

STEWART BROOKS

B. F. McMILLAN, JR.

Brooks & McMillan
Attorneys at Law
Mobile

December 11, 1922.

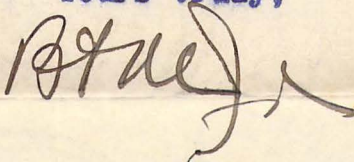
Mr. T. W. Richerson,
Bay Minette, Ala.

Dear Tom: Annie Roberts McMillan v. Ernest McMillan

You will find enclosed the deposition of plaintiff and her witness, Carlisle McDavid. Please forward these papers to the judge, with copy of decree to be signed, at your very earliest convenience.

Yours truly,

Mc/P



ANNA B. FERMANN,
COMPLAINANT.

VS.

JOHN H. ECKERT, LILLIAN ECKERT,
ED. G. MILLER AND CLARA G. MILLER,
RESPONDENTS.

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

Come Ed. G. Miller, Clara G. Miller, John H. Eckert and Lillian Eckert, respondents in the above entitled cause, and separately demur to the bill of complaint filed in this cause, and assign the following separate grounds of demurrer, viz:

1.- Said bill does not contain equity.

2.- Said bill does not allege that the deed to which reference is made in said bill of complaint authorizes foreclosure in event the annual interest on the note is not paid.

3.- For aught that appears in said bill of complaint, the bill is without equity.

4.- The deed to which reference is made in said bill of complaint is not set out.

5.- No facts are alleged showing that the complainant is entitled to foreclose said vendor's lien on account of the annual interest not being paid.

6.- It is not alleged that the note for one thousand dollars is due and unpaid.


AS SOLICITOR FOR RESPONDENTS.

THE STATE OF ALABAMA,
BALDWIN COUNTY.

CIRCUIT COURT OF BALDWIN COUNTY,
IN EQUITY.

To any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon John H Eckert, Lillian Eckert,
Ed G Miller and Clara G Miller,

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

Anne B Ferman,

against said John H Eckert, Lillian Eckert, Ed G Miller and Clara G Miller,

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 18th day of May,

1922

T. W. Richerson

Register.

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

3 Original

Serve on _____

Circuit Court of Baldwin County
In Equity

No. _____

SUMMONS

Anna B Ferman,

vs.

John H Eckert, Lillian
Eckert, (Bay Minette,)

M G Miller and Clara G Miller
(Fairhope).

RECORDED

Gaillard, Mahorner, & Arnold
Solicitor for Complainant

Recorded in Vol. _____ Page _____

THE STATE OF ALABAMA
BALDWIN COUNTY

Received in office this 14th
day of May, 1922

WR Stuart
Sheriff

Executed this 26th day of
June 1922

by leaving a copy of the within summons with
W G Miller and
Clara G Miller
Defendant

WR Stuart
Sheriff

By _____
Deputy Sheriff

Executed & June
June 21st 1922
by leaving a Copy of
within with
John H Eckert and
Lillian Eckert
WR Stuart
Shiff
By B O Wiggins
1922

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 Clara G Miller,

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

Anne B Ferman,

against said Clara G Miller and E.G. Miller,

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 13th day of July,

1922

T. W. Richerson

Register.

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

2 Original

Serve on _____

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court of Baldwin County
In Equity

Received in office this 13th

No. _____

day of July 1922

SUMMONS

W. R. Stuart
Sheriff

Anna B Ferman

Executed this 14th day of

July 1922

by leaving a copy of the within summons with

Clara G Miller

Defendant

+ W. R. Stuart

Sheriff

vs.

+ Wm Steller
By _____

Deputy Sheriff

Clara G Miller et al.

Chas. Hall Gordon and Eddington.

RECORDED

Solicitor for Complainant

Recorded in Vol. _____ Page _____

TO THE HONORABLE JOHN D. LEIGH, JUDGE OF THE TWENTY-FIRST
JUDICIAL CIRCUIT OF THE STATE OF ALABAMA, - SITTING IN EQUITY:

Comes your Oratrix, Anna B. Ferman, and brings this her
bill of complaint against John H. Eckert, Lillian Eckert, Ed G.
Miller and Clara G. Miller and shows unto your Honor as follows:

FIRST.

That your Oratrix is a citizen of Baldwin County, State of
Alabama, -----

----- and is over the age of twenty-one
years; that the said John H. Eckert and Lillian Eckert are each over
the age of twenty-one years and reside at or near Bay Minette, in
Baldwin County, Alabama; that the said Ed G. Miller and Clara G. Miller
are both over the age of twenty-one years and reside at or near Fair-
hope in Baldwin County, Alabama.

SECOND.

