

accept the sum of Fifty-nine Hundred Dollars for the said property, allow the Respondent to pay the greater part of the purchase price in cash and as the Respondent was compelled to mortgage the property which he was purchasing from the Complainant, or other property, to raise the amount that he was to pay in cash, the Complainant agreed to pay the necessary expenses that would be incurred by the Respondent in obtaining the loan from the Federal Land Bank, meet all other requirements of the said Federal Land Bank and allow the Respondent the aforesaid credit of Twenty-five Hundred Dollars on the amount that was then due by the Complainant to the Respondent.

At the time this new agreement was made the Respondent executed a new written option which was dated October 17, 1933, in which he agreed to sell the property which the Complainant had conveyed to him to the Complainant for the sum of Fifty-nine Hundred Dollars, interest and taxes. A copy of this option was attached to and made a part of the Complainant's Original Bill of Complaint in this cause and referred to therein as Exhibit "A". A copy of it was also attached to Complainant's First Amended Bill of Complaint in this cause and referred to therein as Exhibit "B". This said Fifty-nine Hundred Dollar Option was to and did replace the original Seven Thousand Dollar option and after its execution was placed in escrow with the parties' attorney.

Respondent's loan from the Federal Land Bank was completed during the early part of 1934. The Warranty Deed hereinabove referred to as Exhibit "A" was delivered and filed for record by the Attorney for the Complainant and Respondent who was acting as escrow agent and after it was recorded was delivered to the Respondent. The Option for Fifty-nine Hundred Dollars hereinabove referred to was delivered to the Complainant. At the time the transaction was closed the Federal Land Bank held back the sum of One Hundred Fifty Dollars until a barn could be erected on the property but on to-wit, January 22, 1934, Chas. J. Ebert, Local Correspondent of the Federal Land Bank, paid to the Complainant the sum of Three Thousand Forty-seven Dollars by check for said amount drawn by the said Local

Correspondent on the Baldwin County Bank, in Bay Minette, Alabama. This check covered the net proceeds from the loan that had been made by the Federal Land Bank to the Respondent which were at that time available and the said check was indorsed by the Complainant and delivered to the Baldwin County Bank in Bay Minette, Alabama, for the account of the First Joint Stock Land Bank, of Montgomery, Alabama, which said check was applied by the said bank in payment of a draft that had been sent to it for collection by the said First Joint Stock Land Bank, of Montgomery, Alabama, in the sum of Eight Thousand Twenty-two and 35/100 Dollars. At the time the said check was delivered to the Complainant said Local Correspondent of the Federal Land Bank took Complainant's written receipt therefor, a copy of which is hereto attached, marked Exhibit "1" and by reference made a part hereof as though fully incorporated herein, in which said receipt the Complainant acknowledged that the amount so paid to him was in full settlement of the amount due him for the purchase price of the said property and also stated that he had no further claim in, lien on or indebtedness against the said property. A short time later the One Hundred Fifty Dollars that had been held back by the Federal Land Bank until the barn on said property was completed was paid by the Federal Land Bank to the Respondent, who paid said amount to Complainant.

When the transaction whereby the Complainant sold and the Respondent purchased the property that is now in question was closed, the Respondent did not give the Complainant any note or other evidence of debt nor did he at any time agree to at any time pay the Complainant anything else for the said property. The only writings embraced in the contract between the said parties were the Warranty Deed delivered to the Respondent and hereinabove referred to as Exhibit "A", the receipt signed by the Complainant on to-wit, January 22, 1934, and hereinabove referred to as Exhibit "1", the Option for Fifty-nine Hundred Dollars and the receipt for Twenty-five Hundred Dollars, both of which were signed by the Respondent and delivered to the Complainant. After the transaction was closed the Respondent

was not indebted to and is not now indebted to the Complainant in any amount.

After the said transaction was closed and after the Warranty Deed from the Complainant and his wife, hereinabove referred to as Exhibit "A" was delivered to the Respondent, the Complainant came to the Respondent and rented that part of the farm land that he had conveyed to the Respondent, consisting of one hundred seventy-five acres, at an annual rental of Two Dollars and Fifty Cents per acre. The Complainant was placed in possession of the said property by the Respondent and farmed it during the year 1934 and kept possession of it until on to-wit, November 5, 1936, when the Respondent obtained a judgment in the Justice of Peace Court of J. M. Franklin, Notary Public and Ex Officio Justice of Peace, Baldwin County, Alabama, in an unlawful detainer suit that had been commenced by the Respondent on to-wit, May 1, 1935, Respondent having been delayed in the prosecution of said suit by an injunction issued out of this Court on proceedings commenced by the Complainant, which injunction was dissolved by a Decree of this Court dated August 1, 1936.

The rental due by the Complainant to the Respondent on the said property from on to-wit, January 22, 1934 to on to-wit, November 5, 1936, has not been paid, and together with the interest thereon is long past due.

Respondent has been in possession of the said property since on to-wit, November 5, 1936, and is now in actual possession of it, has regularly assessed and paid the taxes thereon and has also paid the installments of principal and interest due by him on the above described mortgage that was made by him to the Federal Land Bank.

8. Respondent alleges that the Complainant has not paid or tendered to him the amount due and that the Complainant has not complied with the conditions precedent contained in the Fifty-nine Hundred Dollar Option from the Respondent to the Complainant dated October 17, 1933, and further alleges that the said Option expired on October 17, 1935. Respondent further alleges that the said Option was in full force and effect and binding on the parties to this suit at the time this suit was filed on to-wit, May 21, 1935.

9. Respondent further alleges that the Complainant has wholly failed to fully inform the Court of all of the details of the transaction between the parties to this suit which he now questions whereby the Complainant sold and conveyed to the Respondent and the Respondent purchased from the Complainant the lands described in the Warranty Deed hereinabove referred to as Exhibit "A", which transaction was devised and instituted by the Complainant who received a large benefit therefrom, namely, more than Three Thousand Dollars in cash, at a time when it could be and was used by him to good advantage, which he has not restored or offered to restore to the Respondent and further alleges that the Complainant is now at one and the same time claiming both under and against the said deed, and he, having taken the said benefit thereunder, which he still retains, is now estopped to question the validity of the transaction. Respondent further alleges that the Complainant has neither affirmed or disaffirmed the contract or transaction in its entirety.

