

ALLENE McMILLAN,
As Executrix of the Estate
of J. Wallace McMillan,
Deceased,

Complainant,

VS.

JOHN N. STANDARD,

Respondent.

:
:
: IN THE CIRCUIT COURT OF
:
: BALDWIN COUNTY, ALABAMA.
:
: IN EQUITY. NUMBER 130.

MOTION TO SUBMIT TESTIMONY.

Now comes Complainant in the above styled cause and shows unto this Honorable Court as follows:

O F E

That on August 11th, 1938, B. F. McMillan, Jr., now deceased, of counsel to Complainant at that time, J. Wallace McMillan, and J. B. Blackburn, of counsel to Respondent, met to take the testimony of Complainant, J. Wallace McMillan, and Mark Cauley, at the office of said B. F. McMillan, Jr. in the Van Antwerp Building in Mobile, Alabama, and at said time, and before any of said testimony was taken, sought to agree upon a plan for taking the testimony aforesaid, by stipulation and with the understanding that the said testimony be taken without the issuance of a commission, the signatures of the witnesses to their respective depositions and any further forms and notices, *to be waived*, it being expressly understood, stipulated, and agreed that in the event counsel for Respondent would consent to this arrangement, that he would have the right at a later date to be agreed upon to make further and more complete cross examination of the said Complainant, J. Wallace McMillan. That thereupon and with the understanding and agreement as aforesaid, the testimony of the said J. Wallace McMillan, Allene McMillan, and Mark Cauley were taken before Inez Shrauger, acting as commissioner.

TWO

That subsequent to taking the said testimony and on towit September 5th, 1938, the said Wallace McMillan was arrested, charged with murder, and immediately committed

to jail, where he remained until his subsequent indictment, trial, conviction, and sentence to life imprisonment in the State Penitentiary at Montgomery, on towit September 30th, 1938, accomplishing thereby his civil death, which situation and disability exists up to and including the time of the filing of this motion.

THREE

That subsequent thereto and on towit the *1st* day of *March*, 1939, your present Complainant, Allene McMillan, filed the last will and testament of the said J. Wallace McMillan, for probate in the Probate Court of Baldwin County, Alabama, which said will was admitted to probate and letters testamentary issued to the said Allene McMillan on towit the said 9th day of May, 1939.

FOUR

That prior thereto and on towit the 1st day of February, 1939, this Honorable Court entered an order on the records of said court, dismissing said cause because of the death of the said J. Wallace McMillan, as will more fully appear from said order.

FIVE

That subsequent thereto and towit the 10th day of April, 1941, your present Complainant, Allene McMillan, as Executrix of the Estate of J. Wallace McMillan, filed a motion in said cause, requesting that said cause be revived in her name as Executrix of said Estate, which said order was granted and said cause reinstated on towit the 21st day of May, 1941, which will fully appear from the court's order of said date.

SIX

That the testimony of the said J. Wallace McMillan, Allene McMillan, and Mark Cauley, referred to herein above, has never been signed by the said witnesses, although Complainant is ready, willing, and able to secure the signatures of the said Allene McMillan and Mark Cauley, should the court so order, but is wholly prevented from securing the

signature of the said J. Wallace McMillan, by reason of the facts herein before set out. That a copy of the testimony of the witnesses as aforesaid was not furnished and made available to counsel for the Respondent until January, 1939, and counsel for Respondent did not have the opportunity to further cross examine J. Wallace McMillan, according to the express agreement of counsel.

SEVEN

Complainant further shows unto this Honorable Court that Complainant's case largely, if not wholly, depends upon the testimony of the said J. Wallace McMillan, and without said testimony, it will be difficult, if not impossible, for Complainant to establish his said case and introduce documentary evidence in support thereof.

THE PREMISES CONSIDERED, Complainant respectfully prays that Honorable Court will admit the testimony herein before referred to and submit said cause for decree thereon.


Solicitor for Complainant.

*Service accepted and further notice
waived, this 23rd day of May, 1941*

*J. T. Tashburn
Solicitor for Respondent*

Filed this May 23, 1941

*J. W. Hare
Judge*

J. WALLACE McMILLAN,
Complainant.

-vs-

JOHN N. STANDARD,
Respondent.

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

It is stipulated and agreed that the testimony of J. Wallace McMillan, the complainant, Mark Cauley and Allene McMillan may be taken before Inez Shrauger, acting as commissioner on August 11th, 1938, at Mobile, Alabama, and returned by her, in question and answer form, to Court and as so returned used as evidence in this cause.

Issuance of commission, signatures of the witnesses to their respective depositions and further forms and notices are waived.

Dated this August 11th, 1938.

Solicitor for Complainant.

Solicitor for Respondent.

DEPOSITION OF J. WALLACE McMILLAN.

DIRECT EXAMINATION - B. F. McMILLAN, JR.

Q. What is your name?

A. J. Wallace McMillan.

Q. Are you the complainant in this suit?

A. Yes Sir.

Q. Are you and the respondent, John N. Standard, both over the age of twenty-one years?

A. Yes Sir.

Q. When this bill was filed?

A. Yes Sir.

Q. Both of you reside at Baldwin County?

A. Yes Sir.

Q. Is the land involved in this suit in Baldwin County?

A. Yes Sir.

- Q. What business have you been engaged in in Baldwin County?
- A. Saw-mill, logging, naval stores, merchandise and farming.
- Q. How long have you been so engaged?
- A. Myself, individually, since 1924; I don't remember when McMillan Brothers went into the business.
- Q. You, as an individual, succeeded to the business of McMillan Brothers?
- A. Yes Sir.
- Q. About when did they go into business?
- A. It must have been around in the late 80's or about 1900.
- Q. In your business operations did you purchase lands?
- A. Yes Sir.
- Q. How much land did you acquire?
- A. 7500 acres.
- Q. That includes the land involved in this suit?
- A. Yes Sir.
- Q. What has been your physical condition?
- A. Very bad.
- Q. Since when?
- A. Well, the worst was about in '26.
- Q. Through 1926?
- A. Yes Sir.
- Q. You had to give up all business?
- A. Practically; I abandoned looking after it myself.
- Q. You couldn't give it your personal attention?
- A. Yes Sir.
- Q. Since when?
- A. I gave it a little attention at all times - even in the bed room.
- Q. Most of your business has been transacted in the bed room for many years?
- A. Yes, in the afternoons all the time.
- Q. When taken sick to whom did you turn your business over to?
- A. Well, Mr. Standard was bookkeeper and I had several foremans.
- Q. Who was your man employed to look after the books and records and clerical part of the business?
- A. Mr. John Standard.

Q. Did he hire and discharge men?

A. Yes Sir, at times.

Q. How long has Standard been with you?

A. He was with McMillan brothers when I bought them out in '24 and stayed until '34, when he quit, continually.

Q. He was your trusted employee?

A. Yes Sir.

Q. Did you ever check the books and records?

A. No Sir, I didn't check them.

Q. Did you entrust that exclusively to Mr. Standard?

A. Yes Sir, he even signed checks; at times he signed checks.

Q. You turned over even signing all checks to him?

A. Yes Sir.

Q. Over what period of time did that relation exist?

A. I don't remember - practically all the time until the Baldwin County Bank failed in '32 - from 1926.

Q. Did you ever, during that time, check over your books and records and Mr. Standard's work on them at all?

A. No Sir.

Q. Were you able to do that?

A. No Sir, and didn't think it was necessary.

Q. Did you discuss fully and frequently with him all of your business matters and inform him of everything?

A. Yes Sir.

Q. During the year 1933 did you negotiate a loan with the Federal Land Bank at New Orleans?

A. Yes Sir.

Q. State the conditions surrounding that loan.

A. Mr. Beebe, my lawyer, came to my house and suggested that I divide my farms up into three units and borrow on it and apply what I borrowed on the mortgage that I had with the Land Bank on this land and said I would have to get somebody I owed and I suggested he and my brother Bob and myself. I told him I didn't owe Bob anything and he said 'How about Mr. Standard?' and I said I didn't know whether I owed him anything or not. Standard never insinuated I owed him at any time but I asked him and he said he expected I did. He said he was willing to take the land and make a borrow on it and if I owed him to put

that in with it. Then I went home because I was sick. I went back and he said I owed him \$2500.00.

Q. Did he have the records with him at that time?

A. No, he did not have the records; and we drew up the papers to that effect - he was to give \$7,000.00 for the three farms which was the agreed purchase price.

Q. Was the \$7,000.00 ever charged?

A. No Sir, the way of paying it was changed. The first way was to make a borrow of \$4500.00 from the Federal Land Bank and put the \$2500.00 that I owed him with it to make up the \$7,000.00 but Beebe said: '\$3500.00 is all we can possibly get on it from the Federal Land Bank, let Mr. Standard give a note for \$1,000.00 if you don't redeem this land in two years', and they didn't advance but \$3400.00 and I thought sure Mr. Standard would take care of the other \$100.00 - I thought he charged himself with it. The \$3400.00 was all they advanced him on the loan on this land.

Q. Of that \$3400.00 that he borrowed from them did he pay you any part?

A. \$3,047.00.

Q. What became of the difference between \$3,047.00 and the \$3400.00 he was actually advanced?

A. He kept out 5% as interest.

Q. What agent of the Federal Land Bank attended to it?

A. A Mr. Ebert.

Q. Did he give you a statement and have you note it?

A. Yes Sir, he made it out since this suit was brought up.

Q. You got only \$3,047.00?

A. Yes Sir.

Q. That was to be paid by Mr. Standard wasn't it?

A. Yes Sir.

Q. As a matter of fact that was deducted from the \$3400.00 so that you received only \$3,047.00?

A. That is all.

Q. You paid the collection fee?

A. Yes Sir.

NOTE:-B. F. McMillan, Jr.

We attach this statement as Exhibit A.

Q. You made over one of the pieces to Mr. Beebe?

A. Yes Sir.

Q. You were indebted to him at that time in that amount?

A. Yes Sir.

Q. At that time who had your books and records?

A. Mr. John Standard.

Q. The respondent in this suit?

A. Yes Sir.

Q. Did you undertake to check those books at that time before closing the deal on that basis, to see if you owed him \$2500.00?

A. No Sir.

Q. On the basis that you have described you made the deed, a copy of which you attached to your bill as Exhibit A?

A. Yes Sir.

NOTE:- B. F. McMillan, Jr.

It is agreed that the deed attached to the bill as first amended on August 31st, 1935, and is marked or referred to as Exhibit A, is a correct copy of the deed made by complainant.

Q. Who drew the deed?

A. W. C. Beebe.

Q. Were you there when it was drawn?

A. If I wasn't I was afterwards - I was in and out.

Q. Did you hear it dictated or did you just sign it?

A. I signed it but didn't hear it dictated or, that is, I don't remember hearing it dictated.

Q. Was the idea that you owed Mr. Standard \$2500.00 based solely on what he said?

A. Yes Sir, altogether.

Q. Now at the time that you have testified, about, where were these books and records actually kept by Mr. Standard?

A. I don't know where they were.

Q. You know they were not in your place?

A. I found out afterwards they were not - I didn't know though until he quit.

Q. When did he quit?

A. The latter part of November, '34.

Q. He remained on there for approximately a year after your signing this deed?

A. Yes Sir.

Q. Where did you finally locate these records?

A. In a box under a lot of letters at my brother's store. We went to Mr. Standard's house and asked him to come to the store. It was a distance of about seven miles to his place but only a distance of about two blocks from the store. He said he wouldn't have time but he came at two o'clock and as we drove off I asked him to bring the papers and records. He had them, at that time, in his own home. When he came into the store he put them on the show case and he said everybody's account was on the books. Previously on the same day I sent for the books by Mr. Mark Cauley but he didn't come out but he sent me some books with the mens' time and not his and didn't send me word about his at all.

Q. Then what happened after he sent some of the books?

A. Also I sent word for him to send the money by Mr. Cauley and he sent all but several dollars and sent word what he used it for. Then on the 12th of November '34, which was a few days after that, in my brother's store at Bay Minette he left two books that had his accounts in them in a paste-board box with letters on top of it and I didn't know he had the books until I got home.

Q. Did he ever take those books to your brother's store?

A. Yes Sir, but he didn't mention having them and didn't take them out of the box and afterwards said 'Everybody's accounts' were in them.

Q. At that time did he say that you owed him any \$2500.00 - after making the trade did you discuss with him about owing him any \$2500.00 in the store?

A. Yes Sir, I stood in front of the store and as he started out I said 'John I haven't seen my account but you know I didn't owe you a penny' and he didn't even look up or say a word but he was white and turned and walked out - he never said whether I did or didn't.

- Q. That \$2500.00 that he said you owed him was taken then as part of the purchase price?
- A. Yes Sir.
- Q. The total purchase price being \$7,000.00, made up of \$2500.00 he said you owed him and \$3500.00 he was going to borrow from the land bank?
- A. Yes Sir, after Mr. Beebe said take it for what we could get for \$3500.00, and they granted him \$3400.00.
- Q. And Beebe said they would take his note for \$1,000.00?
- A. Yes Sir.
- Q. He never paid the \$1,000.00 or any part of it?
- A. No Sir, in fact he has never paid me anything but the \$3,047.00.
- Q. After you got your books back did you have the records checked?
- A. Yes Sir.
- Q. At the time you made that deed when Mr. Standard said you owed him \$2500.00, did you owe him anything?
- A. No Sir.
- Q. What was his indebtedness to you?
- A. When he quit he owed me \$4435.10, including the \$1,000.00.
- Q. Exclusive of the \$1,000.00 he owed you \$3435.10?
- A. Yes Sir.
- Q. The insurance that appears in Exhibit A as \$13.20 - was it chargeable to him?
- A. Yes Sir, but I paid it and it has never been refunded to me.
- Q. Did you cause a complete statement to be made of your dealings with him?
- A. Yes Sir.
- Q. Have you checked that statement with the books that he kept?
- A. Yes Sir.
- Q. Is the statement with you?
- A. Yes Sir.
- Q. On that statement do you have an item of \$220.00 that defendant Mr. Standard, credited himself with for the rent of a truck?
- A. Yes Sir.
- Q. When did you first know that he had credited it?
- A. When I got my books back and checked them.
- Q. Did you owe him anything on the rent of a truck?
- A. No Sir.

- Q. Did you remember any dealings with him about a truck?
- A. Yes Sir, on the date that the credit was made on the book.
- Q. What date was that?
- A. March 23rd, 1931.
- Q. If that was March 23rd, why did you tell me it was May 23rd?
- A. March is right - when the credit was made.
- Q. What does your statement show?
- A. It shows the 23rd of March as the date the credit was made.
- Q. Now state what the dealings with reference to that truck were?
- A. On February 27th, 1930, I bought a truck for \$400.00 and Mr. Standard credited the \$400.00.
- Q. Where - on your books?
- A. Yes Sir.
- Q. What page of your book?
- A. Page 134, Old ledger.
- Q. Finish what you were saying about the buying of the truck?
- A. I bought the truck and after that he told me Henry Bryars wanted to buy it and he wanted to sell it and did, and charged himself with \$400.00 and on the same date credited himself for use of truck with \$220.00 and the truck belonged to me.
- Q. On your statement you have checks paid by Standard to Eula Standard Nelson - who was she?
- A. J. N. Standard's sister.
- Q. Did you ever employ Eula Standard Nelson?
- A. No Sir.
- Q. Was there any occasion for him to pay her any of your money?
- A. No Sir.
- Q. How did he pay her your money?
- A. By checks.
- Q. You never owed her anything?
- A. No Sir, not that I know of.
- Q. Have you those checks - they are seventeen in number?
- A. Yes Sir.
- Q. What are the amounts?
- A. \$140.03, in all.
- Q. Does that correctly show on the statement you have?
- A. Yes Sir.

NOTE:- B. F. McMillan, Jr.

The complainant introduces the statement from which the complainant is testifying and the commissioner marks it Exhibit B.

Q. Have you those checks?

A. Yes Sir.

Q. Where are they?

A. Right here.

NOTE:- B. F. McMillan, Jr.

The complainant introduces the checks, seventeen in number, and the commissioner marks on them Exhibit C, the checks being in the amounts and on the dates shown by Exhibit B.

Q. You have on your statement "Checks paid to himself by Standard from McMillan's money and not charged to him"- have you those checks?

A. Yes Sir.

NOTE:- B. F. McMillan, Jr.

The complainant introduces the checks, seventeen in number, and the commissioner marks on them Exhibit D, the checks being in the amounts and on the dates shown by Exhibit B.

Q. You have as item number 4 on your statement, Exhibit B, "Defendant on 5-18-29, paid his own or his employee's debt to the Baldwin Motor Company and credited instead of charging himself with the amount", \$30.00 - have you that check?

A. Yes Sir.

NOTE:- B. F. McMillan, Jr.

The complainant introduces the check from which the complainant is testifying and the commissioner marks it Exhibit E, the check being in the amount and on the date shown by Exhibit B.

Q. Was that your debt he paid to the Baldwin Motor Company?

A. It was his own.

Q. Did he charge himself with that check?

A. No Sir, he credited himself with it.

Q. You have on your statement as item numbered 5 "Sue Ellen Nelson was defendant's neice and he paid her \$65.00 and credited himself with the amount". Did you owe Sue Ellen Nelson any money?

A. No Sir.

Q. Did you tell defendant to pay her any money?

A. No Sir.

Q. Did you ever have any conversation with him about employing her at your place?

A. Yes Sir; at the dinner table Mr. Standard brought up the subject and said he wasn't paying her anything, that he was just using her while he wasn't feeling well, that he wanted to teach her something and keep her off the streets and wasn't looking to me for anything.