Oratrix further shows unto your Honor that on the 31st, day of
December 1918, the said Ed G. Miller and Clara G. Miller executed to
the said John Eckert and Lillian Eckert, husband and wife, a deed
conveying to them the Northwest quarter of the Northeast quarter of
Section thirty-four, in Township one South, Range three East, contain-
ing Thirty-nine & 93/100 acres of land, more or less, together with
the appurtenances thereunto belonging, and in said deed the said Ed G.
Miller and Clara G. Miller reserved a vendor's lien upon the real
property hereinabove described to secure the payment of One thousand
Dollars, being a part of the purchase price of said property, together
with the interest thereon, for which the said John H. Eckert and Lillia
Eckert executed to the said Millers hereinabove named their promissory
note bearing interest at the rate of eight per-cent per annum, and

agreed to pay the interest on said note annually, but has failed to pay the interest annually due on said note; that after the note was executed the said Ed G. Miller and Clara G. Miller sold, transferred and delivered the note to this complainant for a valuable consideration, a copy of said note and deed is hereto attached and marked Exhibits "A" and "B" and by reference expressly made a part of this bill of complaint.

THIRD.

Oratrix further shows that she is now the owner and holder of the note mentioned in the third paragraph of this bill of complaint, by transfer thereof from the said Ed G. Miller and Clara G. Miller; that the consideration expressed in said note was for the purchase price of the property described in the second paragraph of this bill of complaint and the annual interest thereon is unpaid and due this complainant, hence this suit.

PRAYER FOR PROCESS.

WHEREFORE, the premises considered, your Oratrix prays that the said John H. Eckert, Lillian Eckert, Ed G. Miller and Clara G. Miller be made parties respondent to this bill of complaint, and that the usual process of this Honorable Court be forthwith issued to them, commanding them to demur, plead to or answer this bill of complaint within the time and under the pains and penalties prescribed by law, and under the rules of this court.

PRAYER FOR RELIEF.

And your Oratrix prays that your Honor will take jurisdiction of this cause and will make and enter an order and decree that the transfer, assignment and delivery of the said note by the said Ed G. Miller and Clara G. Miller to this complaint, carried with it all the

right, title, claim and interest that the said Ed G. Miller and Clara G. Miller had in and to the property and note mentioned in this bill of complaint; that this complainant acquired the legal title to and lien on the property embraced in the deed hereinbefore referred to in this bill of complaint; and further, that your Honor will order a reference to be held to ascertain the correct amount due under said note and deed and enter judgment against the said John H. Eckert, Lillian Eckert, Ed G. Miller and Clara G. Miller for the amount of the indebtedness found to be due to your Oratrix by reason of the execution of said note and deed, including a reasonable attorney's fee for conducting this foreclosure proceeding as provided for in and under the terms of said deed and note, and that your Honor may be pleased to decree that said vendor's lien be foreclosed on the property described in said deed and in the second paragraph of this bill of complaint and that the same be condemned and sold to satisfy the said indebtedness and attorney's fees and costs of this suit, and that said respondents equity of redemption in said property be forever foreclosed.

And if she is mistaken in the relief prayed for herein, your Oratrix prays that your Honor will grant unto her such other, further, different and general relief as, in justice and equity, she may be entitled to receive under the allegations and proofs, and she will ever pray, etc, etc.

Guillard, Mahomed & Arnold & H. Lee
Solicitors for Complainant.

FOOT NOTE: The respondents, and each of them, are required to answer each and every paragraph of the foregoing bill of complaint numbered first to third, both inclusive, but not under oath, answer under oath being hereby expressly waived.

Guillard, Mahomed & Arnold & H. Lee
Solicitors for Complainant.

\$1000.00

Bay Minette, Ala., December 28th, 1918 191

Five years

after date, without grace, we promise to pay to the

order of ~~BALDWIN COUNTY BANK~~

~~Ed G. Miller and Clara G. Miller~~

One thousand (\$1000.00)

DOLLARS,

for value received, in gold coin of the United States of the present standard of weight and fineness,

with interest from ^{date at} ~~Maturity~~ 8% per annum until paid., interest payable ^{annually.}

PAYABLE AT THE BALDWIN COUNTY BANK IN BAY MINETTE, ALABAMA

The parties to this instrument, whether maker, endorser, surety or guarantor, each for himself, hereby severally waive as to this debt, or any renewal thereof, all right to exemption under the Constitution and Laws of Alabama, as to personal property, and they each severally agree to pay all costs of collecting, or securing, or attempting to collect, or secure this note, including a reasonable attorney's fee, whether the same be collected or secured by suits or otherwise. And the maker, endorser, surety or guarantor, of this note severally waives demand, presentment, protest, notice of protest suit and all other requirements necessary to hold them, and they agree that time of payment may be extended without notice to them of such extension. The bank at which this note is payable is hereby authorized to apply on or after maturity, to the payment of this debt any funds in said bank belonging to the maker, surety, endorser, guarantor, or any one of them.

John H. Eckert

Lillian H. Eckert

Due

No.

