



That he learned of Complainant's financial embarrassment and his inability to pay said indebtedness from Complainant's own statement of having purchased the land, being unable to pay for it, and his urgent request of Respondent to make the purchase for the joint account of them both. That the agreement of August 15th, 1921, attached to the bill as Exhibit "C", embodied the proposition made to Respondent by Complainant, and instead of being a loan by Respondent to Complainant, said agreement was, as set out therein, a partnership arrangement to purchase said lands and sell same for joint account, and that there was no obligation on the part of Complainant to repay to Respondent any sum whatsoever. Respondent admits the contract as set out in Exhibit "C" but denies that this was at any time considered by either party thereto as a mortgage or security for repayment of a debt, or other than as set out therein.

FIFTH: Respondent admits that Theodore A. Johnson executed deeds for the lands to Respondent at Complainant's request, but again denies that said conveyance was intended as a mortgage or instrument to secure the repayment of the money paid for the lands. Respondent further denies that the relation of debtor and creditor existed between the parties hereto or was created by the transaction, or that he is under any obligation to Complainant other than to carry out the provisions of the contract set out in Exhibit "C" which he has at all times been ready and willing to do, but has been unable to dispose of the lands at a price that would justify a sale.

SIXTH: Respondent admits that he entered upon and took possession of the lands in litigation but only under the terms of the agreement, and that he has received certain monies from same as turpentine leases, of which he has kept careful account and credited to the joint enterprise. He further avers, however, that he has spent under the terms of his contract a very much larger amount in maintenance, supervision and improvement

of said lands for which he has not been repaid.

SEVENTH: Respondent denies the allegations of the seventh paragraph of the bill that the agreement embodying the conditions agreed upon is usurious or that same was intended by either party as a mortgage. He avers, on the contrary, that the transaction was the not unusual agreement whereby one party finances a purchase for lands which are to be sold for the joint benefit and that the money advanced was to be repaid out of the proceeds of sale before any profits were divided. Respondent further shows that said contract contains no provision whatever as to the payment in interest on the money paid for the lands out of the proceeds of the sale and that when said purchase money together with amount expended by Respondent for maintenance and improvement is deducted from the price at which said lands could be sold at the present time, the one-half of the profits that would inure to Respondent would be less than eight per cent interest upon the money Respondent has advanced. Respondent further denies that there is any great disparity between the value of the lands and the amount paid by him for their purchase or that the transaction as made was in any <sup>way</sup> inequitable and unjust or that Complainant is in any way prejudiced by a transaction suggested by him and entered into at his request, which saved for him an interest in certain lands that he had contracted to purchase but was unable to pay for which otherwise he would have lost, and in which under the present arrangement he stands a chance of recovering a small profit.

EIGHTH: Respondent shows that after the lands had been deeded to Respondent, Complainant, without Respondent's knowledge or consent, sold timber from said lands and applied the proceeds to his own use; that in the year 1925 Complainant, without Respondent's knowledge, took possession of about two barrels of

pecans, the sole crop raised upon said lands, and has made no accounting thereof to Respondent of the value of said pecans, and that this has been done subsequent to the initiation of the present litigation and in contempt of this Honorable Court.

NINTH: Respondent further shows that on or about the fifth day of September, 1922, Complainant requested Respondent in settlement of a personal debt of Complainant to deed to one N. A. Nelson the North Half of the Northeast Quarter of Section Twenty-three, Township Six South of Range Three East, eighty acres of the land conveyed in the deeds of Johnson to Respondent, thereby recognizing the validity of this agreement, and as a consideration therefor consenting that Respondent retain for his own use, clear of the provisions of said agreement, any eighty acres in Section Twenty-three that Respondent might select and under the terms of this request Respondent now claims as free from said agreement, and from the effects of the present litigation eighty acres of said land, the location of which he will designate as soon as he can conveniently come to Alabama and make the selection, being not sufficiently familiar with the tract to do so without personal inspection.

TENTH: Respondent further shows that he has in all respects complied with his obligations under the agreement of August 15th, 1921; that he has expended thereon more money than he had expected to do when said agreement went into effect, to-wit, about Three Thousand Dollars; that he has conveyed a part of the land described therein in settlement of Complainant's personal debt; that the orange grove upon said lands which gave them a large part of their value has been destroyed by cold, and that Respondent is ready to make sales of land and make an equitable division whenever a reasonable price for said lands can be obtained, and to comply in all respects with the law and spirit

of the voluntary agreement suggested by Complainant with full knowledge of conditions and entered into in good faith by Respondent.

Having thus fully answered Respondent prays that the bill be dismissed and that he may go hence with his reasonable costs in this behalf expended.

*Riskaby Beebe Hall,*  
Solicitors for Respondent.

*Charles A. Carlson*

*vs.*  
*Madison J. Schiller*

CIRCUIT COURT OF

*Baldwin*  
COUNTY.

IN EQUITY.

I, *D. W. Rice*, Register of said Court, do hereby certify that I

did, on the *29* day of *May* 192*4*, send to

*Madison J. Schiller* Defendant.

whose address was *475.5 Northwestern Ave Chicago Ill.*

by registered mail, postage prepaid, marked "For delivery only to the person to whom addressed," a copy of the Bill

of Complaint filed in this cause; that I demanded a return receipt addressed to the Register of this Court; and that such

receipt was duly received and filed by me in this cause, on the *2nd* day of *Apr* 192*4*.

Witness my hand, this *2* day of *Apr* 192*4*

*D. W. Rice*  
Register.



No. 420

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CIRCUIT COURT OF  
BALDWIN COUNTY.  
IN EQUITY.

