

4 (82)

J. WALLACE McMILLAN,	*	
Plaintiff.)	
	*	IN THE CIRCUIT COURT
VS)	
	*	OF
W. C. BEEBE,)	BALDWIN COUNTY, ALABAMA...
Respondent.)	
		NO. <u>89</u>

DEMURRER

Comes the Respondent in the above styled cause and refiles this answer to the Bill of Complaint 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 February 6th, 1935.

W. C. Beebe,
Respondent.

ALSO: -
Original demurrer and answer as filed on October 23rd, 1934 by M. A. Stone, Register., are hereby refiled this February 6th, 1935, by Robert S. Duck, Register.,

W. C. BEEBE,
Respondent..

COPY Equity Final Record,
Book 6 page 130

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

IN THE CIRCUIT COURT OF BALDWIN
 COUNTY, ALABAMA. EQUITY.
 NUMBER 82.

And now comes the complainant and gives notice of appeal to the Supreme Court of Alabama from the decree of the judge of the Circuit Court of Baldwin County, Alabama, dated May 1st, 1935, and filed May 6th, 1935.

B. F. McMillan
 Attorney for Plaintiff.

We the undersigned J. W. McMillan, _____
 and _____, acknowledge ourselves securities for costs of appeal to the Supreme Court of Alabama in the foregoing cause.

Dated this October 27th, 1935.

J. W. McMillan (SEAL)
W. W. McMillan (SEAL)
B. F. McMillan (SEAL)

Appand Name 1935
 Robert L. Duck

STATE OF ALABAMA,)
COUNTY OF BALDWIN.)

IN THE CIRCUIT COURT OF SAID
COUNTY, EQUITY NUMBER _____.

TO THE HONORABLE F. W. HARE, JUDGE:

Humbly complaining, your orator, J. Wallace McMillan, as complainant, brings this, his bill of complaint against W. C. Beebe, as respondent, and respectfully shows:

First.

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

Second.

Complainant has been engaged in business in Baldwin County for many years and in his business operations has accumulated much land in Baldwin County, to-wit, upwards of eleven thousand (11,000) acres, including that hereinafter *by reference* particularly described in paragraph *fifth* hereof, and all of the accumulations of complainant's business operations have been invested in the purchase of said land.

Third.

Respondent, W. C. Beebe, has for many years been confidential attorney for complainant and has attended to all complainant's business matters in which the services of legal counsel were required and, in the course of his dealings with complainant, he has had the opportunity to, and has secured full and complete knowledge of all of complainant's business affairs and the value of his lands, and complainant has reposed full and implicit confidence in his said attorney and withheld no information of a business nature from him and has trusted him with the handling of all matters and preparation of all such papers, all of which facts were well known to the respondent.

Third.

Some years ago, complainant placed a loan for

forty thousand (\$40,000.00) dollars ^{some of} on his land, which sum was acquired from the First Joint Stock Land Bank, of Montgomery, and which was secured by mortgage, but for some several years preceding the year 1933, that being the year of the happening of the matters and things hereinafter complained of, a terrific financial depression had swept over the entire country and still exists, so that practically all businesses, including that of complainant, were practically paralyzed, and complainant was unable to meet his payments under his mortgage to the First Joint Stock Land Bank and his loan from that bank was called. In this situation, complainant and respondent, his said attorney, went to Montgomery to discuss the matter with the representative of the mortgagee and it was concluded that the mortgagee could, by and through the procurement of certain government bonds and of the handling of the same, settle the mortgage indebtedness against complainant for fifteen thousand (\$15,000.00) dollars, without loss to the mortgagee, and it was agreed to settle the said mortgage for said sum and that the complainant would pay fifteen hundred (\$1500.00) dollars of said reduced amount in cash within such time as was then stipulated, in consideration of which the mortgagee agreed to give him a period of ninety days within which to procure and to pay the remaining thirteen thousand, five hundred (\$13,500.00) dollars, and, after discussion between the complainant and respondent, it was decided by both to make application for a loan for an amount sufficient to pay said sum of fifteen thousand (\$15,000.00) dollars from the Federal Land Bank, at New Orleans.

Fourth.

