cution and delivery of the said deed and of the said option to purchase the said property, and the payment of the said $2,000.00 by this respondent to the said complainant, and of the payment by the complainant as a part of the purchase money for the said land of his said account in the sum of $2500.00, and of the receipt and cancellation by this respondent of the said account, neither the complainant and respondent, nor either of them, considered or intended the said transaction and the said instruments to be a mortgage or in any manner security for a debt; and at no time thereafter, until within the last few days, has the said complainant considered or intended the said papers to be the security for a debt, or that the said complainant was in any way liable to this respondent for the said $2,000.00 or for the said paid, cancelled and receipted account; and that at no time were the said deed and option intended by either the complainantand respondent to be a mortgage or in any manner security for a debt.

That the complainant, only after having failed or refused to purchase the said property, and until the time was practically out for purchasing the same, and after he had been to numerous persons to procure the money to purchase the said property and had been unable to do so, not until then did he ever conceive or intend that the said papers should be a mortgage or security for a debt, or that there was any debt owing in the matter, and such claim at this time is an after-thought and a subterfuge whereby complainant hopes to obtain an extension of the option to purchase said property, in the vain hope that said property will increase in value and he be able to sell the same at a profit, he well knowing that said property would not bring the option price on to-day's market.

Respondent further alleges that the complainant is not in possession of the said property in his own right, but that subsequent to the said conveyance and after the possession of the said property was delivered to the respondent, the same being de-

livered to him on February 7, 1934, and in the latter part of February or the first of March, the complainant came to respondent and offered to lease first the cleared lands and houses on the said property for and at the agreed rental of $250.00 for the crop year 1934. Respondent agreed to the said proposal and rented the said cleared lands and houses on the said property to the complainant for the crop year 1934, for and at the said agreed rental, and placed the complainant in possession of the said property as his tenant, and thereafter on or about the first part of March, 1934, the complainant came to respondent and wanted to rent the pine timber on the said lands for turpentine purposes for the year 1934, and offered him therefor 20% of the gross amount of all naval stores product taken from the trees on the said land during the said period, the same to be set aside and delivered to this respondent upon each shipment of naval stores product taken therefrom, and that this respondent agreed to the said proposal and rented the said pine trees on the said lands to the complainant under the said terms, and the complainant went into possession of the same under the said lease, and the complainant's possession now of any part of the said properties, as he well knows, the allegations in his said complaint to the contrary notwithstanding, is as a tenant of this respondent; and respondent further alleges that the complainant has not paid this respondent any part of the said agreed rentals and that the same is owing and unpaid.

Respondent further alleges that in the summer of 1934 he sold pulp wood on a part of said lands to complainant at 50 cents a cord and complainant paid him for nearly 300 cords of wood therefrom.

Respondent further alleges that each of the aforesaid papers, namely, the deed from complainant and his wife to this respondent, and the option from this respondent and his wife to the complainant, and the letter placing the said instruments in

escrow, and also the deed from the said complainant and his wife to John N. Standard, and the option from John N. Standard to him, and the letter placing the said papers in escrow, were dictated in the presence of the complainant, were read over by him, and that he fully understood the text, the meaning and legal effect of the same, and the same were discussed between this respondent, the complainant and the said John N. Standard, and it was fully explained and he fully understood and agreed and intended that the said conveyances were absolute conveyances, without any right or obligation on complainant's part to repay the said accounts and moneys and with only the right to him within the times specified to purchase the said properties under the said options.

That since the execution and delivery of the said papers, namely, February 7, 1934, at numerous times and occasions, this respondent has called the complainant's attention to the fact that the time was drawing near and urged him, if he wanted the property, to raise the money and purchase it, advising him on each and every occasion that his rights to purchase the property completely expired on October 17, 1934. Complainant on each of the said several occasions fully conceded the same and stated to this respondent that he had made arrangements to raise the money to purchase the property. What went with such arrangements, if they ever existed, respondent does not know.

Respondent further says that this respondent did not at the time of the execution and delivery of the said deed and option agreement, or at any time thereafter or before then, agree that complainant should have the right to redeem the said lands out of the proceeds of any sale of land when made, the full agreement being expressed in the said option giving the said complainant the right to purchase the said property within a specified time, it being immaterial to respondent as to where or how he should procure the funds.

Respondent further denies that the said property was

or is of the approximate value of $10,000.00, but alleges that at the time of his purchase, namely, October 17, 1933, and at the time of the delivery of the said deed, namely, February 7, 1934, the reasonable market value of the said property did not exceed the purchase price paid by this respondent to the said complainant, namely, $4500.00, and respondent further alleges that the said property has not increased in value, but has rather decreased in value owing to the turpentine operations of the complainant, for which he has not paid, and owing to his failure to cultivate the land rented by him in a husbandlike manner.

This respondent further says that he has at no time recognized the security quality of said deed, nor recognized complainant's alleged essential ownership of the lands, nor has he agreed at any time to an extension of the option to purchase, nor has he agreed to the substitution of other lands for the lands involved, but says that the fact is that he has always, at all times, maintained his absolute ownership of said property, and until recently the complainant has conceded that he, the respondent, is the owner absolute of said property, subject only to complainant's right to purchase the same as aforesaid.

Fifth: Further answering said bill of complaint and every allegation therein made, respondent says that it was not the intent of the parties thereto that said deed and option should be a mortgage or in any manner security for a debt, but that the parties to the said deed of conveyance, the complainant and respondent, intended an absolute sale of said property to the respondent at an agreed price of $4500.00, being the reasonable value of said property, in payment of an antecedent debt in the sum of $848.25, and in payment of agreed fees of $1651.75 for services performed and to be performed by respondent for complainant at his request, and the balance thereof, viz., the sum of $2,000.00, to be paid in cash by respondent to complainant, with the right to complainant to purchase said property within a specified time, which said antecedent obligation in the sum of $848.25

was thereby cancelled, receipted and complainant fully discharged therefrom, and which said services were fully performed and the agreed fee therefor, viz., $1651.75, was fully paid and receipted and complainant fully discharged therefrom, and which said $2,000.00 of cash was paid by respondent to complainant, and complainant was not thereby obligated to repay said $2,000.00 or to in any manner to be liable therefor, or to pay either of said accounts, but it was wholly optional with complainant whether he would or would not purchase said property.

Respondent further alleges that complainant has failed or refused to exercise said option to purchase the said property and that such option expired on the 17th of October, 1934, and complainant has no right, title, claim or demand in or to or against said property, and no further right or option to purchase the same.

Seventh: Respondent, further answering said complaint, denies any and all allegations in the said bill of complaint not herein specifically admitted, and having fully answered, the respondent prays he may go hence with his reasonable costs.

W C Beebe

Respondent.

Comes The respondent in the above styled cause and refiles this answer to the bill as amended and inserts the word "eighth" between the word "seventh" and the word "and" in the second line of paragraph fourth, and further answering paragraph "eighth" of said amended bill says the matters therein alleged are untrue. This July 6th, 1935

W C Beebe

Respondent.

