

The State of Alabama, }
BALDWIN COUNTY

CIRCUIT COURT. (Equity)

Feb Term, 1941

I. E. Clark, Plaintiff
No. 125 vs.
The Federal Land Bank of New Orleans & W. H. King, Defendants

BILL OF COSTS

REGISTER'S FEES	AMOUNT	SHERIFF'S FEES:	AMOUNT
Fees in Circuit Court—		Summoning on Bill, Each Defendant.....	3.00
Docketing Cause, One fee only of.....	1.00	Executing Writ of Injunction, or Ne Exeat, each.....	1.50
Issuing Summons on Bill, each.....	.50*	Executing Subpoenas for Witnesses, each.....	.65
Issuing Copies Thereof, each.....	.40	Executing Writs of Possession, each.....	5.00
Entering Return of Same, each.....	.15	Executing Scire Facias or Notice, each.....	1.50
Orders of Publication to Non-Residents, each.....	1.00*	Taking and Approving Bonds, each.....	1.00
Filing Bill or Other Paper, each.....	.10	Impaneling Jury.....	.75
Copies of Same, Per 100 Words.....	.15	Collecting Execution for Costs Only, each.....	1.50
Entering Appearances, each.....	.25*	Sheriff's Commissions.....	
Issuing Writs of Injunction, Ne Exeat, each.....	1.50		
Issuing Copies Thereof, each.....	.50	Total Sheriff's Fees.....	3.00
Entering Return of Same, each.....	.15		
Decrees Pro Confesso, each.....	1.00*	SUMMARY OF FEES, COSTS, AND JUDGMENT	
Order Appointing Guardian Ad Litem, each.....	1.00*	Fees in Circuit Court—	
Issuing Commissions to Take Testimony, each.....	.50	Register's Fees.....	18.00
Taking Testimony, Per Day.....	1.50	Ex-Register's Fees.....	3.00
Taking Testimony, Per 100 words.....	.20	Sheriff's Fees.....	3.00
Receiving and Filing Depositions, each pkg.....	.10	Ex-Sheriff's Fees.....	
Indorsing Depositions Published, each pkg.....	.10	Witness Fees.....	
All Entries on Commission Docket, Each Cause.....	.50	Commissioner's Fees.....	
Entering Order Submitting Cases for Decree, each.....	.50	Guardian Ad Litem.....	
Other Orders of Court, each.....	.25	Publisher's Fees.....	
Noting Testimony on Hearing of Cause, each.....	.50	Solicitor's Fees.....	
Entering Decrees, of 500 Words or Less, each.....	.75	Court Reporter's Fees, Per Day or fraction thereof.....	5.00
Per 100 words over 500.....	.15	Trial Tax.....	3.00
Taking Accounts, etc., on Ref., per Day.....	3.00*		
Taking Testimony on Reference Relating to Trustee, etc., per 100 words.....	.15	Fees and Costs in Inferior Court:	
Reference and Reports, each.....	2.00*	Clerk of Inferior Court Fees.....	
Reports of 500 Words or Less.....	2.50	Sheriff's Fees.....	
Per 100 Words over 500.....	.15	Witness Fees.....	
Issuing Subpoenas for Witnesses, each.....	.25	Total Fees and Costs in Inferior Court.....	16.00
Issuing Witness Certificates, each.....	.25		
All Entries on Subpoena Docket, each Cause.....	.50	Total Fees and Costs.....	
Taking and Approving Bonds, each.....	1.00	Judgment.....	
Making Complete Record, per 100 Words.....	.15	Total Fees, Costs, and Judgment.....	
Hearing, etc., Regarding Appointment of Receiver or Trustee.....	3.00		
Settlements with Receiver or Trustee, each.....	3.00		
Examining Vouchers in Settlements, each.....	.10		
Examining Answers on Exceptions, each Answer.....	3.00		
Removal Disabilities on Non-Age.....			
Commissions on Sales.....			
Making Deeds to Property Sold, each.....	2.00		
Receiving and Paying Out Money Other Than That Arising from Sales.....			
Certificates or Affidavits, with Seal, each.....	.50		
Certificates or Affidavits without Seal, each.....	.25		
Issuing Scire Facias or other Notice, each.....	.50		
Other Orders of Register, except Cont., each.....	.50		
Entering Certificates of Supreme Court, each.....	.50		
Transcript for Supreme Court, per 100 words, each.....	.15		
Additional Copies, per 100 words.....	.05		
Appeal Bond, each.....	1.00		
Certificate of Appeal, each.....	.50		
Notice of Appeal, each.....	.50		
Report to State Board of Health, each case.....	.50		
Certificate of Judgment, each.....	.25		
Issuing Executions, each.....	.75		
Entering Returns Thereof, each.....	.15		
Total Register's Fees.....	10.00		

I. E. CLARK,

Complainant,

VS.

THE FEDERAL LAND BANK OF NEW ORLEANS,
a Corporation, and W. H. KING,

Respondents.

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

Now comes the Federal Land Bank of New Orleans, a Corporation, one of the Respondents in the aforesaid cause, and for answer to the bill of complaint says as follows:

F I R S T:

That it admits the allegation contained in paragraph one of the bill of complaint.

S E C O N D:

It admits that on or about the 1st day of December, 1924, Jeppy Mosely and Lillie Mosely, his wife, made and executed and delivered a mortgage to it to secure an indebtedness of FOUR HUNDRED (\$400.00) DOLLARS and interest and that said mortgage conveyed the lands set forth in paragraph Two of the bill of complaint and that said mortgage was recorded in the Probate Office of Baldwin County, Alabama in Book Number 19 of Mortgages, at page 235, and that on, to-wit: January 11, 1932, the aforesaid property was conveyed by Jeppy Mosely and Lillie Mosely, his wife, to Larkin T. Rhodes by deed dated January 11, 1932, and recorded in Deed Book 51 N. S. at page 469, Baldwin County, Records.

Respondent is not advised as to whether Larken T. Rhodes, before June 10, 1938, or at any other time conveyed said property to complainant, but if such conveyance was made, which it does not admit, and calls for strict proof of the same, said alleged conveyance, together with the conveyance from Jeppy Mosely and wife to Larkin T. Rhodes was subject to the existing mortgage of the respondent.

Respondent admits that on the failure of the payment of the indebtedness due it, that it foreclosed the aforesaid mortgage, on to-wit: June 10, 1938. Respondent is not advised that the property involved was owned by complainant at the time of the foreclosure of said mortgage and calls for strict proof thereof, But if it was, it was subject to the aforesaid mortgage.

Respondent admits that it purchased the aforesaid land at said foreclosure sale and that it executed a foreclosure deed therefor and that the same is recorded in Deed Book 65 N. S. at page 184 Baldwin County Records. Respondent is not advised that after the foreclosure of its said mortgage, and on, to-wit: March 27, 1939, that Larkin T. Rhodes, together with his wife, Mattie L. Rhodes made, executed and delivered a deed to complainant purporting to convey the aforesaid property or any statutory right of redemption that the said Rhodes had or may have had to redeem the said property, and Respondent calls for strict proof of this allegation of the bill of complaint.

T H I R D:

In answer to the Third paragraph of the bill of complaint, it admits that after it acquired the title to said property by virtue of the foreclosure sale of said mortgage held on, to-wit: June 10, 1938, it sold said property to W. H. King for consideration of EIGHT HUNDRED (\$800.00) DOLLARS, ONE HUNDRED SIXTY (\$160.00) DOLLARS of which was paid in cash, and executed a conveyance to the said W. H. King on, to-wit: July 13, 1938, which conveyance is recorded in Deed Book 65 N. S. at page 427 Baldwin County Records. It admits that the balance of the purchase price due it by the said W. H. King, that is the sum of SIX HUNDRED FORTY (\$640.00) DOLLARS was secured by a mortgage executed by the said W. H. King on, To-wit: July 13, 1938, and that said mortgage is recorded in Mortgage Book 77, at pages 51-3 Baldwin County, Records, and that said Mortgage

has not been cancelled nor has the same been paid.

Respondent admits that its conveyance of said property to the said W. H. King was subject to all rights of redemption from said foreclosure sale heretofore referred to and it admits that it assigned to the said W. H. King the debt due ~~to~~ it under said mortgage indebtedness, without recourse.

F O U R T H:

Respondent is not advised as to what efforts, whether diligent or otherwise, have been made by complainant through his agents and attorney to redeem the said property and calls for strict proof of the same.