10. Respondent further alleges that the Complainant has not at any time ^{had}, nor does he now have a lien on the said lands conveyed by him to the Respondent by the Warranty Deed hereinabove referred to as Exhibit "A" for any amount as alleged by him as and for unpaid purchase money for the said land but alleges that the Complainant waived, by the execution and delivery of the document hereinabove referred to as Exhibit "1", any lien on or right to claim same against the said property. The said receipt hereinabove referred to as Exhibit "1" was signed, executed and delivered by the Complainant to the Respondent or Respondent's agent thereunto duly authorized, with full and actual knowledge of its contents, at which time the said Complainant was paid in cash on behalf of the Respondent the consideration set out in the said receipt which was Three Thousand Forty-seven Dollars.

11. Respondent further alleges that any obligation due or owing by the Respondent to the Complainant for the purchase price of the lands conveyed by the Complainant to the Respondent by the Warranty Deed hereinabove referred to as Exhibit "A" was extinguished

by the release from the Complainant to the Respondent hereinabove referred to as Exhibit "1", which said document was in writing and the consideration recited therein, namely, Three Thousand Forty-seven Dollars, was paid to the Complainant in cash for and on behalf of the Respondent at the time the said release was executed and delivered.

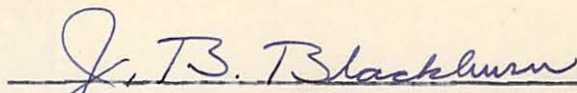
12. Complainant has an adequate remedy at law, and has not done or offered to do equity.

PRAYER FOR PROCESS.

The said John N. Standard, having now answered the Bill of Complaint as last amended, prays that this his Answer may be taken and treated in all respects as a Cross Bill, and that the said J. Wallace McMillan be made a party respondent to this his Cross Bill, and that he have notice of same according to the rules and practice of this Honorable Court.

PRAYER FOR RELIEF.

Respondent and Cross-Complainant prays that your Honor will order a reference to ascertain the amount of rent and interest thereon that is due by the Complainant and Cross-Respondent to the Respondent and Cross-Complainant and that your Honor will, on a final hearing of this cause, by proper decree, fix the amount of the Complainant's and Cross-Respondent's indebtedness to the Respondent and Cross-Complainant. If the Respondent and Cross-Complainant is mistaken in the relief prayed for, he prays that the Court will then grant unto him such other, further and general relief as he may be equitably entitled to the premises considered.


Solicitor for Respondent and Cross-Complainant.

FOOT NOTE: The Complainant and Cross-Respondent is required to answer each and every allegation of the foregoing Cross Bill, but not under oath, the benefit whereof is hereby expressly waived.

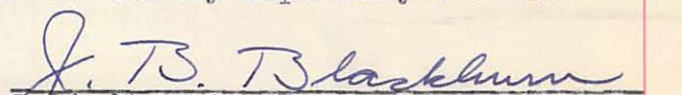

Solicitor for Respondent and Cross-Complainant.

EXHIBIT "1"

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."

- - - - -

J. WALLACE McMILLAN,	¶	
Complainant,	¶	
-vs-	¶	CIRCUIT COURT, BALDWIN COUNTY,
JOHN N. STANDARD,	¶	EQUITY. NUMBER 130.
Respondent.	¶	

Comes the ~~respondent~~ ^{Complainant} and amends his bill of complaint as last amended so as to make the same 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 accumulated about eleven thousand acres of land in said county including that hereinafter particularly 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 personal attention to his business and respondent was complainant's trusted employee, had custody and full control of complainant's books, business records and books of account including his own account with the complainant and complainant entrusted the handling of these to respondent exclusively.

THIRD

During the year 1933 before the document hereinafter referred to as Exhibit A was executed it became necessary for complainant to raise a considerable sum of money and complainant attempted to negotiate a loan with the Federal Land Bank at New Orleans but was unable to borrow from it the full amount needed and agreed with the respondent to convey to him that part of complainant's property hereinafter described in order to raise part of the money needed but complainant was advised by respondent that complainant was indebted to him in the sum of to-wit Twenty-five Hundred Dollars. Respondent

then had and for many years previous had had and for many months following kept possession of complainant's books and business records and complainant did not know whether he was indebted to respondent in the amount named or in any amount but placing implicit trust in the integrity and good faith of respondent and believing his representations, all of which was known by respondent, complainant made a deed to him covering the land particularly described in Exhibit attached to the ~~original~~ bill of complaint ^{as amended} and marked Exhibit A, which exhibit is now referred to and by reference expressly made part hereof. The alleged indebtedness of the complainant to the respondent formed part of the consideration to the extent of said indebtedness for which said deed was given and complainant gave respondent credit for the said amount of Twenty-five Hundred Dollars on the purchase price for said conveyance. Following the execution of said deed to respondent respondent mortgaged the property to the Federal Land Bank to raise part of the purchase price for said property, agreeing to pay complainant the additional sum of One Thousand Dollars, but the respondent still owns an equity of redemption in the property so conveyed to him.

FOURTH

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

FIFTH

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 from them and other facts made known to complainant and now alleges that at the time he executed the document Exhibit A he was not and is not now indebted to respondent in any amount and he therefore alleges that the statements of respondent

that complainant was so indebted to him are untrue and that the respondent knew they were untrue and that he procured the said deed through these fraudulent representations.

SIXTH

Complainant further alleges that at the time said deed was made the respondent agreed and promised to pay complainant as part of the purchase price for said land over and above the said indebtedness of Twenty-five Hundred Dollars and the amount he paid in cash the further sum of One Thousand Dollars which amount was to be paid to-wit at the expiration of two years from the date of said deed, that respondent has not paid and now refuses to pay said sum, wherefore complainant shows that he has an equitable lien on the respondent's interest in said land for said balance due on the agreed purchase price and that in equity and good conscience he is also entitled to a lien on said interest for the said sum of Twenty-five Hundred Dollars which respondent falsely represented to be due him by the complainant and which was treated as part of the purchase price for said land.

THE PREMISES CONSIDERED complainant prays that Your Honor will take jurisdiction of the cause made by this bill of complaint, that by proper process issuing to him the said John N. Standard be made party respondent hereto and be required to answer the charges herein made in all things¹ as required by the rules and practice of this court.

Complainant further prays that Your Honor will by proper orders ascertain and declare the amount due by respondent to complainant for and on account of the matters and things hereinabove set forth and will enter judgment against respondent and in favor of complainant for such sum.