Q. You never had any conversation with her, yourself, did you?

A. No Sir.

Q. Where was that credit entered?

A. It was entered on the book.

Q. Can you, from your notes, get it?

A. I can get it from the books in just a minute. It appears on page 134, February 12th, 1930, in the old Ledger.

Q. Look at your Exhibit B under item numbered 6 for a car, tag and tax, aggregating \$137.14. Did you buy the car?

A. I didn't buy the car.

Q. Whose car was it?

A. I don't know what it means, I just found the charge.

Q. Was there any authority issued from you for anybody to get that on your permission?

A. No Sir.

Q. Look at item number 7 on Exhibit B, Sears & Roebuck Account. Have you those checks?

A. Yes Sir.

NOTE:- B. F. McMillan, Jr.

The complainant introduces the checks, eighteen in number, and the commissioner marks on them Exhibit F, the checks being in the amounts and on the dates shown by Exhibit B.

Q. Did you ever buy an adding machine?

A. No Sir.

Q. Did you ever authorize him to do so?

A. No Sir.

Q. Did he ever buy one?

A. Yes, he had one.

Q. Was it his or yours?

A. It was his.

Q. Where is it now?

A. I don't know.

Q. What did he do with it?

A. I don't know; I suppose he carried it home - it was at my place only a short while.

Q. Did you owe for that adding machine?

A. No Sir.

Q. Now, in item 8 of your statement, Exhibit B, you 14 checks payable to cash, aggregating \$104.00. Have you those checks?

A. Yes Sir.

NOTE:- B. F. McMillan, Jr.

The complainant introduces the checks, fourteen in number, and the commissioner marks on them Exhibit G, the checks being in the amounts and on the dates shown by Exhibit B.

Q. These checks were drawn in your name by John Standard?

A. Yes Sir.

Q. Were they ever charged to him on the books at all?

A. No Sir.

Q. In item number 9 of your statement, Exhibit B, you charged him with \$115.46 for eight checks paid to H. L. Gilbert. Who was H. L. Gilbert working for?

A. Mr. Standard.

Q. Was he working for you at all?

A. No Sir.

Q. Did you owe him anything?

A. No Sir.

Q. But he was working for Standard?

A. Yes Sir, Mr. Standard paid on his account or part of it on my books.

Q. Were these checks paid out of your money?

A. Yes Sir.

Q. Have you got those checks?

A. Yes Sir.

NOTE:- B. F. McMillan, Jr.

The complainant introduces the checks, eight in number and the commissioner marks on them Exhibit H, the checks being in the amounts and on the dates shown by Exhibit B.

Q. You have checks charged to him that were paid to the Baldwin Motor Company. What were they for?

A. I don't know.

Q. Did you owe them anything?

A. No Sir.

Q. H. D. Gilbert was Standard's employee?

A. Yes Sir.

Q. You owed the Baldwin Motor Company nothing?

A. I don't know, but these checks were for Gilbert and I didn't owe any of the Gilbert checks.

NOTE:- B. F. McMillan, Jr.

The complainant introduces the checks, four in number, and the commissioner marks on them Exhibit I, the checks being in the amounts and on the dates shown by Exhibit B.

Q. You have charged H. B. Kilcrease \$9.92 which defendant owed. Was that paid out of your money?

A. Yes Sir.

Q. Was this \$9.92 to H. B. Kilcrease paid out of your money?

A. Yes Sir, it was credited on the book by Standard.

Q. Did you owe Kilcrease anything?

A. No Sir.

Q. Did Standard owe him anything?

A. I don't know.

Q. What page of your records is this on?

A.

Q. Mr. McMillan when Standard was working for you and up to the time you cut salaries, when did you cut salaries?

A. In June, 1930.

Q. That was when the depression came on so that there was no work?

A. Yes Sir, no money and very little work to be done.

Q. What did you cut Mr. Standard's salary to?

A. Fifty Dollars.

Q. After June of 1930 his salary was Fifty Dollars, did you have that correctly understood?

A. Yes Sir.

- Q. After doing that did you have occasion to note what he credited his salary as?
- A. Yes Sir.
- Q. But that was not until you got your books back after November '34?
- A. Yes Sir.
- Q. What did he credit himself for salary with?
- A. He credited for a balance in '30 and '31 of \$100.00 and in '32 and '33 he didn't put it by the month, he put it as \$900.00 which is \$75.00 a month.
- Q. You did not tell him to do it that way?
- A. No Sir.
- Q. Your understanding was that he was to be paid \$50.00 a month?
- A. Yes Sir, and for November '34 he credited by ten months and
- Q. didn't say at what price - no figures at all.
- Q. What would be the difference on the amount from June, 1930, to October 17, 1933, when you made the deed; between his salary at \$50.00 and the salary he actually credited?
- A. \$1,387.80.
- Q. He credited himself too much to that extent?
- A. Yes Sir.
- Q. Have you got the dates of his credits on your ledger?
- A.
- Q. Did you ever owe Otts Finance Company?
- A. Yes Sir, I have owed them but I didn't owe them at the time of these checks of \$82.08?
- Q. Did Mr. Standard owe them?
- A. I don't know, the checks were for H. L. Gilbert's notes.
- Q. Gilbert was working for Mr. Standard?
- A. Yes Sir.
- Q. Was that amount, \$82.08 paid out of your money?
- A. Yes Sir, on checks drawn by Mr. Standard in my name by Mr. Standard.
- Q. Did you authorize that?
- A. No Sir.
- Q. Did Standard charge them to himself?
- A. No Sir.
- Q. How many checks were there?
- A. Two.

Q. Were either of those checks charged to Mr. Standard?

A. No Sir; they applied on Mr. Gilbert's truck. Mr. Standard took over Gilbert's papers from Otts Finance Company and he paid Otts Finance Company out of my money and didn't charge them to himself and took the truck from Gilbert.

NOTE:- B. F. McMillan, Jr.

The complainant introduces the checks, two in number, and the commissioner marks on them Exhibit J, the checks being in the amounts and on the dates shown by Exhibit B.

Q. Did you ever employ Harold Gilbert?

A. Yes, before and since then but not during the time mentioned in the dates in number 13 of Exhibit B.

Q. Who did employ him?

A. Mr. Standard.

Q. Did he pay him out of your money?

A. Yes Sir, he charged some of the money to himself but some he didn't.

Q. Those checks in Exhibit B aggregating \$174.46, he did not charge those to himself and you didn't know it?

A. No Sir.

NOTE:- B. F. McMillan, Jr.

The complainant introduces the checks, thirty-two in number, and the commissioner marks on them Exhibit K, the checks being in the amounts and on the dates shown by Exhibit B.

Q. Who was B. Gilbert?

A. He was a brother of H. L. Gilbert.

Q. Who was he working for?

A. Mr. Standard.

Q. Did you owe him anything?

A. No Sir.

Q. Did Standard pay him checks out of your money?

A. Yes Sir, in my name by him.

Q. Have you got those checks?

A. Yes Sir.

Q. How many are there?

A. Six of them.

NOTE:- B. F. McMillan, Jr.

The complainant introduces the checks, six in number, and the commissioner marks on them Exhibit L, the checks being in the amounts and on the dates shown by Exhibit B.

- Q. You got \$378.00 less than the \$3400.00 that the Federal Land Bank paid to Mr. Standard on that mortgage and he owed you a Thousand Dollars that was the balance to be put on it if not redeemed at the end of two years?
- A. Yes Sir.
- Q. And you didn't redeem it and none of the money has been paid back?
- A. No Sir.
- Q. Did you have any arrangements with Gilbert about hauling logs or lumber?
- A. Lumber.
- Q. What were your arrangements?
- A. They were with Mr. Standard at \$4.00 a thousand, he got Mr. H. L. Gilbert to help him.
- Q. For how much?
- A. Gilbert hauled for \$3.50 a thousand.
- Q. Did he enter the amounts of his indebtedness to Gilbert on your ledger?
- A. Yes Sir.
- Q. Did he credit it to Gilbert?
- A. Yes Sir.
- Q. Did he credit it to himself?
- A. He credited himself with 300 feet more than he did Gilbert.
- Q. On how many occasions did he?
- A. 13 on the first one, he had it the same after that, there was just 300 feet difference all the way through, he credited himself 3900 feet more than he gave Gilbert credit for.
- Q. What are the credits to himself on your books and the credits to Gilbert on your books?
- A. On January 5, 1929, Standard was hauling lumber for \$4.00 per thousand and contracted to H. L. Gilbert for \$3.50 per thousand.
On Jan. 5, 1929, Page 33 Old Ledger #1, Standard credited himself with 31,219 feet.
On Jan. 5, 1929, Page 524 Old Ledger #2, Standard credited H. L. with same this time, 31,219 feet.
On Jan. 19, 1929, Page 33 Old Ledger #1, Standard credited himself with 21,059 feet.
On Jan. 19, 1929, Page 524 Old Ledger #2, Standard credited H. L. Gilbert with 20,759 feet.

Feb. 16, 1929, Page 34, Old Ledger #1, Standard credited himself 18,844 feet.

Feb. 16, 1929, Page 524, Old Ledger #2, Standard credit H. L. Gilbert 18,544 feet.

Mar. 2, 1929, Page 34, Old Ledger #1, Standard credited himself 14,885 feet.

Mar. 2, 1929, Page 525, Old Ledger #2, Standard credit H. L. Gilbert 14,585 feet.

Mar. 16, 1929, Old Ledger, #1, Page, 34, Standard credited himself 16,806 feet.

Mar. 16, 1929, Page 525, Old Ledger #2, Standard credited H. L. Gilbert 16,506 feet.

Mar. 30, 1929, Page 34, Old Ledger #1, Standard credited himself 27,647 feet.

Mar. 30, 1929, Page 525, Old Ledger #2, Standard credited H. L. Gilbert 27,347 feet.

Apr. 13, 1929, Page 34, Old Ledger #1, Standard credited himself 28,496 feet.

Apr. 13, 1929, Page 525, Old Ledger #2, Standard credited H. L. Gilbert 28,196 feet.

Apr. 27, 1929, Page 34, Old Ledger #1, Standard credited himself 24,320 feet.

Apr. 27, 1929, Page 526, Old Ledger #2, Standard credited H. L. Gilbert 24,020 feet.

May 11, 1929, Page 35, Old Ledger #1, Standard credited himself 25,130 feet.

May 11, 1929, Page 526, Old Ledger #2, Standard credited H. L. Gilbert 24,830 feet.

May 25, 1929, Page 35, Old Ledger #1, Standard credited himself 25,744 feet.

May 25, 1929, Page 526, Old Ledger #2, Standard credited H. L. Gilbert 25,444 feet.

June 8, 1929, Page 35, Old Ledger #1, Standard credited himself 26,427 feet.

June 8, 1929, Page 527, Old Ledger #2, Standard credited H. L. Gilbert 26,127 feet.

June 22, 1929, Page 35, Old Ledger #1, Standard credited himself 24,533 feet.

June 22, 1929, Page 527, Old Ledger #2, Standard credited H. L. Gilbert 24,233 feet.

July 6, 1929, Page 35, Old Ledger #1, Standard credited himself 16,408 feet.

July 6, 1929, Page 527, Old Ledger #2, Standard credited H. L. Gilbert 16,108 feet.

July 20, 1929, Page 36, Old Ledger #1, Standard credited himself 20,090 feet.

July 20, 1929, Page 527, Old Ledger #2, Standard credited H. L. Gilbert 19,790 feet.

Q. You say he was doing that hauling?

A. He hauled and Gilbert hauled.

Q. How do you know that his haul didn't account for the discrepancy?

A. Mr. Standard credited himself with what he hauled at \$4.00 a thousand then credited what Mr. Gilbert hauled at \$.50 a thousand but when he credited Gilbert he credited him with 300 feet less each time.

CROSS EXAMINATION - J. B. BLACKBURN.

Q. You have testified here that you had quite a varied business expense extending over quite a number of years, did you not?

A. Yes Sir.

Q. During that period of time, or a large part of it, you were a pretty big operator, were you not?

A. Yes Sir.

Q. What kind of business were you engaged in?

A. Farming, terperentine, saw-mill, logging.

Q. In carrying out that business you bought and sold land, did you not?

A. I sold some - I sold one piece after I bought out the Brothers.

Q. You bought quite a bit, did you not?

A. Yes Sir.

Q. In all business operations you understood fully the meaning of and importance of deeds?

A. Yes Sir.

Q. You understood the meaning and purpose of options, did you not?

A. Yes Sir.

Q. When you employēd an attorney to represent you in this controversy you explained to him all of your facts relative to this Matter?

A. He understood it - Mr. Beebe did.

Q. I am speaking about Mr. B. F. McMillan, Jr., you explained your case to him fully?

A. I think I did.

Q. You filed this original complaint in this case about the 21st of May, 1935, did you not?

A. I don't remember the date.

Q. Mr. McMillan, in your original bill of complaint in this cause, the one filed on the 21st day of May, 1935, you alleged in that pleading that your attorney, Mr. Beebe, suggested that you make a deed to a part of your land to Mr. Standard, is that correct?

A. Yes Sir.

Q. You further stated that you executed the deed which Mr. Beebe prepared, is that true?

A. Yes Sir.

Q. You also stated in there, that in this pleading, that while the document was in the form of a deed it was really intended to be ultimately treated as a mortgage to secure whatever sums may be due the respondent, Standard, by you, is that true?

A. Yes Sir.

Q. But I asked you if you intended that to be treated as a mortgage?

A. Yes Sir.

Q. You asked in that first pleading that you filed that that deed be declared a mortgage, did you not?

A. I don't remember.

Q. To refresh your recollection the bill reads like this: "Your Honor will order a reference to ascertain and determine the amount of said indebtedness and will declare the instrument, copy of which is hereto attached and marked Exhibit A, to be a mortgage, to secure the indebtedness so found to be due".- That was signed by your attorney?

A. I judge by his signature that it was.

Q. You know his signature?

A. Yes Sir.

Q. You told him what to put in it?

A. Yes Sir - to put what he thought should be in it.

Q. Mr. McMillan, there is attached to the original bill of complaint that you signed in this case on May 21st, 1935, a copy of a paper which purports to be an option given by John M. Standard to you, which option is dated October 17th, 1933, and which runs for a period of two years from that date, which gives you the right to purchase the lands described in that option for \$5900.00 with interest thereon plus any taxes paid by first party who is Standard, together with 8% interest thereon from date, payable in cash. Do you have that original option?

A. I don't think I have - I don't think I have ever seen it.

Q. That is one of the instruments that I have covered in my notice to produce certain instruments today.

A. I don't have it.

B. F. McMillan, Jr.- There is no question about the option at all and I don't have it. I will admit that the instrument you have is a true and correct copy of the document that was drawn by Mr. Beebe as an option at the time, I don't admit that it was delivered to him but my understanding was so.

Q. Mr. McMillan, the option that I have just described in my last question,- did you have that option before you came to see your attorney, Mr. B. F. McMillan, Jr.,?

A. I don't remember.

Q. Under our notice to produce that instrument we make a demand on you for that original option, described in my former questions, at this time. Do you have it?

A. No Sir.

Q. A copy of that was attached, do you have the original?

A. No Sir.

Q. Do you deny that the \$5900.00 option was delivered to you - you did not receive the signed copy of that option?

A. I don't know.

Q. Do you know anything about the option I have discussed with you?

A. Not unless I gave it to B. F. McMillan, Jr.

Q. You remember testifying in the Beebe case and your testimony was taken before Miss Ola Sirman as commissioner, I ask you if you did or did not make this statement in that testimony: "I got to his office about one O'clock and he got there about 1:20. After he came in he walked the floor, never sat down and told me that he was on a trade and that he was going back that day and I asked him what kind of a trade he was on and I don't know what figures he used but he made a motion with his hands, 'your place for so much, Mr. Standard's place for so much and your rough land out for so much'. I saw he was leaving the 960 acres that he claimed out and I asked him "How about the 960 acres" and he says 'That's mine', and he told him that it liked a lot of being, that my option wasn't out and he says "You will never redeem it" and he said "What in the hell do you care if I make eighteen or

twenty dollars off of it - just so I sell yours and get you out of debt and have some left?" and I said: "Give me my option" and he got it and gave it to me. I asked him for John Standard's option. He said he would have to rewrite it, that he had made a mistake in it and to send John up and let him sign it." - Did you or did you not make that statement?

A. I think I did.

Q. Wasn't that option executed and delivered to you?

A. I think it was.

Q. You attached a copy of it to your original bill of complaint in this cause - did you not?

A. I think that is right.

Q. You think that is the copy that was attached to your pleadings?

A. Yes sir, I got the option - John brought it to Murph and Murph delivered it to me - it was the \$5900.00 option. That is the option.

Q. Now then, you filed in this cause, through your attorney, an amended bill of complaint in this cause about the 31st of August, 1935, did you not?

A. I don't remember the dates.

NOTE:- J. B. Blackburn.

Respondent attaches copy of said \$5900.00 option as his Exhibit 1 to the testimony of complainant, J. Wallace McMillan.

Q. Now, getting back to my former question, it looks like one of your papers in this cause?

A. I don't know.

Q. You also attached a copy of the deed to that as Exhibit A?

A. I don't know, I don't remember these things.

Q. That purports to be the copy of the deed to you dated October, 17th, 1933, does it not?

A. Well, I judge it would.

Q. Look at the next paper attached, what is it?

A. A copy of the deed I judge.

Q. Is the next one the copy of the \$5900.00 option we have been talking about?

A. I don't know whether this is the copy or not.

Q. It looks like the copy of the option, does it not?

A. It looks like an option.

Q. It looks like the \$5900.00 option?

A. Yes Sir.

Q. You stated in that same amended bill of complaint - did you not - that this deed was intended as a mortgage and asked that it be declared such?