Respondents denies that complainant made written demand upon it for a statement of the amount due it in connection with said foreclosure, but that it furnished the statement, a copy of which appears to be set forth in Exhibit "C" to the bill of complaint. At that time the respondent advised complainant that the legal title to said property was in W. H. King and it would be necessary under the law that the redemption of said property should be made through the said W. H. King.

Respondent further shows, as it appears from Exhibit "A" to Complainant's bill of complaint, that the said W. H. King paid the taxes on the aforesaid land for the year 1938, in the sum of SEVEN AND 66/100 (\$7.66) DOLLARS, and that the said W. H. King also made improvements on said land, the same being permanent improvements, of the value of TWENTY SIX (\$26.00) DOLLARS and that in addition to this the said W. H. King is liable for taxes for the year 1939 and 1940 on the property involved in this suit.

Respondent further shows unto your Honor that no tender of these several amounts set forth in Exhibit "A" and "C" to Complainant's bill of complaint has been tendered to the said W. H. King and that in complainant's diligence, through his agents and attorney to bring about a redemption of this property he should have exercised some of this diligence in endeavoring to tender the necessary amount to the said W. H. King, to redeem said property.

It appears that Complainant was satisfied as to the correctness of the amount set forth in the statements furnished by respondents Federal Land Bank of New Orleans and the said W. H. King but if this is not true then no where in the allegations of the bill of complaint is it set forth that complainant has attempted or offered to arbitrate his differences with the said W. H. King as to the amount that W. H. King claims by way of taxes, permanent improvements and monies paid to and due said Federal Land Bank ^{by} W. H. King which he was in duty bound to do under the Statute before filing his bill of complaint.


Respondent admits that about the 16th day of October, 1939 that complainant forwarded through R. D. Hooks, Secretary-Treasurer of the National Farm Loan Association at Bay Minette, Alabama, a check for FOUR HUNDRED FIVE AND 71/100 (\$405.71) DOLLARS, Respondent further shows that it returned the said FOUR HUNDRED FIVE AND 71/100 (\$405.71) DOLLARS through the said R. D. Hooks, Secretary-Treasurer of the National Farm Loan Association of Bay Minette, Alabama, to be delivered to complainant, at the same time advising complainant through his attorney, Hon. J. B. Blackburn, Bay Minette, Alabama that the FOUR HUNDRED FIVE AND 71/100 (\$405.71) DOLLARS was being returned to the complainant through the said Hooks, and that said sum of money was available to the complainant at any time he wished to obtain it from the said Hooks, That Respondent also advised the complainant through his said Attorney, that the redemption of said land should be affected through the said W. H. King, who then and there held the legal title to the land.

Respondent most unequivocally denies that through any acts on its part has it caused any damages to complainant in connection with his efforts to redeem said property, if he is authorized to do so. That for some reason unknown to Respondent, complainant apparently evaded the redemption of said property through the said W. H. King, who, as aforesaid, holds the legal title to the property and has so held the legal title to the property ever since Respondent sold the same to him and he has paid the taxes on the property, and has made permanent improvements on the property, and he is

liable for the taxes on the property for 1939 and 1940 and the said W. H. King is entitled to reimbursement for such expenditures together with interest thereon, together with the sum of THREE HUNDRED NINETY EIGHT AND 44/100 (\$398.44) DOLLARS as of August 1, 1939 together with the interest the law allows on redemption.

That in the event a redemption is allowed that your Honor will by a proper order and decree protect the interest of Respondent, Federal Land Bank of New Orleans, in the premises.

Having duly answered the foregoing bill of complaint Respondent asks that it be discharged with its reasonable cost.


Solicitors for Respondent, The
Federal Land Bank of New Orleans.

STATE OF ALABAMA
BALDWIN COUNTY

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

WE COMMAND YOU, That you summon The Federal Land Bank of New Orleans, a Corporation, and W. H. King, 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 I. E. Clark against the said The Federal Land Bank of New Orleans, a Corporation and W. H. King, 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, R. S. Duck, Register of said Circuit Court,
this 6th day of April, 1940.

R. S. Duck

Register.

TO THE HONORABLE F. W. HARE, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Your Orator, I. E. Clark, presents this Bill of Complaint against The Federal Land Bank, of New Orleans, a Corporation, and W. H. King, and thereupon your Orator complains and shows unto the Court and your Honor as follows:

1. Your Orator is over twenty-one years of age and a resident of Baldwin County, Alabama. The Respondent, The Federal Land Bank, of New Orleans, is a corporation with its principal place of business in New Orleans, Louisiana. The Respondent, W. H. King, is over twenty-one years of age and is a resident of Stapleton, in Baldwin County, Alabama.

2. On or about the 1st day of December, 1924 Jeppy Mosely and Lillie Mosely, his wife, made, executed and delivered a mortgage to the Federal Land Bank, of New Orleans, to secure an indebtedness of Four Hundred Dollars and interest, which mortgage conveyed the East Three-Fourths of the Northwest Quarter of the Northeast Quarter of Section 4, Township 4 South Range 3 East, in Baldwin County, Alabama, which mortgage is recorded in Book Number 19 of Mortgages at page 235, Baldwin County Records. Thereafter, and on to-wit, January 11, 1932, the said property was conveyed by Jeppy Mosely and Lillie Mosely, his wife, to Larkin T. Rhodes by Warranty Deed dated January 11, 1932 and recorded in Deed Book 51 N. S. at page 469, Baldwin County Records. After the said property was acquired by the said Larkin T. Rhodes and before June 10, 1938, the said property was conveyed by Larkin T. Rhodes to your Orator by deed, which was lost prior to its being recorded, which two last named conveyances, namely the conveyance from Jeppy Mosely and wife to Larkin T. Rhodes and the deed from Larkin T. Rhodes and wife to I. E. Clark, were subject to the existing mortgage to The Federal Land Bank, of New Orleans. The indebtedness due The Federal Land Bank of New Orleans was not paid and this mortgage was foreclosed on to-wit, June 10, 1938 while the property was owned by your Orator subject only to the said mortgage, and the property was purchased by The Federal Land Bank of New Orleans

the foreclosure deed therefor being recorded in Deed Book 65 N. S. at page 184, Baldwin County Records. After the foreclosure of the said mortgage and on to-wit, March 27, 1939, L. T. Rhodes, who is the same person as Larkin T. Rhodes, together with Mattie L. Rhodes, his wife, made, executed and delivered a deed to your Orator conveying the said property and any statutory right of redemption that the said L. T. Rhodes had or may have had to redeem the said property.

3. After the said property was acquired by The Federal Land Bank at the foreclosure sale held on to-wit, June 10, 1938, the said property was sold by The Federal Land Bank of New Orleans, a Corporation, to W. H. King for a consideration of Eight Hundred Dollars, One Hundred Sixty Dollars of which was paid in cash, the conveyance having been made by deed dated July 13, 1938 and recorded in Deed Book 65 N. S. at page 427, Baldwin County Records, which was paid in cash and that the balance of Six Hundred Forty Dollars was secured by a mortgage, which deed conveyed the said property to the said W. H. King subject to all rights of redemption from the foreclosure sale hereinabove referred to and assigned to the grantee W. H. King the debt without recourse, but reserved to The Federal Land Bank of New Orleans a one-half interest in and to all mineral rights on the said property. On to-wit, July 13, 1938, W. H. King made, executed and delivered a mortgage to The Federal Land Bank to secure an indebtedness of Six Hundred Forty Dollars due in twenty annual installments of Thirty-two dollars each, which mortgage is dated July 13, 1938 and is recorded in Book 77 of Mortgages at pages 51-3, Baldwin County Records, which conveys the said property and which has not been cancelled.