EXHIBIT "A"

October 17, 1933.

Mr. J. P. Beebe,
Bay Minette, Alabama.

Dear Sir:-

I hand you herewith a deed from me and wife to W. C. Beebe, a more particular description of which is set out in said deed. The said lands are mortgaged to the First Joint Stock Land Bank. I am to pay off the said mortgage and pay taxes thereon within ninety days.

W. C. Beebe is to pay me for the said lands the sum of $4500.00, payable $2500.00 for an account owing from me to him, and $2,000.00 in cash. If he shall pay the said cash and cancel the said account within ninety days, you will deliver this deed to him. If he shall fail to pay the said cash and receipt the said account within ninety days, then you will return the deed to me. Provided, however, that if his failure to pay the said cash and cancel the said account within the said time shall be due to my failure to pay off said mortgage and taxes, then the said W. C. Beebe shall use the said money to pay off the said mortgage and taxes, whereupon, upon delivering to you a receipted bill, you will deliver the said deed to him, and if the said money shall not be sufficient to pay the said mortgage and taxes, you will hold this deed until such time as I shall clear the said land from mortgage and taxes, and upon demand, he shall pay the said money and cancel the said account, or upon his failure, you will deliver the deed to me.

Yours very truly,

(Signed) J. W. McMillan.

EXHIBIT "B"

Jan. 17, 1934

J. W. McMillan

In Account with

W. C. Beebe

To old accounts as per books	$848.25
To service in matter of settlement of mortgage to J. St. L. Bk.	1651.75
	$2500.00

Paid in full by conveyance
of land dated October 17, 1934.

W. C. Beebe.

Delivered Feby. 7, 1934
W. C. Beebe.

EXHIBIT "C"

STATE OF ALABAMA.
BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS, that JOHN N. STANDARD, single, first party, in consideration of the sum of FIVE DOLLARS ($5.00) to him in hand paid by J.W. McMillan, second party, the receipt of which is hereby acknowledged, does hereby give and grant unto the said second party, for a period of two (2) years from date, the right and option to purchase at the price and under the conditions herein set forth, the following described lands situated in Baldwin County, Alabama, to-wit:

That part of the Joshua Kennedy Grant, Section 47, Township 2 South of Range 2 East, which lies in and would be the South half of the North hald, the South half of the Northwest quarter of regular Government Section 10, Township 2 South of Range 2 East; and all that portion of said grant which would be that part of the North half of the Southwest quarter and the Northwest quarter of the Southeast quarter of regular Government Section 10, Township 2 South of Range 2 East, lying West of the public road leading from Carpenter Station to Stockton, in Baldwin County, Alabama, as now located, containing 240 acres, more or less; and also all that part of the Robert Wolfington Grant, Section 4, Township 2 South of Range 2 East, South of Seabury Creek which lies in and would be the North half of the North half of regular Government Section 10, Township 2 South of Range 2 East, and that part of regular Government Section 3, South of Seabury Creek in regular Government Section 3, Township 2 South, Range 2 East, containing in all 334 acres, more or less, said total acreage of said two tracts being 574 acres, more or less.

The purchase price to be paid to first party by second party, in the event he purchase said lands hereunder, shall be Fifty-nine Hundred Dollars ($5900.00), with interest thereon, plus taxes paid by first party, together with 8% interest thereon from date, payable in cash; whereupon first party will execute and deliver to second party a statutory warranty deed conveying said lands.

This option is not transferable without the written consent of the first party.

IN WITNESS WHEREOF, first party has hereunto set his hand and seal, this the _____ day of _____, 19___.

_____(SEAL)

STATE OF ALABAMA.
BALDWIN COUNTY.

I, _____, a Notary Public in and for said County, in said State, hereby certify that John N. Standard, single, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the _____ day of _____, 19___.

_____
Notary Public, Baldwin County, Alabama.

Signed by John N. Standard
Acknowledged before N.P.
Baldwin County, Ala.

BEEBE & HALL
LAWYERS
BAY MINETTE, ALA.

W. C. BEEBE
H. M. HALL
J. P. BEEBE

EXHIBIT "D"

October 17, 1933.

Messrs. Beebe & Hall,
Bay Minette, Alabama.

Gentlemen:-

I hand you herewith a deed from me and wife to John N. Standard, conveying 574 acres in Sections 10 and 3, Township 2 South, Range 2 East, more particularly described in said deed. This land is mortgaged to the First Joint Stock Land Bank. Within ninety days I am to pay off the said mortgage and to pay all taxes due on said lands.

John N. Standard is to pay me for the said lands $7,000.00, payable $2500.00 on an account owing from me to him; within ninety days from date he is to pay over the sum of $4500.00 in cash and cancel and give you a receipted bill for the said account. Said cash money will be used by me to pay off said mortgage and taxes.

If the said John N. Standard shall fail or refuse within the said ninety days to pay the said $4500.00 and cancel and receipt the said bill, then you will return this deed to me. If he pay the said money and receipt the said bill, you will deliver the deed to him. Provided, however, that if his failure to pay over the said money and receipt the said bill shall be due to my failure to pay off said mortgage and taxes, then the said John N. Standard may use the said $4500.00 to pay off and cancel the said mortgage and taxes. If the said money shall not be sufficient to pay off said mortgage and taxes, then you will hold said deed until such time as I shall pay off and retire the said mortgage and taxes.

Yours very truly,

J. W. McMillan

J. WALLACE McMILLAN,
COMPLAINANT,
VS
JOHN N. STANDARD,
RESPONDENT.

CIRCUIT COURT; BALDWIN COUNTY.
EQUITY. NUMBER 130.

Complainant amends his bill of complaint heretofore filed in this cause to read as follows:

"TO THE HONORABLE F. W. HARE, JUDGE:

Humbly complaining, your Orator, J. Wallace McMillan, as complainant, brings this bill of complaint against John N. Standard, as respondent and respectfully shows:

FIRST.

Complainant and respondent are both over the age of twenty-one years and reside in Baldwin County, Alabama.

SECOND.

Complainant has been engaged in business in Baldwin County, Alabama for many years and through his business operations has accumulated about eleven thousand acres of land in said county including that hereinafter described or referred to. At and for a long time prior to the execution of the deed to respondent hereinafter referred to, complainant's physical condition was so impaired that he was unable to devote his time andpersonal attention or a considerable portion thereof to his business and respondent was during all that time complainant's trusted employee, had full and complete knowledge and control of all complainant's business records and accounts including his own account with the complainant and complainant entrusted the handling of these to him because complainant's condition was such that he could not exercise personal supervision and control.

THIRD.