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*Charles O. Carlson*

---

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vs.

*Milore J. Schiller*

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CERTIFICATE OF REGISTER AS TO NOTICE  
BY REGISTERED MAIL.

---

---

Filed in office on this

*2nd*

day of

*April*

192*4*

*D. H. Peterson*

---

---

Register.

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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 Isidore J. Schiller,

of Chicago Ill, ~~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

Charles O. Carlson,

against said Isidore J. Schiller,

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, T. W. Richerson, Register of said Circuit Court, this 29th, day of March,

192 4.

T. W. Richerson  
Register.

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



*Original*

Serve on \_\_\_\_\_

Circuit Court of Baldwin County  
In Equity

No. \_\_\_\_\_

SUMMONS

*Mrs. A. Carlson*

vs.

*Archie Patton*

By \_\_\_\_\_

*Stone & Stone*

Solicitor for Complainant.

Recorded in Vol. \_\_\_\_\_ Page \_\_\_\_\_

THE STATE OF ALABAMA  
BALDWIN COUNTY

Received in office this \_\_\_\_\_  
day of \_\_\_\_\_ 192 \_\_\_\_\_

Sheriff.

Executed this \_\_\_\_\_ day of \_\_\_\_\_  
192 \_\_\_\_\_

by leaving a copy of the within summons with

Defendant.

Sheriff.

Deputy Sheriff.

*Reg. Copy of  
Bill & Summons  
mailed deft  
mar 29/1924  
D. W. Brewer  
Register*

----- )  
CHARLES O. CARLSON, )

Complainant. )

-vs- )

ISADORE J. SCHILLER, )

Defendant. )  
----- )

IN THE CIRCUIT COURT-EQUITY SIDE.

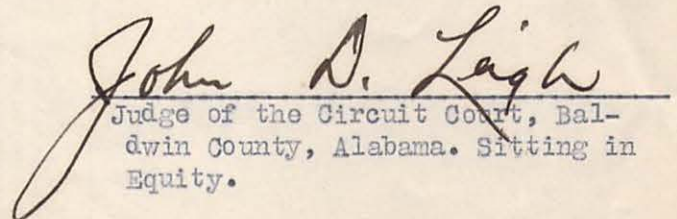
BALDWIN COUNTY, ALABAMA.

No. 420.

This cause coming to be heard on this the 18th. day of February, 1925, on demurrers to the bill of complaint as filed by the respondent and the Court having heard argument of counsel upon the matters at issue and having understood the matters at issue, the Court is of the opinion that said demurrers should be overruled.

1. It is therefore ordered, adjudged and decreed that the demurrers of the respondent to the bill of complaint be and the same are hereby overruled; it is further ordered, adjudged and decreed that the respondent shall have and is hereby given and allowed sixty days (60) from February 18th., 1925, within which to answer the bill of complaint.

Ordered, adjudged and decreed this 18th, day of February, 1925.

  
Judge of the Circuit Court, Baldwin County, Alabama. Sitting in Equity.

Charles O. Carlson,

No. 420.

vs.

Isidore J. Schiller.

THE STATE OF ALABAMA,

Baldwin COUNTY.

CIRCUIT COURT, IN EQUITY.

This the 28th day of

March, 1934.

In this cause it being made to appear to the Clerk of this Court by the affidavit of

Charles O. Carlson,

that the Defendant Isidore J. Schiller,

is a non-resident of the State of Alabama residing at 4756 Northwestern Avenue, Chicago Ill.

and further, that, in the belief of said Affiant the Defendant is over the age of 21 years; it is, therefore, ordered that publication be made in the Baldwin Times, a newspaper published in Bay Minette, Baldwin County, Alabama, once a week for four consecutive weeks, requiring the said

Isidore J. Schiller,

to answer or demur to the Bill of Complaint in this cause by the 28th day of March, 1934,

or after thirty days therefrom a decree Pro Confesso may be taken against

Stone & Stone  
Atty's for Plff.

*R. Whiteman*

Register.

CHARLES O. CARLSON, - COMPLAINANT

vs

ISADOR SCHILLER, - PLAINTIFF

CIRCUIT COURT,

BALDWIN COUNTY, ALABAMA

IN EQUITY

Comes the Defendant in the above styled  
cause and demurs to the Complainant's Bill of Complaint,  
and says:

There is no equity in the Bill:

*Richard Beebe Hall*

Solicitor's for Defendant

CHARLES O. CARLSON, )  
Complainant. )  
vs. )  
ISIDORE J. SCHILLER, )  
Defendant. )

CIRCUIT COURT, BALDWIN COUNTY, ALABAMA.

BRIEF OF DEFENDANT.

This cause is submitted for decree on defendant's demurrer to Complainant's bill of complaint.

The complainant seeks to have certain deeds and a contract declared a mortgage and permit him to redeem.