4. For many months your Orator, through his agents and attorney has made diligent efforts to redeem the said property and has made written demands for proper statements of the amount necessary to redeem, both to the respondent, The Federal Land Bank of New Orleans, and to the respondent, W. H. King. The statements furnished by the Respondent, W. H. King were furnished by him through his attorney on to-wit, March 20, 1939, and September 12, 1939, copies of which are hereto attached, marked Exhibits "A" and "B" and by reference made a

part hereof as though fully incorporated herein. Each of these statements shows on its face that it is incorrect and incomplete. The Respondent, The Federal Land Bank of New Orleans furnished your Orator's attorney a statement of the amount necessary to redeem, dated July 27, 1939, showing the amount due as of August 1, 1939, a true copy of which statement is hereto attached, marked Exhibit "C" and by reference made a part hereof as though fully incorporated herein. On to-wit, the 16th day of October, 1939, your Orator caused his attorney to compute the additional interest that would be due on the said statement from August 1, 1939 to the said date and on the said date paid to the Respondent, The Federal Land Bank of New Orleans, the sum of \$405.71, at which time The Federal Land Bank of New Orleans gave your Orator's attorney a receipt, a copy of which is hereto attached, marked Exhibit "D" and by reference made a part hereof as though fully incorporated herein. At the time the said payment was made a redemption deed for the above described property was demanded but has never been delivered. The mortgage from the Respondent, W. H. King, to the Respondent, The Federal Land Bank, has not been cancelled, and the undivided one-half interest in and to all mineral rights on the said property is still retained by the Respondent, The Federal Land Bank. On to-wit, January 15, 1940, The Federal Land Bank of New Orleans, notified your Orator's attorney by letter, a copy of which is hereto attached, marked Exhibit "E" and by reference made a part hereof, that it could not recognize the tender made by your Orator and suggested that the redemption be effected through the purchaser from the bank, disregarding entirely the undivided one-half interest in and to all mineral rights retained by it at the time it conveyed the property hereinabove described to the Respondent, W. H. King. Because of the actions of the two said Respondents, The Federal Land Bank of New Orleans, a Corporation, and W. H. King, your Orator has been unnecessarily and unreasonably delayed in effecting his redemption of the said property and has been greatly damaged in that he has been forced to lose the use of the said property for a large part of the year 1939

and part of the year 1940, and has been forced to employ counsel for the purpose of filing this suit to redeem the said property, all of which has been caused by and is the proximate result of the Respondents' failure to allow your Orator to redeem the said property as provided by law.

5. In the event the amount already paid by your Orator to the Respondent, The Federal Land Bank of New Orleans, a Corporation, is not sufficient to pay the full amount required by law and legally due for the redemption of the said property, your Orator is ready, able and willing to pay the full amount legally due and submits himself to the jurisdiction of the Court and offers to do equity by paying the amount properly and legally due when the same is ascertained.

PRAYER FOR PROCESS.

Your Orator prays that the said The Federal Land Bank of New Orleans, a Corporation, and W. H. King, be made parties respondent to this Bill of Complaint and that the usual process of this honorable Court do forthwith issue to them and each of them.

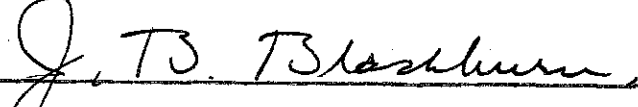
PRAYER FOR RELIEF.

THE PREMISES CONSIDERED, your Orator prays for the following relief:

1. That a reference be held to ascertain and fix the amount legally due by your Orator to the Respondents for redemption of the said property and to determine and fix the amount of the said redemption money that shall be paid to each of the said respondents.
2. That a reference be held to ascertain, determine and fix the amount of costs, damages and expense due your Orator by the respondent, The Federal Land Bank, of New Orleans, a Corporation, and the Respondent, W. H. King, because of their failure to allow your Orator to redeem the said property.
3. That upon a final hearing of this cause your Honor will make and enter a proper decree finally fixing the amount of damages that has been caused your Orator by the Respondents because of their failure to allow the redemption of the said property and determine what further amount, if any, your Orator is required to

pay to redeem the said property and will require the Respondents to each execute a proper redemption deed conveying all of their respective right, title and interest in the said property to your Orator, and further requiring a cancellation of the above described mortgage from the Respondent, W. H. King, to the respondent, The Federal Land Bank, of New Orleans, a Corporation.

4. If your Orator is mistaken in the relief prayed for that the Court will grant unto him such other, further and general relief as he may be equitably entitled to the premises considered.



Solicitor for Complainant.

EXHIBIT "B"

September 12, 1939.

Mr. J. B. Blackburn,
Bay Minette, Ala.

Dear Sir:-

I enclose herewith a statement of the amount necessary to be paid to Mr. King in order to effect a redemption of the property that he bought from the Federal Land Bank. This amount, of course, is exclusive of the interest that the Federal Land Bank has in the property.

In confirming our telephone conversation, we will permit the redemption of the property without a suit in court, provided the redeemer, or his assigns, will allow Mr. King to retain possession of the property until January 1st.

You will note that we have not computed interest on any of the items as shown on the list, since we do not know what day you intend to redeem.

Yours very truly,

J. P. Beebe

JPB/T
Encl.

STATEMENT

\$25.00	with interest at the rate of 10% from June 30, 1938;
135.00	with interest at the rate of 10% from Aug. 19, 1938;
57.24	with interest at 10%, which will start Sept. 15, 1939;
7.43	(taxes) with interest at 6% from Dec. 27, 1938;
10.00	(wire) with interest at 6% from March 14, 1939;
6.00	(posts) with interest at 6% from March 14, 1939;
15.00	(labor) with interest at 6% from March 14, 1939.

EXHIBIT "C"

"July 27, 1939

REDEMPTION STATEMENT AS OF 8/1/39

Loan No. 50241	Name	Jeppy Mosley	
NFLA Bay Minette	Date Acquired	6/10/38	
County Baldwin	State	Alabama	
Unpaid Principal			\$308.62
Matured & Accrued Int. to 6/10/38	\$28.86		
Delinquent Int. to 6/10/38	<u>2.38</u>		31.24
Delinquencies:			
7/18/38 Foreclosure Costs	\$18.26		
Less Credit:			
6/12/37 Installment Credit	1.04		17.22
Cost at Acquisition			\$357.08
Less Bank's Bid at Foreclosure			<u>300.00</u>
Amount of Deficiency			57.08
Interest on deficiency from 6/10/38 to 8/1/38 @8%			\$ 5.21
Bank's Bid at Foreclosure			300.00
Int. on Bank's Bid from 6/10/38 to 8/1/39			
	@ 10%		34.25
Add			
6/28/38 Recording Fee		1.75	
Delinquent Interest to 8/1/38 @ 8%		<u>.15</u>	<u>341.36</u>
Amount necessary for Redemption as of 8/1/39			<u>\$398.44</u>

Note: 7/13/38
PMM Sale to W. H. King, #93257.

BB"

EXHIBIT "D"

"B 1947 NATIONAL FARM LOAN ASSOCIATION R 97346

RECEIPT

DATE RECEIVED	<u>10/16</u>	,19 <u>39</u>	F.L.B.LOAN	<u>50241</u>
STATE	<u>Ala</u>		L.B.C.LOAN	<u> </u>
COUNTY	<u>Baldwin</u>		DUE DATE	<u>9-1</u>

RECEIVED OF J. B. Blackburn, "Attorney for I.E. Clark \$405.71

Four-Hundred-Five & 71/100 DOLLARS,
to be forwarded to The Federal Land Bank of New Orleans for credit as indicated below and in accordance with the conditions and agreements printed on the reverse side hereof.

Interest Installment	—	Application Fee	—
Principal Installment	—	Transfer Fee	—
Penalty Interest	—	Partial Release	—
Insurance Premium	—	Fee	—
Taxes Advanced	—		—

Rent for 19 <u>3</u>	—
Deposit on Purchase Offer	—
Redemption of property	<u>x</u>

Items Received: (Cash), Draft, or Money Order Commodities

Retained by N. F. L. A. \$ Forwarded to F.L.B. \$405.71

Remarks: Submitted to redeem this property.

<u>Bay Minette</u>	NATIONAL FARM LOAN ASSOCIATION
	By <u>R. D. Hooks Jr.</u>
	Secretary-Treasurer "

EXHIBIT "E"

THE FEDERAL LAND BANK OF NEW ORLEANS
FARM CREDIT ADMINISTRATION-FIFTH DISTRICT
ALABAMA-MISSISSIPPI-LOUISIANA

NEW ORLEANS, LA

January 15, 1940

Mr. J. B. Blackburn
Attorney at Law
Bay Minette, Alabama

Loan 50241 - I. E. Clark
Baldwin County, Alabama

Dear Mr. Blackburn:

We have been informed that you have returned to Mr. Hooks the bank's check, No. 17155, for \$405.71, which had been given you as a refund of the said amount previously tendered by you on behalf of Mr. I. E. Clark for the redemption of this property. This check is available to you for your client any time you wish to obtain it from Mr. Hooks.