During these negotiations and after determining to make the loan from the Federal Land Bank, respondent stated

to complainant that, instead of attempting to get this loan through one application for the entire amount, the matter should be presented to the Federal Land Bank in several applications. He did not state why and complainant did not know why, but respondent was then acting as complainant's attorney in the matter and complainant adopted the idea suggested by respondent without inquiring further. Respondent then suggested that complainant owed him some money for attorney's fees ^{for services} which he had rendered and said the amount of the debt was three thousand (\$3,000.00) dollars, that, in addition to this, complainant owed other persons, and respondent's plan was that complainant make a deed for some of the lands to him (respondent) and to other of the said land to one John N. Stanard, another creditor to whom complainant was also indebted. It was planned that three applications for the respective loans would be made by complainant, respondent and said Stanard, which was done, under the plan, devised and presented by the respondent.

Fifth.

Complainant further shows that following this, respondent prepared and complainant signed a deed to respondent, a copy of which is hereto attached and marked "Exhibit A", which is now referred to and by reference made a part hereof, and complainant also executed a deed to other lands similar in form to the said John N. Stanard, and the three applications were made in the name of complainant, respondent and the said Stanard, complainant paying all costs for making the said applications and filing same and paying all expenses of attempting to get the matter through as planned, and the proceeds of all of said applications or loans were to be for complainant's use. The money with which to pay the mortgage to the First Joint Stock Land Bank, hereinafter referred to, and the expenses incidental to all of the proceedings were in this

way raised within the stipulated ninety days and the mortgage to the Joint Stock Land Bank, of Montgomery, was settled, complainant raising said sum as follows:

Mortgage from complainant to the Land Bank Commissioner	\$5,000.00
Mortgage from complainant to the Home Owners' Loan Corporation	\$5,750.00
Mortgage from John N. Stanard to the Federal Land Bank	\$3,400.00.

In addition to this, the respondent raised, by a private loan from J. Hamilton Smith and Hector A. Smith, fifteen hundred (\$1500.00) dollars for complainant's use, which money was raised by a mortgage on the land described in document, copy of which is hereto attached as "Exhibit A", *and delivered to complainant.*

Sixth.

At the time of and during the making of the matters and things herein~~after~~ set forth, complainant, who is attaining mature years, had concluded to sell all of his lands except, perhaps, his home, which it was thought could be done for a sum sufficient to pay his entire indebtedness, including his indebtednesses to respondent and Stanard hereinabove referred to, and leave complainant sufficient for support of himself and family throughout his remaining years, but a sale of the land was then pending and it was thought by all parties interested that it would materialize at an early date, but, due to the continued depression, the sale has not yet been made.

Seventh.

Complainant has stated in paragraph *fixth* hereof that he made a deed to respondent, which allegations are now referred to and by reference made part of this paragraph and he further alleges that, during the said negotiations and at all times it was agreed between complainant, respondent and the said Stanard that

complainant should have the right to redeem the said lands from the documents in form of deeds to respondent and the said Stanard, out of the proceeds of the sale of the said lands when made and respondent delivered to complainant a written statement, copy of which is hereto attached and marked "Exhibit B", evidencing this agreement, although complainant did not read the said document when delivered to him, leaving the preparation of that document to respondent. Respondent also drew, and had executed, an instrument of writing from John N. Stanard to complainant similar in form to that, copy of which is attached as #Exhibit B", except that it provided complainant should have two years within which to pay said money. This method was at the suggestion of and the forms used were prepared by respondent. They were not read by complainant, first, because he trusted respondent to prepare the papers and complainant would probably have not understood the legal effect of such documents if he had read them, but he alleges that the main purpose of the agreement was to secure the respondent's debt against complainant and it was never intended that complainant should convey his land to respondent absolutely for the consideration named, and complainant further alleges that the said document, though in form a deed, was intended as security for respondent's debt against complainant.

Ninth.