During the year 1933 and before the document hereinafter referred to as Exhibit "A" was executed it became necessary or complainant thought it was necessary to negotiate a loan for a considerable amount with the Federal Land Bank at New Orleans and

he was advised by his then attorney, one W. C. Beebe of Bay Minette, Alabama, that the amount for which the loan was sought was so large it could not be effected in one application and suggested that three applications by three different persons be made and further advised that complainant convey part of his land to him and part to another. Complainant at the time was indebted in some amount to his said attorney and thought he was indebted to the respondent herein for a samll sum; Respondent then had complainant's books and records in his physical possession and the exact amount of complainant's indebtedness to respondent, if any, was not known to complainant but the respondent represented it to be $2500.00 and as he then had possession of the records complainant did not undertake to check the amount partly because of his physical condition and partly for the reasons hereinafter stated and he did not undertake to check the records of the account but trusted the statements and representations made by respondent and also trusted in his good faith and promises in the premises.

FOURTH.

Under conditions hereinabove and hereinafter stated complainant made a deed covering certain of his lands not involved in these proceedings to the said W. C. Beebe and also made a deed to the respondent to cover other lands which are involved in this proceeding and which are particularly described in Exhibit "A" hereto attached and in this way the three loans were procured but before the deeds were made it was agreed among complainant, said W. C. Beebe and the respondent that after the loans were consummated the lands so conveyed to the said Beebe and respondent would be reconveyed by them to the complainant or would be sold for the benefit of complainant and that out of the proceeds of such sale complainant would pay his indebtedness to the said Beebe and his indebtedness to the respondent, if any, all of which proceeds and intentions were fully explained to the official connected with the Federal Land Bank through whom the loan to the respondent was made and was agreed to by him.

FIFTH.

Pursuant to the foregoing complainant's said attorney prepared a deed to himself covering certain lands of complainant and prepared a deed to respondent, a copy of which is attached as Exhibit "A" to the original bill of complaint, is now referred to and by reference made a part of this bill of complaint, and at the same time drew an agreement for reconveyance to complainant, a copy of which is hereto attached and marked exhibit "B", and complainant and complainantés wife signed these documents in the attorney's office and left them there. The deed, Exhibit "A" was either delivered to the respondent and by him recorded or was recorded by the attorney and an agreement for reconveyance, a copy of which is hereto attached and named Exhibit "B" was left in the attorney's office execution by the respondent herein. None of the papers were ever delivered to complainant and if they had been so delivered complainant was in no fit condition to understand them, all of which facts were known to the respondent.

SIXTH.

Complainant further alleges that the idea that he owed respondent was based on statements and representations made to complainant by respondent; Complainant depended wholly as to his indebtedness and the amount thereof on statements and representations made by respondent, all of which facts were known to respondent and it was also known to him that complainant was not in condition to check the accounts and had full and implicit confidence in the integrity and fairneds of the respondent and in the truth of his statements and representations and that complainant was executing the deed on these representations and on the promises made by the respondent.

SEVENTH.

Complainant further alleges that since the happening of the matters and things hereinabove alleged complainant has with much difficulty been able to get back from respondent his books and records and has had them checked and he finds and now alleges that at the time he executed the document Exhibit "A" he was not andis not now

indebted to respondent in the amount of $2500.00 or any appreciable part of that sum and he therefore alleges that the representations by the respondent that complainant was so indebted to him are untrue and that the respondent knew they were untrue and the respondent procured the said deed through fraudulent representations, that the deed is without consideration and should be cancelled. Complainant offers to do equity and if it should be determined after a hearing that complainant is indebted to the respondent complainant offers to pay whatever amount it shall be determined he is so indebted.

THE PREMISES CONSIDERED, complainant prays that your Honor will take jurisdiction of the cause made by this bill of complaint and that by proper process issue to him from this court the said Hohn N. Standard be made a party respondent hereto and be required to answer the charges herein made in all things as required by the rules and practices of this court.

Complainant further prays that Your Honor will upon the hearing of this cause order, adjudge and decree that the said deed, a copy of which is hereto attached as Exhibit "A", was procured by fraud, was without consideration and that the same be cancelled; or, if it should be ascertained that complainant was and is indebted to the said respondent, Your Honor will by proper order ascertain and determine the amount of such indebtedness and complainant agrees to pay the amount so determined.

Complainant further prays in the alternity that if it be determined that complainant is indebted to the respondent and complainant does not pay the amount so determined within the time required by decree of this court, the document copy of which is attached as Exhibit "A" be declared a mortgage to secure the indebtedness so found to be due and be foreclosed for the satisfaction of whatever amount it shall be determined complainant is indebted to the respondent.

Complainant prays for such other, further and different

relief as in equity and good conscience may be due him in the premises.

B. F. McMillan, Jr.

SOLICITOR FOR COMPLAINANT.

FOOT NOTE: The respondent is required to answer each and every allegation and paragraph of the foregoing bill of complaint, but his oath thereto is hereby expressly waived.

B. F. McMillan, Jr.

SOLICITOR FOR COMPLAINANT

Complainant demands a jury to ascertain and determine in what amount, if any, complainant was indebted to the respondent at the time the instrument, copy of which is attached to the bill of complaint as Exhibit "A", was executed and delivered, and suggest that the trial on said issue be had before a regular jury at the next jury term of the Court.

B. F. McMillan, Jr.

SOLICITOR FOR COMPLAINANT.

STATE OF ALABAMA.

BALDWIN COUNTY.

KNOW ALL MEN BY THESE PRESENTS, that we, JOHN WALLACE McMILLAN and ALLENE K. McMILLAN, his wife, for and in consideration of the sum of ONE DOLLAR ($1.00) and other good and valuable considerations to us in hand paid by JOHN N. STANDARD, the receipt of which is hereby acknowledged, do GRANT, BARGAIN, SELL and CONVEY unto the said JOHN N. STANDARD, all the following described real property situated in the Couty of Baldwin, State of Alabama, to-wit:

> That part of the Joshua Kennedy Grant, Section 47, Township 2 South of Range 2 East, which lies in and would be the South half of the North half, the South half of the Northwest Quarter of Regular Government Section 10, Township 2 South, Range 2 East; and all that portion of said grant which would be that part of the North half of the Southwest quarter and the Northwest qurter of the Southeast quarter of regular Government Section 10, Township 2 South, Range 2 East, lying West of the public road leading from Carpenter Station to Stockton, in Baldwin County, Alabama, as now located, containing 240 acres, more or less; and also all that part of the Robert Wolfington Grant, Section 4, Township 2 South, Range 2 East South of Seabury Creek which lies in and would be the North half of the North half of regular Government Section 10, Township 2 South of Range 2 East, and that part of regular Government Section 3 South of Seabury Creek in regular Government Section 3, Township 2 South, Range 2 East, containing in all 334 acres, more or less, said total acreage of said two tracts being 574 acres, more or less.

TOGETHER WITH, all and singular, the rights, members, privileges, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD unto the said JOHN N. STANDARD, his heirs and assigns, forever. And we do for ourselves, our heirs, executors and administrators, covenant with the said JOHN N. STANDARD, his heirs and assigns, that we are lawfully seized in fee simple of said premises; that they are free from all incumbrances and that we have a good right to sell and convey the same as aforesaid; that we will and our heirs, executors and administrators shall warrant and defend the same to the said JOHN N. STANDARD, his heirs and assigns, forever, against the lawful claims of all persons whomsoever.

