4-29-66 *	941	400.72	Cash	N. S. Whitman, Jr.	5/13
4-29-66 *	1016	141.64	Cash	N. S. Whitman, Jr.	5/14
5-13-66 *	1079	265.60	Cash	Fletcher	5/15
5-13-66	1142	219.44	Cash	"	5/16
5-24-66	2833	338.66	"	"	5/38
5-30-66 *	1208	362.44	"	"	5/17
5-30-66	1300	434.32	"	"	5/18
6-30-66 *	1404	301.64	"	"	5/19
6-30-66 *	1426	297.12	"	"	5/20
6-30-66 *	1483	339.60	"	"	5/21
6-30-66 *	1557	328.92	"	"	5/22
6-30-66 *	1648	116.84	"	"	5/23
7- 8-66	1792	441.58	"	"	1/22
7-15-66	1833	2,350.35	"	N. S. Whitman	1/5
7-18-66	1848	842.60	"	Fletcher	1/23
7-26-66	1917	138.44	"	"	5/25
7-30-66	1973	97.84	"	"	5/26
7-30-66	1974	563.16	"	"	1/24
8- 5-66	2005	2,165.50	"	"	1/7
8- 8-66	2023	118.44	"	"	5/27
8-12-66	2098	1,503.57	"	"	1/9

Date of Check or date of Cancellation	Check Number	Amount	Payee	Endorser	Folio Page and Line
8-15-66	2115	$ 178.48	Cash	Fletcher	5/28
8-22-66*	2154	2,367.25	"	N. S. Whitman	1/13
9- 6-66	2208	107.64	"	Fletcher	5/30
9- 7-66	2308	224.17	"	"	5/31
8-22-66	2176	113.24	"	"	5/29
9-19-66	2424	90.79	"	"	5/32
9-22-66	2443	125.47	"	"	5/23
9-26-66 *	1708	125.48	"	"	5/24
9-28-66	2546	270.64	Cash	Fletcher	5/3-4
9-30-66	2599	428.16	"	"	5/35
10-10-66 *	2601	106.80	"	"	2/42
10-10-66	2697	301.28	"	"	5/36
10-17-66	2762	292.84	"	"	5/37
10-31-66	2893	265.04	"	"	5/39
11-7-66	2963	358.44	"	"	5/40
11-14-66	3067	343.68	"	"	5/41
1-27-67	3503	1,370.85	Taylor-Windham	C. E. Windham	1/40-5/42-6/1
1-27-67	3504	1,675.49	Cash	N. S. Whitman	Same as above
1-30-67	3544	36.64	"	Whitman Timber Co.	1/41
1-30-67	3865	1,519.31	"	Fletcher	6/6-11
1-30-67	3874	630.59	Taylor-Windham	C.E.Windham	6/8
3-10-67	4035	411.92	Cash	Fletcher	6/12
3-10-67	4036	337.03	Taylor-Windham	C. E. Windham	6/13
3-20-67	4293	1,567.99	Cash	Fletcher	6/14
3-31-67	4294	772.81	Taylor-Windham	C. E. Windham	4/3

Date of Check or date of Cancellation *	Check Number	Amount	Payee	Endorser	Folio Page and Line
4-10-67	4422	$ 547.40	Cash	F.D.Wheeler	6/18
4-17-67	4531	300.90	"	Fletcher	6/19
4-24-67	4605	572.35	"	"	6/20
4-26-67	4635	276.23	Taylor-Windham	C. D. Windham	6/17
4-28-67	4636	247.52	Cash	Wheeler	6/17
4-29-67	4684	555.75	Cash	Fletcher	6/21
5- 8-67	4756	343.15	Cash	Fletcher	6/22
5-15-68	4856	359.70	Cash	Fletcher	6/23
5-22-67	4932	347.05	"	"	6/24
5-29-67	5013	552.05	"	"	6/25
6- 5-67	5090	295.15	"	"	6/26
6-12-67	5215	254.40	"	"	6/27
6-19-67	5274	435.80	"	"	6/28
6-26-67	5356	261.00	"	"	6/29
6-30-67	5423	276.60	"	"	6/30
7-10-67	5502	149.40	"	"	6/31
7-17-67	5599	254.05	"	"	6/32
7-24-67	5681	346.25	"	"	6/33
7-31-67	5749	243.90	"	"	6/34
8- 7-67	5830	454.35	"	"	6/35
8-14-67	5943	289.65	"	"	6/36
8-21-67	6031	409.15	"	"	6/37
8-28-67	6111	379.05	"	"	6/38
9- 4-67	6185	360.90	"	"	6/39
9-11-67	6265	321.25	"	"	6/40