Complainant further alleges that the land conveyed in the said deed to respondent is worth vastly more than the amount of complainant's debt to respondent; it is in many respects the key to ^{Complainant's} ~~respondent's~~ other land and is practically in the heart of complainant's said other land and its value is approximately ten thousand (\$10,000.00) dollars. Complainant further alleges that the

respondent has, since the original deeds were signed to him by complainant, recognized the security quality of the document and the ownership of the land as essential to the value of complainant's other lands, by agreeing to a further extension and the substitution of other lands for these, and has not until recently asserted absolute right and title to the land if complainant did not pay him forty-five hundred (\$4500.00) dollars by September 17th, that being the date of expiration of the document, copy of which is attached as "Exhibit B", but ^{respondent} ~~complainant~~ now states that, unless the land is redeemed by October 17th, complainant's rights in the land and his rights to redeem the land will terminate, that respondent will immediately sell the land to other persons. Since the date of the document in form a deed, by which respondent claims complainant sold land to him, complainant has been in possession of said land.

Complainant therefore shows that, if respondent should carry out his threat and make a sale of this land to an innocent purchaser for value, in view of the form in which respondent has written up the transaction, all of complainant's rights in the land and to redeem the same will be lost. Complainant shows that, depending on the respondent and on his promises, complainant has made no extreme ^{and cannot now} effort to raise the money to pay respondent's alleged debt by October 17th and that, because of the matters and things hereinabove set forth, the document executed by complainant to the respondent, though in form an absolute deed, was given as security for a debt and should be construed a mortgage.

PRAYER FOR PROCESS.

The premises considered, complainant prays that your Honor will take jurisdiction of the cause made by this bill of complaint and that by the proper process issuing to him from

this court, the said W. C. Beebe be made party defendant hereto and to be required to answer the charges herein made within the time and in all things as required by the rules and practice of this honorable court.

PRAYER FOR RELIEF.

Complainant further prays that your Honor will order a reference to ascertain the real amount due by complainant to respondent, will decree that the instrument dated October 17th, 1933, copy of which is attached ^{as exhibit} to this bill of complaint, was given as security for said indebtedness, that respondent holds title to the land described in said deed, as trustee for complainant, or that the instrument be decreed to be a mortgage and, if necessary, that it be foreclosed, preserving to complainant the right of redemption for the period secured to mortgagors under the laws of Alabama, that in event of foreclosure, the proceeds issuing from the foreclosure sale be decreed to be paid to the respondent in the amount ascertained to be due him, and the balance be paid to complainant.

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

B. X. McMillan
Solicitor for Complainant.

NOTE: The respondent, W. C. Beebe, 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. X. McMillan
Solicitor for Complainant.

STATE OF ALABAMA,

COUNTY OF BALDWIN.

Before me, G. Mac Humphris, a notary

public in and for said state and county, personally appeared J. Wallace McMillan, who is known to me and who being sworn, says on information and belief that the allegations of the foregoing bill of complaint are true.

J. W. McMillan

Sworn to and subscribed before me this 16th day of October, 1934.

G. MacKinnon
Notary Public, Baldwin County, Alabama.

"KNOW ALL MEN BY THESE PRESENTS, that we, John Wallace McMillan and Allene K. McMillan, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations to us in hand paid by W. C. BEEBE, the receipt of which is hereby acknowledged, do grant, bargain, sell and convey unto the said W. C. Beebe. all the following described real property situated in the County of Baldwin, State of Alabama, to-wit:

That part of the Joshua Kennedy Grant, Section 47, Township 1 South of Range 2 East, which lies in and would be the South half of regular Government Section 35, Township 1 South, Range 2 East, and also that part of the Joshua Kennedy Grant, Section 47, Township 2 South, Range 2 East, which lies in and would be the Southeast quarter of regular Government Section 2, Township 2 South of Range 2 East; also that part of the J. L. Seabury Grant, Section 5, Township 2 South of Range 2 East, which lies in and would be the North half and the Southwest quarter of regular Government Section 2, Township 2 South of Range 2 East, containing all 960 acres, more or less.

Together with, all and singular, the rights, members, privileges, tenements, hereditaments and appurtenances thereunto belonging or is anywise appertaining.

To have and to hold unto the said W. C. Beebe, his heirs and assigns forever. And we do for ourselves, our heirs, executors and administrators, covenant with the said W. C. Beebe, his heirs and assigns, that we are lawfully seized in fee simple of said premises; that they are free from all encumbrances 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 W. C. Beebe, his heirs and assigns forever, against the lawful claims of all persons whomsoever.

In witness whereof we have hereto set our hands and seals on this the 17th day of October, 1933.