As we have previously advised, it is our interpretation of the law of redemption as set out in the case of Smith vs. Jack, 96 So. 419, that a mortgagee under a purchase money mortgage is not such a title holder as would qualify such a mortgagee to accept funds for redemption. Therefore, we cannot recognize the tender made by your client, and we suggest that the redemption be effected through the purchaser from the bank, who also owns the indebtedness for which the mortgage was foreclosed.

We do not intend to convey by the above statement that we are taking a stand or position in whatever controversy there is existing between your client and our purchaser, but on the contrary, we are merely stating our position as holder of an outstanding purchase money mortgage; therefore, if an amicable redemption cannot be arranged between your client and our purchaser, it will be necessary for you to take such action as you think best.

Yours very truly,

(Signed) J. W. Kelly Jr.
J. W. Kelly, Jr.
Attorney

I. E. CLARK,
complainant,

vs.

THE FEDERAL LAND BANK OF
NEW ORLEANS, New Orleans,
Louisiana, a corporation,
and W. H. KING,
Respondents.

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

NO. 625.

Comes the Respondent, W. H. KING, and for answer to the Bill of Complaint heretofore filed in the above entitled cause and to each count separately and severally says:

FIRST.

That the said Respondent denies each and every allegation contained in said bill of complaint not herein specifically admitted and demands strict proof of the same.

SECOND.

That the said Respondent admits all of the allegations contained in Paragraph One except that the Complainant is a resident of Baldwin County, Alabama, but waives proof thereof.

THIRD.

That the said Respondent denies each and every allegation contained in Paragraph Two and demands strict proof thereof.

FOURTH.

That the said Respondent admits each and every allegation contained in Paragraph Three of said bill of Complaint.

FIFTH.

That for further answer to the said bill of complaint and in answer to Paragraph Four, thereof, the said Respondent says that on, to-wit: March 20th, 1939, he furnished to the Complainant an itemized statement of the amount expended on and for the property sought to be redeemed, which statement was exclusive of the interest that the Respondent, The Federal Land Bank of New Orleans, has

in the property; That in order to effect a redemption of the said property without resorting to a suit, in equity, your Respondent made and executed a deed conveying the property sought to be redeemed to the said Complainant and tendered the same to the said Complainant through his attorney of record, but neither said Complainant nor his attorney of record offered to pay over or tender to your Respondent the amount necessary to effect said redemption; That your Respondent was further requested to furnish an itemized statement of all lawful charges due him, which was furnished the Complainant under date of September 12th, 1939, being exclusive of the amount that the Federal Land Bank has in the property; That the said Complainant has never to this day tendered to your Respondent any sums of money in order to effect said redemption.

SIXTH.

That in further answer to the said Bill of Complaint your Respondent says that he purchased the property sought to be redeemed from the Federal Land Bank of New Orleans, for a consideration of EIGHT HUNDRED (\$800.00) DOLLARS, full warranty deed to your Respondent executed under date of July 13th, 1938, and recorded in 65 NS, page 427, which deed was subject only to the statutory right of redemption, and which reserved thereby a one half interest in all mineral rights, the said instrument assigning, without recourse, the debt of the original mortgagors; That your Respondent made payment of TWENTY FIVE (\$25.00) DOLLARS, under date of June 10th, 1938, to the Federal Land Bank of New Orleans on the said property and made an additional payment of ONE HUNDRED THIRTY FIVE (\$135.00) DOLLARS, under date of August 19th, 1938, to the said Bank; That your Respondent made and executed a mortgage to the said Bank, to secure the balance of the purchase price of the said property, which said mortgage is dated July 13th, 1938, and recorded in Mortgage Book

77 at pages 51-3, being evidenced by a note in the principal sum of SIX HUNDRED FORTY (\$640.00) DOLLARS; that since the execution of the said mortgage your Respondent has paid to the said Federal Land Bank of New Orleans under date of September 15th, 1939, the sum of Fifty Seven & 24/100 (\$57.24) DOLLARS, on the said mortgage; that your Respondent has made an additional payment to the said Bank, under date of September 25th, 1940, the sum of Fifty Three & 28/100 (\$53.28) Dollars, on the said mortgage.

That your Respondent has paid the State and County taxes on the said property for the year 1938, in the sum of Seven & 43/100 (\$7.43) Dollars, under date of December 27th, 1938; and has paid the State and County taxes on the said property for the year 1939, in the sum of SIX & 83/100 (6.83) Dollars, under date of December 30th, 1939; and has paid the State and County taxes on the said property for the year 1940, in the sum of Four & 72/100 (\$4.72) Dollars, under date of October 4th, 1940.

That your Respondent has placed permanent improvements on the said property in the nature of wire fencing which amounted to the sum of Thirty One (\$31.00) Dollars, the same having been completed under date of March 14th, 1939.

SEVENTH.

That for further answer to the said bill of complaint your Respondent says that as evidence of good faith on his part and in order to enable Complainant to accomplish the purpose for which his bill was originally filed, is willing for Complainant to redeem the same from foreclosure upon paying to him the amount required by the Laws of the State of Alabama for the redemption of land sold under foreclosure, the value of all permanent improvements placed thereon by your Respondent, together with the payments made by him to the Federal Land Bank of New Orleans for the purchase of said property and State and County Taxes so expended by him on said

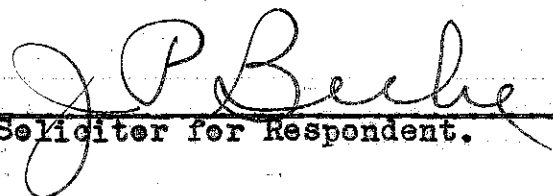
property, with the legal rate of interest; and upon the cancellation of the mortgage now held by the Federal Land Bank of New Orleans, and offers to submit to this Honorable Court the right to fix such time as it considers reasonable to permit Complainant to redeem.

That in further answer to the said bill of Complaint your Respondent W. H. King says that under the laws of the State of Alabama the redemption of the said property should be effected through the said Respondent, the Federal Land Bank of New Orleans:

That the Respondent denies most emphatically that he has done any acts or omitted to perform any duties on his part that would have caused any damage to the Complainant in attempting to effect a redemption of the said property.

That should a redemption be allowed, your Honor will by proper order and decree, protect the interest that your Respondent W. H. King may have in the premises.

That having fully answered the said bill of Complaint your Respondent asks that he be discharged his reasonable cost in the premises.


Solicitor for Respondent.

I. E. CLARK,
Complainant.

vs.

W. H. KING, et al.,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

REPLY BRIEF AND ARGUMENT

OF

JOHN P. BEEBE,
Solicitor for W. H. King, Respondent.

Filed October 8, 1943
R. S. Puck, Register

This being a reply to the brief heretofore filed by Complainant, I. E. Clark, to demurrers interposed to his bill of complaint by the respondent, W. H. King, the said respondent desires to call to the attention of the Court that the complainant has not shown to have used due diligence in an effort to effect a redemption of property sought to be redeemed in that he first secured a written statement from the respondent, W. H. King, under date of March 20, 1939, which is made Exhibit "A" to his bill of complaint. The said Exhibit shows that in addition to the amount that the respondent, W. H. King, has paid to the Federal Land Bank, as of that date, for the purchase of this property, he also shows payment of the taxes for the year 1938 and permanent improvements placed thereon. No action was taken by complainant and no tender was made to the said W. H. King. But on the contrary, as shown by Exhibit "B", some six (6) months expired before the said complainant requested of the said respondent another statement which is dated September 12, 1939, both of which exhibits show evidence of the willingness on the part of the said W. H. King to allow the redemption upon the payment to him of the amount he was lawfully entitled to. No action was taken on this statement by the said complainant. As shown by his Exhibit "C", an itemized statement was furnished him by the Federal Land Bank of New Orleans which shows that they were entitled to, as of August 1, 1939, the sum of \$398.44, exclusive of

the amount respondent, W. H. King, was lawfully entitled to. As shown by Exhibit "D" to the said bill of complaint the said complainant, through his attorney, tendered to the Bay Minette National Farm Loan Association the sum of \$405.71. It appears by Exhibit "E" to the said bill of complaint that the attorney of record for the complainant was informed by the Federal Land Bank of New Orleans that they had some time previously thereto returned to Mr. Hooks, who is the Secretary-Treasurer of the Bay Minette National Farm Loan Association, the amount which he tendered to him and at the same time was advised by the Federal Land Bank that the redemption of the property must be effected through the record title holder of the same. At the time the complainant tendered this amount of \$405.71 he had been informed of the fact that the respondent, W. H. King was entitled to be paid the sums of money which he had previously paid to the Federal Land Bank, plus taxes paid on the property and permanent improvements placed thereon by himself, which far exceeded the amount tendered to the Bay Minette National Farm Loan Association.