That Your Honor will further order, declare and decree that the amount so found to be due is secured by a lien on respondent's interest in said land and that failing to pay same within such time as may be directed by decree of this court respondent's interest in said land be sold for the satisfaction of said claim.

Complainant prays for such other, further and different relief as in equity and good conscience may be due him in the premises.

B. J. McMillan
Solicitor for complainant.

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

B. J. McMillan
Solicitor for complainant.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 37-38

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

Whereas, the Record and Proceedings of the Circuit Court In Equity of said county, in a certain cause lately pending in said Court between

John N. Standard, Appellant,

and

J. Wallace McMillan, Appellee,

wherein by said Court, at the Term, 19, it was considered adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered by our Supreme Court, on the 12th day of May, 1938, that said Decree of said Circuit Court be in all things affirmed,

and that it was further considered that the appellant, and E. Davidson and J. C. McDavid, sureties on the appeal bond, pay - - - -

the costs accruing on said appeal in this Court and in the Court below

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the 14th day of May, 1938.

Robert F. Ligon, Clerk of the Supreme Court of Alabama.

RECORDED

minutes
Sheet 2 - page
374

The Supreme Court of Alabama

October Term, 1937-38

1 Div. No. 3

John N. Standard

Appellant,

vs.

J. Wallace McMillan

Appellee.

From Baldwin Circuit Court.
In Equity

Certificate of Affirmance

The State of Alabama, }
Baldwin County. } Filed

this 17 day of May 1938

Respect

Respect

MAY 12 1938

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1937-38.

1 Div. 3.

John H. Standard

v.

J. Wallace McMillan,

Appeal from Baldwin Circuit Court,
(in Equity).

FOSTER, Justice.

The bill as amended, whose equity is tested by this appeal from a ruling on demurrer, seeks only to enforce a vendor's lien. It alleges a conveyance of land was made by complainant to respondent, and that respondent agreed and promised to pay complainant \$1,000 as a part of the purchase price over and above an alleged indebtedness of \$2,500 claimed to be owing respondent by the complainant, and in addition to an amount presently paid in money.

2.

In so far as the \$1,000.00 are concerned, the bill does not seem to be seriously attacked. But the chief insistence relates to the alleged debt of \$2500.00. We will treat that subject, though the demurrer may not be sufficient to reach that aspect, separately considered. - First National Bank of Birmingham v. Forman, 230 Ala. 185, 160 So. 109, and cases there cited.

The bill avers that "the alleged indebtedness of the complainant to the respondent formed part of the consideration to the extent of said indebtedness for which said deed was given and complainant gave respondent credit for the said amount of \$2500.00 on the purchase price for said conveyance."

The bill sets up facts sufficient to show that such credit was fraudulently obtained in that complainant did not owe such amount to respondent, but was fraudulently induced by him to believe that he did: the facts constituting the fraud being alleged. It is not claimed that those facts are insufficient to show fraud. But it is insisted that the fraud does not serve to create an ascertained or a definitely ascertainable debt for which only equity will enforce a vendor's lien.

In this connection, it may serve a useful purpose to make brief reference to some of our cases. When the contract of sale imposes on the purchaser the obligation to render some service or do some act, the breach of which is not subject to measurement by a fixed legal standard, such breach will not be the occasion for a vendor's lien. - Burroughs v. Burroughs, 164 Ala. 329, 50 So. 1025. Certainly not until after a judgment is rendered at law fixing the money value of the breach. - Parrish v. Hastings, 102 Ala. 414, 14 So. 783; Bridgeport K. & I. Co. v. Am. F. P. S. Car Co., 94 Ala. 592.

But if the consideration is to be in whole or in part the delivery of certain specified chattels, or other property, a failure to make such delivery gives rise to a vendor's lien to the extent of their value. - Campbell v. Goldthwaite, 189 Ala. 1, 66 So. 483; Dixie Industrial Co. v. Benson, 202 Ala. 149, 79 So. 615; Mancill v. Thomas, 216 Ala. 623, 114 So. 223.

Where there is an exchange of land for other property, and the purchaser warranted that which he exchanged against incumbrances, but it was incumbered, to the extent of such incumbrance the value of the land was depreciated in a sum measured by a definite standard, and to that extent the purchase money was not paid, and for its enforcement, the vendor was given an equitable lien. - Mancill v. Thomas, *supra*. This case cites Bradley v. Beasley, 1 Barb. Ch. (N.Y.) 125.

In the case of Jarrett v. Langston, 99 Ark. 438, 138 S. W. 1003, it is held that if the consideration agreed on was a certain sum of money, and the purchaser by fraud induced the seller to receive something in satisfaction which was of no value, there was no satisfaction at all, and the seller was given the right to enforce a vendor's lien for the full amount agreed on, as though there had been no attempt at satisfaction.

In Rhine v. Mack, 108 S. W. (2d) (Ark.) 1079, it was held when satisfaction of the purchase price is procured by fraud, the seller may still enforce a vendor's lien.

In the case of Graham v. Moffett, 119 Mich. 303, 78 N. W. 132, 75 Am. St. Rep. 393, (which cites Bradley v. Beasley, *supra*, somewhat approved), will be found an interesting discussion of some aspects of this question. It is there held that when the purchaser

4.

merely exchanged property, and agreed on no cash value as the consideration, his fraud in respect to the property he exchanged to the seller does not give rise to a vendor's lien for the damages thus sustained as a balance unpaid of the purchase price.

This principle would probably accord with our cases in that such damages are not always measured by a fixed standard. - Fidelity-Phoenix Fire Ins. Co. v. Murphy, 226 Ala. 226, 146 So. 387 (12) (13).

We have shown that the bill in this case in substance alleges that the consideration agreed on was measured by a money standard. And to the extent of \$2,500, the purchaser is charged with inducing the seller by fraud to accept in settlement, satisfaction of a fictitious claim, which he induced the seller to believe he owed. This, we think, comes within the influence of the principle declared and enforced in Jarrett v. Langston, *supra*, and does not conflict with our own cases, and gives rise, we think, to an equitable lien for the purchase price thus represented.

The bill does not disclose that there is any equity which complainant should do as a condition to relief. An offer to do equity would be therefore a meaningless form and unnecessary. - Head v. Carroll, 230 Ala. 688, 163 So. 328, and cases cited.

The decree of the court was to that effect and should, we think, be, and it is affirmed.

Affirmed.