Exhibit A.

Each and every endorser of this note hereby waives all right of exemption of property from levy and sale under execution or other process for the collection of debts, as provided for in the Constitution and Laws of the State of Alabama, or any other State in the United States of America, and it is hereby agreed by each endorser hereof, that he shall pay all costs of collecting this note, after failure to pay when same becomes due under the terms hereof, including reasonable attorney's fee for all services rendered in anyway, in any suit, against any endorser, or in collecting or attempting to collect, or in securing or attempting to secure this debt. Each and every endorser of this note hereby waives demand, protest and notice of protest, and all requirements necessary to hold them as endorsers.

Pay to the order of
Anna B. Ferman.

Ed G. Miller

Clara G. Miller

Internal revenue stamps

20¢

Copy
Exhibit "13"

THE STATE OF ALABAMA, :
: :
BALDWIN COUNTY. : :

KNOW ALL MEN BY THESE PRESENTS,

That Ed. G. Miller and Clara G. Miller, husband and wife, parties of the first part, for and in consideration of the sum of five hundred (\$500.00) Dollars, to us in hand paid by John H. Eckert and Millian Eckert, husband and wife, parties of the second part, the receipt whereof is hereby acknowledged, and for and in consideration of the further sum of One thousand (\$1000.00) Dollars to be paid to Ed. G. Miller and Clara G. Miller, parties of the first part, by said parties of the second part, and for which deferred payment the parties of the second part have executed their one promissory note bearing even date with this instrument and payable at the Baldwin County Bank, Bay Minette, Alabama, five years after date with interest from date at eight per-cent per annum and interest payable annually, for which deferred payment the parties of the first part do hereby reserve a vendor's lien upon the property herein conveyed, the said parties of the first part do hereby grant, bargain, sell and convey unto the said parties of the second part the following described real estate in Baldwin County, Alabama, described to-wit:-

The Northwest quarter (NW $\frac{1}{4}$) of the Northeast (NE $\frac{1}{4}$) quarter of Section Thirty-four (34), Township one (1) South of Range three (3) East, containing thirty-nine & 93/100 acres, more or less.

TO HAVE AND TO HOLD the said real estate with the appurtenances thereunto belonging unto the said parties of the second part, their heirs and assigns forever.

The said parties of the first part do covenant and agree with the parties of the second part, that they are seized in fee of the above described premises and have the right to sell and convey the same; that the said premises are free from all encumbrances; and that they will and their heirs, executors and

administrators will forever warrant and defend the same unto the said John H. Eckert and Millien Eckert, their heirs and assigns against the lawful claims of all persons whomsoever.

It is hereby stipulated that in the event that the said John H. Eckert and Millien Eckert shall fail to pay the said, above described purchase money note at the maturity thereof, or the interest thereon, or the indebtedness thereby secured, then the parties of the first part shall be and are hereby authorized to enforce the above reserved vendor's lien upon said property and may do so either by bill in the Circuit Court, of Baldwin County, Alabama, in Equity, or under the power of sale contained herein. If they elect to enforce the same under the power of sale contained herein, then the said parties of the first part are hereby vested and empowered with full authority upon default in the payment of said note, or the interest thereon, to advertise said property for sale at public outcry, for cash, after giving two weeks notice of the time and place of sale in a newspaper published in Baldwin County, Alabama, such sale to take place at the Court House door of Baldwin County, Alabama, and the proceeds of said sale to be applied as follows: First, to the cost of foreclosure and sale and a reasonable attorney's fee; second, to the amount due on said note at the time of the sale, with interest, and next of the amount to become due with accrued interest, including any liens that may arise against said property, or any taxes which may become due by the parties of the second part or his legal representative. Should the parties of the first part elect to foreclose in the Circuit Court in Equity, then the parties of the second part likewise agree to pay a reasonable attorney's fee to the said parties of the first part.

And the said parties of the second part do authorize the parties of the first part, either personally or by Agent, to conduct the sale and make deed to the purchaser.

All the rights, powers and privileges herein reserved

the parties of the first part shall inure to the benefit of the assignee of the debt hereby secured, should the same be assigned or transferred.

It is distinctly stipulated and agreed that the said parties of the second part accepts this conveyance subject to all the terms, rights, privileges and powers and conditions herein contained.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals this 28th, day of December, 1918.

Ed. G. Miller (Seal)
Clara G. Miller (Seal)

The State of Alabama, :
: :
Baldwin County, :

I, John P. Linnell, a Notary Public in and for said County and State, hereby certify that Ed. G. Miller and Clara G. Miller, husband and 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 bear date.

And I do further certify that on the 31st day of December, 1918, came before me the within named Clara G. Miller, known to me to be the wife of the within named Ed. G. Miller, 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 and seal this 31st day of December, 1918.

John P. Linnell
Notary Public, Baldwin County, Ala.