J. W. McMillan (SEAL)
Allene K. McMillan (SEAL)

\$4.50 U. S. I. R. Stamp
attached, cancelled
10/17/33, J. W. M.

STATE OF ALABAMA,)
BALDWIN COUNTY.)

I, J. P. 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, that, 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, constraints or threats on the part of her husband.

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

(SEAL) J. P. Beebe, Notary Public,
Baldwin County, Alabama.

Gy-Ribit A

STATE OF ALABAMA, |
BALDWIN COUNTY. |

KNOW ALL MEN BY THESE PRESENTS, that W. C. Beebe and CLARICE BEEBE, his wife, first party, in consideration of the sum of FIVE DOLLARS (\$5.00) to them in hand paid by J. W. McMillan second party, the receipt of which is hereby acknowledged, do hereby give and grant to said second party, for a period of one (1) year 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 Poshua Kennedy Grant, Section 47, Township 1 South of Range 2 East, which lies in and would be the South half of regular Government Section 35, Township 1 South, Range 2 East, and also that part of the Joshua Kennedy Grant, Section 47, Township 2 South, Range 2 East, which lies in and would be the Southeast quarter of regular Government Section 2, Township 2 South of Range 2 East; also that part of the J. L. Seabury Grant, Section 5, Township 2 South of Range 2 East, which lies in and would be the North half and the Southwest quarter of regular Government Section 2, Township 2 South of Range 2 East, containing in all 960 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 Forty-Five Hundred Dollars (\$4500.00), with interest thereon, plus any 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 have hereunto set their hands and seals, this the 17th day of October, 1933.

W. C. BEEBE (SEAL)

CLARICE BEEBE (SEAL)

STATE OF ALABAMA, |
BALDWIN COUNTY. |

I, J. P. Beebe, a Notary Public in and for said county, in said State, hereby certify that W. C. Beebe and Clarice Beebe, his wife, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they 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.

J. P. Beebe.
Notary Public, Baldwin County,
Alabama.

Exhibit B.

J. W. McMILLAN,

COMPLAINANT,

VS

W. C. BREED,

RESPONDENT.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, IN EQUITY,

NUMBER 82.

Handwritten signature and notes

The Complainant amends his bill by adding to and as part of paragraph "EIGHTH" the following:

"Complainant further alleges that based on his agreement and understanding with the Respondent as hereinabove and hereinafter set forth and reposing full and complete confidence in the respondent and believing that the respondent would prepare the papers for complainant to sign exactly in accordance therewith and for the protection of complainant, he signed all papers presented by the respondent for him to sign at a time when complainant was a very sick man. He had been taking bromides in order to alleviate his suffering and was not in a condition physically or mentally to fully understand the nature, character or import of the papers he was signing, all of which facts were known to the respondent."

SOLICITOR FOR COMPLAINANT.

J. W. McMillan,

Complainant,

vs.

W. O. Beebe,

Defendant.

Witness this 30th day of October, A. D. 1934.
of said witnesses be fully taken and completed as aforesaid.
be continued from day to day, if necessary, until the testimony
Register at his office in Bay Minette, Alabama, to-wit: on the
for the taking of testimony of said witnesses orally before the
Register, at his office in Bay Minette, Alabama, to appoint a time
3rd day of November, 1934, application will be made before the
before the Register; and you are further notified that on the
witnesses for the Respondent in said cause, to be taken orally
Randolph McGowan, John A. Langford and Jesse M. Smith, witnesses
desires the evidence of W. O. Beebe, J. E. Beebe, Ida M. Turnbull,
Takes notice that W. O. Beebe, Respondent in said cause,
in the above stated cause.
J. W. McMillan, Complainant, and J. W. McMillan, his Attorney,
to

*Notice of discovery
for oral evidence
Material of nature
for his discovery*

Repeated

*W. O. Beebe
Filed Oct 30, 1934*

J. W. McMillan

RECORDED

82

*W. O. Beebe
Respondent*

*Copy this notice to the Oct 30, 1934
giving to J. W. McMillan, Complainant
and to J. W. McMillan, his attorney,
before.*

*W. O. Beebe
Respondent*

THE STATE OF ALABAMA,
BALDWIN COUNTY.