Twelve 50¢ U. S. I. R. stamps attached,
cancelled JWM.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, on this the 17 day of October, 1933.

J. W. McMillan (SEAL)

Allene K. McMillan (SEAL)

STATE OF ALABAMA.

BALDWIN COUNTY.

I, W. C. Beebe, a Notary Public in and for said County, in said State, hereby certify that John Wallace McMillan and Allene K. McMillan, his wife, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day th t, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

And I do further certify that on the 17th day of October, 1933, came before me the within named Allene K. McMillan, known to me to be the wife of the within named John Wallace McMillan, and who being examined separate and apart from her husband touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord and without fear, constaints or threats on the part of her husband.

Given under my hand and seal this he 17th day of October, 1933.

W. C. Beebe
Notary Public, Baldwin County,
Alabama.

Notorial Seal.

STATE OF ALABAMA.

BALDWIN COUNTY.

KNOWN ALL MEN BY THESE PRESENTS, that JOHN N. STANDARD, single, first part, in consideration of the sum of FIVE DOLLARS, ($5.00) to him in hand paid by J. W. McMILLAN, second party, the receipt of which is hereby acknowledged, does hereby give and grant unto the said second party, for a period of two (2) years from date, the right and option to purchase at the price and under the conditions herein set forth, the following described lands situated in Baldwin County, Alabama, to-wit:

That part of the Joshua Kennedy Grant, Section 47, Township 2 South of Range 2 East, which lies in and would be the South half of the North half, the South half of the Northwest quarter of regular Government Section 10, Township 2 Soth of Range 2 East; and all that portion of said grant which would be that part of the North half of the Southwest quarter and the Northwest quarter of the Southeast quarter of regular Government Section 10, Township 2 South of Range 2 East, lying West of the public road leading from Carpenter Station to Stockton, in Baldwin County, Alabama, as now located, containing 240 acres, more or less; and also all that part of the Robert Wolfington Grant, Section 4, Township 2 South of Range 2 East, South of Seabury Creek which lies in and would be the North half of the North half of regular Government Section 10, Township 2 South of Range 2 East, and that part of regular Government Section 3, South of Seabury Creek in regular Government Section 3, Township 2 South, Range 2 East, containing in all 334 acres, more or less, said total acreage of said two tracts being 574 acres, more or less.

The purchase price to be paid to first party by second party in the event he purchase said lands hereunder, shall be Fifty-Nine Hundred Dollars ($5900.00), with interest thereon, plus taxes paid by first party, together with 8% interest thereon from date, payable in cash; whereupon first party will execute and deliver to second party a statutory warranty deed conveying said lands.

This option is not transferable without the written consent of the first party.

IN WITNESS WHEREOF, first party has hereunto set his hand and seal this the 17th day of October, 1933.

J. N. STANDARD. (SEAL)

STATE OF ALABAMA,
BALDWIN COUNTY.

I, W. C. Beebe, a Notary Public in and for said County, in said State, hereby certify that John N. Standard, single, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 17th day of October, 1933.

W. C. BEEBE. (SEAL)
Notary Public, Baldwin County, Alabama.

STATE OF ALABAMA
BALDWIN COUNTY

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY. NO. 130.

I, Robert S. Duck, Register of the Circuit Court for Baldwin County, Alabama, do hereby certify that the foregoing Amended Bill of Complaint, consisting of eight pages, contain a true and complete copy of the Amended Bill of Complaint filed on August 31, 1935, in a certain cause pending in the Circuit Court in Equity for the County aforesaid wherein J. Wallace McMillan is Complainant, and John N. Standard, Respondent, being Case Number 130, as the same remains of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 27th day of August, 1937.

R S Duck
Register.

CERTIFIED COPY OF AMENDED BILL OF COMPLAINT FILED ON AUGUST 31, 1935.

4

J. WALLACE McMILLAN,

Complainant,

VS.

JOHN N. STANDARD,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO.130.

NE

J. WALLACE McMILLAN,

Complainant,

VS.

JOHN N. STANDARD,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 130.

APPEAL.

Now comes John N. Standard, the Respondent in the above entitled cause, by his Attorney, and appeals to the Supreme Court of the State of Alabama from the Decree of the Circuit Court of Baldwin County, Alabama rendered on February 1, 1938 overruling Respondent's Demurrer to Amended Bill of Complaint in this cause.

J. B. Blackburn

Solicitor for Respondent.

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

SECURITY FOR COSTS ON APPEAL.

We, John N. Standard, as Principal, and E. Davidson and J. C. McDavid, as Sureties, do hereby acknowledge ourselves security for all costs of the appeal taken to the Supreme Court by the said John N. Standard from the Decree rendered in said cause on February 1st, 1938, overruling Respondent's Demurrer to Amended Bill of Complaint in said cause.

Dated this 22nd day of February, 1938.

John N. Standard

E. Davidson

J. C. McDavid

Taken and approved on this the 28 day of February, 1938.

R. S. Deas

Register in Chancery, Baldwin County, Alabama.

J. W. McMILLAN, Complainant,	IN THE CIRCUIT COURT OF
VS.	BALDWIN COUNTY, ALABAMA.
JOHN N. STANDARD, Respondent.	IN EQUITY. NO. 130.

DEMURRER TO BILL AS LAST AMENDED.
(Amendment filed August 18, 1937)

I. Comes the Respondent in the above entitled cause and demurs to the Bill of Complaint in said cause as last amended and as grounds therefor assigns separately and severally the following:

1. There is no equity in the bill.

2. Complainant does not offer to do equity.

3. The allegations of fraud and misrepresentation as contained in the Bill of Complaint as last amended are conclusions of the pleader.

4. No facts are alleged to show the fraud and misrepresentation referred to by the complainant in his bill as last amended.

5. It does not allege any facts to show that complainant's alleged illness was such as to destroy or affect his mental capacity.

6. No facts are alleged to show that the alleged illness of the defendant was such as to destroy his free agency.

7. No facts are alleged to show the consideration for the deed as described in the Bill of Complaint as last amended and when or how it was to be paid.

8. Because complainant's allegations to show that fraud and misrepresentation existed are based on information only.

9. Complainant does not state that he has actual knowledge that fraud and misrepresentation existed.

10. No facts are alleged to show that there was a valid agreement between the complainant and respondent as to the amount to be paid by the respondent to the complainant as and for the purchase price of said land.

11. It affirmatively appears from said Bill of Complaint that the legal title to the said land is in the Federal Land Bank.

12. It affirmatively appears from said Bill of Complaint that the Respondent is the owner of an equity of redemption in the said land and not the owner of the fee simple title thereto.

13. For aught that appears in the said Bill of Complaint, complainant has an adequate remedy at law.

14. It affirmatively appears from said Bill of Complaint that there is a non-joinder of parties respondent.

15. It affirmatively appears from the said amended Bill of Complaint that the Complainant does not rescind or disaffirm the contract in toto.