It is the interpretation by the respondent, W. H. King, that this was not a valid tender.

"To constitute a valid tender, the tenderer must offer a specific amount. While such amount need not be beyond reasonable dis-

It further holds that tender or payment into court of a sum not less than the amount due, nothing short of an offer of every-thing that the creditor is entitled to receive is sufficient, and a debtor must at his peril tender the entire sum due, including all necessary expenses incurred or damages suffered by the creditor by reason of the default of the debtor, and a mistake of tendering an amount less than the sum due is the misfortune of the tenderer, and the position of the parties remains the same as if no tender had been made. 62 C. J. 660, Ebersole vs. Addington. 46 Sou. 899, Smith vs. Anders 21 Ala. 782.

The complainant in his Brief and Argument is relying solely on the case of Derrough vs. Barnett, 114 Sou. sp. 198. This case held:

"When the statement of lawful charges claimed includes exaggerated or illegal demands, or the case is so questionable that the redemptioner, acting in good faith, cannot reasonably ascertain at all, the amount he should tender for redemption, no tender need be made before filing a bill to redeem." 60 Sou. 779, Johnson vs. Davis. 39 Sou. 174, Francis vs. White. 102 Sou. 527, Johnson vs. Williamson. This case deals with the redemption of land from foreclosure.

It is contended by the respondent, W. H. King that the case is not in point with the facts as alleged in the complainant's bill of complaint and the exhibits thereto attached and made a part thereof. The case held in this case that: further held that non-residence is good ground for failure to make a tender in advance. The respondent, W. H. King, is a resident of Baldwin County, Alabama, as the bill alleges. The case further holds that ordinarily when this is the sole ground of resort to equity the money must be brought into Court and tendered

The case of Crumpton vs. Campbell, 152 Sou. 220, decided by the Supreme Court under date of January 18, 1934, has this to say:

"(3) Another aspect of the bill was to enforce the statutory right of redemption, and does not aver a tender of the amount necessary to redeem, but, to excuse such tender, the bill avers that the statement furnished to complainant on his demand "was exorbitant, unreasonable and does not properly, legally and in an intelligible manner set out such debt and lawful charges, and the same contains claims of amounts legally in excess of any amounts that may be legally due under said mortgage."

These averments do not meet the requirements of good pleading.

Ewing vs. First National Bank of Montgomery, 148 Sou. 836, Slaughter vs. Webb, 87 Sou. 854, Dorrough vs. Barnett 114 Sou. 198, Cummings vs. Vann 11 Sou. p. 229.

The case of Wilkes vs. Hood, et al., 185 Sou. at page 751, holds that:

"The right of one, after foreclosure, to redeem the property is a right conferred exclusively by statute, and the condition upon which this right may be exercised is, that the person undertaking to redeem, shall comply fully, not partially, with the terms of the statute conferring the right, or must show some valid reason for his failure in any particular.

Francis et al. vs. White, supra.

The complainant contends that the case of Smith vs. Jack, cited in 96 Sou. p. 419, was decided before the adoption of Code of 1923 and that the fifth subdivision of Section 10145 of the 1923 Code was not in existence. I would like to call your Honor's atten-

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tion to the case of Lee vs. Macon County Bank, et al., 173 Sou. p. 662-671, which was decided by the Supreme Court, January 7, 1937, in which Justice Thomas at page 667 has this to say:

"(12) In a case where the statute applies -as statutory redemption- the complainant has the right to rely on the immediate written response made by the mortgagee-purchaser, to the mortgagor's written demand for charges and debts claimed by such statutory redemption.

Dorrough vs. Barnett 114 Sou. 198
Section 5448 Code 1907, Section
10144 Code 1923, Acts 1911, p. 391.

(13 & 14) "The rule as to a failure of compliance by the mortgagee-purchaser, or his vendee, in this behalf, is, that when the defendant, within ten days after such written demand on him, fails to furnish complainant with a written itemized statement of the debt and lawful charges claimed by him and required for redemption, he (the defendant) thereby forfeits all claims or right to compensation for improvements, and complainant is entitled to file his bill to "enforce his (statutory) right of redemption under Code 1923, 10144, 10147, without a tender, by simply offering to pay purchaser's debt and all lawful charges." Gay vs. Taylor, 214 Ala. 659, 108 Sou. 853 Johnson vs. Williams, supra; Slaughter vs. Webb 205 Ala. 334, 87 Sou. 854; Wittmeier et al., vs. Cranford, 73 Sou; page 981. That is, when the written statement of charges by the mortgagee-purchaser, or his vendee, includes exaggerated or illegal demands, or is so questionable that the redemptioner in good faith cannot reasonably ascertain the amount due, no tender need be made."

Dorrough vs. Barnett, supra
Johnson vs. Williamson, supra.

As shown by Exhibits A, B and C there are no items appearing thereon to be exaggerated or illegal, but, on the contrary, are justly due and legal. The

Supreme Court has ruled in all of these case that tender is necessary when statements are furnished upon written demand within the time allowed by statute so long as they do not show to carry exaggerated and illegal demands.

With this before the Court it is respectfully contended by the said respondent that the said complainant has not fulfilled the requirements of the law and that the demurrers of the respondent, W. H. King, should be sustained.

Respectfully Submitted,

John P. Beeche
SOLICITOR FOR RESPONDENT, W. H. KING.

[Handwritten signatures and initials]

[Handwritten signatures and initials]

I hereby certify that a copy hereof has this day been mailed to Hon. J. B. Blackburn, Bay of record Minette, Alabama, Solicitor for the complainant.

John P. Beeche
SOLICITOR FOR W. H. KING, RESPONDENT.

COMPLAINANT'S BRIEF.

I. E. CLARK,

Complainant,

VS.

W. H. KING, et al,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY.

BRIEF AND ARGUMENT

By J. B. Blackburn,
Solicitor for Complainant.

STATEMENT OF THE CASE.

This is a suit filed by I. E. Clark against W. H. King and The Federal Land Bank, a Corporation.

The Bill of Complaint alleges in substance that the Complainant is the owner of the statutory right of redemption to certain property in Baldwin County, Alabama, on which The Federal Land Bank foreclosed a mortgage given to it by Jeppy Moseley and wife, under whom Complainant claims title. It alleges further that the said foreclosure sale was held on June 10, 1938; that The Federal Land Bank became the purchaser of the said property at the sale for the sum of Three Hundred Fifty-seven and 08/100 Dollars (\$357.08) (See Exhibit "C" to the Bill) and sold the property on to-wit July 13, 1938 to the Respondent, W. H. King, for Eight Hundred Dollars (\$800.00), One Hundred Sixty Dollars (\$160.00) of which was paid in cash and a Purchase Money Mortgage given by the said King to The Federal Land Bank to secure the balance due of Six Hundred Forty Dollars (\$640.00) and interest, and that at the time of this conveyance The Federal Land Bank RESERVED ONE-HALF INTEREST IN AND TO ALL MINERAL RIGHTS ON THE SAID PROPERTY. The Bill further alleges that Complainant made diligent efforts to redeem the said property, commencing prior to March 20, 1939, and that these efforts continued up to the time this suit was filed; that the Complainant made demand on each of the Respondents for

correct statements of the amounts necessary to redeem and that correct statements were not furnished (copies of the statements furnished are attached to the Bill as Exhibits "A", "B" and "C"); that on to-wit October 16, 1939, Complainant paid to the Respondent The Federal Land Bank, the sum of Four Hundred Five and 71/100 Dollars (\$405.71) and demanded a redemption deed to the property which has not been delivered; the mortgage from the Respondent, King, to the Respondent, The Federal Land Bank, "has not been cancelled and the undivided one-half interest in and to the mineral rights is retained by the Respondent, The Federal Land Bank; that on to-wit January 15, 1940 The Federal Land Bank, by letter, a copy of which is attached to the Bill of Complaint as Exhibit "E", notified Complainant that it could not recognize the payment tendered and paid by the Complainant and suggested that the redemption be effected through its purchaser, the Respondent, W. H. King, disregarding entirely the undivided one-half interest in and to all mineral rights retained by it at the time it conveyed the property to the Respondent, W. H. King, and further disregarding the amount due it on the mortgage given to it by the Respondent, W. H. King. The Bill further alleges that Complainant has been damaged by the actions of the Respondents, OFFERS TO DO EQUITY, seeks an accounting and redemption of the property and general relief.