A. I don't know.

Q. You filed another amended bill of complaint in this cause on February 3rd, 1936?

A. I don't know.

Q. That was filed in this cause for you, was it not?

A. I don't know.

Q. You have examined this copy of the amended bill of complaint filed on February 3rd, 1936, have you not?

A. Yes Sir.

Q. And in that you still ask that this deed be declared a mortgage to secure the indebtedness determined to be due or cancelled because the deed was attained by fraud?

A. Yes Sir.

Q. In that bill of complaint that I have just referred to, filed on February 3rd, 1936, and the two that I referred to filed before that time - in none of those did you mention this additional claim of \$5,000.00?

A. I don't know - I didn't see it in them.

Q. You filed another amended bill of complaint in this cause on July 10th, 1937 - I ask you to examine it. You have examined that bill of complaint?

A. I suppose I have.

Q. The one filed on July 10th, 1937?

A. Yes Sir.

Q. In that you state that the respondent, Mr. Standard, agreed to pay you a sum of \$1,000.00 which he agreed to pay you in the event the land was not sold and redeemed?

A. Yes Sir.

- Q. Why did you wait until more than two years after this suit had been commenced to mention the \$1,000.00 referred to in the bill of complaint as a balance which you now claim to be due?
- A. I don't know.
- Q. You gave your attorney all the facts at the beginning?
- A. Yes Sir.
- Q. It was due in the beginning wasn't it?
- A. Yes Sir.
- Q. You waited until you filed your third bill of complaint before you mentioned it?
- A. Yes Sir.
- Q. You have gone into much detail with your attorney there over some amounts that you claim Mr. Standard owes you. Where did you get those amounts?
- A. Off of the books.
- Q. Did you get them or did someone get them off of the books for you?
- A. My wife got some of them.
- Q. You said that in one of your pleadings in this case that you had had them examined and from that examination found that you did not owe Standard. Who made that examination?
- A. I had an auditor who lives in Mobile I think and he said that it was as near as he could make it.
- Q. Was he a licensed auditor?
- A. He wasn't a licensed auditor and was auditing for the W. P. A.
- Q. He was on the relief?
- A. He was working for them.
- Q. What books did you use in arriving at the idea that you didn't owe Mr. Standard \$2500.00?
- A. These two ledgers that he kept his account on.
- Q. You are positive that you didn't use anything on arriving on this except the two ledgers he kept his account on?
- A. Just the checks.
- Q. You are positive about that?
- A. Yes Sir.
- Q. What books did you use in arriving at that conclusion?
- A.. The old and new ledgers covering his accounts.
- Q. Are you positive?
- A. Yes Sir.

Q. None of the mens' accounts were in them?

A. No Sir.

Q. Where is your saw mill time book?

A. I have one but don't remember whether it is the saw mill time book or not.

Q. Where is that saw mill time book?

A. Either here or at home, I will look.

Q. Did you take into consideration in making up those charges that you have against Mr. Standard, this time book here?

A. No Sir, I took his time by the ledger.

Q. And not this?

A. No Sir.

Q. As shown by this book if you owed him anything is he entitled to that?

A. No Sir, nothing but the ledger. He is not entitled to two books.

Q. If he showed some of the amounts to him in this book he is not entitled to that because it doesn't appear in those ledgers there?

A. No Sir.

Q. In going through and making up the charges that you have against him you have not taken into consideration anything mentioned in this time book with the red binding and black back which covers parts of the years of 1927, '28, '29, '30 and 1931?

A. No, I went by ledger only. That is where a man should keep his accounts.

Q. During the period of time from 1927 to January 1st, 1934, were you in the saw mill business?

A. Yes Sir.

Q. How many mills did you operate?

A. I operated two at several times.

Q. One in Bay Minette?

A. Yes Sir, in '29.

Q. Did some cutting back of Wiggins place, some around Emery Thompsons and some in the pasture back of your house?

A. Yes Sir.

Q. You bought some at Perdido?

A. Yes Sir.

Q. And put it on the railroad there?

A. Yes Sir.

- Q. During the greater part of that time how did you haul the logs, by truck?
- A. Yes Sir.
- Q. How did you haul it from the ramps to the mill tracks?
- A. With trucks.
- Q. Did Mr. Standard have a contract or agreement with you to haul a load of that timber?
- A. Yes Sir.
- Q. He also had a contract or agreement with you to haul lumber?
- A. Yes Sir.
- Q. Didn't you buy quite a bit of timber from Mr. Charlie Earle?
- A. Yes Sir.
- Q. That was in the north end of the county?
- A. Yes Sir.
- Q. How far from Bay Minette?
- A. About twenty-five miles.
- Q. Mr. Standard hauled that?
- A. Yes Sir.
- Q. Approximately 110 thousand feet?
- A. I don't know?
- Q. How much did you agree to pay him for that - didn't you agree to pay him \$7.00 per thousand for hauling Earle timber?
- A. I don't remember.
- Q. The closer he got to Bay Minette the cheaper rate he got?
- A. Yes Sir.
- Q. On the basis of 110 thousand feet at \$7.00 per thousand that item would make \$770.00?
- A. Yes Sir.
- Q. Didn't Lester Jones buy some timber from McGowin?
- A. Yes Sir.
- Q. How much was there in that?
- A. I don't know.
- Q. Was it approximately 40 thousand feet?
- A. I don't know.
- Q. Didn't he agree to pay the stumpage and haul it to the mill for \$18.00 per thousand?
- A. I think that was right.

Q. Multiplying eighteen by forty would make a total of \$720.00.

That is correct, is it not?

A. Yes Sir.

Q. Didn't he get some from little Bob Catrett?

A. Yes Sir.

Q. Wasn't there about twenty thousand feet of that?

A. I don't know.

Q. Do you remember what you agreed to pay him?

A. I don't know.

Q. Mr. Standard owned a piece of land out in the Raven community?

A. Yes Sir.

Q. Didn't he deliver you some timber from that?

A. Yes Sir.

Q. How much?

A. I don't know.

Q. To refresh your recollection, wasn't it 82 thousand feet?

A. I don't know, it was not on the books.

Q. Would you say that it wasn't 82 thousand feet?

A. I wouldn't say.

Q. What did you agree to pay him for that?

A. I don't know.

Q. He hauled logs for you from the various logging operations in the county to Bay Minette?

A. Yes Sir.

Q. He hauled some from Bay Minette creek?

A. I had some hauled down there but I don't know whether John did it or not.

Q. What did you agree to pay him.

A. I don't know.

Q. Out in the red hill territory, didn't he haul some from out there for you?

A. I don't remember.

Q. Do you remember what you agreed to pay him?

A. I don't know.

Q. In the McGill lumber from Perdido, didn't Mr. John haul some of it?

A. I don't think so.

Q. Did he buy a model T Ford truck from McGill from a suggestion made by you?

A. I don't know about that but I think he bought a truck.

- Q. How much did you give him for hauling your lumber?
- A. I think it was \$4.00 per thousand.
- Q. The hauling of lumber and logs extended over a period of approximately four years?
- A. I expect it did.
- Q. In making up these charges against Mr. Standard did you give him credit for anything?
- A. He didn't give himself credit for some of it but issued checks for it.
- Q. Did you say that he has no record of the amounts due him for that work or would you just say that they weren't in that ledger?
- A. I just took the ledger.
- Q. You made up these charges against him from the books that were favorable to J. Wallace McMillan and not the whole set of books and didn't go through this one at all?
- A. I went through the ledgers only. I thought that is the only way a man should keep all of his accounts.
- Q. How much did you say Mr. Standard owed you?
- A. About \$3400.00.
- Q. Does the fact that you got approximately \$3400.00 in cash have anything to do with arriving at that amount?
- A. No Sir.
- Q. You say he is indebted to you in about \$3400.00?
- A. Yes Sir.
- Q. Can you tell how much Mr. Standard or anyone else owes you by just going through and listing the debits in an account?
- A. I can't tell just by the debits.
- Q. You introduced in evidence, three pages of charges against the respondent, Standard, representing items which you now claim to be due and which you identified as your Exhibit B, did you not?
- A. Yes Sir.
- Q. That shows the total of \$4435.10, does it not?
- A. Yes Sir.
- Q. That is every bit debits, is it not?
- A. Yes Sir, I didn't give an itemized account.

Q. You itemized everything you thought you could charge this respondent with?

A. I itemized every charge that was wrong and checks that he did not charge.

Q. Through the period of time from May 1927 up through 1933-or '34 these items total \$4435.10?

A. Yes Sir.

Q. During all that period of time, some eight years, you didn't give him credit for a dime?

A. He gave himself credit for everything that was due him.

Q. Why didn't you set out in this statement a full list of the credits to which he was entitled as well as the debits which you claimed?

A. I didn't dispute anything except what he put down.

Q. You made your Exhibit B?

A. I did.

Q. You typed that?

A. No Sir.

Q. You didn't actually make it then?

A. No Sir, Miss Shrauger typed it.

Q. That is not a copy of the ledger?

A. No Sir.

Q. It is not a copy of any whole page in the ledger, it just represents scattered charges picked out by you at random does it not?

A. Some of it is in the ledger.

Q. Is the part that comes from the ledger a copy of the ledger sheets?

A. No Sir, not all of it.

Q. You just picked out charges that you didn't owe him?

A. No Sir.

Q. Is any part of it a copy of a whole page?

A. No Sir.

Q. Let's refer just to the ledger now. The part of your Exhibit B that comes from the ledger is not a true and correct copy of any particular pages of that ledger?

A. No Sir.

Q. Nor any page of the ledger?

A. No Sir.

- Q. Do you know that those checks are not charged to somebody else?
- A. Nobody that I know of.
- Q. Could you make a positive statement under oath that they were not charged to somebody else?
- A. No Sir.
- Q. Then you can't testify that those checks that you have referred to in your Exhibit B represent proper charges against John Standard?
- A. I know they do because they are not properly kept.
- Q. But would you say that he hadn't charged them to somebody else?
- A. Yes, because I couldn't find them.
- Q. Did you make a careful examination of those books?
- A. Yes Sir.
- Q. Every page of every book?
- A. Yes Sir, of the ledger.
- Q. You didn't go through anything else?
- A. No Sir.
- Q. You testified a while ago you didn't go through this book that we have over here, the mill time book?
- A. No Sir.
- Q. And then you couldn't testify as a matter of fact in this law suit that these checks were not properly charged to somebody in the mill time book - to somebody else?
- A. No Sir.
- Q. You have not examined it then?
- A. No Sir.
- Q. You cannot testify to this?
- A. No Sir.
- Q. The mill time book was a vital part of your set up wasn't it?
- A. Yes Sir.
- Q. You paid off every week or two?
- A. Every two weeks, Standard did the paying for me and I couldn't say those things were taken out of the payments.
- Q. How many trucks did Mr. Standard have out on your operations?
- A. I don't know how many he had.

Q. At the time H. L. Gilbert was first working there, Gilbert owned a Chevrolet truck and trailer?

A. Yes Sir.

Q. Didn't Mr. Standard later take over that same truck and trailer?

A. Yes Sir.

Q. Didn't Mr. Standard have another Chevrolet truck and trailer that he bought from the Chevrolet place in Bay Minette?

A. Yes Sir.

Q. He had a model T Ford he bought from Pete McGill?

A. Yes Sir.

Q. Didn't you agree to buy one of those Chevrolet trucks and trailers?

A. I did buy one, I don't know whether it was one of them or not.

Q. You say that is what he charged you on the book \$400.00 for?

A. Yes Sir, I bought the truck from him for \$400.00 and that \$400.00 was charged to me on the books.

Q. That money was never paid in cash to him by you?

A. Yes Sir.

Q. Who sold it to Bryers?

A. John Standard.

Q. And who did Bryers pay for it and how much?

A. John Standard and he paid \$400.00.

Q. Mr. Standard sold you that truck and trailer for \$400.00, charged you with \$400.00 on the books and gave to himself a corresponding credit of \$400.00. Did he give himself that credit when the truck was sold to you?

A. Yes Sir.

Q. You kept that truck about how long?

A. I bought the truck and trailer on February 27th, 1930, for \$400.00; on the date he credited himself with \$400.00, on January 23rd, 1931, new ledger, page 30, Standard charges himself with truck \$400.00 on same date.

Q. Practically a year later you hadn't paid for it so he comes back and charges himself with \$400.00 for the truck, and didn't he then take the truck back and sell it to Henry Bryars and didn't Henry Bryars pay him for it?

A. Yes Sir.

Q. What compensation was Mr. Standard to get for your use of that truck?

A. Nothing.

- Q. He charged himself with the \$400.00 when he sold it to Bryars?
- A. Yes Sir.
- Q. You used it a year?
- A. I kept it in a shed a year.
- Q. You didn't pay him a dime?
- A. No Sir.
- Q. Didn't John come to you and tell you that he had a chance to sell that truck to Henry Bryars and didn't you tell him that, in substance, that you couldn't pay him - that it would be all right with you for him to go ahead and sell it?
- A. No Sir.
- Q. Didn't you tell Mr. Standard you didn't care which one of the two trucks you had - you would just as soon have one as the other?
- A. He came to me and said Henry Bryars wanted to buy the truck for \$400.00 and I said to let him have it. He said 'He likes the trailer on your truck the best'. I said it didn't make any difference to me and I don't know which one he took.
- Q. You don't know how much Henry Bryars paid for the truck?
- A. John told me \$400.00 when he was offered it and when he was paid.
- Q. Didn't you testify that on the same date that he charged himself with \$400.00 he comes along and charges you with rent on the truck for \$220.00 and hadn't the two of you discussed the matter and you told him you couldn't pay him and that he would have to charge the rent?
- A. I did not.
- Q. You did have the truck a year?
- A. Not quite a year.
- Q. After the sale of the truck to Bryars, didn't you take the Gilbert truck?
- A. He brought it out and left it.
- Q. But that truck stayed at your house?
- A. Yes Sir.
- Q. You used it?
- A. No Sir, I don't think so.
- Q. You had the use of those trucks and hadn't paid him for it?
- A. I didn't promise to pay anything for the Gilbert truck.

Q. You didn't pay any rent on it?

A. Not on the Gilbert truck.

Q. You deny then telling Mr. Standard to charge you with rent on any truck?

A. Yes sir.

Q. How much did it depreciate?

A. None; he come to my room and said that Henry Bryars wanted to buy the truck. I asked him how much did he give and he said \$400.00. I told him to sell it and keep the money and I guess he did.

Q. You denied taking over the Gilbert Truck?

A. Yes Sir.

Q. When Gilbert and Howell bought the Gilbert truck back didn't Mr. Standard come out and discuss the matter and get your consent to sell it?

A. No Sir.

Q. You have referred here to a number of checks which total \$140.03 paid to Eula Standard, do you know what those checks were for?

A. I do not.

Q. Could you make a positive statement as to whether you did or didn't obtain the benefit of that \$140.03?

A. No way that I can tell by the books.

Q. Do you know where Mr. Standard was buying his gasoline during the period of time from February 28, 1927 to July 21, 1928?

A. I do not.

Q. Do you know whether he was buying it from Eula Standard?

A. He was at times.

Q. Don't those payments represent payments made to her for gasoline?

A. There is nothing on the record to show.

Q. What record?

A. The ledger which he was supposed to keep his account in.

Q. Did you examine this red bound black book which is called your mill time book and which covers the period of time for the years 1927, '28, '29 and '30 and '31, to see if Mr. Standard had charged himself with that amount on this book?

A. No Sir.

Q. Then you don't know whether he charged it to himself or not?

A. He did not on the ledger.

- Q. You couldn't say as a matter of fact whether John Standard should be charged with the sum of \$140.03 or not could you?
- A. I say he was not entitled to it because he did not enter it on his account in the ledger.
- Q. You don't know whether he charged it in the mill time book?
- A. I don't know about anything except the ledger.
- Q. These other books are in your possession?
- A. Yes Sir.
- Q. This mill time book is in your possession?
- A. Yes Sir. John had it a while but I have had it since examining the books.
- Q. The next item you referred to is checks which totaled \$206.75; Which are four in number. Now do you know what those checks covered?
- A. No, I don't.
- Q. Did you state, as a matter of fact, that that wasn't in partial payment to him for hauling lumber and logs?
- A. I say it was not because I balanced the ledgers.
- Q. You didn't consult the mill time book?
- A. No Sir.
- Q. You don't know whether he charged himself with the \$206.75 on the mill time book or not?
- A. No Sir.
- Q. The next item to which you referred was a check to the Baldwin Motor Company for \$30.00. Do you know what that was for?
- A. No, only the first of the checks; it said it was for H. L. Gilbert.
- Q. Did you examine the mill time book for that item?
- A. No Sir.
- Q. How do you know whether there was any charge on that book or not?
- A. I don't know.
- Q. The next item to which you referred in your testimony was a \$65.00 item that was paid to Sue Ellen Nelson and credited to Standard. What was that for?
- A. I don't know.
- Q. Didn't she go out and help Mr. Standard in the store and when she was helping him in the store he had to support her?
- A. Yes Sir.
- Q. Didn't you go to Mr. Standard and ask him if he was paying the girl anything and didn't he tell you no?
- A. No Sir.