Date of Check or date of cancellation *	Check	Amount	Payee	Endorser	Folio Page and Line
9-25-67	6434	$ 352.45	Cash	Fletcher	6/42
9-30-67	6509	332.50	"	"	6/43
10- 9-67	6558	259.40	"	"	6/44
9-18-67	6365	140.65	"	"	6/41

Filed
Dec 12 1970
Alice J Hunt Clerk
Registrar

RAY E. LOPER LUMBER COMPANY, INC., a corporation,	)	
Plaintiff ,	)	
VS.	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally,	)	AT LAW NO._____
Defendants.	)	

AMENDED COMPLAINT

This cause having been transferred from the Equity Side of the Circuit Court of Baldwin County, Alabama, to the Law Side of the said court by a decree dated on, to-wit, October 30, 1970, the plaintiff files the following as its amended complaint on the Law Side of the said court.

AMENDED COMPLAINT

COUNT ONE

The plaintiff claims of the defendants the sum of ONE HUNDRED FORTY-EIGHT THOUSAND FOUR HUNDRED SIXTY-SEVEN AND 28/100 DOLLARS ($148,467.28) for that heretofore on, to-wit, April 8, 1964, and at all times since the said date, the plaintiff has owned timber situated in Baldwin and Mobile Counties in the State of Alabama. On, to-wit, April 8, 1964, or during the several months prior thereto and continuing thereafter, the exact dates at this time being unknown to the plaintiff, the defendants, Choyce E. Windham, N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., entered into an agreement or arrangement under which and by which they or their agents, servants or employees acting for them, would unlawfully enter upon lands located in Baldwin and Mobile Counties in Alabama, upon which timber belonging to the plaintiff was situated, and would unlawfully cut and remove said timber and

convert the proceeds therefrom to their own use; and after the said dates the defendants, acting either individually or through their respective agents, servants or employees, did unlawfully cut and remove or cause to be cut and removed timber belonging to the plaintiff, and did sell or cause to be sold such timber and did convert the proceeds therefrom to their own use.

On, to-wit, February 18, 1964, February 26, 1964, March 3, 1964, March 11, 1964, March 18, 1964, March 25, 1964, and April 1, 1964, defendant N. S. Whitman Timber Company, Inc., drew checks on the First National Bank of Mobile, Alabama, payable to the plaintiff, said checks being numbered 21748, 21816, 21861, 21962, 22019, 22076, and 22142, in the respective amounts of $1971.34, $423.64, $217.04, $539.61, $2117.19, $134.28, and $82.50, each of the said checks being attached to stumpage statements reflecting timber belonging to or taken from the plaintiff. The total of these checks was the sum of $5485.60. None of these said checks were delivered to the plaintiff.