The material allegations of the bill of complaint are that the complainant was indebted to one Theodore A. Johnson, which debt was secured by a deed to the property involved in this suit; that complainant was unable to pay the debt and that defendant advanced the money to take up the debt and that deeds, shown as exhibits "A" and "B", to the property were executed by Johnson to defendant; said deeds being dated April 21, 1921, and recorded May 30, 1921; that on August 15, 1921, defendant and complainant entered into a contract relative thereto as follows:

"THIS INDENTURE WITNESSETH That Whereas, the undersigned, ISIDORE J. SCHILLER, of the City of Chicago, County of Cook and State of Illinois hereinafter designated as party of the first part, is now the owner in fee simple of record of the following described real estate in the County of Baldwin and State of Alabama, known and described as follows, to-wit:

(Description of property.)

and,

WHEREAS, the undersigned, Charles O. Carlson, of the City of Chicago, County of Cook and State of Illinois, hereinafter designated as the party of the second part, is indebted to the said party of the first part in the sum of Twenty-three Hundred Seventy-eight and 64/100 (\$2378.64) Dollars, and is interested in said real estate to the extent only as hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of one (\$1) dollar and other good and valuable consideration by said second party to said first party in hand paid, receipt whereof is hereby acknowledged, said Isidore J. Schiller, party of the first part, hereby declares that he holds the hereinabove described real estate subject to the following and for the following purposes, to-wit:

That he is to sell the said real estate, or parts thereof, from time to time until the entire real estate above described is sold, at the best price and on the best terms then obtainable; that he is to retain all of the net proceeds derived from the sale of said real estate until he shall have received the amount of the indebtedness herein referred to, Twenty-three Hundred Seventy-eight and 64/100 (\$2378.64) Dollars, without interest, whereupon said indebtedness shall be deemed paid, and all the net proceeds received over and above the amount of said indebtedness shall be divided equally in two parts, one part to be retained by the party of the first part, and the other part to be paid by him to the said party of the second part as and when received.

It is hereby agreed between said parties of the first and second parts that each shall pay one-half of all general and special taxes and any other disbursements necessary or expended in and about the holding and maintenance of said real estate from time to time as such taxes and disbursements accrue.

The interest of said party of the second part in said real estate shall be conclusively presumed to be personal property and not real estate.

WITNESS the hands and seals of the parties hereto this 15th day of August, A. D. 1921."

Complainant further alleges "that at the time of the execution and delivery of said deeds to defendant the relation of debtor and creditor existed between complainant and defendant on which complainant was, has been and now is liable to suit; that complainant under the terms of their agreement was, has always been and now is under obligation to repay to defendant the amount paid out by him to Johnson for complainant that such deeds were made to defendant, not to extinguish, cancel or discharge the amount due by complainant to defendant and for such loan but, in reality to secure the repayment of the same and was so intended and understood by the defendant and complainant; that the written agreement between complainant and defendant; which is hereto attached as exhibit "C" ( copied in full above ) and which embodies the conditions

under which the loan was made, recites that complainant is indebted to the defendant in said sum."

Complainant further recites in paragraph six that defendant has entered into and taken possession of the property.

Paragraph seventh in substance recites that the alleged loan was usurious.

Defendant's demurrer is "that there is no equity in the bill."

The courts will hold an absolute deed to be a mortgage when and only when there is a valid subsisting debt owing by the grantor to the grantee.

Vincent vs. Walker (86 Alabama 333) wherein Justice Summerville delivering the opinion said:

"If there be no debt due from the grantor to the grantee, there can be no mortgage, the idea of a mortgage without a debt to be secured by it is a legal myth in our system of juris prudence."

Haynie vs. Robertson (57 Alabama 37) Justice Stone:

"It is unquestionably the law that parties may make their own contract in their own terms, and compel their performance as made or recover damages for their breach, unless they infringe a rule of law of public policy.

When contracting they may mold the terms to suit their own conveniences or taste---courts are not guardians of the people who are sui juris, not for the purpose of pronouncing their contracts wise or unwise---The intentions of contracting parties gathered from the terms of their contract must control in its interpretation, if that intention violate no principal of law---

A mortgage is in equity a hypothecation or pledge of property for the security of a debt. There must be a debt or there can be no security for its payment. Hence it is said if there is no debt there can be no mortgage. Debt in this connection, means a duty or obligation to pay for the enforcement of which an action will lie. In McKinley vs Conley (12 Alabama 678) it was said, in effect, that whether a transaction was a mortgage or conditional sale, depended on the inquiry, did the party have a remedy for the recovery of the money on a debt. And in Peples vs. Stolla, at the December term 1876, (57 Alabama 58) we said "the effect of a mortgage made by one capable in law of executing such contract, is to leave on the mortgagor a personal liability for the resedium of the debt, if on foreclosure the property mortgaged fails to yield a sum sufficient to pay in full."

Complainant alleges that the written agreement between the complainant and defendant which is hereto attached as exhibit "C" (copied in full above) and which embodies the conditions, etc.

And the construction of this agreement is the determining factor in the case. If this agreement does not create a debt owing by the complainant to the defendant on which the defendant could maintain an action for money complainant cannot recover.

The contract is signed by both parties and in the light of the language of Justice Stone quoted above must determine the rights of the parties unless it violate a principal of law or be contrary to public policy.

It is elementary that the instrument must be construed as a whole and all parts will be looked to in determining its meaning.

The agreement recites that party of the first part is now the owner in fee of record of the following described real estate; that second party is indebted to him, that he holds the property for the purposes: to sell the same at the best price, to retain out of net proceeds the amount of the debt (purchase price) and to divide the net proceeds between the parties. It further provides for payment by each of one half of general and special expenses and of taxes, and concludes with the recital that the interest of the second party (Carlson) is personal property.

The contract clearly precludes the theory of a debt upon which defendant could recover a money judgment. If there be a debt it is repayable only out of the proceeds of the land and defendant could not claim payment in any other manner.

The case of *Nsbit vs. Ware, et al* (30 Alabama 60) under an agreement to pay a debt by the delivery of specific article, viz iron and



See also Jackson vs. Waddill. Where it is held debt will not lie on a contract to pay in bank notes.

Young vs. Scott (5 Alabama 475)

Will vs. Clay (48 Alabama 253)

Should defendant enter suit for the supposed debt, defendant under the above authorities has a perfect defense in this contract.