- Q. Didn't you tell Mr. Standard that she ought to be credited with something and that after she had worked several months he credited her with \$65.00 but as he was caring for her he credited it to his account for her.
- A. He said "I am not charging for Sue Ellen Nelson".
- Q. Did you say that the other conversation between you and Mr. Standard didn't happen in the one to which I referred about crediting something for the girl?
- A. No Sir.
- Q. The next item to which you referred in your testimony was an item of \$137.14 which represented a car, tag and tax. Do you know what that was for?
- A. I do not.
- Q. Don't you remember trading for a new Chevrolet and in trading for that Chevrolet you traded in a truck and a ford coupe, the ford coupe belonging to John Standard?
- A. Yes Sir.
- Q. You didn't pay John for that ford?
- A. Yes Sir.
- Q. Was that on another occasion?
- A. No Sir.
- Q. You did trade his ford coupe in to the Chevrolet people?
- A. No Sir; John said his old car had played out and said 'You all need a good car, your car will do for me and you take my run-about and truck and trade it in as first payment on a car and I will take the old car which will do me all right'. That conversation took place at the dinner table and my wife was listening.
- Q. And didn't you tell him to charge you with the coupe?
- A. No, I gave a better car than I got.
- Q. You had agreed, when you employed him, to furnish him with an automobile?
- A. No Sir, I did pay the running expenses and paid the difference between the Chevrolet and a new car that he traded for.
- Q. When Mr. Standard began working for you in 1925 did you tell him that you would give him \$75.00 per month and board or did you tell him \$75.00 and a car and let him stay where he wanted to?
- A. No Sir.
- Q. Wasn't you to furnish the car and pay the running expenses?
- A. No Sir.

- Q. You referred, in your testimony, to a series of checks to Sears & Roebuck, totaling \$93.34. Do you know what they were for?
- A. No Sir, except that they say for John Standard's adding machine.
- Q. Did you examine the mill time book?
- A. No Sir.
- Q. If you didn't examine the mill time book to see whether or not he had made a charge how do you know that it should be charged to him at this time?
- A. I went by the ledger and not by the mill time book and if it is charged there, it is improperly charged.
- Q. The next item referred to in your direct testimony was fourteen checks payable to cash which total \$104.00. Do you know what those were for?
- A. I do not.
- Q. Would you say you didn't receive the benefits of those?
- A. I do not believe I did.
- Q. Do you know whether or not you received the benefit of that \$104.00?
- A. I don't know.
- Q. How do you know that you didn't?
- A. Because he has no record of it.
- Q. About that time, didn't you have a lot of business in Mobile?
- A. Yes Sir.
- Q. You made frequent trips over here?
- A. Yes Sir.
- Q. On a number of those trips before coming over here wasn't it customary for you to go to a barber shop at Bay Minette and often times didn't you send Mr. Standard to the bank to get money for the two of you to use on those trips?
- A. Yes Sir.
- Q. Could you testify, as a matter of fact, that that \$104.00 wasn't money he got for you at your request to use for your expenses on the trips to Mobile?
- A. I did not get it for my use and I did not use any of it.
- Q. You referred next, in your direct testimony, to a series of checks payable to H. L. Gilbert which total \$372.58. Have you examined the mill time book to see if Mr. Standard charged himself with those?

A. No Sir.

Q. Not having examined that mill time book, you don't know whether that item should be charged to Mr. Standard now or not?

A. Yes Sir, it is a proper charge because Mr. Standard was a bookkeeper and balanced his ledger every month, drew his money, put down full amount of his hauling, and why should it be anything else.

Q. If he charged himself in the time book then it should now be charged to him because it isn't in the ledger?

A. Yes Sir.

Q. The next item you referred to was \$9.92 which you claim that Mr. Standard paid to H. B. Kilcrease, and \$1387.80 which you claim that he improperly credited to himself for salary. How would you explain that charge?

A. H. B. Kilcrease, according to my books owed me \$9.92. Standard credited Kilcrease Account by J. N. Standard and didn't charge it to himself.

Q. You filed a written answer to interrogatories in this case, did you not? There was some written questions known as interrogatories propounded to you in this case, you filed them on two occasions, did you not?

A. Yes Sir.

Q. In your last answer to interrogatories you made this statement: "Defendant paid to H. B. Kilcrease \$9.92 which defendant owed". Now you say, Mr. McMillan, that Kilcrease owed you \$9.92?

A. He owes me, according to the book.

Q. You now say that Kilcrease owes you \$9.92?

A. Yes Sir.

Q. What do you say about the salary item of \$1387.80?

A. He over charged.

Q. What did you start paying Mr. Standard when he went out there?

A. \$75.00.

Q. Did he continue working for that?

A. No, in '29 I raised him to \$100.00.

A. At what time in '29?

A. I don't remember but I don't claim any discrepancy until June, 1930 in his time.

Q. What happened after June, 1930?

A. I cut his salary to \$50.00.

Q. Didn't you make some cuts among your men and didn't he ask you the question what about himself and didn't you tell him 'Don't cut yourself until I tell you'?

A. No Sir.

Q. And isn't it a fact that you didn't tell him to cut himself at all and later he voluntarily reduced his own salary to \$75.00 per month?

A. No.

Q. The next series of checks you referred in your direct examination was the sum of \$82.08 paid to Otts Finance Company. Did you examine the mill time book to see if there was any charge to Mr. Standard or not?

A. No Sir.

Q. You don't know whether that amount should now be charged to him?

A. It should be charged to him because he didn't show it on the ledger.

Q. Even though you got credit for it at the time it was paid, he should now be charged with it because it doesn't appear on the ledger?

A. He should not have the benefit of it.

Q. In making these charges you haven't gone by the books but by part of the books?

A. I have gone by the ledgers.

Q. And the ledgers are simply a part of the books?

A. It is a final analysis and all accounts should be conveyed from the time book to the ledger.

Q. You haven't taken into consideration this mill time book at all?

A. No Sir.

Q. The next item referred to in your direct testimony is a series of checks totaling \$174.46 and made to Harold Gilbert. Did you examine the mill time book to see if these items had been charged to Mr. Standard?

A. I did not.

Q. And consequently you don't know whether they are a proper charge against Standard at this time?

A. I know they are not charged on the ledger and don't know whether they are on the time book or not and it is a proper charge against Standard now.

Q. Even if it was charged against Standard on the Mill Time book?

A. Yes Sir.

Q. The next item to which you referred to in your direct testimony was some payments made to B. Gilbert which totaled \$34.00. Did you examine the mill time book to see if Mr. Standard charged himself with that item?

A. No Sir.

Q. Not having examined the mill time book to see if Mr. Standard has charged himself with that item how do you know that it is a proper charge against Mr. Standard at this time?

A. I just know it is.

Q. The next item that you referred to in your direct testimony was an item of \$378.00 which you claim represents the unpaid portion of the proceeds from the loan made by the Federal Land Bank to John N. Standard. Is that right?

A. Yes Sir.

Q. You got \$3,047.00 at one time didn't you?

A. Yes Sir.

Q. Later you got \$150.00?

A. Yes Sir.

Q. You also have on this paper you have introduced in evidence here in Exhibit B, a line which reads like this: "Balance due on purchase price for land \$1,000.00", that is in there is it not?

A. Yes Sir.

Q. You have no note for that do you?

A. No.

Q. You have no writing for it?

A. No, only his word. I have his sworn testimony.

Q. When did you commence negotiations to deed this place that is now in question to Mr. Standard:

A. I don't know the exact date. I think it was terminated about October 17, 1933.

Q. Wasn't it, as a matter of fact, several months before that you originally started out with this plan?

A. Yes Sir.

Q. When you started out with that plan to sell him this place there was a good residence located on the property?

A. Yes Sir.

Q. That was insured in your favor and you collected that insurance, did you not?

A. Yes Sir, I collected \$250.00 but it was burned before the contract was made.

Q. You don't remember the exact date you got the insurance?

A. No I do not, it was insured for \$500.00 and it burned a few days after I got a ninety day option from the Joint Stock Land Bank.

Q. You got the benefit of the insurance?

A. Part of it. It burned after I got the option. I don't remember the exact date. The man at the bank asked didn't I feel that I should give them some of it and I took \$250.00 and he took \$250.00.

Q. There was \$500.00 paid?

A. I got credit on the land for \$250.00 and the bank got the other \$250.00.

Q. That was after the loan application had been made to the Federal Land Bank?

A. I don't remember.

Q. The First Joint Stock Land Bank had agreed to reduce your indebtedness to it provided you paid it in a certain time?

A. Yes Sir.

Q. As soon as you made that agreement with them you set out to get the money?

A. Yes Sir.

Q. As part of that plan these applications were made to the Federal Land Bank. As a part of that plan to raise money these various applications were made to the Federal Land Bank for loans?

A. Yes Sir.

Q. Isn't it probable that the John Standard application had been made before the house burned?

A. I am not sure, at any rate he didn't complain about it.

- Q. What books did Mr. Standard keep while he was employed by you?
- A. He kept all my books.
- Q. What do all of your books cover?
- A. He kept all of the accounts.
- Q. What made up your system of books?
- A. I don't know what all he kept but he kept a day book part of the time and some time books and he kept a ledger of the men and a ledger of his time. He didn't have a cash book. He didn't keep a check book.
- Q. How about bank books?
- A. Only partially.
- Q. How many ledgers?
- A. I thought only one until I found his own, a separate book.
- Q. In making up these charges you testified to against him, you examined what, just the ledgers?
- A. And a few scattered checks; I took all the checks and examined the ledger to see if they were charged.
- Q. You just examined the ledgers and those checks?
- A. Yes Sir.
- Q. You got the bank statements each month?
- A. John Standard did.
- Q. They didn't come to you?
- A. They were addressed to me but John got the mail out.
- Q. Up to the time that Mr. Standard ceased working for you sometime time in '34, these books were located in your commissary practically all the time were they not?
- A. The time books were but not the ledgers.
- Q. Were they there at your commissary in front of your home as long as Mr. Standard was working for you?
- A. I don't know and didn't know until after he left that they were there.
- Q. You stated, in your last amended bill of complaint, that you owned approximately 11,000 acres of land?
- A. 11,500.
- Q. Along in the last half of the year '33 and early in the year 1934 did you actually own those lands or did you simply own an equity of redemption in them?
- A. They were under mortgage.

Q. They were heavily encumbered too, were they not?

A. Yes Sir.

Q. Wasn't your equity of redemption in them in the latter part of '33 and early part of '34 of doubtful value?

A. Yes Sir.

Q. In the latter part of '33 and early in '34 didn't you have a mortgage to the First Joint Stock Land Bank of Montgomery, Alabama, that was dated on or about January 1st, 1927, and which was recorded in Book number 38 of Mortgages at Page 66, of the Baldwin County Records, something about that date?

A. Yes Sir.

Q. Didn't you have but one mortgage to the First Joint Stock Land Bank?

A. No.

Q. In the last part of '33 and at the time they agreed to accept this cut in the amount due them, you owed them and for taxes on that property, approximately \$40,000.00?

A. Yes Sir.

Q. That mortgage was in default?

A. Yes Sir.

Q. They were threatening foreclosure?

A. Yes Sir.

Q. You secured what kind of an option from them?

A. They agreed to take \$15,000.00 and give me ninety days to raise the money.

Q. When did they first give you that?

A. I don't remember the date.

Q. It wasn't until 1934 that you finally paid them off was it?

A. The final was in the first part of February, 1934.

Q. Did they extend the time any?

A. They did verbally and just left the money in the bank.

Q. You had quite a bit to say about your physical condition being impaired. Your mental condition wasn't impaired was it?

A. Only when I had taken bromide heavily.

Q. But you have never been looked on as a man that is crazy or didn't have his wits about him. You knew what you were doing?

A. Yes Sir.

Q. If you read a newspaper you knew what you were reading?

A. Yes Sir, but there were times that I didn't read them.

Q. When you were attending to business you knew what you were doing?

A. In a general way, yes.

Q. During the time that I believe you stated that this deed was dated, October 17th, 1933?

A. I think that is the date.

Q. As a matter of fact, the transaction wasn't closed until January, 1934?

A. January or February, it lay in the bank.

Q. Over that period of time, which was approximately ninety days you knew that you had given Mr. Standard a deed to that place and knew you had an option to re-purchase?

A. Yes Sir.

Q. During that period of time, during the summer and fall of 1933 and 1934 you devoted practically all of your time to your business?

A. No Sir.

Q. Didn't you, during that period of time, really handle some of the biggest business affairs you had ever handled?

A. No Sir.

Q. I don't mean altogether just sales, I mean refinance your indebtedness and things of that kind?

A. Yes Sir, Beebe helped me.

Q. You mean Mr. W. C. Beebe?

A. Yes Sir.

Q. He was your attorney at that time?

A. Yes Sir.

Q. He had full knowledge of all your business affairs. You didn't with-hold any information of business character from him?

A. Yes Sir.

Q. He knew you were indebted to Standard?

A. No, he didn't.

Q. It was he who suggested the making of the deed to Standard?

A. Yes Sir.

Q. Prior to October 17th, 1933, it did become necessary for you to raise a large amount of money?

A. Yes Sir.

Q. You were heavily involved at that time?

A. Yes Sir.

Q. You made an application to the Federal Land Bank for a loan on all of your farm lands?

A. Yes Sir.

Q. Was that application approved or rejected?

A. Rejected.

Q. After it was rejected was when you and Beebe discussed deeding certain lands to people that you owed money and it was after that that you went to Mr. Standard and suggested making a deed to him covering the property that you finally conveyed to him?

A. I first asked him did I owe him anything and he said he expected that I did.

Q. You knew that it was true and agrees to make him a deed?

A. I didn't know it was true but only took his word and thought it was true.

Q. You made a deed to him dated October 17th?

A. Yes Sir.

Q. At the time the deed was made you agreed to give Mr. Standard a credit of \$2500.00 that was to be in full settlement of the amount due to him by you?

A. He said that was all.

Q. It was agreed that that was to be in full satisfaction?

A. Yes Sir.

Q. Mr. McMillan, as a matter of fact, didn't you know that you were indebted to Standard of your own personal knowledge?

A. No Sir.

Q. How did you account for your being indebted in the large amount that you were to almost everybody that you came into contact with and that you didn't owe John Standard anything?

A. I didn't think about that. I asked John if I owed him. I hadn't seen the books and the first I became suspicious was when my brother asked me if John claimed that I owed him \$2500.00 and he said "You know it is impossible for it to be that much".

Q. At the time you made this deed to Mr. Standard, it was absolutely essential that you raise the \$15,000.00 with which to pay off the First Joint Stock Land Bank?

A. It was very essential of course.

Q. You, by paying that off, saved around \$25,000.00?

A. Yes Sir.

Q. And prevented the foreclosure of that mortgage?

A. Yes Sir.

Q. And you salvaged, at that time, your home place and farm consisting of about how many acres?

A. About seven or eight hundred.

Q. You salvaged that?

A. Yes Sir.

Q. I believe you stated that Mr. Beebe suggested the making of the deed to Mr. Standard?

A. Yes Sir.

Q. Mr. Beebe knew all about your affairs?

A. Yes Sir.

Q. You claim that you are not now indebted to Mr. Standard for anything accruing up to January 22nd, 1934?

A. I don't know.

Q. As a matter of fact, he gave you a receipt when this thing was closed for \$25.00?

A. No Sir.

Q. Did he give you a receipt for any amount?

A. Yes Sir.

Q. Did you have the receipt before Beebe suggested to you that you make a deed to Mr. Standard, he suggested that you try to sell off some of your property?

A. No, we had been trying to sell it for years.

Q. Didn't he suggest that you make an application to the Federal Land Bank for a loan on the farm part of your home place?

A. Yes Sir.

Q. Did he also suggest that you make an application to the Home Owner's Loan Corporation for a mortgage on your home place?

A. Yes Sir.

Q. Did he suggest that you try to sell off the Martin Place?

A. No Sir.

Q. Did you try to sell the Martin Place?

A. I talked to several about it.

Q. What did you offer to sell it for?

A. I don't think I ever got a price because of the depression.

- Q. Almost any price you could realize would have been good?
- A. No, you couldn't get a reasonable price during the depression.
- Q. After you couldn't sell the Martin Place was when you went to Mr. Standard and offered to make him a deed to it?
- A. A good while afterwards.
- Q. You did that, provided he could make a substantial payment in cash?
- A. Yes Sir.
- Q. You agreed to allow him a credit of \$2500.00 and that credit was to be in full satisfaction of all amounts due Mr. Standard by you?
- A. Yes Sir, unless I redeemed it.
- Q. You referred to redeeming - that redemption was to be as provided in the option wasn't it?
- A. This agreement was made in addition to the option.
- Q. What was the agreement?
- A. That if I didn't redeem it he was to give me \$1,000.00.
- Q. That was the \$1,000.00 that you put in about two years after this suit was started?
- A. I don't know.
- Q. When you made the deed, Mr. McMillan, to Mr. Standard, Mr. Standard executed an option to you giving you the right to re-purchase the property at any time within two years for the sum of \$7,000.00. That was the original option?
- A. Yes Sir.
- Q. That happened, didn't it?
- A. Yes Sir.
- Q. At that time you executed the deed to Standard?
- A. Yes Sir.
- Q. Standard executed an option to you agreeing to convey the property in two years for \$7,000.00?
- A. He didn't agree for \$7,000.00 and I don't think the option was drawn that way but if this is a copy that I have here it does say that.
- Q. What was your answer with reference to the \$7,000.00 option when you first executed the deed? At the time you executed the deed on October 17th, 1933, you left it with Mr. Beebe, didn't you?
- A. Yes Sir.