On, to-wit, April 8, 1964, or at a time prior thereto, the exact time being unknown to the plaintiff, the defendants, as a part of their agreement or arrangement to defraud the plaintiff of the aforesaid sum of $5485.60, did cancel or cause to be canceled all of the aforesaid checks which had been executed payable to the plaintiff, and subsequent to which on, to-wit, April 8, 1964, defendant N. S. Whitman Timber Company, Inc., issued its check No. 22221, payable to cash in the sum of $2950.91, which check was endorsed by N. S. Whitman before being paid; and on, to-wit, April 9, 1964, defendant N. S. Whitman Timber Company, Inc., caused to be issued its check No. 22224, payable to cash in the sum of $66.09, to which was attached a statement bearing the legend "Corrected statement 4-8-64 (22221)." The sum of the two said checks numbered

22221 and 22224 is 55% of $5485.60, which was the total of the said checks which were not delivered to the plaintiff and were subsequently canceled. None of the proceeds of these two said checks was paid to the plaintiff for its timber.

During the period from April 8, 1964, to, to-wit, October 9, 1967, other timber belonging to the plaintiff was cut and sold by the defendants and N. S. Whitman Timber Company, Inc., caused a number of checks to be issued payable to cash, drawn on its funds deposited in the First National Bank of Mobile, Mobile, Alabama. The face amount of the said checks was computed at 55% of the defendant's invoice price for plaintiff's timber, as shown by stumpage statements issued in connection with the said checks, the total of which said checks was $66,224.38. According to the said stumpage statements, defendant N. S. Whitman Timber Company, Inc., retained 45% of the invoice price, or the sum of $54,183.58, in its corporate treasury.

During the period from, to-wit, January 3, 1966, to, to-wit, September 9, 1967, the defendant N. S. Whitman Timber Company, Inc., caused certain checks, which totaled $28,059.32, to be drawn on its funds in the First National Bank of Mobile, Mobile, Alabama. The amount of each of these checks was computed at the defendant's invoice price for plaintiff's timber of $4.00 or $5.00 per cord, when its true value was $8.00 per cord or more. None of these checks or the proceeds from these checks were delivered to the plaintiff.

The total sum of the said checks issued to cash and to Taylor-Windham, a partnership composed of the defendant Choyce E. Windham and Tom Taylor, in the two categories above described was $94,283.70, none of which was paid to the plaintiff in payment of its timber as listed and priced on the stumpage statements of

defendant N. S. Whitman Timber Company, Inc., and when added to the $54,183.58 retained by defendant N. S. Whitman Timber Company, Inc., it totals $148,467.28 which belonged to the plaintiff and which was unlawfully converted by the defendants to their own use.

A list of the checks described above and aggregating $94,283.70 is set out in full in Exhibit A hereto attached, and by reference made a part hereof as though fully incorporated herein; all to plaintiff's damages as aforesaid, hence this suit.

COUNT TWO

The plaintiff claims of the defendants ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000.00) due from them for money on, to-wit, at various times between April 8, 1964, and June 1, 1968, the exact dates of which are unknown to the plaintiff, received by the defendants for the use of the plaintiff, which sum of money with interest thereon is still unpaid.

J. B. Blackburn

Attorney for Plaintiff

CERTIFICATE AS TO SERVICE

I hereby certify that I mailed a copy of the above and foregoing amended complaint to Tolbert M. Brantley, Esquire, attorney for Choyce E. Windham, and to Norborne C. Stone, Esquire, attorney for N. S. Whitman, N. S. Whitman, Jr., and N. S. Whitman Timber Company, Inc., a corporation, by first class mail, postage prepaid and properly addressed, on this the 25th day of November, 1970.