J. W. McMillan,

Complainant,

vs.
W. C. Beebe,

J. W. McMillan
vs.
W. C. Beebe

RECORDED
Book

82

Defendant
Deceased
Heir at Law
James J. Beebe
deceased

John H. Standard
Randolph McGowan
Ida M. Turnbull

CIRCUIT COURT OF BALDWIN

COUNTY, ALABAMA.

IN COURT
NO. 82

Filed October 30, 1934

W. C. Beebe
Registrar

The Respondent, W. C. Beebe, requests the oral examination of the following named witnesses, on behalf of the respondent, viz.:

John H. Standard
Randolph McGowan
Ida M. Turnbull
said witnesses reside in the County of Baldwin, State of Alabama.
M. A. Stone, the Registrar of this Court, is suggested as a suitable person to be appointed Commissioner to take the deposition of said witnesses on such oral examination.

W. C. Beebe
Respondent.

Supervisor of this business matter this day to J. W. McMillan, Poplar Bluffs and to J. W. McMillan in Mobile, Mobile, October 30, 1934.

W. C. Beebe

Notice of this business matter given to J. W. McMillan, Poplar Bluffs, and to J. W. McMillan in Mobile, Mobile, October 30, 1934.

SUMMONS--ORIGINAL.

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

To Any Sheriff of the State of Alabama--GREETING:

WE COMMAND YOU, That you summon W. G. BEEBE

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 W.C.BEEBE

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, M. A. Stone, Register of said Circuit Court, this 16th day of October 1934

M. A. Stone Register

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

The State of Alabama }
Baldwin County---Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA--GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the _____

Monday in _____ 193_____

in a certain cause in said Court wherein J W Mc Millan.

Plaintiff, and W C Beebe

Defendant, ~~an judgment was~~ ^{decree} rendered against said

J W McMillan.

to reverse which _____ the said Decree

J W Mc Millan.

has on this day applied for and obtained from this office an APPEAL, returnable to the

~~Supreme~~ Spring Term of our Supreme Court of the State of Alabama, to

be held at Montgomery, on the _____ day of _____, 193_____ next,

and the necessary bond having been given by the said J W Millan.

with M M Mcmillan and

R D McMillan. sureties,

Now, You Are Hereby Commanded, without delay, to cite the said

W C Beebe.

or _____ attorney, to appear at the

Spring. Term of our said Supreme Court, to defend against the said

Appeal, if He think proper.

Robert S Duck.

WITNESS, ~~W W Rickerson~~, Clerk of the Circuit Court of said County, this 31

day of October, A. D., 1935

Attest:

Robert S Duck Clerk.

3

J. W. McMILLAN,
COMPLAINANT,
VS
W. C. BEEBE,
RESPONDENT.

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|
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IN THE CIRCUIT COURT OF
BALDWIN COUNTY, IN EQUITY,
NUMBER 82.

The Complainant amends his bill by adding to and as part of paragraph "EIGHTH" the following:

"Complainant further alleges that based on his agreement and understanding with the Respondent as hereinabove and hereinafter set forth and reposing full and complete confidence in the respondent and believing that the respondent would prepare the papers for complainant to sign exactly in accordance therewith and for the protection of complainant, he signed all papers presented by the respondent for him to sign at a time when complainant was a very sick man. He had been taking bromides in order to alleviate his suffering and was not in a condition physically or mentally to fully understand the nature, character or import of the papers he was signing, all of which facts were known to the respondent."

B. J. McMillan
SOLICITOR FOR COMPLAINANT.

10

J. W. Mc.Millan,)	
Complainant,)	
Vs.)	Circuit Court, Baldwin County,
W. C. Beebe,)	Alabama.
Respondent.)	In Equity.
)	

This cause coming on to be heard is submitted for decree on demurrer to the Bill of Complaint as amended, and also for final decree on the pleadings and proof as noted by the Register.

Upon consideration of the demurrer to the said amended Bill of Complaint I am of the opinion that said demurrer is not well taken, and it is ordered, adjudged and decreed by the Court that said demurrer be, and same hereby is, overruled.