16. No facts are alleged to show the consideration for the deed described in the Bill of Complaint as last amended or when or how this consideration was to be paid.

17. The allegations of the said amended bill are vague, indefinite and uncertain and do not sufficiently inform the Respondent of the issues which he is called upon to meet.

18. No facts are alleged to show that there was a valid agreement between the Complainant and the Respondent as to the amount to be paid by the Respondent to the Complainant as and for the purchase price of said land.

II. Comes the Respondent in the above entitled cause and demurs to each paragraph of the Bill of Complaint as last amended separately and severally, and as grounds therefor assigns separately and severally the following:

1. There is no equity in the bill.

2. Complainant does not offer to do equity.

3. The allegations of fraud and misrepresentation as contained in the Bill of Complaint as last amended are conclusions of the pleader.

4. No facts are alleged to show the fraud and misrepresentation referred to by the Complainant in his bill as last amended.

5. It does not allege any facts to show that Complainant's alleged illness was such as to destroy or affect his mental capacity.

6. No facts are alleged to show that the alleged illness of the defendant was such as to destroy his free agency.

7. No facts are alleged to show the consideration for the deed as described in the Bill of Complaint as last amended and when or how it was to be paid.

8. Because Complainant's allegations to show that fraud and misrepresentation existed are based on information only.

9. Complainant does not state that he has actual knowledge that fraud and misrepresentation existed.

10. No facts are alleged to show that there was a valid agreement between the Complainant and Respondent as to the amount to be paid by the Respondent to the Complainant as and for the purchase price of said land.

11. It affirmatively appears from said Bill of Complaint that the legal title to the said land is in the Federal Land Bank.

12. It affirmatively appears from said Bill of Complaint that Respondent is the owner of an equity of redemption in the said land and not the owner of the fee simple title thereto.

13. For aught that appears in the said Bill of Complaint, complainant has an adequate remedy at law.

14. It affirmatively appears from said Bill of Complaint that there is a non-joinder of parties respondent.

15. It affirmatively appears from the said amended Bill of Complaint that the Complainant does not rescind or disaffirm the contract in toto.

16. No facts are alleged to show the consideration for the deed described in the Bill of Complaint as last amended or when or how this consideration was to be paid.

17. The allegations of the said amended bill are vague, indefinite and uncertain and do not sufficiently inform the Respondent of the issues which he is called upon to meet.

18. No facts are alleged to show that there was a valid agreement between the Complainant and the Respondent as to the amount to be paid by the Respondent to the Complainant as and for the purchase price of said land.

J. TB. Blackburn

Solicitor for Respondent.

McMILLAN & ALDRIDGE
ATTORNEYS AT LAW
803-806 VAN ANTWERP BUILDING
MOBILE, ALABAMA

BENJ. F. McMILLAN, JR.
HENRI M. ALDRIDGE

December 15, 1937

Honorable F. W. Hare,
Monroeville, Alabama.

Dear Judge: McMILLAN VS. STANDARD.

Mr. Blackburn has today sent me copy of a brief, the original of which he says he mailed to you on yesterday. I sent you my brief in the case a number of weeks ago and I suppose you have it before you. If you have not, I will of course send you a copy. After this length of time it may have gotten misplaced.

I have read Mr. Blackburn's copy but haven't yet studied it carefully. However, it doesn't seem to me that the points and authorities he cites are apt to the issues presented by this amended bill and his demurrers thereto.

It is but a platitude to say that he who seeks equity must do equity, that a deed is but an executed contract, and that a contract must be affirmed or disaffirmed in toto.

The Bill in its amended shape alleges that Complainant sold Respondent land and as part of the consideration gave him credit on the purchase price for an amount Respondent falsely and fraudulently represented that Complainant owed him, and that Complainant because of such false and fraudulent representation believing that he did owe him allowed the credit when as a matter of fact he owed him nothing. We respectfully submit that under such facts we have a right, when we find a statement to be false and fraudulent, to have the credit cancelled and recover the amount.

Fraud, of course, does render a contract voidable but it doesn't render it void except at the option of the wronged party and he, if he chooses, can treat the contract as valid and recover for the wrong. The principle is analogous to breach of warranty in a sale of personal property wherein the vendee has either of three rights:

(1). He can rescind sale and recover the amount he has paid; or,

(2). He can treat the sale as valid and recover the difference between the value of the property as delivered and what its value would have been if the article had been as represented; or,

(3). If he has already paid for the property he can rescind the sale and recover the entire amount.

Of course, to create a vendors lien there must be a definite debt, but the Complainant alleges a definite debt, viz: Twenty-five Hundred Dollars. However if he hadn't alleged a definite figure he could still proceed with this case and the Court could, by proper orders (by reference if necessary), ascertain and fix the definite amount.

Fraud may not in all cases be a distinctive ground for equitable jurisdiction but in this case with the other allegations of the amended bill equitable jurisdiction does attach. If a man sells land the purchase price for which is not fully paid, the seller can by proper proceedings have the Court fix an equitable lien on the land and if in this case the Complainant because of the Defendant's false and fraudulent representations, gave the latter credit for Twenty-five Hundred Dollars on the mistaken theory that he owed the Respondent that sum, such mistake being superinduced by the willful fraud of the Respondent himself, the result is that that Twenty-five Hundred Dollars has never in fact been paid. It is therefore the unpaid part of the purchase price and equity will attach an equitable lien to protect it. The fact that a receipt has been given means nothing for the consideration can always be inquired into.

Undue influence and sickness, if it is not such as to destroy the free will would not in all cases render a deed void but the principle doesn't apply when the mistake is brought about by the actual willful fraud of the party. In other words, if the relation of the parties was such as to justify Complainants reliance of the truth of Respondents statements, total destruction of free agency is not essential when that trust has been violated.

The principle involved in the last unit of Respondent's points and authorities has already been ruled on by this Court and it is unnecessary to refer to that in this reply.

In our original brief we submitted authorities which we respectfully submit sustain every statement we have made. We deem it unnecessary to attempt to answer that part of Respondent's brief dealing with the disaffirmance; on the other hand we are treating the sale as binding, but are simply trying to get the unpaid part of the purchase price and in such case the vendee has a perfect right to "hang on" to the benefits received under the contract, if any.

We discuss the case of Blackmon Vs. Quennelle, 189 Ala., 630, because Defendant seems to place his main reliance on the holding in that case. But we respectfully submit that the principles there announced are far from controlling the issues now presented. In the first place that was an action at law and the concluding paragraph of the opinion holds about as clearly as can be done, that if it had been in equity a different opinion would have been rendered. The facts in that case are:

Mrs. Blackmon sold Quennelle certain land with full warranty when as a matter of fact there were tax liens against it, and the suit was for breech of warranty; the defense was that

Quennelle and his lawyer fraudulently connived to conceal from Mrs. Blackmon the existance of these liens and the Court held that this could not be done in a Court of law. We respectfully submit that that holding has nothing to do with the present case. It is apparently cited to sustain the idea that as long as this Complainant treats the contract as outstanding he must be bound by every letter of the contract, and he cites this case at law, which after all holds nothing but that if a seller contracts land as free of all liens when in fact a tax lien exists the seller is not released from his warranty because he did not know and the purchaser did know a lien existed. This principle has nothing to do with the payment of the consideration. In our original brief we cited numerous cases wherein the deed was absolute on its face and recited payment of consideration in full but the Court held that notwithstanding such recital if the consideration had not in fact been paid, that fact could be shown and the payment would be secured by an equitable lien. Of course we have to go into equity to do this but we are in equity and present issues as far removed from the Blackmon case as the poles are wide apart.