FILED

NOV 25 1970

ALICE J. DUCK CLERK REGISTER

J. B. Blackburn

Attorney for Plaintiff

Date of Check, or date of cancellation(*)	Check Number	Amount	Payee	Endorser	Folio
4- 8-64	22221	$ 2,950.91	Cash	N. S. Whitman	8/1
4- 9-64	22224	66.09	Cash	D & R Ser. Stn	8/2
5- 8-64	22487	1,051.16	Cash	N. S. Whitman	8/3
5-15-64	22601	65.72	Cash	N. S. Whitman	8/4
5-22-64	22622	392.96	Cash	N. S. Whitman	8/5
5-19-64	22673	1,530.63	Cash	N. S. Whitman	8/6
6- 5-64	22756	26.33	Cash	N. S. Whitman	8/7
6-12-64	22883	191.72	Cash.	N. S. Whitman	8/8
6-26-64	22949	211.95	Cash	N. S. Whitman	8/9
7- 3-64	23007	328.02	Cash	N. S. Whitman	7/10
7-10-64	23068	562.60	Cash	N. S. Whitman	8/11
9- 4-64	23440	2,847.33	Cash	N. S. Whitman	8/11-12
10- 9-64	23765	2,319.07	Cash	N. S. Whitman	10/14
11-13-64	24175	6,131.58	Cash	N. S. Whitman	8/15
1- 8-65	24457	1,117.11	Cash	N. S. Whitman	8/17
2-19-65	24834	2,284.13	Cash	N. S. Whitman	8/18
2-23-65	25322	3,479.26	Cash	N. S. Whitman	8/19
4-23-65	25919	1,326.46	Cash	N. S. Whitman	8/20

EXHIBIT "A"

Date of Check or date of cancellation (*)	Check Number	Amount	Payee	Endorser	Folio Page and Line
8-13-65	26308	$ 698.45	Cash	N. S. Whitman	8/21
10-15-65	26642	6,684.28	Cash	N. S. Whitman	8/22
9-10-65	26426	2,214.17	Cash	Fletcher	8/35
11-5-65	26891	1,875.82	Cash	N. S. Whitman	8/25
11-26-65	26971	2,135.25	Cash	N. S. Whitman	8/29
12-10-65	27073	1,603.43	Cash	Fletcher	8/30
12-17-65	27104	1,119.99	Cash	N. S. Whitman	8/31
12/23/65	27167	391.97	Cash	N. S. Whitman	8/32
12/31/65	9	774.70	Cash	N. S. Whitman	8/23
1-14-66	70	960.47	Cash	N. S. Whitman	1/3
1-14-66	223	3,114.89	Cash	N. S. Whitman	1/4
1-31-66 *	218	895.35	Cash	Mobile Check Exc.	5/1
2-11-66	317	2,462.90	Cash	Fletcher	1-6
2-21-66	380	2,230.97	Cash	Fletcher	1/8
3-7-66	403	355.24	Cash	Fletcher	5/2
3-7-66 *	402	360.76	Cash	Fletcher	2/1
3-7-66 *	405	337.84	Cash	Fletcher	5/3
3-7-66 *	407	367.44	Cash	Fletcher	5/4
3-7-66 *	409	313.80	Cash	Fletcher	5/5
3-7-66 *	467	197.20	Cash	N.S.Whitman, Jr.	5/6
3-7-66 *	404	131.88	Cash	Fletcher	2/2
3-7-66 *	406	145.00	Cash	Fletcher	2/3
3-7-66 *	408	132.48	Cash	Fletcher	2/4
4-29-66 *	518	307.56	Cash	N.S.Whitman, Jr.	5/7
4-29-66 *	1037	211.80	Cash	N.S.Whitman, Jr.	5/8

