

ERNEST RABON,

Complainant,

vs.

JOHN MINCHEW and  
JOE F. JOHNSON,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

EQUITY SIDE.

BRIEF AND ARGUMENT OF  
RESPONDENTS ON PETITION  
OF COMPLAINANT FOR A  
REHEARING.

FRANK G. HORNE  
ATMORE, ALABAMA.

SOLICITOR FOR  
RESPONDENTS.

STATEMENT OF FACTS.

This cause was submitted for final decree upon the Bill of Complaint, the pleadings filed therein, and on the testimony of various witnesses and "EXHIBIT A" which was a statement of account the respondent, John Minchew testified was rendered to him by the Complainant, Ernest Rabon, and "EXHIBIT B" which was a book of account owned by the Complainant and which was brought by him to the hearing at which it was introduced, but which was introduced in evidence by the respondents.

The Court by final decree rendered November 7th., 1940, dismissed the Bill of Complaint, and also dismissed the cross bill filed by the respondents and taxed the costs against the complainant, and declared the mortgage sued on "paid" and satisfied "in full".

The Complainant filed a petition to set aside the decree of November 7th., and to either grant a rehearing, or to enroll a decree against the respondents granting to the Complainant the relief sought in his original Bill of Complaint.

BRIEF AND ARGUMENT.

"EXHIBIT B" does not show a total of \$1,080.86 collected as so ably stated by the Complainant but does show irrefutably that a great deal more than that has been collected as discovered by this Court

on the former hearing of this cause.

We were horrified to discover that the complainant in his zeal to take the property of the respondents had taken "EXHIBIT B" and without benefit of cross examination and without our knowledge has added thereto certain notations and what changes he has made we have no way of ascertaining. But we do know that when originally presented these books showed beyond a doubt that Ernest Rabon had failed to account for a little more than one hundred dollars of the moneys he had collected for and in behalf of Rabon and Minchew. We know that his books showed then, and we might add, they show now that on the date he claims he took his own money and paid out this mortgage and had it transferred to himself, that is at the end of that day, he had nearly a hundred dollars in his possession with which to have paid the note, and which it was his duty to use for that purpose.

In marking up his book he notes that certain sums were not collected by him but were taken in by Minchew and that he did not receive them. If he knows this, he knew it all the time, and he knew it when he gave John Minchew "EXHIBIT A", and in that statement from his books he did not leave out the portions he has marked around in "EXHIBIT B".

Now the worthy solicitor for the Complain-

PAGE SEVEN. Brief and Argument.

We submit that the complainant is not in good conscience entitled to deduct any commissions at this late date, and further it is by no means certain that he has not already been overpaid for commissions.

According to the Proverbs of Solomon, the Certain Maxims of Hafiz, the platitudes of Plato, the creeds of such as Lao Tze, Confucius, and Mahomet, the philosophies of all who subscribed to the Democratic way of life, a man should come into a court of Equity with clean hands.

Add to these men of eminence those learned in the law from antiquity to the present and it is always an excellent rule to follow and one that is followed in our courts.

Ernest Rabon has demonstrated that his purpose is to get the property of the respondents in whatsoever manner he can. Neither rhyme nor reason supports him in his desire.

He has demonstrated the lack of a real right to this property by giving false statements to the respondents, by failing in his duty to collect and account for moneys turned over to him; by trying to deny his own books which he kept and which were the records by which he was to account for the moneys of the respondent, John Minchew.

PAGE EIGHT. BRIEF AND ARGUMENT. \*

We respectfully submit that the complainant had funds on hand on the second day of May with which to have paid the mortgage without purchasing the same with his own money. His records clearly indicate this and without doubt he was trying to take an unfair advantage of the respondents when he took the money of Rabon and Minchew and paid this note but had it transferred to himself.

This indebtedness was that of R. M. Rabon as well as John Minchew-and to show that Ernest Rabon treated it as such see the item on page 8 of "EXHIBIT B" where he paid one of the notes to the First National Bank of Atmore. And when he had the funds on hand to pay it with both on the 2nd day of May and on the 5th it was his duty to pay it.

Ernest Rabon according to his books has had at all times since the date the note was due enough of the funds of John Minchew in his hands to pay the note and it was his duty to so do.

We submit that the decree rendered in this cause was the only rational and reasonable conclusion which could have been reached under the evidence in this case. We feel that to disturb this finding would do violence to good conscience and equity in the matter, and we respectfully submit that the decree should stand as given and the petition to grant a rehearing should be denied.

PAGE NINE. Brief and Argument.

Respectfully submitted,



Solicitor for the Respondents.

I hereby certify that a copy of this brief has this day been mailed to Hon. John P. Beebe, the Solicitor of Record for the Complainant, Ernest Rabon.

Dated this 16th day of December, 1940.



Solicitor for the Respondents.