Q. Mr. Standard executed an option to you giving you the right to re-purchase the property for \$7,000.00 and other charges mentioned therein within two years. He executed that and left that with Mr. Beebe?

A. I don't know.

Q. Didn't Mr. Standard also execute and deliver to Mr. Beebe a receipt from Mr. Standard to you for \$2500.00?

A. No Sir.

Q. Wasn't all of those papers placed in escrow with Beebe and Hall pending Mr. Standard's securing a loan from the Federal Land Bank to raise some cash to pay to you on the purchase price of the property?

A. Yes Sir.

Q. Didn't Mr. Standard make an application to the Federal Land Bank in New Orleans for the purpose of raising this cash payment?

A. Yes Sir, for part of it.

Q. This application was made in his name?

A. Yes Sir.

Q. Was made in his behalf and was for his own use and benefit?

A. I suppose so.

Q. It was finally approved by the Federal Land Bank for \$3400.00?

A. Yes Sir.

Q. About the time Mr. Standard commenced the negotiations with the Federal Land Bank, that residence was situated on part of the property?

A. I don't think it was, but the house was destroyed by fire and I collected \$250.00 of the insurance.

Q. Now then, after you got this \$250.00, the time of the ninety day option with the First Joint Stock Land Bank was beginning to run out?

A. They had agreed to accept \$15,000.00 before the house burned.

Q. And being in need of money, you agreed to reduce that price of \$7,000.00 to \$5900.00?

A. No Sir, I did not.

Q. Didn't you agree to not only accept the \$5900.00 but to pay from your own funds what expense Mr. John Standard incurred in obtaining the loan from the Federal Land Bank?

A. No Sir.

- Q. And after you made this new agreement to accept \$5900.00, wasn't the option re-written?
- A. No Sir, I don't think it was.
- Q. You say it wasn't re-written?
- A. If it was, I don't remember anything about it.
- Q. You did admit in the beginning of this testimony that you did have a \$5900.00 option from John Standard?
- A. I don't remember; that option has nothing to do with our trade.
- Q. You had, and you admitted in the beginning of your testimony, an option given by John Standard to you whereby he agreed to sell you this property for \$5900.00, didn't you have that option?
- A. I guess so.
- Q. That was the copy you attached to your pleadings in this case, wasn't it?
- A. I don't know.
- Q. Early in 1934 along in January, wasn't Mr. Standard's loan from the Federal Land Bank completed?
- A. It might have been, the last of January.
- Q.. At the time, didn't Mr. Beebe, who had the deed from Mr. and Mrs. McMillan to Mr. Standard, take it to the Court House and record it?
- A. I don't know.
- Q. Don't you know that it had to be recorded?
- A. I don't know who did it, but I suppose it was.
- Q. At the time the loan was completed they held back \$150?
- A. Yes Sir.
- Q. And on January 22nd, 1934, Charles J. Ebert, local correspondent for the Federal Land Bank, paid to you the sum of \$3,047.00 by a check for that amount drawn by Ebert on the Baldwin County Bank in Bay Minette, which check covered the net proceeds of the loan from the Federal Land Bank to John N. Standard, that were available at that time?
- A. Yes Sir.
- Q. You endorsed that check?
- A. I don't remember.
- Q. Do you remember whether or not you endorsed that check and delivered it to the Baldwin County Bank at Bay Minette to be applied on the account of the First Joint Stock Land Bank?

A. We applied it on it. I don't know whether I endorsed it or not.

Q. Didn't you use the check that had been given by Ebert to you for \$4975.37, which represented the proceeds of your own loan from the Federal Land Bank?

A. I used whatever the check was. I don't remember the amount.

Q. At the time Mr. Ebert delivered you that check for \$3,047.00 which represented the proceeds from the Standard loan that was available at that time, didn't you sign some papers?

A. Yes Sir, I did.

Q. At that time didn't you sign what the Federal Land Bank calls a creditors receipt?

A. I might have, I don't know.

Q. I hand you a photostatic copy of a creditors receipt, dated January 22nd, 1934, signed J. W. McMillan. Is that your signature?

A. That is my signature.

NOTE:-J. B. Blackburn.

We introduce this photostatic copy of this creditors receipt as Respondent's exhibit 2 to the Complainant's testimony.

Q. When you signed this creditors receipt you stated that Mr. Ebert paid to you the sum of \$3,047.00?

A. I don't know what he paid. He and Ebert and Beebe and Holmes figured it up and Mr. Beebe came to me after they got through and told me he would give me a statement of all that was paid.

Q. Whatever Mr. Ebert paid to you, you turned over to the Baldwin County Bank on the First Joint Stock Land Bank draft?

A. Yes Sir.

Q. In that creditors receipt you stated that that was in full settlement of the amount due you for the purchase price of the property and further stated that you had no further claim, lien on or indebtedness against the property. Is that right or wrong?

A. I didn't think so because I thought Standard had given me a correct account and his statement of my indebtedness to him was true.

Q. Nevertheless, you signed the creditors receipt?

A. Yes Sir.

Q. And got all of the \$3,000.00 when you did so?

A. Yes Sir.

- Q. When this thing was closed, Mr. Standard didn't give you any note for any thousand dollars?
- A. No Sir.
- Q. As a matter of fact, the only writings embraced in the final contract between you and Mr. Standard was the deed from you to Mr. Standard, the \$5900.00 option from Standard to you, the Creditors receipt that we have just introduced in evidence, and that \$2500.00 receipt from Standard to you?
- A. As far as I remember.
- Q. Mr. McMillan, after this transaction was closed between Mr. Standard and you, didn't you go to Mr. Standard and rent the farm land on the property that you had conveyed to him, which farm land consisted of 175 acres, for \$2.50 per acre?
- A. I did not.
- Q. Wasn't the first litigation between you and Mr. Standard the Unlawful Detainer suit that Mr. Standard filed against you in the Justice of the Peace Court of J. M. Franklin; it was the first time that rent was ever mentioned?
- A. Yes Sir. It was the first litigation.
- Q. To refresh your memory, wasn't the unlawful detainer suit started before Mr. Franklin, then didn't you file this present suit that we are now taking testimony in, and later get an injunction and stop Mr. Standard from prosecuting the Unlawful Detainer suit, and wasn't your injunction dissolved and then didn't we go ahead in Franklin's Court, getting judgement against you and get possession of the property?
- A. Yes Sir.
- Q. And we have possession of the property now?
- A. Yes Sir.
- Q. You used that property from January 22nd, 1934 to November 5th, 1936, didn't you?
- A. I don't remember the dates, that is about right.
- Q. You haven't paid Mr. Standard any rent for that length of time?
- A. No Sir.
- Q. Mr. Standard has been in possession of it since the date of that judgement, about November 5th, 1936?
- A. Yes Sir.

Q. He assessed and paid taxes on it?

A. I don't know.

Q. You don't know of its being sold, do you?

A. No Sir.

Q. They usually sell it for taxes not being paid?

A. Yes Sir.

Q. He has also paid his installments of principal and interest in the Federal Land Bank?

A. I don't know.

Q. You stated in your bills of complaint that it was subject to a mortgage to the Federal Land Bank?

A. Yes Sir.

Q. And as a matter of fact, the mortgage would have been foreclosed if the mortgage hadn't been paid up?

A. I don't know.

Q. Yours was made about the same time?

A. Yes Sir.

Q. You didn't pay up?

A. No Sir.

Q. Yours has been foreclosed?

A. Yes Sir.

Q. Mr. McMillan, you referred, a while ago, to this option given by Mr. Standard to you, dated October 17th, 1933, and which expired at the end of two years from that date and which provided that you had the right to purchase the property described in the option at any time within the two years for \$5900.00 with interest thereon plus taxes paid by Standard, together with 8% interest on both of those items from October 17th, 1933. That option expired didn't it, on October 17th, 1935?

A. Yes Sir.

Q. Did you, at any time before October 17th, 1935, go to Mr. Standard and pay or tender to him that \$5900.00?

A. No Sir.

Q. The interest on it?

A. No Sir.

Q. The taxes?

A. No Sir.

Q. The interest on that?

A. No Sir.

Q. You have never returned the option to him?

A. No Sir.

Q. You have never offered to return it to him?

A. No Sir.

Q. In other words, you didn't comply with the rights given you in that option; which were conditioned precedent to your right to get the property back?

A. No Sir.

Q. And that option was in full effect and binding on both parties in this suit when you filed this suit on May 21st, 1935?

A. I don't know.

Q. If you had gone to Mr. Standard and paid him the money referred to in the option he would have had to give you a deed?

A. Yes Sir.

Q. As a matter of fact, you haven't fully informed the Court of all of the details of this transaction between Mr. Standard and you, have you?

A. Up to the time the last amended bill of complaint was filed I have, if you will take the ledger and leave out the other books.

Q. You and your attorney devised and instituted this plan whereby this property was deeded to Mr. Standard?

A. Yes Sir.

Q. You got more than \$3,000.00 from Mr. Standard at a time when it could be used by you to save more than \$25,000.00?

A. No Sir.

Q. But it with the other would?

A. Yes Sir.

Q. But you didn't get it?

A. No Sir.

Q. Didn't you tell me a while ago that you couldn't find a purchaser for that land?

A. Yes Sir.

Q. You haven't, at any time, gone to Mr. Standard and offered to pay back to him the money he paid you?

A. No Sir.

Q. You haven't offered to relieve him of his obligation to the Federal Land Bank?

A. No Sir.

Q. And you haven't offered to pay him back the taxes that he paid on this land?

A. No Sir.

Q. You have recognized the validity of the mortgage to the Federal Land Bank?

A. Yes Sir.

Q. Why did you acknowledge that this was a valid mortgage to the Federal Land Bank after Mr. Standard defrauded you as you have alleged here?

A. I agreed it was when I made the mortgage and I stick to it, I have the \$3,000.00. The Federal Land Bank is entitled to their money from somebody.

Q. You still have the \$3,000.00 and haven't offered to pay it back?

A. No Sir.

Q. You know that Mr. Standard is liable to the Federal Land Bank on that mortgage?

A. Yes Sir.

Q. Don't you know, as a matter of law, that the Federal Land Bank could foreclose that mortgage if he fails to make his payments as bid on the property, for less than the amount due, and secure a deficiency judgement against Mr. Standard for the balance?

A. I suppose they could.

Q. And you haven't offered to relieve Mr. Standard of the obligation?

A. No Sir.

Q. Weren't you, at one and the same time, claiming both under and against this deed that you made to Mr. Standard?

A. What do you mean?

Q. I mean this: Weren't you treating the deed from you to Mr. Standard as being good in order that you won't have to pay back to Mr. Standard the more than \$3,000.00 that has been paid to you; aren't you treating it good for that purpose?

A. I don't know how to answer it.

Q. Aren't you treating the same deed as being bad in order that you can get back whatever interest Mr. Standard has in the property?

- A. I am not trying to get anything that belongs to Standard.
- Q. Including the property involved in this suit?
- A. I am trying to get my money back that takes the property.
- Q. That property in this suit belongs to him, doesn't it?
- A. I don't think so.
- Q. In executing this deed to Mr. Standard, which has been referred to earlier in this testimony, didn't you acknowledge in that written instrument that the consideration referred to in the deed had been paid?
- A. I might have, but I thought that the books were correct.
- Q. We are just discussing about the deed. You did acknowledge in the deed that the consideration had been paid?
- A. I expect I did, I think I did.
- Q. Don't you know?
- A. I don't know, but I think I did.
- Q. I will show you, Mr. McMillan, the original deed from you and your wife to Mr. Standard which has been referred to earlier in this testimony. Did you, or did you not, acknowledge in that deed that the consideration had been paid?
- A. Yes, I did.
- Q. Didn't you, by signing the creditors receipt which we have introduced in evidence in this case, acknowledge that everything due you had been paid?
- A. I thought so, by Mr. Standard's statement.
- Q. Wasn't you and Mr. Standard on perfectly good terms until you filed the suit against W. C. Beebe and Mr. Standard refused to testify for you in that case?
- A. Yes Sir.

RE-DIRECT EXAMINATION:- B. F. McMILLAN, JR.

- Q. He has asked you about your contentions in this case. The claim you are now making is what was stated in the amended bill that you last filed. Did you ever rent that land to Standard?
- A. No Sir.
- Q. At the time you signed what he showed you as a creditors receipt did you know that Standard's statement to you was false about you owing him?
- A. No Sir.

- Q. Was that read to you at all, that creditors receipt?
- A. No Sir.
- Q. Did you read it yourself?
- A. No Sir.
- Q. Mr. Blackburn has asked you about that agreement for \$5900.00; at the time you were closing this deed you thought the \$2500.00 you owed Standard, according to his statement, and the \$3400.00 the Land Bank advanced made the \$5900.00 and you thought that that was a legitimate claim?
- A. Yes Sir.
- Q. But if you didn't redeem the land he was to pay the balance of the purchase price of \$1,000.00?
- A. Yes Sir.
- Q. He also asked you about a receipt from Mr. Standard and also asked about that option from Mr. Standard; do you remember when you first saw either of those papers?
- A. It was in August of 1934, I think it was.
- Q. They had never been handed you before that?
- A. No Sir.
- Q. Was the receipt given you from Mr. Standard?
- A. He gave me a receipt for \$2500.00. Standard left it with my brother the following August, that was eleven months after I had closed the deal.
- Q. He also asked you about Mr. Beebe's knowing all of your affairs and knew about you owing Standard; did he know that you owed Standard anything?
- A. No Sir.
- Q. Did he say you did?
- A. He asked me if I did.
- Q. Was Mr. Standard, at that time, or at any time, a man of influence who had property or money?
- A. He didn't have either that I know of.
- Q. He had never said one word to you about you owing him or asked you for any money that you owed him?
- A. No Sir.
- Q. He has also asked about you being heavily indebted to other persons and you stated that you were; were not those indebtednesses for tracts of timber land that you had bought most of it, part of

the purchase price on that timbered land?

A. Yes Sir, part of it.

Q. He also asked you about why did you think it was true that you owed Standard; state your answer to that?

A. Because I asked him.

Q. And he told you that you owed him \$2500.00?

A. Yes Sir; I went to his house and called him out and asked him and he said "I expect you do" and after that he told me how much.

Q. When you got possession of those books did Mr. Standard tell you that was all the books?

A. I don't know what he told Mark; he didn't bring all of them.

Q. When did you get the book with Standard's account on it?

A. On the 12th of November, 1934.

Q. About thirteen months after you closed this deal?

A. Yes Sir.

Q. Did you notice Standard's account at that time and any peculiarities about the entries in that account?

A. Only when he was crediting up his time.

NOTE:

Respondent objects on the grounds that the book is the best evidence.

Q. Continue please.

A. Only in crediting up his salary he put it by the year instead of by the month and you could hold up the book and tell that it was recently entered.

Q. When you sent for your books did you send for all your books?

A. Yes Sir.

Q. Did he bring them and deliver them to you as all the books?

A. He delivered part of them.

Q. And you later got your other books with his account in them?

A. Yes Sir.

Q. That was in response to your demand for all of your books?

A. Yes Sir.

Q. You spoke of a Day Book; what is a Day Book?

A. I term a Day Book as what a man gets through the day - the daily occurrences and the entries on that book are transferred to the ledger.

- Q. He asked about that time ledger, where is it or what is it?
- A. This time ledger is nothing in the world but the names of the men employed, the number of days they are employed, the amount they are paid per day and the aggregate of that amount.
- Q. A man's account wouldn't appear in the time ledger?
- A. It should.
- Q. There is no provision in the time book for it, is there?
- A. No Sir.
- Q. Mr. Standard's name didn't appear in the time book?
- A. No Sir.
- Q. You never employed him by the day did you?
- A. No Sir.
- Q. And it is only those men who are employed by the day whose names would be in the time book?
- A. Yes Sir.
- Q. And the amount due that man as shown by the time book is shown by the ledger, is it not?
- A. Yes Sir.
- Q. That is the only system you employed?
- A. Yes Sir.
- Q. It is the only way he kept it?
- A. It is the only way that I know of.
- Q. So that these ledgers you examined would reflect the entire transaction with Mr. Standard?
- A. Yes Sir.
- Q. If you did pay Standard or he did pay himself out of your monies, that entry wouldn't go on the time book would it?
- A. No Sir.
- Q. I believe you said that Mr. Harold Gilbert was not working for you?
- A. No Sir.
- Q. Would there be any occasion for his name to be on your time book?
- A. No Sir.
- Q. If it went on there, it shouldn't have gone on there?
- A. No Sir.
- Q. If anything was paid him that payment would not be reflected in the time book?
- A. No Sir.

- Q. There is no place in the time book for such a payment to be is there?
- A. No Sir.
- Q. Is this property we are litigating over, what is called the Martin Place or property?
- A. It is known as the Martin Bush and R. D. McMillan property.
- Q. What is the value of this property?
- A. I guess, \$7,000.00 for the Martin and \$2,000.00 for the Bush and about \$10,000.00 for the McMillan.
- Q. On that examination about the H. B. Kilcrease item, \$9.92, as I understand that, did Kilcrease owe you that amount of money?
- A. It was charged to him on my books and then it was credited to him.
- Q. How?
- A. By Standard, and no corresponding charge was made against Standard.
- Q. In making up that statement, Exhibit B, would there be any occasion for you to make a transcript or copy of each ledger page to show an erroneous entry by Mr. Standard on the ledger?
- A. No Sir.
- Q. In making it up, then, you just entered on that Exhibit B the items which he took and didn't charge himself with, is that it?
- A. That is it.
- Q. The rest of the items where you could find a corresponding entry, you accepted as true and made no charge for them?
- A. That is true.
- Q. You say the checks that he cashed for you, he put your initials, J. W. M. in the corner?
- A. Yes Sir.
- Q. These checks that you have charged to him have no such initials or entry in the corners?
- A. No Sir.
- Q. If he did draw a check and put no initials in the corner, you charged them then as moneys that he got and your moneys would pay those checks?
- A. Yes Sir.
- Q. Anything on any of these day books or that should be transferred from the time book to the ledger, those things were posted up so that the ledger was to be a complete history of all the records?
- A. Yes Sir.