But supposing that a debt does exist upon which complainant is liable, a construction we do not admit, he has contracted with the defendant for the use of his money for an unlimited time, without interest, he has bound defendant for services which he admits have been performed, he is bound him for expenses which he admits have been met. By the contract he has bound himself to recompense this service to repay the expenses, and for the use of the money advanced out of the net proceeds of the lands and defendant has no other way of reimbursement. To permit him now, after defendant has fully complied with the contract, to disavow its terms would not do justice. The court could not compel their reimbursement, it has no way of determining justice between the parties. Such provisions are binding and are not usurious.

Harman vs. Lehrman (85 Alabama 379)

Woolsey vs. Jones (84 Alabama 88)

Schlfielder et al vs. Corter's admr. (64 Alabama 527)

Wright vs. McA (11 Alabama 236)

Walson vs. McC (13 Alabama 57,64)

Kitchen vs. Robinson (138 Alabama 419)

This instrument does not purport to establish a debt, but to define the rights and duties of the parties with reference to the lands. It creates a partnership in the lands and rests the title in the defendant in trust for the parties to this suit. The trust created is valid and enforceable.

Code 1923 Section 6913.

124 Alabama 415, Sanders vs. Steele.

142 Alabama 339, Berry vs. Bromberg.

107 Alabama 695, Simmons vs. Richardson.

52 Alabama 83, Pittman vs. Corniff.

89 Alabama 381, Cornell vs. Cole.

189 Alabama 209, Montgomery vs. Wilson.

113 Alabama 589, Rogers Vs. Johnson.

145 Alabama 683, Howison vs. Baird (opinion 40 Southern 94) where-

in.

"Complainant and defendant entered into an agreement, whereby the former was to procure a lease of coal lands and devote his time and energies to the opening of a mine on the same, and the latter was to furnish the money necessary to put the mine into operation. The parties were to be equal partners in the ownership of the mine after defendant had been paid for the money spent or advanced by him. The lease was obtained, and each party entered on the performance of his part of the agreement. After some time, defendant sent complainant a blank transfer of the lease to be executed by complainant to defendant, and accompanying the transfer sent a letter stating that complainant had no interest in the property until defendant was paid back the money advanced by him, and then he had a half interest. Complainant accordingly executed the transfer. Held, that defendant held title to the lease in trust for the repayment to him of the sums advanced, and then for the benefit of himself and complainant in equal shares."

"A written declaration of trust containing a statement of certain conditions is an admission by the trustee of the performance by the cestui que trust of all conditions precedent to his right to an equitable interest in the property other than those stated therein."

The power of sale in the case is a power coupled with the interest and is not revocable.

Code 6941.

That the price paid for lands was greatly less than its value is not of itself sufficient to raise the presumption that a deed absolute was intended as a mortgage.

West vs. Hendris (28 Alabama 206)

Ropier vs. Gulf City Paper Co., (77 Alabama 126)

Vincent vs. Walker (86 Alabama 333)

Stollenwerck vs. Marks & Gayle (188 Alabama 587)

The allegation that the debt secured thereby was a continuing debt for which complainant is liable and that such deeds were made not to extinguish the debt, etc. must be construed together with the allegation that the contract exhibit "C" embodies the terms. This

allegation is a conclusion of the pleader and in conflict with the proper construction of the contract.

See Swift vs. Swift (36 Alabama 147)  
Stollenwerck vs. Marks & Gayle (188 Alabama 587)

This last case is conclusive as to the construction of the contract under consideration and it is fatal to complainant's right of relief.

The facts are largely parallel with the facts of the case at bar: Mark and Gayle were purchasing certain lands from Abraham Brothers and being unable to meet the payments entered into a contract with Stollenwerck whereby Stollenwerck advanced the money, obtained deeds and advanced additional moneys to Marks and Gayle; the contract provided for interest and taxes and further provided that Marks and Gayle would share in the division of profits on a sale; the court held that there was no debt creating the relationship of debtor and creditor essential to fix the status of mortgagor and mortgagee and denied relief.

Respectfully submitted,

*Rickarby, Beebe & Hall*  
Solicitors for Defendant.

STATE OF ILLINOIS, }  
 COOK COUNTY. } ss.

I, ROBERT M. SWEITZER, County Clerk of the County of Cook, DO HEREBY

CERTIFY that I am the lawful custodian of the official records of Notaries Public of said County, and as such officer am duly authorized to issue certificates of magistracy, that.....  
*Elfrida H. Prestal*

whose name is subscribed to the annexed Jurat, was, at the time of signing the same, a Notary Public in Cook County, duly commissioned, sworn and acting as such, and authorized to administer oaths and to take acknowledgments and proofs of deeds or conveyances of lands, tenements or hereditaments, in said State of Illinois, all of which appears from the records and files in my office; that I am well acquainted with the handwriting of said Notary, and verily believe that the signature to the said Jurat is genuine.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the County of Cook at my office in the City of Chicago in the said County this

*26* day of *Mar*, 192*4*

*Robert M. Sweitzer* COUNTY CLERK.

CHARLES O CARLSON,  
Complainant,

IN THE CIRCUIT COURT, EQUITY-  
SIDE, BALDWIN COUNTY, ALA-  
BAMA.

-vs-

ISADORE J. SCHILLER,  
Defendant.

AFFIDAVIT OF NON-RESIDENCE.

STATE OF ILLINOIS.

COUNTY OF COOK.