PAGE FIVE--Brief and Argument.

by circling a ring around certain items he shows he received and saying that they were received, not as his books show, but otherwise. When did he find this out? Who else says it is so? Why should he ask anyone to believe it? When he gave "Exhibit A" to the respondent he did not call his attention to it then. When "EXHIBIT A" and "EXHIBIT B" were duly presented in Court he did not call anyone's attention to it then, but now he wants to make out a new account and one that might be more in his favor. I do not think it either fair, right nor reasonable to permit him to do so, and we submit that the record does not show that he tried to when his day in Court came, and if the matter is as uncertain as his other statement, "EXHIBIT A" we feel that this right should be denied him. Here we wish to state that we do not feel that his solicitor is any party to his trying to place addenda to, or otherwise mutilate the exhibits in the case.

Now we come to the point where it is contended that Ernest Rabon received no commissions on the moneys collected. We will say that he certainly has gall to ask for any after the <sup>w</sup>ay he has tried to take the property of John Minchew and Joe Johnson. But every phase of this case shows that Ernest Rabon was out to get "his" whether anyone else got theirs or not, and the record is not altogether silent as to that. Did he get any commis-

PAGE SIX. Brief and Argument.

sion, and what commission was he entitled to. He says he was entitled to 5%. This was the amount all hands agree he was to have. Now he asks 3% and apparently asserts he has received nothing. But the record helps to show that he has admitted he got part of his commissions and we submit that in fact he got all of them and then some. On page 11 of the transcript of testimony taken before Miss Ida M. Turnbull and dated in her certificate annexed thereto, June 15, 1940 the following takes place:

" Q. And you handled all of his money for three and a half months and charged him 5% for collecting his moneys?

A. I only got a small portion of the 5%; I only got paid for a small portion of the twelve or thirteen hundred dollars.

Q. How much did you get on that, \$50.00?

A. No, about \$20.00.

Mr. BEEBE: I also object to that, because it is incompetent, irrelevant and immaterial and has no bearing on the case."

Now he admits \$20.00 was received by him and a perusal of the two accounts, that is "Exhibit A" and "Exhibit B" reveals that in all he received more than seventy dollars. None of it was marked Commission, but we believe that regardless of how it was marked, it was on hand and he got it along with the rest. We might call attention to the item of May 10th. in both "Exhibit A" and "Exhibit B" It is noted as "supplies" in "EXHIBIT B" but is not noted as anything in "EXHIBIT A". This item is found on page 14 of "EXHIBIT B" and on the third page of the debits of "EXHIBIT A" and amounts to \$11.07.



PAGE SEVEN. Brief and Argument.

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ERNEST RABON,

Complainant,

VS.

JOHN MINCHEW AND JOE F.  
JOHNSON,

Respondents.

In the Circuit Court of Baldwin  
County, Alabama.

In Equity.

This cause originated on the law side of the court and was a suit in two counts, in detinue and on a waive note, which note Complainant alleged that he purchased from the First National Bank of Atmore with his own funds. On the hearing it was made to appear that the Complainant was in the employ of the Respondent, Minchew, and charged with the duty of collecting for lumber sold, and disbursing the proceeds to Minchew's creditors. As such agent of Minchew, he kept an account showing his receipts and disbursements, which book of account is introduced in evidence, and from which it appears that instead of Minchew being indebted to him, he is indebted to Minchew, roughly in the sum of \$50.00, after giving the Complainant credit for the note to the Atmore bank which he claims was paid with his own funds.

The Respondent, Minchew, filed a cross bill to which no answer has been filed, and no decree pro confesso taken. This amounts to an abandonment of the cross bill and no relief can be given Minchew against the Complainant for moneys unaccounted for. It follows that no affirmative relief can be given the Cross Complainant for any balance due him.

The Register will enroll the following

DECREE

This cause coming on to be heard is submitted for final decree upon the pleading and proof as noted by the Register, and upon consideration thereof, I am of the opinion that the Complainant is not entitled to relief, and,

IT IS THEREFORE, ORDERED ADJUDGED AND DECREED by the Court that the cause be dismissed and the costs taxed against

the Complainant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the note and mortgage sued on be, and the same hereby is, declared paid and satisfied in full.

This 7th day of November, 1940.

*J. M. Hare*  
\_\_\_\_\_  
Judge

RECORDED

Deane

Kind Number 8, 1940  
R. S. Deane, Register

note

THIS IS A COPY OF DOCUMENT NO. 1040.  
It contains data and statistics in full.  
Some of the data and statistics are on page 1 and the same history  
is in volume number 8, 1940, page 1040.  
The document is complete.

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RECORDED

ERNEST RABON,  
Complainant,

VS

JOHN MINCHEM AND  
JOE F. JOHNSON,  
Defendants.

BILL OF COMPLAINT.

Filed September \_\_, 1959.

Register.

*This the*  
*filed, September 21, 1959*  
*R.S. Duck Circuit Clerk*  
*By: Max Lee Morgan*  
*Deputy*

BEEBE, HALL & BEEBE  
LAWYERS  
BAY MINETTE, ALA.