- Q. Now, he asked you about checks to Mrs. Standard for gas, is that the name Mrs. Standard or Mrs. Nelson?
- A. Mrs. Nelson.
- Q. Were those checks paid for gas that she furnished you?
- A. I never bought any gas.
- Q. Where is she now?
- A. She is in Anniston.
- Q. Some of the men did buy gas and how do you know that those checks that you have charged to Standard were not for gas Mrs. Nelson had furnished some of your men?
- A. I marked on them who they were for and some of them were for after she had quit selling gas and had gone.
- Q. Do you know how many?
- A. I know there was one.
- Q. The checks were used in Anniston?
- A. Yes Sir.
- Q. In regard to that Bryars truck, you say when you bought the truck he credited himself with \$400.00?
- A. Yes Sir.
- Q. Was this about the time you bought the truck from him?
- A. Yes Sir.
- Q. Then later he told you that Henry Bryars had offered \$400.00 for the truck?
- A. Yes Sir.
- Q. And you told him to sell it and he did sell it?
- A. Yes Sir.
- Q. Do you know how much he got?
- A. He charged himself with \$400.00 and said that is what he got.
- Q. And at the same time he charged himself with \$400.00, he credited himself with \$220.00 for the use of the truck?
- A. Yes Sir.
- Q. Did you ever rent a truck and trailer or any other motor vehicle from Standard?
- A. No Sir.
- Q. In making this statement, Exhibit B, you didn't do the physical work of transcribing that statement on the paper?
- A. No Sir.

Q. That was done from data furnished by you?

A. Yes Sir.

Q. That was done in my office?

A. Yes Sir.

Q. And after that was done did you or did you not verify the figures on Exhibit B from your data?

A. Yes Sir, I did.

Q. You know them, that Exhibit B is correct?

A. Yes Sir.

Q. Is Exhibit B correct?

A. Yes Sir, it is according to the books.

Q. In order for you to tell from your ledger whether he enters credits to himself to which he is not entitled and whether he pays money to himself for which he doesn't charge himself, you don't have to go to any other book to ascertain that fact, do you?

A. No Sir, I took his checks.

Q. As a matter of fact, in getting up this statement, Exhibit B, you had to use a number of detached checks that had never been entered on the book at all, didn't you?

A. Yes Sir.

Q. He asked you about a number of these hauling logs and lumber for you at so much per thousand; did you pay him for all that he hauled for you?

A. All that he put on the book.

Q. He did put some on the book?

A. He was supposed to put it all.

Q. And you paid him for all that he put on the book?

A. Yes Sir.

Q. How did you pay him?

A. Mostly in checks.

Q. Have you got all of those checks?

A. No, I have only the ones he didn't charge, the others were entered on the ledger which corresponds with the number of feet that he credited himself with.

Q. When he would haul the logs or the lumber he would enter it to his credit on the ledger and that was paid?

A. Yes Sir.

- Q. The ledger shows that every entry for hauling that he made on all these places that he asked about has been paid?
- A. Yes Sir; according to the way he has his books balanced it doesn't show that it has been paid but it has been paid.
- Q. What do you mean by the way the books are balanced?
- A. Well, his books show a balance now that is not true. They actually are paid but each entry he hauled he didn't get it.
- Q. And these charges that he has gotten pay for - all that hauling - and if he hadn't made these erroneous entries that you disclosed by Exhibit B, it would reflect an indebtedness to you of something over \$3400.00 in addition to that \$1,000.00, the balance due on the purchase price?
- A. Yes Sir.
- Q. He asked you a number of questions and asked you to identify the several pleadings in this case; the papers you have filed in your suit; off hand, do you recall whether you ever saw or read any of those pleadings or not?
- A. I don't remember, any of the contents - I depended on you wholly.
- Q. If you had been able to repurchase two years after you had made that deed and gotten that option ; and assuming that his statement that you owed him \$2500.00 is correct, you would have had to pay him \$5900.00 to repurchase, that would be correct wouldn't it?
- A. Yes Sir, if I had gotten the whole \$3400.00.
- Q. Do you remember whether, in his examination in the Beebe case, Mr. Standard was asked about that \$1,000.00 that he was to give a note for?
- A. Yes Sir.
- Q. Do you remember what he said?
- A. You asked him if he agreed to give a thousand dollar note and he said he would not and you asked him would he sign it and he said "I don't think I will".
- Q. Wallace, do you know whether that ledger that you examined contained or purported to contain your entire account with John Standard?
- A. It connected up his accounts all right as far as I could tell, in other words his accounts, his checks, his lumber, rosin and turpentine was all on the ledger.
- Q. What about his logs?
- A. I think you will find logs on there to, I don't know for sure.

RE-CROSS EXAMINATION:- J. B. BLACKBURN.

Q. After this deed to Mr. Standard was delivered in the early part of 1934, I will ask you if you didn't tell Mr. W. C. Beebe that you had rented the farm land, on the place that you had sold Mr. Standard, from him?

A. No Sir.

Q. In the written demand for production and certain written instruments of which you accepted service, today we referred to a \$2500.00 written receipt from Standard to you and we, at this time, make demand on you for the production of that receipt.

A. I never got it.

Q. You don't have that?

A. No, it was never delivered.

Q. You stated that you didn't get that \$5900.00 option until about eleven months after the deal was closed. In computing that time Mr. McMillan, didn't you start figuring from October rather than January?

A. Yes Sir, that is when I would have had to start it if I had redeemed.

Q. The option could not be delivered to you until the deed was delivered to Mr. Standard, could it?

A. The option could have been delivered immediately.

Q. Wasn't all the papers to be held in escrow and delivered when the transaction was closed?

A. Not necessarily, the option.

Q. As a matter of fact, the transaction wasn't closed until about the 27th of January 1934?

A. Sometime about that.

Q. And as a matter of fact, you didn't get your option from Standard or your option from Beebe until in the summer of 1934, did you? And you didn't go after it until you thought Beebe would sell the land?

A. No Sir.

Q. You said that, in response to one of Mr. McMillan's questions there a minute ago, that Standard didn't have any property or money and didn't he have a place out on Jack Springs Road consisting of more than 100 acres?

A. I think he did.

Q. And didn't he have a place there on the avenue where Mrs. Eula Nelson lived?

A. I don't know whether it was his or hers.

Q. In answering that question you are just saying what you think and not what you know.

A. I don't know whether he had anything or not.

Q. And you don't know how much he had?

A. No Sir.

Q. In neither one of your answers to Mr. McMillan's question you said that this large amount of money you owed was for part of the purchase price for timbered land?

A. Yes Sir, part of it.

Q. Didn't you owe other obligations including Taylor Lowensteins?

A. Yes Sir.

Q. And they had a suit of more than \$30,000.00 for several years?

A. Yes Sir.

Q. He also asked you about the value of that property you conveyed to Mr. Standard and you told him about your idea of the value and what you paid and so on. When were you fixing that value; that is, as of what date?

A. At any time.

Q. It was worth just as much one time as another?

A. No Sir.

Q. The Federal Land Bank only loaned \$3400.00 on it?

A. Yes Sir.

Q. You said a while ago that some of the men did buy gasoline from Mrs. Nelson?

A. I think they did.

Q. Have you checked every account in all of your books to see if there are any charges against any of the men?

A. I checked the accounts of everybody working for me who had a car and didn't find any charges on the dates the checks were given.

Q. What books did you check?

A. The ledgers, where the accounts of my men were kept.

Q. Did you check any other books?

A. No Sir.

Q. You referred to this data from which your Exhibit B was prepared; was Exhibit B prepared from a yellow sheet that you had or was

that prepared from the books?

A. What do you mean?

Q. You introduced in evidence the number of charges against the respondent referred to as Exhibit B and stated in one of your questions that they were made up from some data that you had. Was it data from a yellow sheet made up by you, or from the books themselves?

A. Made from the books.

Q. What then, do you mean by "that data"?

A. I don't know, but I took a copy off the books and put it on a sheet of white paper in long hand and somebody transcribed it from the long hand on the typewriter but I compared it with the books.

Q. In looking through Mr. Standard's account on the ledger did you find anything in there with reference to the logs that he sold you for his property on the Jack Springs Road?

A. I don't remember.

Q. It is apparent that some of his account was kept in other books?

A. I don't know.

A. The only thing I did was look up the checks when I found they weren't charged, the ledger is all that I examined.

Q. You stated something about having paid Mr. Standard all you owed him; you notice in our written interrogatories which we propounded to you, we asked for an itemized statement of the entire account between you and Mr. Standard; you at first refused to furnish it, that is, it was furnished in an incomplete way; we then filed a motion before Judge Hare and he made an order requiring you to make sufficient answers to some of our interrogatories and then still, you come in and furnish us as an itemized statement, only a list of charges against Mr. Standard; why did you not furnish us a complete itemized list of all of the debits and of all the credits; you understand what an itemized list means don't you?

A. Yes Sir.

Q. If you only furnished us a list of charges or debits you haven't furnished us an itemized statement?

A. No Sir.

Q. How many accounts did you find in your books there?

A. I didn't find any of my men's accounts in there except the lumber

men, and Taylor Lowenstein.

Q. Did you find any accounts for those men any where else?

A. No Sir.

Q. Did you examine each of the accounts that was in there itemized; item by item?

A. I did with anything pertaining to Standard but not with the other men; I didn't have any occasion to.

Q. Couldn't there have been some charges there that you overlooked when you didn't go through the other books?

A. I didn't have any occasion to go through for the other men.

Q. Suppose that those checks that you are accusing Mr. Standard of using had been used for the benefits of the other men, wouldn't their accounts have disclosed it?

A. There are no other accounts he could have used it for.

Q. For example, if one of those checks made out to cash had been drawn by Mr. Standard and given to one of the Cauleys and then Mr. Standard had come to Mr. Cauleys account and charged him with cash in the same amount of that check, wouldn't your books have showed it then?

A. It could have, possibly; but he shouldn't have.

Q. Now then, you didn't examine those accounts to see whether that condition existed or not?

A. No Sir.

Q. Yet you make a positive statement that John Standard has used money without it having been charged to somebody?

A. Yes Sir, I haven't looked at all the accounts but that is not the way he kept the accounts.

Q. Didn't you state there that the books would show that Mr. Standard has a balance due him?

A. Yes Sir.

Q. Why wouldn't you furnish us that in the itemized statement?

A. I didn't think it was necessary, I am showing you the false entries.

Q. You say you depended on your attorney to file these pleadings for you?

A. Yes Sir.

Q. You didn't expect your attorney to file pleadings for you in a case without your disclosing to him the facts did you?

A. I gave him the facts.

Q. You mean to testify in this case that you told your attorney about this \$1,000.00 before this suit was filed?

A. Yes sir.

Q

SECOND RE-DIRECT EXAMINATION:- B. F. McMILLAN, JR.

Q. You have no knowledge of the contents of the interrogatories he says were propounded to you except as he stated to you just now?

A. That is all.

Q. He also asks about the gas account of Mrs. Nelson on the time book is there any place to put any such account on the time book?

A. No Sir.

Q. In comparing the statement that you have introduced as Exhibit B you checked that from the ledger and from the original checks?

A. I Did.

Q. Those are the checks you introduced in evidence, were they?

A. Yes Sir.

Q. In completing one ledger, the old one, and opening a new one did he transfer the balances from the old ledger to the new ledger so that the new ledger would at all times reflect a balance Due?

A. Yes Sir.

Q. Can you tell from the checks that you have charged against Mr. Standard who collected those checks?

A. Only when he puts the name on it.

Q. In these checks that you have offered in evidence, drawn to cash and collected at the bank, he had put his name on them, is that true?

A. Yes Sir.

J. Wallace McMillan.

DEPOSITION OF ALLENE McMILLAN.

DIRECT EXAMINATION - B. F. McMILLAN, JR.

Q. What is your name?

A. Allene McMillan.

Q. You are the wife of the complainant?

A. Yes Sir.

Q. What has been the condition of his health since the year 1926?

A. A nervous wreck.

Q. Has he been able to attend to any of his business?

A. Yes Sir, up until some little over two years ago he tried to attend to business.

Q. Two years ago he quit entirely?

A. Something over two years, yes sir.

Q. How long before two years did he have to turn his business over to somebody else to run for him?

A. Along the latter part of 1929 and '30. He had a complete breakdown in 1926, we went North for a while and stayed a month.

Q. Did he ever entirely recover from that?

A. No Sir.

Q. Who had charge of his books and records?

A. John Standard had charge of the bookkeeping and the store.

Q. Do you know Sue Ellen Nelson?

A. Yes Sir, she is a neice of John Standard.

Q. Did you hear anything about the arrangements as to her working there?

A. Yes Sir, at the dinner table when she first went there Mr. Standard said he wasn't feeling well and he wanted to keep Sue Ellen off the streets and thought he would get her out here and she could be learning a little business.

Q. Did he say whether your husband should pay her anything?

A. He said Wallace need not pay her, that he would give her a little something.

Q. What do you know about your husband's trading cars with him?

A. There was some talk of Mr. Standard's needing a new car. He had been using his other car and as I remember it, this was the way the conversation went: Our car was a great deal better than John's and he said 'Instead of getting me a new car, Wallace, you

and Allene need a car more than I do, suppose you take my little car and the old pick-up truck and thrn them in as first payment on you a new car and let me have your old car; which seemed to be perfectly satisfactory as it was done.

Q. Then you traded your car to him for his?

A. Yes Sir, and the little pick-up truck belonged to us.

Q. Do you know anything about the H. L. Gilbert truck?

A. I don't know anything except a conversation I overheard between Wallace and Mr. Cauley after this came up.

Q. Mr. Standard wasn't there?

A. No Sir.

Q. You don't know anything about the Bryar's truck?

A. No Sir.

Q. Did you know at the time, 1930, when the men's wages were cut; do you recall that?

A. Only that Wallace sent me down to the store to ask John if he would come up, he wanted to talk with him.

Q. Up to that time John had been devoting all of his time to the business, hadn't he?

A. Yes Sir.

Q. After that time how much time did he devote to it?

A. He was out; he usually came to Mobile on Thursdays for groceries and sometimes, I reckon not all that time because sometimes he stayed in Bay Minette and let the truck driver take it on out there, he was usually out there on Saturdays.

Q. How much time on Saturday?

A. I don't know, he came there about twice a week.

CROSS EXAMINATION - J. B. BLACKBURN.

Q. You say that Mr. Wallace tried to attend to business until a couple of years ago?

A. Yes Sir.

Q. During 1933 didn't he actually handle some of the biggest business matters he had ever handled?

A. I don't know.

Q. Don't you know that during that year he succeeded in refinancing his indebtedness?

A. Yes Sir.

- Q. And at that time didn't he owe the First Joint Stock Land Bank about \$40,000.00?
- A. I don't know.
- Q. He did pay that for much less than the amount due didn't he?
- A. I don't know.
- Q. While he was negotiating with the First Joint Stock Land Bank in Montgomery and with the Federal Land Bank in New Orleans, didn't he make a number of trips to both places?
- A. He had to, but had to be heavily under the influence of medicine all the time to keep down pain.
- Q. His trouble was neuritis, wasn't it?
- A. Yes Sir.
- Q. That doesn't affect one's mind, does it?
- A. Being heavily under the influence of bromide and aspirin, yes sir. He had to take this medicine to be able to attend to business.
- Q. You wouldn't say that he had ever been a man or was ever in such condition that he didn't know what he was doing when attending to business?
- A. No Sir.
- Q. You mentioned a moment ago about the Nelson girl and the conversation that took place at your home; do you know of your own personal knowledge whether Mr. Wallace and Standard ever had any further conversations about the matter?
- A. No Sir.
- Q. You mentioned this car that Mr. Wallace traded in; that was the property of Mr. Standard; to you know of your own personal knowledge whether there was any arrangement between your husband and Mr. Standard whereby Mr. Standard was to charge Mr. Wallace McMillan for that car?
- A. I don't know, but I do know this; it was just to turn over his car to my husband for that car.
- Q. You mentioned the time that Mr. Standard devoted to Mr. McMillan's work; out there; do you know whether he devoted any time except what he was doing out there?
- A. He was keeping the books out at his home. There was very little that required much bookkeeping.
- Q. Mr. Standard did haul Mr. McMillan around quite a bit?
- A. Yes Sir.

DEPOSITION OF MARK CAULEY.

DIRECT EXAMINATION - B. F. McMILLAN, JR.