Date of Check or date of Cancellation(*)	Check Number	Amount	Payee	Endorser	Folio Page and Line
4-29-66 *	651	$ 507.68	Cash	N.S.Whitman, Jr.	5/9
4-29-66 *	713	406.48	Cash	N. S. Whitman, Jr.	5/10
4-29-66 *	820	294.32	Cash	N. S. Whitman, Jr.	5/11
4-29-66 *	880	359.28	Cash	N. S. Whitman, Jr.	5/12
4-29-66 *	941	400.72	Cash	N. S. Whitman, Jr.	5/13
4-29-66 *	1016	141.64	Cash	N. S. Whitman, Jr.	5/14
5-13-66 *	1079	265.60	Cash	Fletcher	5/15
5-13-66	1142	219.44	Cash	"	5/16
5-24-66	2833	358.68	"	"	5/38
5-30-66 *	1208	362.44	"	"	5/17
5-30-66	1300	434.32	"	"	5/18
6-30-66 *	1404	301.64	"	"	5/19
6-30-66 *	1426	297.12	"	"	5/20
6-30-66 *	1483	339.60	"	"	5/21
6-30-66 *	1557	328.92	"	"	5/22
6-30-66 *	1648	116.84	"	"	5/23
7- 8-66	1792	441.58	"	"	1/22
7-15-66	1833	2,350.35	"	N. S. Whitman	1/5
7-18-66	1848	842.60	"	Fletcher	1/23
7-26-66	1917	138.44	"	"	5/25
7-30-66	1973	97.84	"	"	5/26
7-30-66	1974	563.16	"	"	1/24
8- 5-66	2005	2,165.50	"	"	1/7
8- 8-66	2023	118.44	"	"	5/27
8-12-66	2098	1,503.57	"	"	1/9

Date of Check or date of Cancellation	Check Number	Amount	Payee	Endorser	Folio Page and Line
8-15-66	2115	$ 178.48	Cash	Fletcher	5/28
8-22-66*	2154	2,367.25	"	N. S. Whitman	1/13
9- 6-66	2288	187.64	"	Fletcher	5/30
9- 7-66	2308	224.17	"	"	5/31
8-22-66	2176	113.24	"	"	5/29
9-19-66	2424	90.79	"	"	5/32
9-22-66	2443	125.47	"	"	5/23
9-26-66 *	1708	125.48	"	"	5/24
9-28-66	2546	270.64	Cash	Fletcher	5/3-4
9-30-66	2599	428.16	"	"	5/35
10-10-66 *	2601	106.80	"	"	2/42
10-10-66	2697	301.28	"	"	5/36
10-17-66	2762	292.84	"	"	5/37
10-31-66	2893	265.04	"	"	5/39
11-7-66	2963	358.44	"	"	5/40
11-14-66	3067	343.68	"	"	5/41
1-27-67	3503	1,370.85	Taylor-Windham	C. E. Windham	1/40-5/42-6/1
1-27-67	3504	1,675.49	Cash	N. S. Whitman	Same as above
1-30-67	3544	36.64	"	Whitman Timber Co.	1/41
1-30-67	3865	1,519.31	"	Fletcher	6/6-11
1-30-67	3874	630.59	Taylor-Windham	C.E.Windham	6/8
3-10-67	4035	411.92	Cash	Fletcher	6/12
3-10-67	4036	337.03	Taylor-Windham	C. E. Windham	6/13
3-20-67	4293	1,567.99	Cash	Fletcher	6/14
3-31-67	4294	772.81	Taylor-Windham	C. E. Windham	4/3

Date of Check or date of Cancellation *	Check Number	Amount	Payee	Endorser	Folio Page and Line
4-10-67	4422	$ 547.40	Cash	F.D.Wheeler	6/18
4-17-67	4531	300.90	"	Fletcher	6/19
4-24-67	4605	572.35	"	"	6/20
4-26-67	4635	276.23	Taylor-Windham	C. E. Windham	6/17
4-28-67	4636	247.52	Cash	Wheeler	6/17
4-29-67	4684	555.75	Cash	Fletcher	6/21
5- 8-67	4756	343.15	Cash	Fletcher	6/22
5-15-68	4856	359.70	Cash	Fletcher	6/23
5-22-67	4932	347.05	"	"	6/24
5-29-67	5013	552.05	"	"	6/25
6- 5-67	5090	295.15	"	"	6/26
6-12-67	5215	254.40	"	"	6/27
6-19-67	5274	435.80	"	"	6/28
6-26-67	5356	261.00	"	"	6/29
6-30-67	5423	276.60	"	"	6/30
7-10-67	5502	149.40	"	"	6/31
7-17-67	5599	254.05	"	"	6/32
7-24-67	5681	346.25	"	"	6/33
7-31-67	5749	243.90	"	"	6/34
8- 7-67	5830	454.35	"	"	6/35
8-14-67	5943	289.65	"	"	6/36
8-21-67	6031	409.15	"	"	6/37
8-28-67	6111	379.05	"	"	6/38
9- 4-67	6185	360.90	"	"	6/39
9-11-67	6265	321.25	"	"	6/40