Upon consideration of the case on its merits as disclosed by the pleading and proof I am of the opinion that Complainant has failed to make out a case entitling him to the relief prayed for in the Bill; in fact, aside from the general prayer for relief, Complainant prays for nothing that he is entitled to pray for except that the deed to the Respondent be declared a mortgage. Complainant does not follow this up with a prayer to be allowed to redeem. If the deed in question could be declared a mortgage under the proof,--which the testimony does not justify--, his only right then would be that of redemption. A mortgagor has no right to compel a foreclosure, as is prayed for in the bill.

It is, therefore, ordered, adjudged and decreed by the Court that Complainant is not entitled to relief, and his Bill is dismissed. Costs are taxed against Complainant, for which let execution issue.

This May 1st, 1935.

J. W. Hare
Judge.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19~~35~~³⁵-6

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

Whereas, the Record and Proceedings of the Circuit Court
of said county in a certain cause lately pending in said Court between
J. Wallace McMillan, Appellant,
and
W. C. Beebe, Appellee,
wherein by said Court, at the _____ Term, 19~~35~~³⁵, 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 14th day of May, 19~~35~~³⁶, that said
decree of said Circuit Court be in all things affirmed,
and that it was further considered that the appellant, and J. W. McMillan,
M. M. McMillan and R. W. McMillan,
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, 19~~35~~³⁶

Robert F. Ligon
Clerk of the Supreme Court of Alabama

6

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

IN THE CIRCUIT COURT OF
 BALDWIN COUNTY, ALABAMA.
 IN EQUITY.
 NO. 82.

It is agreed between the parties that the depositions of witnesses, W. C. Beebe, John N. Standard, J. P. Beebe, Jesse M. Smith, Ida M. Turnbull, Randolph McGowan and Frank B. Nihart, be taken before Ora Sirmon without the issuance of Commission; that the depositions of said witnesses as taken and returned by her be treated as evidence in said cause, and that all formalities in the manner of taking and certifying and returning said depositions are hereby waived, and that the same be considered with the same force and effect as if formal Commission had issued regularly and the taking, certifying and returning of the same were in full compliance with the law, and that *Randolph McGowan and Frank B. Nihart* witnesses' signatures to the same are waived.

This the 6 day of February, 1935.

J. Wallace McMILLAN
 Solicitor for Complainant.

W. C. Beebe
 Solicitor for Respondent.

✓

Bay Minette, Alabama.
February 6, 1935.

R. S. Duck,
Register in Chancery,
Baldwin County, Alabama.

In Account With,

ORA SIRMON

Services rendered as Commissioner in case of J. Wallace
McMillan, Complainant, vs. W. C. Beebe, Respondent.....\$50.00

9

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

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY.
NO. 82.

This cause is submitted on behalf of respondent on the following:

1. His demurrers and answers and exhibits thereto attached, viz.: Exhibits *a B C & D*
2. Deposition of W. C. Beebe ~~and Exhibits thereto attached, viz.: Exhibits~~
3. Deposition of J. P. Beebe and exhibits thereto attached, viz.: Exhibits *A, B, & C*
4. Deposition of Ida M. Turnbull.
5. Deposition of John N. Standard ~~and exhibits thereto attached, viz.: Exhibits *A*~~
6. Deposition of Randolph McGowan.
7. Deposition of Jesse M. Smith and exhibit thereto attached, viz.: Exhibit *A*
8. Deposition of Frank B. Nihart.
9. Agreement of counsel as to depositions of witnesses, W. C. Beebe, John N. Standard, J. P. Beebe, Jesse M. Smith, Ida M. Turnbull, Randolph McGowan and Frank B. Nihart.

Robert S. Luck
Register.

MAY 14 1936

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THE STATE OF ALABAMA * * * * JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1935-36.

1 Div. 910.

J. Wallace McMillan

v.

V. C. Hoobe,

Appeal from Baldwin Circuit Court,
(In Equity).

GARDNER, Justice.

The bill seeks to have a deed declared a mortgage, but unaccompanied by any offer of redemption. On the contrary, the bill discloses complainant's inability to pay the debt, and his testimony is to like effect.

Complainant has proceeded upon the theory that the court will assume jurisdiction merely for the purpose of declaring the deed a mortgage. Though there are authorities sustaining this view (41 Corpus Juris 304, note 37), yet a different rule has long been established in this jurisdiction.—Hick v. Ashurst, 55 Ala. 607; Ross v. Lands-Ann, 55 Ala. 568.