Q. What is your name?

A. Mark Cauley.

Q. How long did you work with Mr. McMillan?

A. About 13 years.

Q. Were you working there when John Standard was working there?

A. I started to work the first of 1929.

Q. Do you remember when, in 1930, there was a cut in the wages?

A. Yes Sir.

Q. Did you have a conversation with Mr. Standard in regard to it?

A. He was doing the paying off at the time and told me that my wages were cut.

Q. What did he say about his own?

A. He said his was cut worse than anyones.

Q. That was in June, 1930, when the other men were cut?

A. Yes Sir.

Q. Do you know anything about that truck of Henry Bryars?

A. I don't know anything about it, only that is I don't know anything definite.

Q. Do you know if he sold it to Mr. McMillan?

A. I don't know except what I heard Mr. Standard say, that he had bought a truck.

Q. Did you hear him say anything about selling the truck to McMillan?

A. I don't know, the only thing is that I remember the truck being there and about Henry buying the truck.

Q. What did he say he sold it to Henry Bryars for?

A. I don't remember about it.

Q. Do you know anything about the Gilbert truck?

A. Yes Sir.

Q. What about it; did he sell it to Mr. McMillan?

A. I don't remember whether he sold the Gilbert truck to Mr. McMillan or not; Gilbert came and got it.

CROSS EXAMINATION - J. B. BLACKBURN.

Q. Mr. Cauley, you say Mr. Standard told you he had been cut more than any of the others?

A. Yes Sir.

Q. You don't have any personal knowledge of what Mr. McMillan was paying Mr. Standard at any time?

A. No Sir.

Q. You were there quite a while were you not?

A. Yes Sir.

Q. You had a pretty good idea of the business operations?

A. No Sir.

Q. What were your duties?

A. I was general foreman.

Q. Did you have anything to do with the saw mill operations?

A. I locked the saw mill.

Q. Do you know who hauled a lot of his lumber and logs; didn't Mr. Standard's trucks move a lot of his logs?

A. Yes Sir, Mr. McMillan said so.

Q. You know that Mr. Standard hauled lumber?

A. Yes Sir.

Q. You don't know how much Mr. McMillan paid or agreed to pay him?

A. No Sir.

Q. You don't know whether McMillan owes him anything now?

A. No Sir.

RE-DIRECT EXAMINATION - B. F. McMILLAN, JR.

Q. About how much time did Mr. Standard put in on Mr. McMillan's work? after June, 1930?

A. I think he came about two days a week.

RE-CROSS EXAMINATION - BLACKBURN.

Q. You don't know what he did elsewhere?

A. No Sir; I know nothing except about what his duties were out there.

Mark Cauley.

J. WALLACE McMILLAN,	:	IN THE CIRCUIT COURT OF
Complainant.	:	BALDWIN COUNTY, ALABAMA.
	:	
vs.	:	IN EQUITY.
	:	
JOHN N. STANDARD,	:	NUMBER 130.
Respondent.	:	

MOTION TO REVIVE.

Now comes Allene McMillan, and shows unto this Honorable Court:

ONE:

That on towit the 30th day of September, 1938, J. Wallace McMillan, Complainant in the foregoing cause, was convicted of the offense of murder in the first degree in the Circuit Court of Baldwin County, Alabama, and sentenced to life imprisonment in the State Penetentiary at Montgomery, Alabama, and is therefore civilly dead.

TWO:

Subsequently thereto, on February 1st, 1939, this Honorable Court entered an order and decree abating this action by reason of the civil death of the Complainant as aforesaid, and further ordered that said cause be revived by a bill of revivor with leave of this Court being first had and obtained.

THREE;

That on towit the 9th day of May, 1939, your Petitioner, Allene McMillan, was duly appointed Executrix of the Estate of J. Wallace McMillan, and Letters Testamentary on his said Will were issued to Petitioner, said Letters being hereto attached as Exhibit A and specifically made a part of this Petition.

FOUR:

That by reason of the fact that your Petitioner resides in Montgomery, Alabama, and experiences great difficulty in managing and handling the affairs of the Estate of her husband, that she has heretofore been delayed in filing this petition for revivor.

THE PREMISES CONSIDERED, Petitioner humbly prays that this Honorable Court will revive said cause in the name of Allene McMillan, as Executrix of the Last Will and Testament of J. Wallace McMillan, and that said cause be reinstated on the docket of this Honorable Court for further orders and decrees.


Solicitor for Petitioner.

RECORDED

Native Docket
page 101

Filed April 10th 1991
R. S. Duchs, Clerk - Register

The State of Alabama, Baldwin County

PROBATE COURT

LETTERS TESTAMENTARY

THE WILL OF J. Wallace McMillan

having been duly admitted to record in said county, letters testamentary are hereby granted to

Allene McMillan

the executrix named in said will, who has complied with the requisitions of the law, and is authorized to take upon herself the execution of such will.

Witness my hand, and dated this 9th day of May, A.D., 1939.

[Handwritten signature of G. W. Robertson]

Judge of Probate

Exhibit "A"

The State of Alabama
BALDWIN COUNTY

PROBATE COURT

ESTATE OF

J. Wallace McMillan

Deceased.

Allene McMillan

Executrix

Letters Testamentary

J. WALLACE McMILLAN,
Complainant,
VS.
JOHN N. STANDARD,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 130.

ANSWER TO BILL OF REVIVOR.

Now comes the Respondent in the above entitled cause, reserving to himself all right of exception to the said Bill or Motion for Revivor, and for answer thereto says:

1. The Respondent admits the allegations of paragraphs numbered One and Two of the said Motion or Bill to Revive.

2. The Respondent denies each and all of the other allegations of the said Motion or Bill to Revive, and demands strict proof of same.

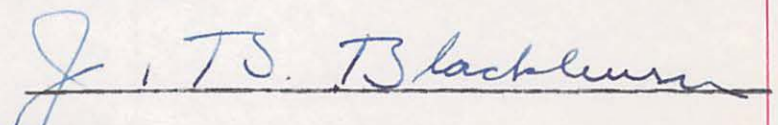
3. The Respondent offers and sets forth the following defenses to the matters, claims and equities, if such there be, set forth in the said Motion or Bill to Revive:

(a). The said Allene McMillan is guilty of laches in filing the said Motion or Bill to Revive the said cause.

(b). It affirmatively appears from the said Motion or Bill to Revive that the said J. Wallace McMillan became civilly dead on to-wit, September 30, 1938; that more than one year has expired between the time the said J. Wallace McMillan became civilly dead and the time the said Motion or Bill to Revive was filed, because of which the Court has no authority to order the said cause revived at this time.

(c). The Motion or Bill to Revive the said cause was not filed within twelve months from the date of the civil death of the said Complainant, J. Wallace McMillan, and is therefore barred by the statute of limitations of twelve months.

The Respondent having fully answered the said Bill or Motion to Revive, prays to be hence dismissed with his reasonable costs and charges in this behalf expended.


Solicitor for Respondent.

J. WALLACE McMILLAN,
Complainant,
VS.
JOHN N. STANDARD,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 130.

DECREE.

This cause coming on to be heard on this the 2nd day of March, 1939, being a time heretofore set by the rules of this Court for the calling of the Equity Docket thereof, and it appearing to the Court that J. Wallace McMillan, the Complainant in this said cause, was sentenced to life imprisonment, in this Court and by the undersigned Judge thereof on September 30, 1938, and thereby became civilly dead, all of which was suggested by the Solicitor for the Respondent in open Court; IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That this cause be and it is hereby abated by the civil death of the Complainant, J. Wallace McMillan.

2. In the event this cause is revived the method of reviving it shall be by a Bill of Revivor after leave of the Court is first had and obtained.

Done in open Court at Bay Minette, Alabama, on this the 2nd day of March, 1939.

F. M. Hale

Judge.

RECORDED

DECREE.

J. WALLACE McMILLAN,

Complainant,

VS.

JOHN N. STANDARD,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 130.

Filed March 3, 1939
R. S. Dunch, Register
By - Harold W. Thompson
Deputy-Register

ALLENE McMILLAN, as
Executrix of the Estate
of J. Wallace McMillan,
Deceased,

Complainant,

VS.

JOHN N. STANDARD,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 130.

MOTION TO SUPPRESS DEPOSITION AND DISMISS CAUSE.

Now comes the Respondent in the above entitled cause and moves the Court to suppress the oral deposition of J. Wallace McMillan which has been offered in evidence by the Complainant in this cause and as grounds therefor sets down and assigns, separately and severally the following:

1. The said deposition was not taken in the form and manner prescribed by law.
2. The said deposition was not taken as prescribed by law.
3. The said deposition so offered was not taken by agreement of counsel in which the formalities required by law for the taking of said deposition were waived.
4. The said deposition was not taken before a Commissioner appointed as provided by law.
5. It affirmatively appears that the said deposition so offered was not taken according to the agreement of counsel.
6. The introduction of the said deposition in its present form would defeat the ends of justice and deprive Respondent of his legal right to cross examine the said witness, J. Wallace McMillan.

The Respondent further represents that because of the many books, documents and other exhibits referred to in the testimony of the said J. Wallace McMillan, it is essential and most necessary

to Respondent's case that all of said books, documents and other exhibits be most carefully examined by the Respondent and his solicitor and after such examination that the said witness be further cross-examined about all of the matters and details contained therein; that because of the civil death and imprisonment of the said J. Wallace McMillan, the Respondent is now deprived and has been since the first Monday in September, 1938 deprived of this right without any fault whatever on his part, and without said further cross examination the Respondent will be deprived of his legal right to fully cross-examine the said witness and the ends of justice will thereby be defeated.

The Respondent further represents that it affirmatively appears from the Motion or Bill to Revive this said cause which was filed on April 10, 1941, and from Complainant's motion to submit the said testimony, that the said J. Wallace McMillan became civilly dead on to-wit, September 30, 1938, when he was sentenced to life imprisonment and further that he is now confined in a State Penitentiary under said sentence and is thereby incapable of testifying in the said cause. The Respondent further represents that the alleged deposition of the said J. Wallace McMillan, the motion to submit same and the other pleadings affirmatively show that his entire case, if such case he has, depends entirely on his own testimony, that such testimony was not properly taken before he became civilly dead, that he is not now capable of testifying and therefore this cause should now be dismissed.

WHEREFORE, Respondent moves the Court to suppress the alleged deposition and to dismiss the said cause. Petitioner further prays that such other orders may be made and decrees rendered as may be requisite and proper in the premises.

J. T. Blackburn
As Solicitor for Respondent.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority within and for said

County in said State, personally appeared John N. Standard, who, after being by me first duly and legally sworn, deposes and says: That he is the Respondent in the above entitled cause; that he has read over the foregoing Motion and that the allegations contained therein are true.

John N. Standard

Sworn to and subscribed before me
on this the 22nd day of May, 1941.

Ora S. Nelson

Notary Public, Baldwin County, Alabama.

I hereby accept service of the foregoing motion to suppress Complainant's testimony and to dismiss said cause, consent and agreed, the same may be heard on May 23rd, 1941, without service to me.


Solicitor for Complainant.

J. WALLACE McMILLAN,
Complainant,

VS.

JOHN N. STANDARD,
Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 130.

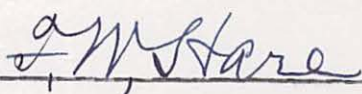
DECREE.

This cause coming on to be heard on this date in
Monroeville, Alabama, where it was set for hearing by consent of the
parties as provided by Chancery Rule Number 59, and being submitted
on the Motion or Bill to Revive filed in the said cause by Allene
McMillan on April 10, 1941, and the answer of the Respondent, John N.
Standard filed on May 21, 1941, and upon consideration of all of
which IT IS THEREFORE Ordered, Adjudged and Decreed by the Court as
follows:

1. That the said cause be and it is hereby revived in
the name of Allene McMillan, as Executrix of the Estate of J. Wallace
McMillan, Deceased, as Complainant, and that the said cause as re-
vived be, and it is hereby continued until ten o'clock A. M. on
Friday, May 23, 1941, when it shall be heard in Bay Minette, Alabama,
at which time the said Complainant shall file legal depositions of all
of her witnesses including that of J. Wallace McMillan, except for the
exhibits thereto; that if such depositions are not filed on said date
or if such depositions as filed disclose that the testimony of J.
Wallace McMillan is essential to Complainant's right to proceed further
in this case, and if his said deposition as filed is suppressed, then,
the said cause shall be dismissed.

2. If Complainant shall file legal depositions of all
of her witnesses as provided in this decree and if the same are not
suppressed, she shall be allowed ten additional days in which to file
the exhibits to such depositions.

Done at Monroeville, Alabama, on this the 21st day of
May, 1941.



Judge.

ALLENE McMILLAN, as
Executrix of the Estate of
J. Wallace McMillan,
Deceased,

Complainant,

VS.

JOHN N. STANDARD,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 130

DECREE.

This cause coming on to be heard on this the 23rd day of May, 1941, being the date set by a former Decree of this Court in hearing the said cause, which cause is submitted on the Motion of to Revive filed on April 10, 1941; Respondent's Answer to said Motion or Bill, filed on May 21, 1941; the Court's Decree in said cause May 21, 1941; the Complainant's Motion for Submission of her testimony in said cause filed on this date accompanied by the oral deposition of J. Wallace McMillan, Mark Cauley and Allene McMillan; the Respondent's Motion to Suppress the deposition of J. Wallace McMillan and dismiss the said cause, from all of which the Court is of the opinion that the said J. Wallace McMillan became civilly dead on to-wit, September 30, 1938, and is still under such disability; that Complainant's entire case depends upon the testimony of the said J. Wallace McMillan; that his said testimony as shown by the deposition filed by the Complainant in this cause has not been taken as provided by law or according to agreement of counsel; that its admission in its present form would deprive the Respondent of his right to fully and properly cross examine the said witness without fault on the part of the Respondent, thereby defeating the ends of justice and therefore the said oral deposition of the said witness J. Wallace McMillan, should be suppressed; that because of the death of the said J. Wallace McMillan, a further continuation of cause on the docket of this Court would be useless as the testimony of the said J. Wallace McMillan cannot now be taken and further Court is of the opinion that the Complainant has not complied

the terms of the Court's Decree in this cause dated May 21, 1941, and therefore this cause should be dismissed, WHEREUPON it is Ordered, Adjudged and Decreed by the Court as follows:

1. That the oral deposition of the said J. Wallace McMillan filed by the Complainant in this cause on this date be, and the same is hereby in all respects suppressed.

2. That this cause be and the same is in all respects dismissed.

3. That the Register of this Court shall, within thirty days from the rendition of this Decree, file a certified copy hereof for record in the office of the Probate Judge of Baldwin County.

4. That all of the costs of this proceeding as revived be, and the same are hereby taxed against the Complainant, for which execution may issue.

Done at Bay Minette, Alabama, on this the 23rd day of May, 1941.



Judge.

J. WALLACE McMILLAN, |
 Complainant. | IN THE CIRCUIT COURT OF
 - vs - | BALDWIN COUNTY, ALABAMA.
JOHN N. STANDARD, |
 Respondent. | IN EQUITY. NO. 130.

The complainant, answering the cross bill filed by respondent, says:

Complainant now refers to and by reference adopts and files as answer to this cross bill all allegations of the bill of complaint as last amended, filed by the complainant in this cause, and denies everything alleged by the respondent's cross bill in contradiction of the allegations in said bill of complaint as last amended.

Complainant admits that he did give the respondent a credit of \$2500.00 on the purchase price of the property and that this credit was given in satisfaction of a supposed indebtedness by complainant to the respondent but as alleged in the amended bill of complaint, and now re-averred, the idea that complainant was so indebted to respondent was superinduced by the false representations made by the respondent to complainant and that there was in fact no indebtedness due by the complainant to the respondent so that the credit given was in satisfaction of a supposed indebtedness that did not in fact exist and complainant's act in giving such a credit was based on the false representations of the respondent, which complainant then believed and which respondent knew complainant believed. Complainant further re-avers that under the agreement between complainant and respondent, at the time the deed was given, respondent did owe complainant an additional \$1,000.00 on the purchase price, with interest thereon, even if respondent's representations to complainant had been true and if complainant had been indebted to respondent in the sum of \$2500.00.

Complainant further denies that he had personal knowledge of an indebtedness to respondent which had been increasing for several years; he now re-alleges that he owed the respondent nothing and further avers that up to the time it was suggested in these negotiations that complainant was indebted to respondent, the latter made no claim of any such indebtedness, but on the other hand when

drawing money from complainant's bank account and taking goods from complainant's store, the respondent's explanation and statements to complainant indicated that the respondent recognized his own indebtedness to complainant.

Complainant further denies that at the time of these negotiations the respondent executed and delivered to complainant any written receipt for any indebtedness due or supposed to be due by the complainant to the respondent; as a matter of fact complainant never saw or heard of any such receipt until many months afterwards when, at his earnest solicitation and insistence, respondent brought complainant's records to the store of complainant's brother and complainant then found among the papers so brought there, a paper purporting to be a receipt from the respondent to complainant for the sum of \$25.00. When this receipt was executed and where it was kept complainant does not know but states, on information and belief, that the paper was executed about the time respondent brought the papers back to complainant's brother's store.

~~Complainant denies that he is now or ever has been indebted~~ Complainant denies that he is now or ever has been indebted to the respondent for rent on the property involved in this case or otherwise. He denies that he ever rented the property from the respondent and alleges that respondent never made any claim against complainant for any such rent until long after the bill of complaint in this case was filed.

Complainant admits that he did offer the Martin place for sale but he denies that, except as hereinafter stated, he offered it for sale at a figure less than the amount for which it was sold to the respondent; in fact no definite offer for the sale of the place was made and no figure was ever discussed, except that after this suit was filed on one occasion he did discuss selling the place for a figure per acre that would have aggregated \$6840.00. The value of the place exceeded the amount respondent agreed to pay for it and complainant did not offer and would not have accepted an offer for an amount less than that total figure, and complainant alleges on information and belief that the reason the place could not be sold or was not sold was because of the financial depression generally prevailing at the time.