The Respondents have filed many grounds of demurrer to the Bill of Complaint but after reading the brief of the Respondent, W. H. King, (no brief having been filed by The Federal Land Bank) we will endeavor to limit this brief and argument to the

questions argued by the Solicitor for the Respondent, W. H. King, considering that any grounds of demurrer which have not been argued by the said Respondent have been abandoned.

POINTS AND AUTHORITIES.

1. Property may be redeemed from the purchaser at a foreclosure sale, or his vendee, within two years. Section 10140 of the 1923 Code of Alabama.

2. A mortgagee of the purchaser, or his assignee of record is considered a vendee of the purchaser and a party redeeming must pay all mortgages made by the purchaser or his vendee on the land to the extent of the amount required to redeem the property. If there is any balance in excess of the indebtedness secured by the mortgages made by the purchaser or his vendee, the same must be paid to the purchaser. Sub-section 5, Section 10145 of the 1923 Code of Alabama; *Dorough vs. Barnett*, 216 Ala. 599, 114 So. 198.

3. Where payment of redemption money must be made in part to one person and part to another and ground for equitable relief arises as against one, redemptioner need not tender or pay into court amount due but may file bill to redeem making such persons respondents, and offering to pay redemption money when ascertained. *Dorough vs. Barnett*, supra.

ARGUMENT.

The Bill of Complaint (See Exhibit "D" to Bill) shows that on October 16, 1939 Complainant's attorney paid to the Respondent, The Federal Land Bank, the sum of Four Hundred Five and 71/100 Dollars (\$405.71) to redeem the property; that this money was retained by the said Respondent without expression from them until January 15, 1940 (See Exhibit "E" to Bill) when they wrote Complainant's attorney admitting possession of the money, stating that they could not recognize the tender made by Complainant and suggesting that the Complainant effect the redemption through their purchaser, the Respondent, W. H. King, giving as authority for the position taken by them, that is, that they

were not such party as could accept the redemption money, the case of Smith vs. Jack, 96 So. 419.

The Solicitor for the Respondent, W. H. King, in the brief filed by him in this cause, places much stress on the case of Smith vs. Jack and takes the position that the Bill does not contain equity because no tender was made to the Respondent, W. H. King. Each of these Respondents have overlooked the fact that this case was decided prior to the adoption of the 1923 Code. The case of Smith vs. Jack was decided on April 19, 1923 and a re-hearing was denied therein on May 24, 1923. The case construed Sections 5746 et seq. of the 1907 Code. Section 5746 of the 1907 Code is now Section 10140 of the 1923 Code. There is a slight difference between the two sections but this difference is immaterial. Section 5749 of the 1907 Code is now Section 10145 of the 1923 Code. The said section, as contained in the 1907 Code, did not contain Sub-Section 5 which is now a part of Section 10145 of the 1923 Code. Sub-Section 5 of Section 10145 distinctly states:

"A mortgagee of the purchaser, or his assignee of record is considered a vendee of the purchaser."

This Section of the Code was construed in the case of Dorrough vs. Barnett, supra, where the court held:

"It appears the Respondent, Mrs. Young, a mortgagee of the purchaser, is a non-resident. Such mortgagee is deemed a vendee of the purchaser, and redemption MUST INCLUDE PAYMENT OF THE MORTGAGE TO THE MORTGAGEE, NOT TO THE PURCHASER." (Emphasis ours), Code Section 10145, Subdivision 5."

The case of Smith vs. Jack having been decided prior to the adoption of the 1923 Code, which Code was adopted and went into effect on August 17, 1924, ceased to be the law when

the 1923 Code became the law, consequently there is no authority whatever for the position taken by the Respondents in this cause. We deem it unnecessary to cite further authority to show the Court that the Respondent, The Federal Land Bank, is the vendee of the Respondent, W. H. King, and being such vendee is the proper party to receive the redemption money and the proper party to see that the redemption is carried out and allowed.

The Bill shows (See Exhibit "C" to the Bill) that the Respondent, The Federal Land Bank, furnished the Complainant a statement showing the amount due as of August 1, 1939; that on October 16, 1939 the amount shown by the said statement, together with the additional interest thereon was paid to the Respondent, The Federal Land Bank, which is the vendee of the Respondent, King, and the proper party to receive the money. This money is still retained by the Respondent, The Federal Land Bank, and it, in its letter of January 15, 1940 (Exhibit "E" to Bill) refused and still refuses to allow the redemption. This brings this case directly within the rule laid down in the case of *Dorrough vs. Barnett*, supra, which reads as follows:

"Where payment of the redemption money must be made in part to one person and part to another and ground for equitable relief arises against one, the redemptioner need go no further, but may file his bill making all such persons respondents, and offering to pay the redemption money when ascertained, and according to the decree of the court."


The Solicitor for the Respondent, King, in his brief in this cause has had much to say about Complainant's failure to make a tender. He overlooks the fact that the total amount due as shown by the Respondent's statement (Exhibit "C" to Bill)

HAS BEEN PAID to the Respondent, The Federal Land Bank, the vendee of the Respondent, King, and that this sum of money is still held by this Respondent which has refused to allow the redemption.

It will be noticed on reading the Bill of Complaint that the Complainant commenced his efforts to redeem the property prior to March 20, 1939, and that he continued his efforts up to the time the Bill of Complaint was filed in this cause. The Bill, as written, contains equity and is not subject to any of the grounds of demurrer interposed by the Respondents. It not only shows a case entitling the Complainant to relief but shows a case where the Respondents have disregarded Complainant's rights, forced him to go to unnecessary trouble and expense and have driven him into court to secure relief which they wrongfully refused to give him.

The Complainant's case is so simple, the authorities so clear and his right to relief so great that we deem it unnecessary to burden the Court with a lengthy brief and in conclusion we respectfully submit that the grounds of demurrer to the Bill are not well taken and that a decree should be rendered overruling the Demurrer to the Bill.

Respectfully submitted,


Solicitor for Complainant.

I hereby certify that I did, on October 5, 1940, deliver a copy of this brief to John P. Beebe, Solicitor for the Respondent, W. H. King, and did on the said date mail a copy thereof to the Respondent, The Federal Land Bank, at New Orleans, Louisiana,

postage prepaid.

Dated this 5th day of October, 1940.

J. B. Blackburn
Solicitor for Complainant.

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Complainant's Brief

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Supreme Court has ruled in all of these cases that
tender is necessary when statements are furnished
upon written demand within the time allowed by statute
so long as they do not show to carry exaggerated and
illegal demands.

With this before the Court it is respect-
fully contended by the said respondent that the said
complaint has not fulfilled the requirements of
the law and that the demands of the respondent, W.
H. King, should be sustained.

Respectfully Submitted,

John P. Blackburn
John P. Blackburn

John P. Blackburn
SOLICITOR FOR RESPONDENT, W. H. KING

John P. Blackburn
John P. Blackburn

I hereby certify that a copy hereof has
this day been mailed to Hon. J. B. Blackburn, Bay
of record
Minette, Alabama, Solicitor for the complainant.

John P. Blackburn
SOLICITOR FOR W. H. KING, RESPON-
DENT.

Respondent's

postage prepaid.

Dated this 5th day of October, 1940.

J. T. B. [Signature]
Solicitor for Complainant.

Filed October 5, 1940
R. S. Lusk, Reporter

Complainant's Brief

Page 75 Federal Land Bank

I. E. CLARK,
Complainant,

-VS-

W. H. KING, ET AL.,
Respondents.

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

BRIEF AND ARGUMENT

OF

JOHN P. BEEBE,
Solicitor for W. H. King, Respondent.

Filed August 26, 1940
R. S. Dush, Regista

This cause is submitted to your Honor for decree upon the demurrers of W. H. King, Respondent, filed to the original bill of complaint.