Anderson, C.J., Gardner and Bouldin, JJ., concur.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

.....1..... Div., No.3.....

.....John N. Standard....., Appellant,

vs.

.....J. Wallace McMillan....., Appellee,

FromBaldwin (In Equity)..... Circuit Court.

The State of Alabama, }
City and County of Montgomery. }

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to.....4.....inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme
Court of Alabama, at the Capitol, this the

14th day ofMay..... 1938.....

Robert F. Ligon
Clerk of the Supreme Court of Alabama.

THE STATE OF ALABAMA JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

THE SUPREME COURT OF ALABAMA

October Term, 19³⁷⁻³⁸

1 Div., No. 3

John N. Standard

Appellant,

vs.

J. Wallace McMillan

Appellee.

From Baldwin Circuit Court.
(In Equity)

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1936

[Faint, illegible text and signatures on the reverse side of the page]

J. W. McMILLAN,
Complainant,

-vs-

JOHN N. STANDARD,
Respondent.

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

Complainant further answering interrogatories numbered
7 and 13 says:

Answer to interrogatory number 7. Plaintiff attaches hereto
Exhibit A as amended in accordance with order of the Circuit
Court.

Answering interrogatory number 13 defendant says:

"When I got my books and records back from him on towit
November 12th, 1934."

J. W. McMillan

Sworn to and subscribed before me
this 24th day of June, 1938.

Aug. Stranger
Notary Public.

EXHIBIT A AS AMENDED.

1. On May 23rd, 1931, defendant credited himself with rent on complainant's truck. \$220.00
2. Checks paid Eula Standard and not charged, \$140.03, as follows:
These checks are payable to Eula Nelson whose maiden name was Eula Standard. They are 17 in number and are for the following amounts and on the following dates: \$6.49-\$16.65-\$17.69-\$7.98-\$14.09-\$13.98-\$1.68-\$6.88-\$7.36-\$3.13-\$4.75-\$1.95-\$4.95-\$2.00-\$5.20-\$20.00-\$5.25; and are dated: 5-28-27; 7-19-27; 9-3-27; 10-1-27; 10-29-27; 12-9-27; 2-4-28; 2-18-28; 3-1-28; 3-17-28; 6-9-28; 6-23-28; 7-7-28; 8-4-28; 5-20-29; 4-18-30; 7-21-28. 140.03
3. Checks paid to himself by Standard and not charged to him.
Note:
These checks are 4 in number and are for the following amounts and on the following dates, viz: \$34.45-\$124.04-\$23.26-\$25.00; they are dated: 12-8-28; 8-10-29; 6-1-29; 6-12-33. 206.75
4. Defendant on 5-18-29 paid his own or his employer's debt to the Baldwin Motor Company and credited instead of charging himself with the amount. 30.00
5. Sue Ellen Nelson was defendant's niece and he paid her \$65.00 and credited himself with the amount. 65.00
6. Amount credited instead of charged to himself for:
Car \$121.19
Tag 11.75
Tax 4.20 137.14
7. Defendant owed Sears-Roebuck \$93.34 and paid them with checks on plaintiff's account and failed to charge them to himself. These payments were made: 6-4-30; 7-4-30; 8-5-30; 5-5-30; 4-5-30; 3-6-30; 2-19-30; 1-17-28; 10-28-29; 1-27-30; 9-3-30; 10-2-30; 11-4-30; 12-5-30; 1-5-31; 2-5-31; 3-3-31; 4-2-31. 93.24
8. Defendant drew 14 checks payable to cash aggregating \$104.00 and collected them himself and failed to charge them to himself. These checks are for the following amounts, viz:
\$5.00-\$4.00-\$2.00-\$3.00-\$3.00-\$10.00-\$10.00-\$10.00-\$2.00-\$25.00-\$5.00-\$5.00-\$10.00-\$10.00-; dated respectively, 12-31-31; 12-15-31; 12-8-31; 9-15-31; 5-15-31; 11-6-30; 3-28-30; 10-14-29; 10-24-28; 1-7-29; 10-21-30; 3-30-31; 3-11-31; 2-10-30. 104.00
9. H. L. Gilbert was working for defendant and not for complainant. Defendant paid him out of complainant's money by checks, \$115.46. These checks are for the amounts: \$70.46-\$7.00-\$8.00-\$8.00-\$5.00-\$6.00-\$3.00-\$8.00; and are dated: 6-1-29; 8-19-29; 9-29-29; 8-31-29; 5-20-29; 4-30-29; 4-27-29; 1-22-30.
He also paid to the Baldwin Motor Company, \$257.12 on 1-27-30; 11-6-29; 10-19-29; 7-2-29; the checks being respectively \$90.00-\$40.00-\$105.00-\$22.12. 372.58
10. Defendant paid to H. B. Kilcrease \$9.92 which defendant owed. This payment was made out of plaintiff's money and defendant did not charge himself with the amount. Complainant and defendant agreed on the salary the defendant was to receive following _____ and defendant in entering up his credits on complainant's books entered a credit for salary \$1387.80 in excess of his correct salary. \$9.92--\$1387.80. 1397.72

1. Defendant over the telephone on 1-28-38
said the records of the FBI in New York
showed that the defendant was in New York
on 1-28-38 and the records were in New York
on 1-28-38.

2. Defendant advised that the records in
New York showed that the defendant was in
New York on 1-28-38 and the records were
in New York on 1-28-38.

4 US. 28

ANSWER TO INTERROGATORIES.

McMillan,
vs. *Standard*

130

Filed June 30 1938
R. J. [unclear]
Request

J. WALLACE McMILLAN,

Complainant,

vs.

JOHN N. STANDARD,

Respondent.

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

.

This cause is submitted on motion of respondent to require complainant to amend his Bill of Complaint by making the Federal Land Bank a party, the theory being that the Bank is a necessary party, and that the bill should be dismissed upon refusal, or failure, to make it a party.

The facts gathered from the Bill of Complaint as last amended (August 18th., 1937) and the said motion are as follows:

In 1933 Complainant was in need of money and made an arrangement with Respondent to convey to him the lands in suit at an agreed price - not stated in the pleadings. Complainant alleges that a part of the consideration was a debt fraudulently claimed against him by Respondent, who stood in confidential relations with him, and also \$1,000.00 to be paid within two years. Respondent was to mortgage the lands conveyed to him by Complainant to the Bank and turn the money thus obtained over to Complainant as a part of the purchase price. This was done, and Complainant received \$3,047.00 from the Bank, as purchase money for the land, giving his receipt therefor, in which receipt he stated that he held no other claim or lien against the land.