Yours very truly,

McMILLAN & ALDRIDGE.

BY: B F McMillan Jr.

BFM/IS
(Encl.)

J. W. McMILLAN,	)	
Complainant,	(	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA.
JOHN N. STANDARD,	(	IN EQUITY. NO. 130.
Respondent.	)	

DECREE ON DEMURRERS:

This cause coming on for hearing, was submitted on Respondent's Demurrers to the Bill as last amended.

Said cause being argued by counsel, upon consideration of the Court, it is hereby ordered, adjudged and decreed that said demurrers be, and they hereby are, over-ruled. Respondent is allowed thirty days, from this date, in which to file his answer.

DATED this 1st day of February, 1938.

F. W. Hare

Judge.

original Duck

RECORDED

min. 2-341

J. W. McMILIAN,

Complainant,

vs.

JOHN N. STANDARD,

Respondent.

DECREE ON DEMURRERS:

Filed Feb. 2, 1938.

R. S. Duck

Register.

AGREEMENT TO ABRIDGE RECORD.

It is hereby agreed between B. F. McMillan, Jr., Solicitor for J. Wallace McMillan, Complainant, (Appellee), and J. B. Blackburn, Solicitor for John N. Standard, Respondent, (Appellant), as provided by Supreme Court Rule Number 28 (Code of 1923, Volume 4, Page 888) that the transcript in this cause which has been appealed to the Supreme Court of Alabama from the Circuit Court of Baldwin County, Alabama, Sitting in Equity, shall only contain the following:

1. A copy of this agreement.

2. The Amended Bill of Complaint filed in this cause on August 31, 1935, together with all exhibits thereto attached, being Exhibits "A" and "B" respectively.

3. The Amended Bill of Complaint filed in this cause on August 18, 1937.

4. Respondent's Demurrer filed on September 9, 1937 to the Amended Bill of Complaint filed on August 18, 1937.

5. Decree Overruling Respondent's Demurrer to Amended Bill of Complaint dated February 1, 1938.

6. Appeal and Security for Costs.

7. Citation on Appeal.

IT IS FURTHER AGREED that all other proceedings in the said cause be omitted from the transcript to be prepared in this appeal.

Executed in triplicate on this the 3 day of March, 1938.

B. F. McMillan, Jr.

Solicitor for Complainant. (Appellee).

J. B. Blackburn

Solicitor for Respondent. (Appellant)

Duck
7-404

RECORDED

AGREEMENT TO ABRIDGE RECORD.

J. WALLACE McMILLAN,

Complainant,

VS.

JOHN N. STANDARD,

Respondent.

Filed march 4, 1938.
R. S. Duck, Register

CITATION OF APPEAL Moore Ptg. Co.

The State of Alabama
Baldwin County

IN THE CHANCERY COURT OF BALDWIN COUNTY

To J. WALLACE McMILLAN :

Or To B. F. McMILLAN, JR., , Solicitors of record.

Whereas, on the 28th day of February, 1938, JOHN N. STANDARD, Respondent.

took an appeal from the decree rendered on the 1st day of February 1938, by the Circuit Court of said county, in the cause of J. WALLACE McMILLAN, Complainant,

versus

JOHN N. STANDARD, Respondent;

Now, therefore, you are cited to appear as required by law, before the Supreme Court of Alabama. to defend on said appeal, if you think proper so to do.

Witness my hand this 1st day of March 1938

Register in Chancery.

Service accepted and further notice waived this 3rd day of March, 1938

B. McMillan
Atty for appellee

RECORDED Dec 7.405

original

J. WALLACE McMILLAN Complainant

vs.

JOHN N. STANDARD. Respondent

CITATION OF APPEAL

IN EQUITY

Issued 1st day of March 1938

Moore Ptg. Co., Bay Minette

J. W. McMILLAN,		
Complainant,		IN THE CIRCUIT COURT OF
VS.		BALDWIN COUNTY, ALABAMA.
JOHN N. STANDARD,		IN EQUITY. NO. 130.
Respondent.		

INTERROGATORIES TO BE PROPOUNDED TO THE COMPLAINANT UNDER SECTION 7764 OF THE 1923 CODE OF ALABAMA.

No. 1. Did you on or about January 22, 1934, sign an original Creditor's Receipt, of which the following is a copy?

"CREDITOR'S RECEIPT

STATE OF Alabama |
|
COUNTY OF Baldwin|

AGREEMENT

WHEREAS John N. Standard, hereinafter called "debtor", is indebted to the undersigned in the sum of $3047.00 for Purchase price of Land (here briefly set out nature of indebtedness), same being or SECURED by- - - -not recorded in Records of Purchase of - - -Book, Page- - -Land- - - - - - - - - - County, State of - - - .

AND WHEREAS, The Federal Land Bank of New Orleans and or the Agent of the Land Bank Commissioner has loaned to debtor the moneys with which to pay said indebtedness upon the condition and agreement that said indebtedness would be reduced and scaled down and that the undersigned would accept from debtor a sum less than the amount due in full payment and satisfaction of said indebtedness.

NOW THEREFORE, the undersigned, for and in consideration of the above and in further consideration of the sum of $3047.00 in hand paid by debtor, receipt of which is acknowledged, does hereby accept said sum of $3047.00 in full and final payment and satisfaction of said indebtedness and or any other indebtedness owed by debtor to the undersigned. Undersigned further agrees not to collect, attempt to collect, or revive in any way any further part of said indebtedness, nor to take any new security therefor. Undersigned further avers and agrees that the security set out in first paragraph above has been satisfied of record, if recorded, and that there are no further liens or encumbrances securing this indebtedness.

WITNESS my hand on this the 22nd day of January 1934.

J. W. McMillan

WITNESS:
Chas. J. Ebert."

No. 2. If your answer to the above question is yes, what consideration was paid you at or about the time you signed the above instrument, and how was this consideration paid?

No. 3. How much money was paid you by the Federal Land Bank or John N. Standard in addition to the sum of $3047.00 referred to in the receipt mentioned above and explain when, how and by whom this payment was made?

No. 4. At or about the time the deed which is referred to as Exhibit "A" in your Last Amended Bill of Complaint was executed, did the Respondent, John N. Standard, execute and deliver a receipt to you or W. C. Beebe who delivered this receipt to you?

No. 5. Where is the receipt referred to in the foregoing question at this time?