Before me, Elfrida M. Crestel, a Notary Public in and for said state and county, personally appeared Charles O. Carlson who is known to me and who, after being by me first duly sworn, deposes and says under oath:-

That his name is Charles O. Carlson, he is over the age of twenty one years and is a resident of Chicago, Illinois. That he is the Complainant in that certain cause now pending in the Circuit Court, Equity-Side, Baldwin County, Alabama and in which Isadore J. Schiller is the defendant; that Isadore J. Schiller is over the age of twenty one years and is a non-resident of the State of Alabama, residing at 4755 North Western Avenue, Chicago, Illinois and that service by publication is necessary against the said Isadore J. Schiller to make him party defendant in said cause.

Sworn to and subscribed  
before me, a Notary Pub-  
lic, my notarial seal being  
hereto affixed on this the

Charles O. Carlson

26<sup>th</sup> day of March, 1924.

Elfrida M. Crestel  
Notary Public, Cook County,  
State of Illinois.

----- X  
 CHARLES O. CARLSON.  
 Complainant.  
 -vs-  
 ISIDORE J. SCHILLER.  
 Defendant.  
 ----- X

IN THE CIRCUIT COURT-EQUITY SIDE.  
 STATE OF ALABAMA.  
 BALDWIN COUNTY.  
 No. \_\_\_\_\_

TO THE HONORABLE, THE CIRCUIT COURT, EQUITY SIDE, STATE OF ALABAMA, BALDWIN COUNTY, AND THE HON. JOHN D. LEIGH, JUDGE THEREOF, SITTING IN EQUITY:-

Comes your Complainant, Charles O. Carlson, and exhibits this, his Bill of Complaint to declare a deed an equitable mortgage and for general relief, against Isidore J. Schiller, and shows unto your Honor and unto this honorable court as follows:-

1. That the complainant and defendant are both over the age of twenty-one years and are non-residents of the State of Alabama, residing in the City of Chicago, Illinois; that the subject matter of this cause is real property situted in Baldwin County, Alabama.

2. That on heretofore, to-wit; April 12th., 1921, and prior thereto, your complainant was indebted to one Theodore A. Johnson of Silverhill, Alabama, and, as security for the payment of said indebtedness, said Johnson held title to the following described property of the complainant in Baldwin County, Alabama, viz:-

All of Block Five (5); Lots 1, 2, 3, 4, 8 9, 16, 17, 20, 23 and 24 in Block Twelve (12); of the Southeast quarter of the Southeast quarter of Section Three; also Lots 1 and 2 in Block 17; all of Block Eighteen (18) except Lots 1, 3, 4, 5 and 6; all of Block 19 except Lots 1, 3, 4, 5, 6, 19, 23 and 24; Lots 4, 5, and 6 in Block 20; all of Block 29 except Lots 1, 22, 23 and 24; all of Block Thirty (30); all of Block Thirty-one (31); all of Block Thirty-two (32) except Lots 21, 22, 23 and 24 of the Northwest quarter of the Northwest quarter of Section Eleven. All in Township Six (6) South of Range Three (3) East, (163 lots in all, including streets and alleys, in the Town of Silverhill, as per plat on record in Baldwin County, Alabama, also,

The Northwest quarter of the Southeast quarter and the North half of the Southwest quarter of the Southeast quarter of Section Two (2), (60 acres); and the West half of the Northeast quarter and the Northeast quarter of the Northeast quarter of section twenty-three and the Southeast quarter of Section Twenty-three, all in township six south of range three east of St. Stephens Meridian. In all 340 acres, more or less.

That all of said property belonged to your complainant subject only to said indebtedness which, at that time, amounted to Two Thousand, three hundred and seventy-eight and 64/100 dollars (\$2,378.64)

3. That said indebtedness was due and had been due for some time and your Complainant was in financial difficulties and owing to his inability at that time to pay off and discharge said indebtedness was about to lose said property which was then reasonably worth from twenty thousand dollars (\$20,000.00) to twenty-five thousand dollars (\$25,000.00).

4. That the defendant, Isidore J. Schiller, had at that time owned and dealt in real estate in the vicinity where said lands were located, was fully acquainted with lands values in that vicinity, knew the worth and value of complainant's lands and of the difference between the amount due thereon and their value and the said defendant was also fully acquainted with the financial embarrassment of complainant, of his inability to pay said indebtedness and of the probability of the lands being lost to complainant by reason of his inability to pay off said debt to Johnson; that the defendant thereupon offered to loan to complainant sufficient money to pay off said indebtedness to Johnson, the same to be used and handled by the defendant himself for that purpose, but this to be done only upon the following conditions:- That as security for the repayment of the loan from defendant to complainant the complainant should procure the said Johnson to deed all of said property direct to the defendant and vest the legal title to the whole of said lands in defendant and that as compensation for the use of defendant's money that this complainant enter into an agreement in substance, that the defendant should retain the title to said property as security for the repayment of the indebtedness due by complainant to defendant and the defendant, while retaining the title under said deeds from Johnson, was to sell the said real estate, or parts thereof, from time to time until the entire real estate was sold; that the defendant was to retain all of the net proceeds derived from the sales of said real estate until he, the defendant, should have received the amount of said indebtedness, \$2,378.64, whereupon said indebtedness should be deemed paid, all net proceeds over and above said indebtedness to be divided equally between defendant and complainant, defendant to retain his half and to pay the other half to complainant as and when received by defendant; that each should pay one half of the general and special taxes and other disbursements necessary or expended in and about the holding and maintenance of said real estate

from time to time. That your Complainant, under the exigency then existing, realizing his inability to raise the money from his own resources to pay off said indebtedness and save his property, and being prevailed upon by the Defendant, was induced to and did borrow from the defendant/the said sum and authorized the defendant to pay the same to the said Johnson for the discharge of complainant's indebtedness which was done and, for the purpose and with the intention of securing the repayment of said loan from defendant to complainant the said Johnson was authorized and instructed by complainant to deed said property to the defendant; that such conveyance was made by two deeds dated April 12th., 1921 and which are now of record in the office of the Judge of Probate of this county; that copies of said deeds are hereto attached, marked "Exhibit A" and "Exhibit B" and made a part of this bill of complaint; that subsequent thereto, on to-wit; August 15th., 1921, complainant and defendant entered into a written agreement embodying the conditions under which the loan was made by defendant as above set out in substance; that said written agreement is of record in the office of the Judge of Probate of this county, a copy of same being hereto attached, marked "Exhibit C" and made a part of this bill.