The Bill is against Standard alone, its object being the establishment of a vendor's lien and its enforcement against Respondent's equity of redemption for ^{the} \$2,500.00 alleged fraudulently simulated debt, and the balance claimed due of \$1,000.00.

The Bank is not made a party, and the prayer of

the Bill seeks to affect only Respondent's equity of redemption. The Bill, in effect, recognizes the validity of the mortgage from Standard to the Bank, and asks no relief against the Bank. Complainant was privy to the execution of the mortgage, and is estopped to deny its validity, and no such denial is attempted. The object of the suit is to fasten a lien upon Standard's equity of redemption in the land, and while the Bank is interested in the subject matter of the suit (the land), it has no interest in the equity of redemption. The Bank's security cannot be affected by the litigation between the Complainant and Respondent, nor could the Bank and the Respondent by any provision in the mortgage deprive Complainant of the right to proceed legally against Respondent's equity of redemption.

Under the facts alleged in the Bill, and in the motion under submission, no conceivable relief could be obtained against the Bank if said Bank was made a party, nor can its rights be affected by its ~~omission~~. Only those whose rights are involved in the purpose of the Bill are necessary parties. The failure to make the Bank a party does not prejudice the rights of Respondent. It is no affair of the Bank's whether or not Standard is still due Complainant a part of the agreed purchase price, so long as Complainant recognizes the Bank's mortgage as a valid and subsisting security for Standard's debt to the Bank.

The Bill does not allege that the Bank was a party to any fraud practiced upon Complainant, or that the rights of the Bank are in anyway affected by the alleged fraud. The Bank is entitled to nothing but the repayment of its money loaned, and this the Bill concedes. The Bank admittedly stands as a purchaser for value without notice of any equity Complainant may have as against Respondent; and, so long as its full rights in the premises are admitted and protected, it is not concerned in this dispute between

Complainant and Respondent.

I, therefore, conclude that the Motion should be overruled and denied, and the Register will enroll the following

D E C R E E

This cause coming on to be heard is submitted on motion of Respondent to require Complainant to amend his Bill of Complaint by making the Federal Land Bank a party to the suit; and upon consideration thereof, I am of the opinion that said motion is not well made, and should be overruled.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that said motion be, and the same hereby is, overruled and denied.

This, the 8th day of September, 1937.

J. W. Hare
Judge.

RECORDED

Duck
2-318

J. WALLACE McMILLAN,
COMPLAINANT,

VS.
JOHN N. STANDARD,
RESPONDENT.

EQUITY NO. 130

Acree

130

Filed September 11, 1937

R. S. Duck, Register

Complainant and Respondent.

I therefore complain that the action should be
overruled and denied, and the register will enroll the following

H. S. H. H. H.

[Handwritten signature]

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

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

DECREE ON DEMURRER TO AMENDED BILL OF COMPLAINT.

This cause coming on to be heard on this the 3rd day of January, 1936 by agreement of the Solicitors of Record for the respective parties, who were each present and argued same, and being submitted on the Bill of Complaint as last amended and the Respondent's demurrer to the Bill of Complaint as last amended, the same having been considered and understood by the Court, it is therefore Ordered, Adjudged and Decreed by the Court that the said Demurrer be, and it is hereby sustained.

Dated this 3rd day of January, 1936.

J. W. Hare

Judge.

130 RECORDED

check

DECREE ON DEMURRER TO AMENDED
BILL OF COMPLAINT.

2-204

7

J. WALLACE McMILLAN,
Complainant,

VS.

JOHN N. STANDARD,
Respondent.

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

Dated this 3rd day of January,
1936.

Peter Duck
Clerk-Register

Dated this 3rd day of January, 1936.

Judge

John N. Standard

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

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

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

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

DECREE ON MOTION TO STRIKE.

This cause coming on to be heard on this the 3rd day of January, 1936, by agreement of the Solicitors of Record for the respective parties who were each present and argued same, and being submitted on the Bill of Complaint as last amended and Respondent's Motion to Strike that part of the Bill of Complaint as last amended in which Complainant demanded a trial of the said cause by jury, and the same being understood and considered by the Court it is therefore Ordered, Adjudged and Decreed by the Court that the said Motion to Strike be and it is hereby granted.

Dated this 3rd day of January, 1936.

F. W. Hare

Judge.

130 RECORDED
Such
a. 204

DECREE ON MOTION TO STRIKE.

J. WALLACE McMILLAN,
Complainant,

VS.

JOHN N. STANDARD,
Respondent.

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

Dated this 3rd day of January,
1936.

Filed this 14 Jan 1936
Robert DeLoach
Clerk-Registrar

Dated this 3rd day of January, 1936.

Judge.

W. M. H. 1936

J. WALLACE McMILLAN,
Complainant,

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

J. W. McMILLAN,

Complainant,

VS.

JOHN N. STANDARD,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. 130.

DECREE ON DEMURRER TO ORIGINAL BILL OF COMPLAINT.

This cause coming on to be heard on this the 21st day of August, 1935, being submitted on the original Bill of Complaint and the Respondent's Demurrer to the original Bill of Complaint and argued orally in open Court, the same having been considered and understood by the Court:

IT IS THEREFORE, Ordered, Adjudged and Decreed by the Court that the said Demurrer be and it is hereby sustained.

Dated this 21st day of August, 1935.

F. W. Hare

Judge.

130
RECORDED
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3-315

DECREE ON DEMURRER TO ORIGINAL
BILL OF COMPLAINT.

J. W. McMILLAN,
Complainant,

VS.

JOHN N. STANDARD,
Respondent.

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

Dated this 21st day of August,
1935.

R. S. Duch, Register

J. W. McMILLAN,
Complainant,

BALDWIN COUNTY, ALABAMA.
IN THE CIRCUIT COURT OF

Judge.

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

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

DEMURRER TO AMENDED BILL.