The demurrers attack the bill on the following grounds, namely: That there is no equity in the said bill; that the bill does not allege sufficient facts to show that the said Complainant has the right to redeem from mortgage foreclosure; that the said bill fails to allege a tender to the said W. H. King, Respondent, of the full and lawful amount due him; that the said bill does not allege sufficient facts to show wherein the statements furnished to the Complainant by the said Respondent, W. H. King, were incomplete and incorrect and the averments therein are a mere conclusion of the pleader; that the said bill fails to allege sufficient facts to show that at the time of the foreclosure of the mortgage by the Federal Land Bank of New Orleans, the Complainant was the owner of the property sought to be redeemed; that the said bill fails to allege that the said Complainant paid into court the amount furnished to the said Complainant by itemized statements of the said Respondent; that the bill fails to allege that the said Complainant tendered to the record title holder of the said property sought to be redeemed the amount necessary to effect the said redemption; that the said bill fails to allege sufficient facts

to show that the said Complainant has complied with the provisions of Section 10147 of the Code of Alabama.

I shall discuss the demurrers as nearly as I possibly can in the order in which I have set them out in the above paragraph.

Before a redemptioner can invoke the jurisdiction of the equity court in an effort to effect a redemption he must exhaust all efforts attempting to redeem the property without necessitating the aid of the court.

The Complainant's bill of complaint is without equity because he does not allege that he tendered to the record title holder of the property a sum sufficient to redeem. In fact, the bill does not allege that he made any tender to W. H. King, Respondent,

The case of Smith vs. Jack, cited in 96 So., p. 419-422, holds that:

"The conveyance to Smith by the purchasers at the foreclosure sale was, of course, subject to the redemption the cited statutes provide. Smith acquired thereby the legal title to the land. Since statutory redemption is designed to operate upon, to divest the legal title, the Complainants properly sought to effect redemption from Smith, the repository of the legal title.

Code Section 5746 (1923 Code Section 10140)
"The mortgage from Smith to the purchasers at the foreclosure sale, reserving the right to possession in the mortgagor, was in equity (the rule is different at law), a security for the debt, not a conveyance in praesenti of the legal estate."
Morrison vs. Formby 67 So., p. 668, Welsh vs. Phillips 54 Ala. p. 309.

The bill of complaint alleges that tender was made to the Federal Land Bank of New Orleans, who at the time did not hold title to the property sought to be redeemed. The bill affirmatively alleges that the property was sold by the Federal Land Bank of New Orleans, a corporation, to W. H. King, for a consideration of \$800.00, \$160.00 of which was paid in cash, conveyance having been made by deed dated July 13, 1938, and recorded in Deed Book 55 NS., page 427, Baldwin County Records. Hence, under Smith vs. Jack, supra, the bill does not contain equity because tender to the record title holder was not made.

The bill of complaint alleges that the Complainant has secured a deed from the title holder to the property at the time of foreclosure conveying the said property and any statutory right of redemption that the record title holder had or might have had to redeem the said property. The deed is not of record and is not made a part of the said bill by exhibit. For aught that appears the deed might not be sufficient to entitle the Complainant to the redemption of the property from foreclosure.

The bill does not allege that a tender to the Respondent, W. H. King, of any sum of money in an effort to effect a redemption notwithstanding the fact that the Complainant was furnished with an itemized statement of the amount necessary to redeem from foreclosure within

the period required by the statutes as shown by Exhibits "A" and "B" of the bill of complaint. Neither does the bill of complaint allege that the redemptioner has paid into the court the amount as shown by statements furnished.

The case of Davis vs. Ashburn, 141 So., p. 226-228, says:

"As a bill to enforce the statutory right of redemption, it is without equity, as the Complainants have not brought into Court the redemption money, nor alleged any sufficient excuse for not doing so."

Code Section 10147, Slaughter vs. Webb 87 So., p. 854, Lacy vs. Fowler, 91 So., p. 593.

It is insisted by the said Respondent that the allegations in the bill of complaint that the statements furnished by the Respondent, W. H. King, are incorrect and incomplete, ~~and~~ are mere conclusions of the pleader.

The case of Johnson vs. Williams, 102 So., p. 527, says:

"A resort to equity to enforce right to redeem mortgaged lands is necessary only when creditor or purchaser refuses to accept tender and to convey, or decline to inform debtor or redemptioner of amount necessary to be tendered or where it is impossible or impracticable for debtor to comply with requirements of statutes without the aid of equity."

"A bill to enforce wife's right to redeem mortgaged lands of husband, alleging as excuse for failure to tender redemption money inclusion in purchaser's statement of improper liens, fees, and interest charges, held not to sufficiently excuse failure to aver tender."

Code 1907, Section 5749 (1923 Code Section 10145)

"The items properly due being subject to verification had she used due diligence, and demurrer to bill was properly sustained."

The statement furnished in this cited case was much more complicated and involved than in the statements furnished the Complainant, I. E. Clark. It affirmatively appears by his bill of complaint that he secured one statement from the Federal Land Bank of New Orleans, and two statements

from W. H. King, no one of which was shown to be so involved that it would be impossible or impracticable to comply with the requirements of the statutes without the aid of equity, and had the Complainant used due diligence he would have been able to verify the items furnished on the statements. The case of *Rodgers vs. Stahmer* 179 So., p. 229, says:

"A bill which does not allege a tender, nor non-compliance with a demand for a settlement of the amount to be tendered, is demurrable, unless a good excuse for noncompliance with these requirements is disclosed by the bill. *Lacy vs. Fowler*, 91 So., p. 593; *Slaughter vs. Webb* 87 So., p. 854; *Johnson vs. Williams* 107 So., p. 527; *Davis vs. Ashburn* 141 So. p. 226.

The Respondent, W. H. King, further contends that the or purchase price and all lawful charges to the record demurrers should be sustained for that the bill does not allege sufficient facts to show that the redemptioner has

complied with all of the provisions of Code Section 10147,

which plainly states that it is necessary before a redemptioner can invoke the jurisdiction of the equity courts

for the purpose of effecting a redemption he must pay

into court the amount of purchase money and the interest and all lawful charges, if the written statement thereof

has been furnished, or if not furnished offering to pay

such debt or purchase price and all lawful charges, the Circuit Court shall then take jurisdiction thereof and

settle, and adjust all the rights and equities of the

The rule that pleadings are to be construed most strongly against the pleader is called into operation.

The Complainant will probably attempt to excuse himself from complying with the statutes as provided because there was reserved in the deed from Federal Land Bank of New Orleans, to W. H. King, the undivided one-half interest in and to all mineral rights. This reservation in the deed

"Another aspect of the bill was to enforce the statutory right of redemption, and does not aver a tender of the amount necessary to redeem, but, to exercise such tender, the bill avers that the statement furnished to Complainant on his demand "was exorbitant, unreasonable and does not properly, legally and in an intelligible manner set out such debt and lawful charges and the same contains claims of amounts legally in excess of any amounts that may be legally due under said mortgage."
"These averments do not meet the requirements of good pleading."

Ewing vs. First National Bank of Montgomery, 148 So., p. 836, Slaughter vs. Webb 87 So., p. 854, Dorrough vs. Barnett 114 So., p. 198, Cummings vs. Vann 111 So., p. 229.

The bill of complaint alleges that the mortgage was foreclosed by the Federal Land Bank of New Orleans on June 10, 1938. Complainant's bill was filed on April 6, 1940, the complainant waiting until the eleventh hour before asking for relief through the court of equity. Has he shown by his bill to have used due diligence in an effort to effect a redemption and to excuse his failure to comply or attempt to comply with the requirements of the law?

"A bill to redeem under the statutes is defective if it does not show a tender of the purchase money or and excuse for not doing so as provided by Section 5748 of the Code of 1907 (10144, 1923 Code).

Lewis vs. McBride 57 So., p. 705, Francis vs. White 34 So., p. 174.

"If the bill attempts to set up a good excuse for not tendering the money to the purchaser this will not relieve the complainant from averring a present tender by payment into court.

Beatty vs. Brown 14 So., p. 368, Wittmeir vs. Cranford 73 So., p. 981.

The case of Beebe vs. Buxton, 12 So., p. 567, has this to say:

"The statutory right of redemption is purely the

creature of legislation, and can only be exercised by the persons named in the statute, in the mode, within the time, and upon the conditions there prescribed.

Powers vs. Andrews 4 So., p. 263.

One of the essential conditions to the exercise of the right is the payment or tender by the redemptioner to the purchaser, or his vendee, of the purchase money, with 10 %, per annum thereon, and all lawful charges.