5. Complainant further shows unto this court that the said Johnson had no contract or negotiations with defendant for said lands but executed said deeds by the direction and under authority from and of your complainant and in consideration of the payment by the defendant for complainant of the indebtedness due on said lands; that, in equity your complainant was the real grantor, the conveyance being made at his instance and to secure his indebtedness to defendant and, in equity, all of the title which defendant acquired and holds comes from complainant; that such deeds were made to secure the repayment of a indebtedness due by complainant to the defendant; that such conveyances, although absolute deeds on their face, are, in equity, mortgages to secure the repayment of money; that at the time of the execution and delivery of said deeds to defendant the relation of debtor and creditor existed between complainant and defendant; that the debt secured thereby was and is a continuing debt in the hands of the defendant on which complainant was, has been and is now liable to suit; that complainant under the terms of their agreement was, has always been and is now under obligation to repay to defendant the amount paid out by him to Johnson for complainant; that such deeds were made to defendant, not to ex-



tinguish, cancel or discharge the amount due by complainant to defendant for such loan but, in reality, to secure the repayment of the same and was so intended and understood by the defendant and complainant; that the written agreement between complainant and defendant, which is hereto attached as Exhibit C and which embodies the conditions under which the loan was made, recites that complainant is indebted to the defendant in said sum.

6. That the defendant has entered upon and taken possession of said property and exercises rights of ownership over same; that he has sold a part thereof and received the proceeds from such sale; that he, the defendant, has received, from time to time, rents and profits therefrom on account of turpentine leases and otherwise. That your complainant, when able, ready and willing, has sought to redeem said property by paying to defendant all amounts legally due on account of said loan but defendant refuses to allow such payment and redemption.

7. That the compensation to defendant for the use of the money loaned, as provided by the agreement embodying the conditions under which the loan was made, is usurious; that the provisions of said agreement which permit the defendant to deduct from the proceeds of all sales "any disbursements expended in and about the holding and maintenance of said real estate from time to time" is grossly unjust to complainant in that the defendant who, in equity is a mortgagee, may consume all of said proceeds by expenditures not authorized to be made by mortgagees and to the damage of complainant; that even if such proceeds should not be so consumed, the one half not consumed which the defendant, by such agreement, would retain as compensation for the use of his money, would amount to many times the proper, legal and just rate of interest on said money and would be a usurious compensation; that such agreement and conditions of said loan are therefore void on account of usury except as to the provision for the repayment of the money loaned and this the complainant is ready, willing and able to repay, together with such interest and other charges thereon as to this court may seem meet and proper. Complainant further shows that said loan has been repaid when proper credit is given for the rents and profits, use and occupation and proceeds of sales received and enjoyed by the defendant, but if complainant is mistaken in this, and it be ascertained that said loan has not been fully repaid, he is now ready, able and willing to repay

whatever sum may be fairly and really and honestly due and to redeem said property and does hereby offer to do equity in all things and does submit himself to the jurisdiction of this court for all purposes connected with and incident to the doing of full and complete equity and to the foreclosure of said deeds as equitable mortgages. Complainant further shows that it would be grossly inequitable and unjust to allow said deeds to stand as absolute conveyances of said land and this on account of the duress of circumstances under which they were made, of the great loss to complainant and unreasonable and unjust benefit to defendant, on account of the great disparity between the value of lands and money loaned, that to allow them to stand as absolute conveyances would be unconscienceable; that to decree and give to them their real purpose, that of security, would work no hardship on defendant.

PRAYER FOR PROCESS AND RELIEF.

THE PREMISES CONSIDERED, Complainant prays that your Honor will make and enter such orders and decrees and will issue or cause to be issued such notices and summons to the said Isidore J. Schiller as will make him a party defendant to this bill, requiring him to appear and plead, answer or demur, within the time allowed by law in such cases.

That upon a final hearing of this cause that your Honor will render, adjudge and decree that the said deeds from Johnson to Schiller, are mortgages from the complainant to defendant to secure the indebtedness existing between them at that time and that the agreement embodying the conditions of such transaction be declared void on account of usury except to that portion providing for the repayment of the amount of loan by this complainant to the defendant together with such fair, legal and just compensation for the use of the defendant's money as your Honor may think proper and equitable; that a reference be ordered held by the Register of this court to ascertain the fair and proper amount due by complainant, if any, after excluding all matters not properly chargeable and crediting on the amount originally due all proper credits by way of rents and profits, value of use and occupation and proceeds of sale received by the defendant; that upon payment into court by complainant of such amount as may be ascertained to be due by your Honor, that the defendant, Isidore J. Schiller, be required to make, execute and deliver deeds to all of said property back to the complainant; that a reasonable time be fixed for such re-conveyance by defendant after such payment by

complainant and should the defendant fail to so re-convey within the time fixed by your Honor that the Register of this court be ordered, authorized and empowered to so convey said property and reinvest your Complainant with such title and to deliver such conveyances to complainant.