Comes the Respondent in the above entitled cause and for demurrer to the Amended Bill of Complaint in said cause, and to each and every count thereof, separately and severally, assigns the following separate and several grounds, to-wit:

1. There is no equity in the Amended Bill.
2. Complainant does not offer to do equity.
3. The Complainant, by his Amended Bill, makes no offer to redeem in the event the deed in question is declared a mortgage.
4. Complainant makes no offer to redeem.
5. The allegations of fraud and misrepresentation, as contained in the Amended Bill of Complaint, are conclusions of the pleader.
6. No facts are alleged to show the fraud and misrepresentation referred to by the Complainant in the Amended Bill of Complaint.
7. Because it affirmatively appears from the Amended Bill of Complaint that the Complainant is not in any way indebted to the Respondent.
8. Because it affirmatively appears from the Amended Bill of Complaint that the Complainant was not indebted to the Respondent at the time the deed in question was delivered.
9. It does not allege any debt to be due and owing by the Complaint to the Respondent.
10. It does not allege that the deed referred to in the Amended Bill of Complaint as "Exhibit A" was intended by both parties thereto as security for a debt.

11. Because it does not allege that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was intended by the Respondent as security for a debt.

12. It does not allege that there is a debt due by the Complainant to the Respondent which continued after the execution and delivery of the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

13. It does not allege that any evidence of debt was given by the Complainant to the Respondent.

14. Because it does not allege that there was a debt from the Complainant to the Respondent secured by the deed referred to in the Amended Bill of Complaint as "Exhibit "A" which continued after the execution and delivery of the said deed.

15. Because it affirmatively appears that the Complainant does not come into equity with clean hands.

16. It is multifarious.

17. It is multifarious in that the relief asked for is inconsistent.

18. The allegations as to the Complainant's physical condition as contained in the Amended Bill of Complaint are conclusions of the pleader.

19. No facts are alleged to show Complainant's physical condition as alleged in the Amended Bill of Complaint.

20. The allegation that Complainant was not indebted to the Respondent at the time the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was given is a conclusion of the pleader.

21. No facts are alleged to show that the Complainant was not indebted to the Respondent at the time the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was given.

22. The allegation that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was without consideration is a conclusion of the pleader.

23. The allegation that there was no consideration for the deed referred to in the Amended Bill of Complaint as

11. Because it does not allege that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was intended by the Respondent as security for a debt.

12. It does not allege that there is a debt due by the Complainant to the Respondent which continued after the execution and delivery of the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

13. It does not allege that any evidence of debt was given by the Complainant to the Respondent.

14. Because it does not allege that there was a debt from the Complainant to the Respondent secured by the deed referred to in the Amended Bill of Complaint as "Exhibit "A" which continued after the execution and delivery of the said deed.

15. Because it affirmatively appears that the Complainant does not come into equity with clean hands.

16. It is multifarious.

17. It is multifarious in that the relief asked for is inconsistent.

18. The allegations as to the Complainant's physical condition as contained in the Amended Bill of Complaint are conclusions of the pleader.

19. No facts are alleged to show Complainant's physical condition as alleged in the Amended Bill of Complaint.

20. The allegation that Complainant was not indebted to the Respondent at the time the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was given is a conclusion of the pleader.

21. No facts are alleged to show that the Complainant was not indebted to the Respondent at the time the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was given.

22. The allegation that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was without consideration is a conclusion of the pleader.

23. The allegation that there was no consideration for the deed referred to in the Amended Bill of Complaint as

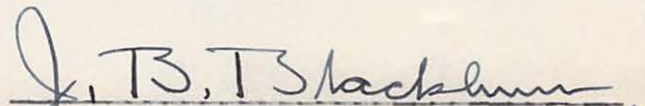
"Exhibit "A" is a conclusion of the pleader.

24. No facts are alleged to show that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was without consideration.

25. No facts are alleged to show that there was no consideration for the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

26. It affirmatively appears from the Amended Bill of Complaint that there was a consideration for the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

27. It does not allege that the Complainant offered to pay the respondent the consideration referred to in the option, a copy of which is attached to the Amended Bill of Complaint as "Exhibit "B", before this suit was commenced.


Solicitor for Respondent.

The State of Alabama, }
Baldwin County } Circuit Court of Baldwin County, In Equity

To Any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon JOHN N. STANDARD

of BALDWIN County, to be and appear before the Judge of the Circuit Court of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by

J. WALLACE McMILLAN

against said JOHN N. STANDARD

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defendant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, Robert S. Duck, Register of said Circuit Court, this 28rd day

of July 1935

Robert S. Duck Register

N. B.—Any party defendant is entitled to a copy of the bill upon application to the Register.

RECORDED
Duck
6-372

THE STATE OF ALABAMA,
BALDWIN COUNTY

Serve on _____

Circuit Court of Baldwin County
IN EQUITY

No. _____

SUMMONS

Received in office this _____

day of _____, 193_____

SHERIFF

Executed this _____ day of

_____ 193_____

by leaving a copy of the within Summons with

_____ Defendant

_____ Sheriff

By _____

Deputy Sheriff

Service accepted this 23rd day
of July, 1935.

John N. Standard,

By J. B. T. Stackhouse
As his Attorney.

Solicitor for Complainant

Recorded in Vol. _____ Page _____

WITNESSED before me, J. Duck, Register of said Circuit Court, this _____ day of _____, 1935.

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

X
 X
 X
 X
 X

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

And now comes complainant and further amends the amended bill heretofore filed in this cause in the following respects:

FIRST.

Complainant amends paragraph THIRD of said bill to read as follows:

THIRD- During the year 1935 before the document hereinafter referred to as Exhibit A was executed complainant negotiated a loan with the Federal Land Bank at New Orleans and was advised by one W. C. Beebe of Bay Minette that three applications for said loan by three different persons should be made and for this purpose advised complainant to convey part of his land to him and part to some other person, stating that it would be better if the conveyances were made to persons to whom complainant was indebted and suggesting the name of respondent who was at that time working for complainant as hereinafter stated. Respondent then and for many years previous had and for many months afterwards kept possession of complainant's books and records and complainant did not know whether he was indebted to the respondent or not but the respondent was called into conference and represented that complainant was indebted to him in the sum of Twenty-five Hundred Dollars and as he then had possession of all the records complainant did not undertake to check an indebtedness vel non to the respondent or its amount if any such indebtedness existed, partly because of complainant's weakened physical condition and partly for the reasons hereinabove and hereinafter stated but the respondent was then and had for many years been complainant's trusted employee and well knew that complainant trusted said respondent's statements and representations

and in his good faith and promises and based on those representations and trusting in the truth of respondent's statement and his promises complainant made a deed to the respondent covering the lands particularly described in exhibit hereto attached and marked Exhibit "A" which is made part of this bill of complaint. Complainant continued in possession of said lands and is now in possession of said lands.