No. 6. Attach the receipt referred to in the two foregoing questions to your original answers to these interrogatories.

No. 7. Explain in detail how the books and records which John N. Standard surrendered to you at the time he left your employ show that you were not indebted to John N. Standard in the sum of $2500.00, at the time you executed the deed attached to your Last Amended Bill of Complaint as Exhibit "A" and attach an itemized copy of said account to your answers to these interrogatories.

No. 8. When did you first claim that John N. Standard was due you a balance of $1,000.00 on the purchase price of the land described in the deed attached to your Bill of Complaint as last amended as Exhibit "A"?

No. 9. If your answer to the above question shows that you claimed this amount prior to January 22, 1934, why did you execute the receipt referred to in the first question in these interrogatories and make the representations contained therein?

No. 10. If the $1,000.00 which you claim to be due you as a balance due on the purchase price of the property in question was due at the time this suit was filed, why did you, in your original Bill of Complaint in this cause attempt to have the deed in question declared a mortgage and why did you fail to claim this $1,000.00 at the time you filed the said original Bill of Complaint?

No. 11. If the balance of $1,000.00 which you allege in your Bill of Complaint as last amended was due you at the time your first amended Bill of Complaint was filed in this cause on August 31,1935, why did you fail to make any reference to this $1,000.00 in that Amended Bill of Complaint and why did you at that time attempt to have the deed in question cancelled for fraud or declared a mortgage without making any reference to the said balance of $1,000.00 which you now claim to be due?

No. 12. If the balance of $1,000.00 which you now claim to be due you on the purchase price of the property in question was due you when you filed your second Amended Bill of Complaint in this cause on February 3, 1936, why did you fail to make any reference to this $1,000.00 in that Amended Bill of Complaint and why did you in that Bill of Complaint disregard the said $1,000.00 and attempt to have the deed in question cancelled for fraud or in the alternative declared a mortgage and foreclosed?

No. 13. When did you first learn that you were not indebted to John N. Standard?

No. 14. What was the total consideration to be paid by John N. Standard to you for the property in question and when and how was this to be paid?

No. 15. Has John N. Standard ever given you a note or other writing to evidence the $1,000.00 which you now claim to be due you on the purchase price of the property in question and if so attach the original of such instrument to your answer to these interrogatories.

No. 16. Were there any written instruments in the final contract between John N. Standard and you except the deed from you and your wife to John N. Standard, a copy of which is attached to your last Amended Bill of Complaint as Exhibit "A", and the Option for $5900.00 from John N. Standard to you dated October 17, 1933,

whereby you were given an option to purchase the land in question for $5900.00 and the other charges referred to therein, and if there were additional writings attach the originals or copies thereof to your answer to these interrogatories.

J. B. Blackburn

Attorney for the Respondent.

STATE OF ALABAMA |
BALDWIN COUNTY |

Before me, Ora Sirmon, a Notary Public, within and for said County in said State, personally appeared J. B. Blackburn, who, after being by me first duly sworn deposes and says: That he is the attorney for the Respondent in the above entitled cause and that the answers to the foregoing interrogatories, if well and truly made, will be material testimony for the Respondent in the said cause.

J. B. Blackburn

Sworn to and subscribed before me
on this the 27th day of September, 1937.

Ora Sirmon

Notary Public, Baldwin County, Alabama.

J. WALLACE McMILLAN,

Complainant,

VS.

JOHN N. STANDARD,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO._____.

TO J. WALLACE McMILLAN, COMPLAINANT:

Notice is hereby given you to produce the following original papers and books on the taking of Complainant's testimony in the above entitled cause on August 11, 1938:

1. The original two-year Option from J. N. Standard to J. W. McMillan, dated October 17, 1933, whereby J. N. Standard agreed to sell J. W. McMillan the property described in the said Option for $5900.00 cash with interest thereon plus taxes paid on said property by J. N. Standard with 8% interest thereon.

2. The original receipt for $2500.00 given by J. N. Standard to J. W. McMillan covering the amount of $2500.00 paid by J. W. McMillan to J. N. Standard.

3. Three time books, black back, consisting of about 250 pages each; two books, black back, with salary account of J. N. or John N. Standard and all other books kept by J. N. or John N. Standard while employed by J. W. McMillan.

Upon your failure to produce the said documents or any of them, secondary evidence of their contents will be introduced.

John N Standard
Respondent.

J. T. S. T. Blackburn
Solicitor for Respondent.

I hereby accept service of the above demand for the production of the above described documents and do hereby waive all other and further notice of same.

Dated this 11th day of August, 1938.

J. WALLACE McMILLAN,

By John McMillan

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

ANSWER AND CROSS BILL.

Now comes the Respondent in the above entitled cause and for answer to the Bill of Complaint in this cause as last amended and for this his Cross Bill says:

1. Respondent admits the allegations of paragraph numbered First.

2. The Respondent denies that the Complainant owned an unencumbered title to the lands which are made the basis of this suit up to the time he conveyed them to the Respondent by full Warranty Deed as will hereinafter appear, and alleges that at the time the Complainant agreed to sell these lands to the Respondent he had only an equity of redemption therein which was of doubtful value as the property was heavily encumbered by Mortgage that had been given by the Complainant and his wife to the First Joint Stock Land Bank of Montgomery, Alabama, which mortgage was dated January 1st, 1927, and recorded in Book Number 38 of Mortgages at Page 66, Baldwin County Records. Respondent denies that the Complainant's physical condition was so impaired that he was unable to devote his personal attention to his business during the year 1933, and up to the time the transaction between the Complainant and Respondent was closed on to-wit, January 22, 1934, and further alleges that at the said time the Complainant was at all times in full possession of his mental faculties and that during this period of time he devoted all or practically all of his time and attention to his business. Respondent admits that he was employed by the Complainant for a number of years prior to January 22, 1934, during a part of which time he had partial custody of some of Complainant's Books and records but denies that he handled them exclusively. He further alleges that

during practically all of the time that he had the custody of said books and records they were situated in Complainant's store building which was located within the curtilage of Complainant's home, were accessible to the Complainant and open to his inspection at all times. Respondent does not know exactly how much land had been accumulated by the Complainant in his business operations but admits that the Complainant claimed approximately eleven thousand acres of land and alleges that all, or practically all of this land was heavily encumbered by mortgages which were in default. The Respondent denies each and all of the other allegations of paragraph numbered Second.