Should your complainant, however, be mistaken in the relief sought herein and hereby, that your Honor will make, render and enter such judgments and decrees as will grant to complainant such relief, other, further or different than that sought, to which he, in equity and good conscience is entitled. And, as in duty bound, he will ever pray, etc.,

STONE & STONE.  
Solicitors for Complainant.

FOOT NOTE:-

The Defendant, Isidore J. Schiller, is required to answer each and every paragraph of the foregoing bill of complaint, from "1" to "7", both inclusive, but answer under oath is hereby expressly waived.

STONE & STONE.  
Solicitors for Complainant.

This indenture, made this 12th day of April, 1921, between Theodore A. Johnson and Hannay Johnson, his wife, of the town of Silverhill in the county of Baldwin, and State of Alabama, parties of the first part and Isadore Schiller of the city of Chicago in the county of Cook and state of Illinois, party of the second part.

Witnesseth:- That the said parties of the first part, for and in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration in hand paid by said party of the second part, receipt whereof is hereby acknowledged, grant, bargain, sell unto the said party of the second part, and to his heirs and assigns forever, all the following described lots, pieces or parcels of land, situated in the county of Baldwin and State of Alabama, and known and described as follows, to-wit:-

All of Block Five (5); Lots 1, 2, 3, 4, 8, 9, 16, 17, 20, 23 and 24 in Block Twelve (12); of the southeast quarter of the southeast quarter, section three (SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Sec. 23); also Lots One (1) and Two (2) in Block Seventeen (17); all of block eighteen (18) except Lots 1, 3, 4, 5, and 6; all of Block Nineteen (19) except Lots 1, 3, 4, 5, 6, 19, 23, and 24; Lots 4, 5, and 6 in Block Twenty (20); all of Block Twenty Nine (29) except Lots 1, 22, 23 and 24; of the; All of Block 30; all of Block 31; all of block 32 except lots 21, 22, 23 and 24 of the northwest quarter of the northwest quarter of section Eleven (NW $\frac{1}{4}$  of NW $\frac{1}{4}$ , Sec. 11), all in township six south of range three east (163 Lots in all, including streets and alleys in town of Silverhill, as per plat on record in Baldwin County, Alabama.

And the said Theodore A. Johnson and Hanna Johnson, his wife, parties of the first part, for their heirs, executors and administrators, do covenant, promise and agree, to and with the said party of the second part; his heirs and assigns, that they have not done or suffered to be done, anything whereby the said premises hereby granted are, or may be, in any manner encumbered or charges; and that the said premises against all persons lawfully claiming, or to claim the same, by, through or under them, they will warrant and forever defend.

And the said party of the first part hereby expressly waive and release any and all right, benefit, privilege and advantage, and exemption under or by virtue of any and Statutes of the State of Alabama, providing for the exemption of homesteads from sale on execution or otherwise.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of Oscar Johnson.

Theodore A. Johnson (Seal)  
Hanna Johnson (Seal)

State of Alabama,) SS.  
Baldwin County )

I, Oscar Johnson, a notary public in and for said state and county, do hereby certify that Theodore A. Johnson and Hanna Johnson, 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 said conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand this 21st., day of April, 1921.  
State of Alabama,)  
Baldwin County. )

Im Oscar Johnson, a notary public in and for said state and county, do hereby certify that on the 21st day of April, 1921, came before me the within named Hanna Johnson, known to me to be the wife of the within named Theodore A. Johnson, who being examined separate and apart from her husband in reference to her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord and without fear, constraint or threats on the part of the husband.

In witness whereof, I hereunto set my hand this 21st day of April, 1921.  
(Seal)

Oscar Johnson, Notary Public

Filed for record May 26th., 1921 at 2 pm/

Recorded May 30th., 1921. J

Special Warranty Deed.

This indenture made this 12th day of April, in the year of our Lord one thousand nine hundred and twenty one (1921) between Theodore A. Johnson and Hanna Johnson, his wife, of the town of Silverhill in the county of Baldwin and state of Alabama, parties of the first part and Isidore J. Schiller of the city of Chicago in the county of Cook and state of Illinois, party of the second part.

Witnesseth:- That said parties of the first part, for and in consideration of the sum of one dollar (\$1.00) and other good and valuable considerations, in hand paid by said party of the second part, receipt whereof is hereby acknowledged, grant, bargain and sell unto the said party of the second part, and to his heirs and assigns, forever, all the following described lots, pieces or parcels of land, situated in the county of Baldwin and state of Alabama and known and described as follows:-

The northwest quarter of the southeast quarter (NW<sup>1</sup>/<sub>4</sub> of SE<sup>1</sup>/<sub>4</sub>); and the north half of the southwest quarter of the southeast quarter of section two (60) sixty acres; and the west half of the northeast quarter and the northeast quarter of the northeast quarter; and the southeast quarter of section twenty three (23); all in township six south of range three east of St. Stephens Principal Meridian; in all 340 acres more or less in Baldwin County, Alabama.

And the said Theodore A. Johnson and Hanna Johnson, his wife, parties of the first part for their heirs, executors and administrators, do covenant, promise and agree, to and with the said party of the second part, his heirs and assigns, that they have not done, or suffered to be done, anything whereby the said premises hereby granted, are or may be, in any manner encumbered or charged; and that the said premises against all persons lawfully claiming, or to claim the same, by, through or under them, they will warrant and forever defend.