SECOND.

Complainant amends paragraph FOURTH so as to make the same read as follows:

FOURTH- At the time the said deed was made it was understood and agreed that after negotiations with the Federal Land Bank were completed the respondent would reconvey the lands covered by said deed to the complainant, that all of complainant's land would be sold by complainant in one body, in which manner the lands would bring the best price, and that out of the proceeds of said sale complainant would pay the respondent whatever amount, if any, complainant was indebted to the respondent, and at the time of the execution of the deed, Exhibit "A", the respondent executed a document, copy of which is hereto attached and marked Exhibit "B", which is now referred to and by reference made a part of this bill of complaint. Complainant further avers that all of these proceedings and intentions were fully explained to the official connected with and representing the Federal Land Bank and were agreed to by him in the negotiations.

THIRD.

Complainant amends paragraph numbered FIFTH so as to make the same read as follows:

FIFTH- Pursuant to the foregoing the said W. C. Beebe prepared a deed to respondent, of which Exhibit "A" is a copy, and at the same time drew an agreement for reconveyance by respondent to complainant, which respondent executed, of which Exhibit "B" is a copy, and complainant and complainant's wife signed said Exhibit "A" 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 was executed by respondent.

FOURTH.

Complainant amends paragraph numbered SEVENTH so as to make the same read as follows:

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 from them and other facts made known to complainant and now alleges that at the time he executed the document Exhibit "A" he was not and is not now indebted to respondent in any amount 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 of the evidence in the case that complainant is indebted to the respondent complainant offers to pay whatever amount it shall be determined he is so indebted.

FIFTH.

Complainant amends his prayer for relief so as to make the same read as follows:

PRAYER FOR RELIEF.

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 in any amount, Your Honor will be proper order ascertain and determine the amount and complainant agrees to pay any amount so determined.

Complainant further prays in the alternative if it be determined that complainant is indebted to the respondent and com-

plainant 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.

Complainant refers to his amended bill filed in this cause on to-wit August 31st, 1935, adopts all paragraphs of that amended bill except the paragraphs changed by this amendment and as so amended files this as his amended bill.

B. F. McMillan, Jr.

Solicitor for Complainant.

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.

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 four pages, contain a true and complete copy of the Amended Bill of Complaint filed on February 3, 1936, 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.

Robert S. Duck

Register.



CERTIFIED COPY OF AMENDED BILL
OF COMPLAINT FILED ON FEBRUARY
3, 1936.

J. WALLACE McMILLAN,
Complainant,

VS.

JOHN N. STANDARD,
Respondent.

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



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

The complainant amends his bill of complaint as last amended as follows, viz:

FIRST

Complainant refers to his bill of complaint as last amended, adopts all averments therein made except as herein-after stated and by reference makes such averments part of this amendment.

SECOND

Plaintiff amends paragraph "FOURTH" of his bill as last amended so as to make the same read as follows:

FOURTH - At the time said deed was made, respondent agreed to reconvey the land to complainant or to permit complainant to include it in a sale to be made by him, so that complainant could sell all of his land in one body in which manner it would bring the best price, and it was further agreed that out of the proceeds of said sale respondent would receive the amount due him which he then falsely represented to be Twenty-five Hundred Dollars, and further agreed that if plaintiff did not sell his land or redeem said property from respondent, the respondent would pay to complainant the further sum of One Thousand Dollars which said sum, with the Twenty-five Hundred Dollars that respondent represented complainant owed him as hereinabove and hereinafter stated, was to be the purchase price for complainant's interest in the land, but complainant avers that he has not sold said land and that respondent declines to reconvey said land to complainant and declines to pay the complainant the said sum of One Thousand Dollars, so that the respondent is indebted to complainant in the said sum of Twenty-five Hundred Dollars which he falsely represented to complainant was the amount due him, and in the further sum of One Thousand Dollars which he agreed to pay the complainant in the event

the land was not sold or redeemed. Complainant therefore shows that by reason of the facts herein alleged he has an equitable lien on respondent's interest in said land to secure said indebtedness and is entitled to a decree fixing and establishing the same.

THIRD

Plaintiff amends paragraph "FIFTH" of his bill as last amended so as to make the same read as follows:


FIFTH - Pursuant to the foregoing understanding or agreement complainant executed a deed to respondent, copy of which is attached as Exhibit A. The said deed was delivered to W. C. Beebe who either recorded same or delivered to the respondent for recording and who drew another agreement, copy of which is attached and marked Exhibit B, but complainant never received the document marked as Exhibit B or the original thereof, which at some time, vomplainant does not know when, was signed by the respondent, until many months after the execution of the deed and he knew nothing of its contents or of the fact that the same was executed by respondent, but the respondent has never paid or tendered the One Thousand Dollars balance due by him under the terms of his original agreement at anytime.

FOURTH

Complainant amends his prayer for relief as last amended so as to make the same read as follows:

Complainant prays that upon the hearing of this cause Your Honor will order, adjudge and decree that the deed, copy of which is hereto attached and marked Exhibit A, was procured by fraud and that when executed complainant owed the respondent nothing, and that Your Honor will impress upon respondent's equity of redemption in the said land a lien in favor of complainant for the amount of Thirty-five Hundred Dollars with interest from the date of the said deed.

Complainant prays for such other, further and different relief as in equity and good conscience may be due him in the premises.


Solicitor for Complainant.

NOTE: 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.

A. W. Millett
Solicitor for Complainant.

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

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

DEMURRER TO BILL AS LAST AMENDED.

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 Amended Bill.
2. Complainant does not offer to do equity.
3. The Complainant, by his Amended Bill, makes no offer to redeem in the event the deed in question is declared a mortgage.
4. Complainant makes no offer to redeem.
5. The allegations of fraud and misrepresentation, as contained in the Amended Bill of Complaint, are conclusions of the pleader.
6. No facts are alleged to show the fraud and misrepresentation referred to by the Complainant in the Amended Bill of Complaint.
7. Because it affirmatively appears from the Amended Bill of Complaint that the Complainant is not in any way indebted to the Respondent.
8. Because it affirmatively appears from the Amended Bill of Complaint that the Complainant was not indebted to the Respondent at the time the deed in question was delivered.
9. It does not allege any debt to be due and owing by the Complainant to the Respondent.
10. It does not allege that the deed referred to in the Amended Bill of Complaint as "Exhibit A" was intended by both parties thereto as security for a debt.