Complainant denies that after failing to find a purchaser, he communicated with the respondent with reference to any of complainant's difficulties or discussed with respondent any indebtedness due by complainant to him and he denies that he made respondent a proposal to sell him the Martin Place and other lands if respondent could make a substantial cash payment except insofar as he closed the deal with the respondent by giving the deed which forms the foundation of this suit, under the conditions set forth in the amended bill of complainant.

Complainant admits that there was a residence on the premises before complainant's deal with the respondent was made and that this residence was destroyed by fire; he further admits that the residence was insured for the sum of \$5.00 but he alleges that his deal with the respondent was made without reference to this residence or to its value and that the purchase price agreed to be paid by the respondent was \$7,000.00 and this was the agreed purchase price made after the residence was burned and was without reference to that residence or its value and complainant never did agree to accept less than \$7,000.00 for the place and respondent agreed to pay this sum after the residence had been burned. Complainant further avers that he never agreed to pay any of respondent's expenses that would be incurred by the respondent in obtaining a loan from the Federal Land Bank or meet other requirements of that bank, and this contention is made by the respondent for the first time when this answer is filed.

Complainant has no recollection of signing a document, copy of which is attached to the answer as Exhibit I, and if he signed such document the respondent was not a party to that part of the general plan under which the said document was signed, in addition to which complainant did not then know that the respondent had wilfully and falsely misrepresented the existence of an indebtedness due by complainant to respondent; at the time the transaction was closed it was contemplated that complainant should have a certain period within which to repurchase the land if he wanted to and in event of such repurchase by complainant, respondent would have been released from the additional \$1,000.00 of the purchase price but complainant did not repurchase and he has never released the respondent from payment of said sum and the respondent, after receiving said deed and after the document Exhibit I was signed, has

agreed to pay the said additional \$1,000.00.

As hereinabove stated, complainant has never rented the property or any part of it from the respondent and has never agreed to pay respondent any rent for same and the respondent never made any such claim until after the bill of complainant in this case was filed.

Complainant further denies that he has failed to inform the Court of all details of the transaction which are necessary to determine the issues now presented for determination. He admits that he hasn't tendered to the respondent the amount received for the place but he alleges that he has not elected to rescind the transaction and therefore there was no duty revolving upon the complainant to pay or tender to the respondent anything.

Having now fully answered the cross bill, the complainant as cross respondent, prays that the same be dismissed.

B. J. Greenman
Solicitors for Complainant.

Equity No 130

Wallace W. Mellon

VS

John Standon

Answer to Cross
Bill

Filed September 3, 1938
R.S. Dush, Register

By: Randall Thompson
Deputy-Register

... was killed.
... made any such claim until after the bill of complaint in this case
... need to pay respondent any rent for same and the respondent never
... property on any part of it from the respondent and has never
... as heretofore stated, complaint has never been
... amount to pay the said defendant \$1,000.00.

J. WALLACE McMILLAN,
Complainant,
vs.
W. C. BEEBE,
Respondent.

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

Comes the respondent in the above styled cause, and demurring to complainant's complaint, says:

1. There is no equity in the bill of complaint.
2. Said bill of complaint does not offer to do equity.
3. Said bill of complaint does not allege that the complainant is ready, able and willing to pay this respondent any amount that this court should find owing by him.
4. Said bill of complaint does not allege that the deed attached as Exhibit "A" to complainant's bill of complaint was intended by both the parties thereto as security for a debt.
5. The said bill of complaint does not allege any debt owing by the complainant to the respondent.
6. Said bill of complaint does not allege that respondent intended said deed and option to be a mortgage or in any manner security for a debt.

Without waiving the foregoing demurrers, but expressly insisting upon them, respondent, answering the said bill of complaint, says:

First: He admits the allegation in Paragraph First of said bill of complaint.

Second: He admits the allegation in Paragraph Second of said bill of complaint.

Third: Answering the third paragraph of said bill of complaint, the respondent says that for several years he has been attorney for complainant and complainant has from time to time

disclosed information with reference to his business to him and entrusted him with handling legal matters for him, and in the preparation of legal papers. He does not know whether or not complainant made full disclosure of all of his business transactions, or whether or not he withheld information of a business nature from this respondent, or whether or not he had full and complete knowledge of all of complainant's business affairs and the value of his lands.

Answering the second of the paragraphs numbered three of said bill of complaint, respondent admits that several years ago complainant borrowed moneys on a part of his lands from the First Joint Stock Land Bank of Montgomery, and that for several years prior to 1933 he had not paid principal and interest on the said indebtedness, and that in the summer of 1933 there was owing from the said complainant to the said First Joint Stock Land Bank more than \$40,000.00, and that the same was secured upon a part of complainant's land, and in addition thereto the said lands had been sold for taxes and nearly \$2,000.00 was owing for taxes thereon.

Respondent further alleges that in the summer of 1933 said First Joint Stock Land Bank had called the said complainant's loan and were proceeding to foreclose the same, and that (this respondent) ^{wc 13-} at the request of the complainant, entered into negotiations with them on behalf of the complainant for further time, and upon their refusing to grant such further time, at the direction of the complainant, entered into negotiations with the said First Joint Stock Land Bank for a settlement of the said debt, and after numerous conferences and correspondence with them (this respondent) ^{wc 13} did procure for the complainant an agreement on behalf of the First Joint Stock Land Bank to accept approximately \$15,000.00 in full settlement of complainant's debt to them, and that (this respondent) ^{ed wc 13} acting for and on behalf of the complainant, did assist him in the borrowing from the Southern Kraft Corporation on properties not involved in the said mortgage the sum of \$1500.00, which said sum of

money was used for the complainant as a cash payment to the First Joint Stock Land Bank and as a consideration for their giving to him a contract to settle and adjust his indebtedness for and at the sum of approximately \$15,000.00. This respondent does not know whether or not the First Joint Stock Land Bank took a loss on the indebtedness of the said complainant to it.

Fourth: Answering the paragraphs numbered Fourth, Fifth, Sixth, Seventh and Ninth of the said bill of complaint, respondent says that the full nature and history of the transaction alleged in the said bill of complaint is as follows: That the complainant was indebted as aforesaid to the said First Joint Stock Land Bank and that prior to August, 1933, he made an application to the Federal Land Bank of New Orleans for a loan with which to pay said indebtedness, claiming in his application to have a farm of 2500 acres with 405 acres in cultivation; that the Federal Land Bank of New Orleans rejected his said application. (That thereafter complainant solicited this respondent to go with him to New Orleans to assist him in getting said application re-considered, which this respondent refused to do, stating that court, then about to convene, required his time.) The complainant himself went to New Orleans for the said purpose, and upon his return reported to (this respondent) that the Federal Land Bank of New Orleans would not consider his said application for a loan. He again solicited this respondent to assist him, and this respondent again advised him that the August term of the Circuit Court was about to convene and would continue for three weeks and that he would be unable to go into the matter until after court adjourned; that immediately after the adjournment of court, namely, on the Sunday following its adjournment, this respondent sent word to the complainant that he would be ready to go into the matter on Monday; that on Monday this complainant and this respondent went in complainant's car over the tract of land conveyed in the First Joint Stock Land Bank mortgage. That upon inspecting the property, this respondent readily saw that the com-

plainant did not have a farm of 2500 acres, with 405 acres in cultivation, but had two separate and distinct farms approximately four miles apart, and that the rest of his property was wild, cut-over land and not suited for farm purposes, and his said holdings could in no manner be considered a farm unit within the requirements of the Federal Land Bank, and as a matter of fact there were two separate and distinct farm units consisting of his home place of 175 acres cleared, and a limited number of unimproved acres immediately adjoining, and a farm known as the Martin Farm approximately four miles South therefrom with 175 acres cleared, with a limited number of acres of unimproved property. That the remainder of said holdings could not be considered a farm unit, nor properly a part of the two units above mentioned. This respondent thereupon so advised complainant and suggested to complainant that it would be impossible for him to borrow a sum sufficient on the whole tract to pay off the First Joint Stock Land Bank mortgage or to settle with them at any reduction that they might reasonably be expected to make, and further advised the complainant that in respondent's judgment the Federal Land Bank would consider an application from him for the home place only, and that for him to salvage his home from the said mortgage it would be necessary for him to sell off the Martin place and the unusable part of the wild lands, and that it would be necessary for him to make an application to the Federal Land Bank for a loan on the farm part of his home place and to make an application to the Home Owners' Loan Corporation for a loan on his home. That upon selling off the Martin place and the unusable portion of the open lands and obtaining a loan from the Federal Land Bank and the Home Owners' Loan Corporation on his farm and home, he could probably realize sufficient money to save his home place. That the home place naturally fell into a block of approximately 900 acres, the Martin place would naturally go with certain additional lands immediately adjacent, making a farm unit of approximately 575 acres; that 180

acres in Section 27, Township 1 South, Range 2 East, of timbered lands could not possibly be classed as a farm and should not be included in any application to the Federal Land Bank; that the 960 acres involved in this suit constituted the remaining part of said land, all of which is cut-over land, except approximately 50 acres cleared but unstumped and with a little timber on the extreme southern portion thereof, would not qualify for a Federal Land Bank mortgage. Immediately thereafter complainant and respondent went to New Orleans for a conference and the Federal Land Bank officials advised that they would consider only his application on the home place, and only for a limited amount, greatly inadequate to settle his indebtedness to the First Joint Stock Land Bank. Respondent, upon their return from New Orleans, advised complainant to apply to the Home Owners' Loan Corporation for a loan of \$5,000.00 and to the Federal Land Bank for a loan of \$6,000.00, and to sell off the Martin tract, the 180 acres in Section 27, Township 1 South, Range 2 East, and the 960 acres involved in this suit, for a sum sufficient to raise the balance of the \$13,500.00 and taxes, and if possible an additional amount to pay respondent's fees.

Acting upon respondent's advice, complainant undertook to sell the Martin place with the lands immediately adjoining and undertook to sell the 960 acres involved in this suit, and undertook to sell the 180 acres in Section 27, Township 1 South, Range 2 East, and spent several weeks in his efforts to sell said properties, offering the Martin place and the property involved in this suit at considerably less than the amounts paid by John N. Standard for the Martin place and considerably less than the amount paid by this respondent for the 960 acres involved in this suit, so he advised this respondent. That after complainant had exhausted all possible sources of selling the said property, as he reported to this respondent, and complainant was faced with the loss of the entire property and had given up hope of saving any of it, this respondent proposed to the complainant that he would

purchase the 960 acres from complainant for the sum of \$4500.00, and would pay him therefor \$2,000.00 in cash and the balance to be paid by the full settlement of an account of \$848.25 which this respondent had against the said complainant and which said account had accumulated over a period of several years, and an additional \$1651.75 for services rendered and to be rendered the complainant in and about the settlement and adjustment of his said indebtedness to the said First Joint Stock Land Bank, which said sum of \$1651.75 was then and there agreed upon by the said complainant and this respondent as and to be the full fee for services to be rendered by this respondent to the complainant in and about the said matters, save and except only that the said \$1651.75 should not include any expenses and money expended by respondent in and about the same for expenses or otherwise, nor the preparation of abstract nor the opinion on title necessary in the borrowing of money by the complainant in the said transaction, but which charges for abstract and opinion and expenses and money expended by respondent should be in addition to the said agreed fees in settlement for services, and not to form a part thereof, and the said complainant and this respondent did agree that there was due to this respondent at the said time for services rendered prior to the commencement of the transaction then under consideration the sum of \$848.25. And this respondent further stated to the complainant that if complainant wanted the said lands he would give him an option to purchase the same at any time within twelve months for the said purchase price, namely, \$4500.00, plus 8% interest thereon, plus taxes on the said land; that the said complainant, after considering the same for several days, came back to the respondent and accepted the said proposal of sale. That at the time respondent proposed to purchase the land involved in this suit, he suggested to the complainant that he sell the said Martin place with the lands adjoining, making a total of 575 acres, to John N. Standard, and that at the time complainant accepted respondent's proposal to purchase the land involved in this suit, he reported to this respondent that he had sold the said Martin place with the lands adjoining as aforesaid to John N. Standard for the sum of \$7,000.00, to be paid \$2500.00 in settlement of an account owing by him to John N. Standard and \$4500.00 cash. That thereafter and thereupon the said complainant caused

this respondent to draft the deed referred to as Exhibit "A" to the bill of complaint, conveying the lands involved in this suit to respondent, and to draft an option from this respondent to the complainant giving him one year in which to purchase the property upon the terms stated above, a copy of which said option is attached to complainant's bill of complaint, marked Exhibit "B", and at the same time a letter placing the said deed and the said option in escrow with one J. P. Beebe, instructing the said J. P. Beebe to hold the said deed and option and to deliver them upon the payment of the said \$2,000.00 and upon the delivery to him of a receipted bill for the said accounts, a copy of which said letter is hereto attached, marked Exhibit "A" and made a part of this answer.

That at the same time of the drafting of said papers, the said complainant caused this respondent to draft a deed from him to John N. Standard, conveying the said Martin place and the said adjoining lands, and to draft an option from the said John N. Standard to him, giving him two years in which to purchase the said property upon similar terms and conditions, and at the same time a letter from him to Beebe & Hall, placing the two said papers in escrow to be delivered at the time and in the manner described in the said letter.

Respondent further says that to raise the cash consideration to be paid by him for the said lands involved in this suit, he made an application to the Federal Land Bank of New Orleans for a loan on said properties. That the application was made by him for and on his behalf and was not made on behalf of the complainant, and the complainant did not pay the fees, but that respondent paid all fees required with the said application. That the said John N. Standard made an application to the Federal Land Bank of New Orleans for a loan to raise the cash part of his purchase money, and that his loan was approved for \$3400.00, and he being unable to raise additional money, the complainant agreed with him to sell him said property at \$5900.00, \$2500.00 payable as aforesaid on account, and \$3400.00 in cash. That a new option for the reduced amount was made between complainant and Standard, a copy of which said agreement and

the original of said letter being hereto attached, marked Exhibits "C" and "D" and made a part of this answer. That the respondent's application to the Federal Land Bank was rejected in its entirety. That thereafter he borrowed from J. Hamilton Smith and Hector A. Smith the sum of \$1500.00, and through the collection of fees in his office, raised the additional \$500.00; that on, at and before the expiration of the ninety days for the closing of said deal, as set out in said escrow letter, this respondent was ready, able and willing to pay over said \$2,000.00 in cash and to cancel said accounts, but that said sum was insufficient to pay said mortgage and taxes, and complainant had not and was unable to pay the same and caused the same to be cancelled, but had loans and sales in process of closing for sums sufficient therefor, and the checks to pay said mortgage were finally delivered to the First Joint Stock Land Bank on the 17th day of January and cleared on or about February 10, 1934, and on said day the said mortgage to the First Joint Stock Land Bank was cancelled and said taxes paid on February 6, 1934, so that on February 7, 1934, respondent consummated the purchase of the said property from the said complainant for and at the sum of \$4500.00, paying him therefor the sum of \$2,000.00 in cash and delivering to complainant's said agent, J. P. Beebe, a receipted bill for the aforesaid services in the sum of \$2500.00, a copy of which receipted bill being hereto attached, marked Exhibit "E" and made a part of this answer, and the said account against the said McMillan was then and there fully paid and satisfied, and this respondent paid him as aforesaid the additional sum of \$2,000.00. That the said transaction was in no way considered or intended by respondent or by the complainant as a loan to him, but was intended by both said parties and was a sale of the said lands by the complainant to this respondent for the consideration as aforesaid, payable as aforesaid. That no note or evidence of debt was given by the complainant to the respondent to evidence the said \$4500.00, or any part thereof, nor did the said complainant agree at any time to pay the said respondent the said \$4500.00, or any part thereof. That under the said agreement and deed and under the said option attached to complainant's bill as

Exhibit "B" it was fully understood and agreed by and between the parties and was the intent by said agreement and said papers that the complainant should have only an option to purchase the said property within the said time, but that he was not bound thereby to purchase the same, nor bound in any manner to pay or repay this respondent any part of the funds or account making up the purchase price of the said property. That the applications by the complainant for loans as aforesaid were finally approved by the Home Owners' Loan Corporation for \$5750.00 and the Federal Land Bank for \$5,000.00. Respondent negotiated an additional loan of \$1,000.00 for complainant from J. Hamilton Smith and Hector A. Smith on said 180 acres in said Section 27, Township 1 South, Range 2 East; and that through the said loans to complainant and through the sales to respondent and Standard and through and by the said efforts of respondent, the complainant was able to settle and adjust his said indebtedness to the First Joint Stock Land Bank, and to save his home, the net saving to complainant being over \$25,000.00. That in and about the services rendered by this respondent to the said complainant in procuring the reduction in his obligation to the First Joint Stock Land Bank and re-financing the same, this respondent was required to make numerous trips to Mobile, Montgomery and New Orleans, and was required to be out of his office 24½ full days, and in addition thereto had numerous and lengthy correspondence with the parties and institutions dealt with, and in addition thereto had innumerable and almost daily conferences in his office with complainant relative to the transaction, so that the same consumed practically all of respondent's time commencing in August, 1933, and ending in February, 1934, and during which time respondent, because of the urgency of the complainant's financial condition and respondent's extreme desire to serve the complainant, practically abandoned all other work in his office and devoted almost his entire time to the said affairs of the said complainant.

Respondent further alleges that at the time of the exe-