And the said parties of the first part hereby expressly waive and release any and all rights, benefits, privileges and advantages and exemption under or by virtue of any and all Statutes of the State of Alabama, providing for the exemption of homesteads from sale on execution of otherwise.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written. Signed, sealed and delivered in the presence of Oscar Johnson.

Theodore A. Johnson (seal)  
Hanna Johnson (seal)

State of Alabama, )SS  
Baldwin County. )

I, Oscar Johnson, a Notary Public in and for said state and county, do hereby certify that Theodore A. Johnson and Hanna Johnson, 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 said conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand this 21st day of April, 1921.  
(Seal) Oscar Johnson, Notary Public.

State of Alabama, )SS  
Baldwin County )

I, Oscar Johnson, a Notary Public in and for said state and county, do hereby certify that on the 21st day of April, 1921, came before me the within named Hanna Johnson, known to me to be the wife of the within named Theodore A. Johnson, who, being examined separate and apart from her husband with reference to her signature to the within named conveyance, acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of the husband.

In witness whereof, I hereunto set my hand, this 21st day of April, 1921.  
(Seal) Oscar Johnson, Notary Public.

Filed for record May 26th, 1921 at 2 pm.  
Recorded May 30th, 1921.

Jas M Voltz, Judge of Probate.

Exhibit B

THIS INDENTURE WITNESSETH That Whereas, the undersigned, ISIDORE J. SCHILLER, of the City of Chicago, County of Cook and State of Illinois, hereinafter designated as party of the first part, is now the owner in fee simple of record of the following described real estate in the County of Baldwin, and State of Alabama, known and described as follows, to-wit:

\* All of Block Five (5); Lots 1, 2, 3, 4, 8, 9, 16, 17, 20, 23 and 24 in Block Twelve (12); of the South East quarter (S.E.  $\frac{1}{4}$ ) of the South East quarter (S.E.  $\frac{1}{4}$ ) of Section three (3); also lots 1 and 2 in Block Seventeen (17); All of Block Eighteen (18) except Lots 1, 3, 4, 5 and 6; All of Block Nineteen (19) except Lots 1, 3, 4, 5, 6, 19, 23 and 24; Lots 4, 5, and 6 in Block Twenty (20); All of Block Twenty-nine (29), except Lots 1, 22, 23, and 24; All of Block Thirty (30); All of Block Thirty-one (31); All of Block Thirty-two (32) Except Lots 21, 22, 23 and 24, of North West quarter (N.W.  $\frac{1}{4}$ ) of the North West quarter (N.W.  $\frac{1}{4}$ ) of Section Eleven (11) All in Township Six (6) South, Range Three (3) East, (163 lots in all, including streets and alleys in Town of Silverhill, as per plat on record in Baldwin County, Alabama.) also

EXHIBIT ✓  
✓ The North West quarter (N.W.  $\frac{1}{4}$ ) of the South East quarter (S.E.  $\frac{1}{4}$ ); and  
The North half (N.  $\frac{1}{2}$ ) of the South West quarter (S.W.  $\frac{1}{4}$ ) of the South East quarter (S.E.  $\frac{1}{4}$ ) of Section two (2), (60 acres); and  
✓ The West half (W.  $\frac{1}{2}$ ) of the North East quarter (N.E.  $\frac{1}{4}$ ); and  
The North East quarter (N.E.  $\frac{1}{4}$ ) of the North East quarter (N.E.  $\frac{1}{4}$ ); and the South East quarter (S.E.  $\frac{1}{4}$ ) of Section twenty-three (23) all in Township Six (6) South, Range three (3) East of St. Stephens Principal Meridian; in all 340 acres more or less.

and

WHEREAS, the undersigned, Charles O. Carlson, of the City of Chicago, County of Cook and State of Illinois, hereinafter designated as the party of the second part, is indebted to the said party of the first part in the sum of Twenty-three Hundred Seventy-eight and 64/100 (\$2378.64) Dollars, and is interested in said real estate to the extent only as hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of One (\$1) Dollar and other good and valuable consideration by said second

party to said first party in hand paid, receipt whereof is hereby acknowledged, said Isidore J. Schiller, party of the first part, hereby declares that he holds the hereinabove described real estate subject to the following and for the following purposes, to-wit:

That he is to sell the said real estate, or parts thereof, from time to time until the entire real estate above described is sold, at the best price and on the best terms then obtainable; that he is to retain all of the net proceeds derived from the sale of said real estate until he shall have received the amount of the indebtedness herein referred to, Twenty-three Hundred Seventy-eight and 64/100 (\$2378.64) Dollars, without interest, whereupon said indebtedness shall be deemed paid, and all the net proceeds received over and above the amount of said indebtedness shall be divided equally in two parts, one part to be retained by the party of the first part, and the other part to be paid by him to the said party of the second part as and when received.

It is hereby agreed between said parties of the first and second parts that each shall pay one-half of all general and special taxes and any other disbursements necessary or expended in and about the holding and maintenance of said real estate from time to time as such taxes and disbursements accrue.

The interest of said party of the second part in said real estate shall be conclusively presumed to be personal property and not real estate.

WITNESS the hands and seals of the parties hereto this

15<sup>th</sup> day of August, A.D. 1921.

Isidore J. Schiller (SEAL)  
Charles O. Carlson (SEAL)

STATE OF ILLINOIS

COUNTY OF COOK

)  
( SS.

I, Ludwig Kahn, a notary public in and for said County and State, do hereby certify that ISIDORE J. SCHILLER and CHARLES O. CARLSON, 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 said Instrument they executed the same voluntarily on the day the same bears date.

Given under my hand this 15th day of Aug, A.D.1921.

Ludwig Kahn  
NOTARY PUBLIC