3. Respondent admits that during the year 1933, and before the Complainant and his wife made the Warranty Deed to the Respondent which is dated October 17, 1933, and recorded in Deed Book Number 54 N. S. at Page 435, Baldwin County Records, it became necessary for the Complainant to raise a considerable sum of money as the Complainant was heavily involved at that time and further admits that Complainant negotiated with the Federal Land Bank of New Orleans, for the purpose of trying to borrow money from it but alleges that the said Federal Land Bank refused to make the Complainant a loan at that time. The Respondent admits that the Complainant agreed to and did convey certain lands to him, which conveyance was made by Warranty Deed hereinabove referred to and further admits that Respondent made a mortgage to the Federal Land Bank for the purpose of raising the amount which he agreed to pay the Complainant in cash for said property which sum was raised and paid to the Complainant as will hereinafter appear, and that Complainant gave him a credit of Twenty-five Hundred Dollars on the purchase price of said property, but alleges that this credit was given in full settlement and entire satisfaction of the indebtedness due by the Complainant to the Respondent. Respondent also admits that the said property is now owned by him subject only to the mortgage made by him to the Federal Land Bank. Respondent denies that the Complainant relied on repre-

sentations made by him for information about the indebtedness due from the Complainant to the Respondent and also denies that he agreed to pay the Complainant the additional sum of One Thousand Dollars for the said property as alleged by Complainant, and alleges that he is not now indebted to the Complainant in any amount. Respondent denies each and all of the other allegations of paragraph Numbered Third.

4. Respondent alleges that the Complainant had full and complete personal knowledge of the fact of his indebtedness to the Respondent and also had complete personal knowledge of the fact that his indebtedness to the Respondent had been increasing for several years. Respondent denies that the Complainant relied on any statements and representations made by him and also denies that the Complainant's physical condition was such that he could not check the accounts. Respondent denies that the Complainant executed and delivered the said Warranty Deed to him because of any representations or promises made by him and alleges that the Complainant made and executed and delivered the said Warranty Deed for the purpose of selling the property described therein and thereby helping to raise money to be used by the Complainant in compromising and settling the mortgage indebtedness due by him to the First Joint Stock Land Bank, of Montgomery, Alabama, on the mortgage hereinabove referred to and thereby preventing the foreclosure of the said mortgage and the loss of the property involved in this suit, together with a large amount of other property then owned by the Complainant but subject to the said mortgage, to pay the taxes due on the said property, to pay the Respondent the amount which the Complainant knew was justly due him and save his home and the farm part of his home place. Respondent further denies each and all of the other allegations of paragraph numbered Fourth.

5. Respondent denies that he obtained the said Warranty Deed hereinabove referred to by any false or fraudulent representations and denies that the Complainant was not indebted to him at the time

the said deed was made. Respondent admits that the Complainant is not now indebted to him on any obligation that accrued prior to January 22, 1934, and alleges that Complainant's indebtedness to him at that time was fully paid when the said Warranty Deed was delivered, at which time Respondent executed and delivered to the Complainant a written receipt for said indebtedness. Respondent further alleges that the Complainant is now indebted to him for rent on the property which is made the basis of this suit as will hereinafter appear. Respondent denies each and all of the other allegations of paragraph numbered Fifth.

6. Respondent denies that he agreed or promised to pay the Complainant as part of the purchase price of the said property the additional sum of One Thousand Dollars at the expiration of two years from the date of said deed as alleged in his paragraph Sixth, and denies that the Complainant has any lien on the said property for any amount. Respondent denies each and all of the other allegations of paragraph numbered Sixth.

7. For further answer the Respondent alleges that during the year 1933 the Complainant was indebted to the First Joint Stock Land Bank of Montgomery, Alabama, in a sum which exceeded Thirty-five Thousand Dollars, which indebtedness was secured by the above described mortgage given by the Complainant and his wife to the First Joint Stock Land Bank of Montgomery, Alabama, and on which the principal and interest payments had not been paid for sometime prior to 1933. In addition to the amount due the First Joint Stock Land Bank, of Montgomery, Alabama, Complainant's property had been sold for taxes and approximately Two Thousand Dollars was due and owing for taxes thereon.

During the summer of 1933 the said First Joint Stock Land Bank of Montgomery, Alabama, had called the Complainant's loan and was proceeding to foreclose the mortgage. The Complainant and his attorney, after extensive negotiations with the said First Joint Stock Land Bank, of Montgomery, Alabama, secured an agreement with it whereby it would accept approximately Fifteen Thousand Dollars

in full settlement of the Complainant's indebtedness to it. After securing the said agreement with the said First Joint Stock Land Bank, of Montgomery, Alabama, the Complainant became very active in his efforts to raise the amount necessary to settle with the said First Joint Stock Land Bank, of Montgomery, Alabama, pay the taxes due by him on his property and thereby save part of the property and around Twenty-five Thousand Dollars. In his efforts to raise this money he made an application to the Federal Land Bank,of New Orleans, for a loan in an amount sufficient to pay his indebtedness but the application so made by him was rejected by the Federal Land Bank. The Complainant made several trips to New Orleans in an effort to persuade the Federal Land Bank to make him a loan in the desired amount which it refused to do.

After Complainant's application to the Federal Land Bank was finally rejected, his attorney suggested to him that he make an application to the Federal Land Bank for a loan on the farm part of his home place and make an application to the Home Owners Loan Corporation for a loan on his home, sell off the "Martin Place", which is the property that was conveyed to the Respondent, and other property and by so doing he could raise enough money to pay the amount which the First Joint Stock Land Bank had agreed to accept in settlement of the amount due it. The Complainant attempted to carry out the suggestions made by his attorney and in his attempt to carry out these suggestions attempted to sell the "Martin Place", which is part of the property now in question at a figure much less than the amount received for it when he conveyed it to the Respondent, but was unsuccessful in finding a purchaser. After failing to find a purchaser for said property the Complainant communicated with this Respondent, told him of his difficulties, discussed with him the amount of Complainant's indebtedness to him and made him a proposal whereby Complainant would sell him the said"Martin Place" and the other said lands which he conveyed to the Respondent provided

he could make a substantial cash payment, and agreed to allow the Respondent a credit of Twenty-five Hundred Dollars on the purchase price of said property which amount was to be in full settlement of Complainant's indebtedness to the Respondent.

After considerable negotiations which extended over quite a period of time, Respondent agreed to accept the plan suggested by the Complainant and his attorney, and on to-wit, October 17, 1933 the Complainant and his wife executed the Warranty Deed hereinabove referred to as Exhibit "A" and the Respondent executed a receipt for Twenty-five Hundred Dollars and an Option to the Complainant whereby Respondent agreed to convey the property to the Complainant within two years for the sum of Seven Thousand Dollars, taxes and interest, and the said papers were placed in escrow with Messrs. Beebe and Hall, who were then acting as attorneys for both the Complainant and Respondent.

The Respondent made an application to the Federal Land Bank of New Orleans, in an effort to raise the cash payment on the purchase price which the Complainant had agreed to accept for the said property. This application was made by the Respondent in his own name, in his own behalf and for his own use and benefit, and was finally approved by the Federal Land Bank for the sum of Thirty-four Hundred Dollars.

At the time the Complainant and the Respondent commenced their negotiations for the sale and purchase of the said property, a valuable residence was situated on it, but during the time that the negotiations were pending the residence on the said property was destroyed by fire and at the time of the fire was insured in Complainant's favor and he collected the insurance thereon.

After the destruction of the residence further negotiations were had between the Complainant, the Respondent and the attorney, during which time the Complainant, because of the destruction of the residence and the other reasons alleged in this answer agreed to