Date of Check or date of cancellation *	Check	Amount	Payee	Endorser	Folio Page and Line
9-25-67	6434	$ 352.45	Cash	Fletcher	6/42
9-30-67	6509	332.50	"	"	6/43
10- 9-67	6558	259.40	"	"	6/44
9-18-67	6365	140.65	"	"	6/41

RAY E. LOPER LUMBER COMPANY, A Corporation,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR. and N. S. WHITMAN TIMBER COMPANY, INC., A Corporation,	X	AT LAW
Defendants.	X	

DEMURRER TO AMENDED COMPLAINT

Come now the Defendants, N. S. Whitman, N. S. Whitman, Jr. and N. S. Whitman Timber Company, Inc., a corporation, by and through their attorneys of record and demur to the Amended Complaint heretofore filed against them and to each count thereof separately and severally and for grounds thereof assign the following, separately and severally:

1. For that the allegations contained therein are vague, indefinite and uncertain.

2. For that the allegations contained therein are prolix.

3. For that the allegations contained therein fail to state a cause of action entitling the Plaintiff to relief.

4. For that there is a misjoinder of causes of action.

5. For that the allegations contained therein are mere conclusions of the Pleader.

6. For that the allegations contained therein are inconsistent and repugnant.

7. For that the Amended Complaint is multifarious.

8. For that the allegations of said Amended Complaint are duplicitous.

CHASON, STONE & CHASON

By: Eberhard E Ball
Attorneys for Defendants,
N. S. Whitman, N. S. Whitman
Jr. and N. S. Whitman
Timber Company, Inc., a
Corporation.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 30 day of Nov, 1970

Eberhard E Ball

FILED
NOV 30 1970
ALICE J. DUCK CLERK REGISTER

DEFENDANTS DEMAND A TRIAL
BY JURY OF THE CAUSE.

Eberhard E Ball

9542

(5)

RAY E. LOPER LUMBER COMPANY, INC., a corporation, Plaintiff,	)	
VS.	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
CHOYCE E. WINDHAM, N. S. WHITMAN, N. S. WHITMAN, JR., and N. S. WHITMAN TIMBER COMPANY, INC., a corporation, jointly and severally, Defendants.	)	AT LAW NO. 9542

ORDER SETTING DATE FOR HEARING MOTION

Plaintiffs' motion to require the production of books, papers and records by the defendants, which was filed in this cause and served on the attorneys for the defendants on December 17, 1970, shall be and it is hereby set for hearing at 1:00 o'clock P. M. on Monday, December 21, 1970.

Done on this the 18th day of December, 1970.

Telfair J. Washburn
Judge

FILED
DEC 18 1970
ALICE J. COOK CLERK REGISTER

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

10016

PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, $300

POSTMARK OF
DELIVERING OFFICE

PINEVILLE
JUL
30
1968

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN
TO

NAME OF SENDER

Mrs. Alice J. Duck

STREET AND NO. OR P.O. BOX

Circuit Clerk Baldwin County

POST OFFICE, STATE, AND ZIP CODE

ay Minette, Alabama 36507

POD Form 3811 June 1966

055—10—71648—1

INSTRUCTIONS TO DELIVERING EMPLOYEE

☒ Show to whom and date delivered ☒ Show to whom, date, and address where delivered ☒ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO. 953081

INSURED NO.

SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

1 C. Wirtham

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

2

DATE DELIVERED 8/2

SHOW WHERE DELIVERED (*only if requested*)

Thru Person w/ders

AUG 2 1963

CLERK REGISTRY

c55—16—71548-9 GPO