11. Because it does not allege that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was intended by the Respondent as security for a debt.

12. It does not allege that there is a debt due by the Complainant to the Respondent which continued after the execution and delivery of the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

13. It does not allege that any evidence of debt was given by the Complainant to the Respondent.

14. Because it does not allege that there was a debt from the Complainant to the Respondent secured by the deed referred to in the Amended Bill of Complaint as "Exhibit "A" which continued after the execution and delivery of the said deed.

15. Because it affirmatively appears that the Complainant does not come into equity with clean hands.

16. It is multifarious.

17. It is multifarious in that the relief asked for is inconsistent.

18. The allegations as to the Complainant's physical condition as contained in the Amended Bill of Complaint are conclusions of the pleader.

19. No facts are alleged to show Complainant's physical condition as alleged in the Amended Bill of Complaint.

20. The allegation that Complainant was not indebted to the Respondent at the time the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was given, is a conclusion of the pleader.

21. No facts are alleged to show that the Complainant was not indebted to the Respondent at the time the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was given.

22. The allegation that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was without consideration is a conclusion of the pleader.

23. The allegation that there was no consideration for the deed referred to in the Amended Bill of Complaint as "Exhibit "A" is a conclusion of the pleader.

24. No facts are alleged to show that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was without consideration.

25. No facts are alleged to show that there was no consideration for the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

26. It affirmatively appears from the Amended Bill of Complaint that there was a consideration for the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

27. It does not allege that the Complainant offered to pay the respondent the consideration referred to in the option, a copy of which is attached to the Amended Bill of Complaint as "Exhibit "B", before this suit was commenced.

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

1. The allegations of fraud and misrepresentation as contained in paragraph "SECOND" of the Bill of Complaint as last amended are conclusions of the pleader.

2. No facts are alleged to show the fraud and misrepresentation referred to by the Complainant in paragraph numbered "SECOND" of the Bill of Complaint as last amended.

3. The allegations as to the Complainant's physical condition as contained in paragraph "SECOND" of the Bill of Complaint as last amended are conclusions of the pleader.

4. No facts are alleged to show Complainant's physical condition as alleged in paragraph numbered "SECOND" of the Bill of Complaint as last amended.

III. Comes the Respondent in the above entitled cause and demurs to paragraph "THIRD" of the Bill of Complaint as last

amended and as grounds therefor assigns separately and severally the following:

1. The allegations of fraud and misrepresentation as contained in paragraph "THIRD" of the Bill of Complaint as last amended are conclusions of the pleader.

2. No facts are alleged to show the fraud and misrepresentation referred to by the Complainant in paragraph numbered "THIRD" of the Bill of Complaint as last amended.

3. Paragraph numbered "THIRD" of the Bill of Complaint as last amended does not allege any debt to be due and owing by the Complainant to the Respondent.

4. Paragraph numbered "THIRD" of the Bill of Complaint as last amended does not allege that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was intended by both parties thereto as security for a debt.

5. Paragraph numbered "THIRD" of the Bill of Complaint as last amended does not allege that there is a debt due by the Complainant to the Respondent which continued after the execution and delivery of the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

6. Paragraph numbered "THIRD" of the Bill of Complaint as last amended does not allege that any evidence of debt was given by the Complainant to the Respondent.

7. The allegations as to the Complainant's physical condition as contained in paragraph "THIRD" of the Bill of Complaint as last amended are conclusions of the pleader.

8. No facts are alleged to show Complainant's physical condition as alleged in paragraph "THIRD" of the Bill of Complaint as last amended.

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

1. Because it affirmatively appears from paragraph "FOURTH" of the Bill of Complaint as last amended that the Complainant is not in any way indebted to the Respondent.

2. Because it affirmatively appears from paragraph "FOURTH" of the Bill of Complaint as last amended that the Complainant was not indebted to the Respondent at the time the deed in question was delivered.

3. Paragraph "FOURTH" of the Bill of Complaint as last amended does not allege any debt to be due and owing by the Complainant to the Respondent.

4. Paragraph "FOURTH" of the Bill of Complaint as last amended does not allege that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was intended by both parties thereto as security for a debt.

5. Because it does not allege that the deed referred to in paragraph "FOURTH" of the Bill of Complaint as last amended as "Exhibit "A" was intended by the Respondent as security for a debt.

6. Paragraph "FOURTH" of the Bill of Complaint as last amended does not allege that there is a debt due by the Complainant to the Respondent which continued after the execution and delivery of the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

7. Paragraph "FOURTH" of the Bill of Complaint as last amended does not allege that any evidence of debt was given by the Complainant to the Respondent.

8. Paragraph "FOURTH" of the Bill of Complaint as last amended does not allege that there was a debt from the Complainant to the Respondent secured by the deed referred to in the Amended Bill of Complaint as "Exhibit "A" which continued after the execution and delivery of the said deed.

9. Because it affirmatively appears from said paragraph "FOURTH" of the Bill of Complaint as last amended that the Complainant does not come into equity with clean hands.

10. Paragraph "FOURTH" of the Bill of Complaint as last amended does not allege that the Complainant offered to pay the respondent the consideration referred to in the option, a copy of which is attached to the Amended Bill of Complaint as "Exhibit "B" before this suit was commenced.

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

1. Paragraph "FIFTH" of the Bill of Complaint as last amended does not allege any debt to be due and owing by the Complainant to the Respondent.

2. Paragraph "FIFTH" of the Bill of Complaint as last amended does not allege that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was intended by both parties thereto as security for a debt.

3. Paragraph "FIFTH" of the Bill of Complaint as last amended does not allege that there is a debt due by the Complainant to the Respondent which continued after the execution and delivery of the deed referred to in the Amended Bill of Complaint as "Exhibit "A".

4. Paragraph "FIFTH" of the Bill of Complaint as last amended does not allege that there was a debt from the Complainant to the Respondent secured by the deed referred to in the Amended Bill of Complaint as "Exhibit "A" which continued after the execution and delivery of the said deed.

5. No facts are alleged in said paragraph "FIFTH" to show that the Complainant was not indebted to the Respondent at the time the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was given.

6. The allegation that the deed referred to in the Amended Bill of Complaint as "Exhibit "A" was without consideration is a conclusion of the pleader.