2.

Based upon considerations of the maxim that he who seeks equity must offer to do equity, and that equity will not do justice by piece-meal, but delights to quiet litigation, this Court, in Nixon v. Ashurst, supra, said: "So, if it is insisted that an absolute conveyance is really a security for a debt, and therefore a mortgage, there must be an offer to pay the debt or the court will not interfere"; and in Ross v. Landman, supra, was the holding that the demurrer taking the point no offer was made to pay the debt was well taken and should have been sustained."

The demurrer to the bill in the instant case also took the point, and should have been sustained, rather than overruled, as was done.

There is some suggestion that the court might order the mortgage foreclosed, and in such a manner complainant would obtain the two year period for statutory redemption. But a mortgagor is in no position to secure a foreclosure. The remedies for the collection of the debt are those belonging to the mortgagee, which he may pursue and as to which the mortgagor cannot compel an election. - Nixon v. Ashurst, supra.

Under the rule here well established, therefore, the bill was without equity, an infirmity confirmed by the proof, and those considerations justified the dismissal of the bill.

The question of fact involved, in view of this conclusion, is therefore unnecessary here to be determined.

Let the decree stand affirmed.

Affirmed.

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

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 919

J. Wallace McMillan, Appellant,

vs.

W. C. Beebe, Appellee,

From Baldwin 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 2 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 of May, 1936
Robert F. Ligon
Clerk of the Supreme Court of Alabama.

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Op # 9

- ✓1. Original Bill of Complaint
- ✓2. Demurrer and Answer
- ✓3. Amended Bill of Complaint
- ✓4. Refiling of Demurrers to Amended Bill
- ✓5. Complainant's Testimony
- ✓6. Agreement of Counsel
- ✓7. Defendant's Testimony
- ✓8. Complainant's Note of Testimony
- ✓9. Note of Testimony for Respondent.
- ✓10. Final Decree
- ✓11. Notice of Appeal Security for Cost
- ✓12. Citation of Appeal
- ✓13. Clerk's Certificate
- ✓14. Assignment of Errors

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Mr. Robert S. Duck Montgomery, Ala., July 7th 1936 Dr.

per Clerk
Bay Minette, Alabama,
 To ROBERT F. LIGON,

Clerk of the Supreme Court of Alabama,
 Montgomery, Ala.

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To Costs of Appeal in Supreme Court,		By Items:	
<u>1st</u> Div. No. <u>919</u>		Docketing Cause	\$.30
<u>J. Wallace McMillan</u> , Appellant, vs. <u>W. C. Beebe</u> , Appellee, From <u>Baldwin</u> Circuit Court		Entering Attorney	(.30 ea.) .60
		Appeal or Writ of Error	.50
		Order	.50
		Continuance	(1) (.25) .25
		Judgment	1.00
		Mandate or Certificate to Court Below	2.00
		Writ of Fieri Facias	(1.00)
		Taxing cost, copying, and entering satisfaction	.85
		Fee in lieu of State Tax	4.00

No. 83

RECORDED
ack

The State of Alabama
BALDWIN COUNTY

IN EQUITY
Circuit Court of Baldwin County

J. M. Miller 1770 Miller

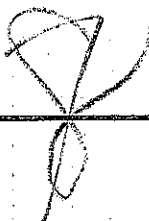
J. C. Beck
vs.

NOTE OF TESTIMONY

Filed in Open Court this 6

day of February 1935

Robert S. Beck
REGISTER



J. Wallace Merrill
 Complainant
 vs.
N. C. Brooks

THE STATE OF ALABAMA
 Baldwin County

IN EQUITY
 Circuit Court of Baldwin County

Bill of Complaint
Amended

This cause is submitted in behalf of Complainant upon the original Bill of Complaint,

was up to Bill of Complaint, deposition of J. Wallace Merrill and exhibits thereto, deposition of Wallace Killenore, deposition of W. R. Dickey, deposition of John Killenore, deposition of M. M. McMillan, deposition of Mark Cowley, deposition of A. P. M. Hudson, deposition of Mrs. J. Wallace Merrill, deposition of J. Wallace Merrill

and in behalf of Defendant upon

Filed

Robert S. Duck

Register.