The statute not specifically prescribing the mode in which the tender must be made, the absence of the purchaser or his vendee from the state is recognized as an excuse for a failure to make the tender to him in person, and as occasioning a necessity to file a bill for redemption, in which the tender may be made, (the bill alleges that the Respondent, W. H. King, is a resident of Stapleton, Baldwin County, Alabama.), To the sufficiency of a tender made in this way, the payment of the money into court is essential.

Spoor vs. Phillips 27 Ala. 193, Tremble vs. Williamson, 49 Ala. p. 525, Alexander vs. Caldwell 61 Ala. p. 543, Caldwell vs. Smith 77 Ala. 157 Stocks vs. Young 67 Ala. p. 341.

As the statute clearly makes a payment or a tender a condition to the exercise of the right, we think that such payment or tender must be made to the purchaser or his vendee in person, or when that is not practicable, by the deposit of the money in Court on the filing of the bill to redeem. The complainant could by his bill have tendered the amount, which, according to his averments, he was bound to pay. Because of the failure to make the tender in the bill the complainant does not show himself entitled to relief prayed. The grounds of demurrer suggested in this defect in the bill were properly sustained."

The case of Foerster vs. Swift, cited at 113 So., p.

31, has this to say:

"Bill seeking right of redemption under Code 1923, Sections 10140, et cetera, of lands sold under mortgage, which did not ever tender, or that redemptioner, by exercise of due diligence could not have ascertained amount necessary for redemption, were demurrable."

"It is not alleged in the bill that there was any tender made to Respondent, nor is there a payment of any sum into court."

Francis vs. White, supra; Lacy vs. Fowler, supra; Lewis vs. McBride, supra; Ceals vs. Rodgers 55 So., p. 417; Johnson vs. Williams 102 So. p. 527.

The case further held that for the lack of due diligence on the part of the Complainant he should not attempt to invoke the jurisdiction of the equity court in an effort to effect a redemption because he has not complied with the statutes made and provided for that purpose and for that reason the Supreme Court held that the demurrers should be sustained because the bill did not contain equity.

The bill of complaint makes no objections as to the amount of permanent improvements placed on the land by the Respondent, W. H. King, and should, of course, not be considered as an excuse for failure to comply with the statutes which require the Complainant to tender to the record title holder of the property the amount as shown by his itemized statement or by the payment of the money into court.

"Bill in equity, based on dispute as to value of permanent improvements constructed by purchaser at mortgage sale, will not lie on behalf of proposed redemptioner, who has failed to comply with Code 1923, Sections 10144, 10153 and 10154, relative to arbitration, since such redemption by arbitration is exclusive, and on failure to comply with the law he must pay value of improvements by holder of title.

Cummings vs. Vann 111 So., p. 229.,
Prichard vs. Sweeney, 19 So., p. 730,
Smith vs. Jack, 96 So., p. 419.

The bill alleges that the Respondent, W. H. King, holds title to the property by deed from the Federal Land Bank of New Orleans, who was the purchaser at foreclosure

sale. Of course, if the alienee takes and holds the land in actual visible possession, this is sufficient notice of the alienation and payment or tender must be then made to such alienee.

Camp vs. Simon 34 Ala., p. 126.

It is contended by the Respondent, W. H. King, that under this particular aspect of the bill it is plainly subject to the demurrers. Treated as a bill to redeem from W. H. King, as the alienee of the title acquired by the Federal Land Bank at the foreclosure sale, the bill is defective in failure to allege that the amount tendered the Federal Land Bank, of New Orleans, included all lawful charges of which Complainant had notice and was subject to the demurrers on that account.

Fuller vs. Varmun 41 So., p. 777.

It is insisted that it is the duty of the party seeking to redeem to ascertain at his peril what the lawful charges are and to tender them. The case of Francis vs. White, 39 So., p. 174 holds that so long as the Respondent is available and upon written demand of statement as to the amount due and within the time prescribed by law the statement is furnished and no objection is raised as to the amount of permanent improvements as shown by the statement the bill was demurrable because the Complainant had not complied with the statutes.

The statutes confer a mere right or privilege upon the debtor. He must conform to requirements of the statutes by the payment or tender of the purchase price, together with 10%, per annum thereon, and all lawful charges and must pay to the person in possession or the record title holder the value of all the permanent improvements. The statutes direct how the amount of the value of the permanent improvements may be determined. These are all made conditions precedent to redemption, or revesting of the title in the debtor. The statute, however, contemplates that the redemption be perfected out of court between the parties by each party doing that which the statute directs. A resort to equity is only necessary when the purchaser or his vendee refuses to convey or declines to inform the debtor of the amount necessary to be tendered. If the Complainant had made a tender to the record title holder of the property of the amount shown by his statement then he would have complied with the statutes and this tender would have the effect, under the very language of the statute, to reinvest him with the title, and the record title holder would of course, have to reconvey to him. If the Complainant has been furnished with statements of the amount necessary to redeem he would not have to resort to the court of equity for that purpose and it is contended by the Respondent, W. H. King, that the bill is

without equity because no tender was made to him after statement was furnished and no payment was made into court. Equity will not undertake to do that which the debtor should have done for himself. So in the bill to redeem under the statutes the debtor must either aver a payment or a tender of all the amounts that the statutes require or to show a valid excuse for failure therein. Equity has the jurisdiction and power to compel both to discharge those duties imposed by the statutes and will aid either party to enforce his rights thereunder.

Baker vs. Burdshaw 31 So., p. 497,
Prichard vs. Sweeney 19 So., p. 730,
Lehman-Durr Co. vs. Collins 26 Ala. p. 127.

I therefore respectfully submit that the Complainant has not fulfilled the requirements of the law and that the demurrers of the Respondent, W. H. King, are good and well taken and should be therefore sustained.

Respectfully submitted,

John P Beebe
SOLICITOR FOR W. H. KING, RESPONDENT.

I hereby certify that a copy hereof has this day been mailed to Hon. J. B. Blackburn, Bay Minette, Alabama, the Solicitor of Record for the Complainant.

Dated this the 26 day of August, 1940.

John P Beebe
SOLICITOR FOR WH.KING, RESPONDENT.

W. H. King

ANSWER.

I. E. CLARK,

Complainant,

VS

THE FEDERAL LAND BANK OF NEW
ORLEANS, a Corporation, AND
W. H. KING,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY.

FILED November 30, 1940.

R. S. Duch

Clerk.

LAW OFFICES
HYBART & CHASON
BAY MINETTE, ALABAMA

Received in Sheriff's office
April 6, 1940. W.R. Stuart Sheriff

Original

SUMMONS AND **RECORDED**

BILL OF COMPLAINT.

Executed April 11th 1940
by serving copy of within Bounds of
Complaint on

R. Hooker as agent
for Federal Land Bank
of New Orleans, a Corp

W.R. Stuart Sheriff
Deputy Sheriff

I. E. CLARK,
Complainant,

VS.

THE FEDERAL LAND BANK OF NEW ORLEANS
A CORPORATION, and
W. H. KING,
Respondents.

Executed 1th day April 1940
by serving copy of within Summons and
Complaint on

W. H. King

W.R. Stuart Sheriff
By B. F. Kucenas Deputy Sheriff

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Equity Number
625

Filed April 6, 1940
R. S. Dush, Register

W. H. King
Stallworth Camp

I. E. CLARK,
Complainant,

vs.

The Federal Land
Bank of New Orleans,
a Corporation and
W. H. King,
Respondents.

Answer of Respondent,
W. H. King.

Filed February 3rd, 1941,

R. S. Dink
Register.

JOHN P. BEEBE

ATTORNEY AT LAW

LAMBERT BUILDING

DAY MINETTE ALABAMA

I. E. CLARK,
Complainant,
vs.
W. H. KING, et al.,
Respondents.

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

Comes the Respondent, W. H. KING in the above entitled cause and files this his demurrer to bill of complaint heretofore filed in said cause and to each count separately and severally thereof and as grounds for said demurrer says:

FIRST.

That there is no equity in the said bill of complaint.

SECOND.

That the said bill of complaint does not allege sufficient facts to show that the said complainant has the right to redeem from mortgage foreclosure.

THIRD.

That the said Complainant fails to allege that he has complied with Section 10143 of the 1923 Code of Alabama.

FOURTH.

That the said bill of complaint fails to aver that the Complainant has tendered a sufficient amount of money to the Respondent for the redemption of the property sought to be redeemed and neither does the said bill of complaint allege sufficient facts to relieve him of the duty to tender the full amount necessary to redeem.

FIFTH.

That the said bill of complaint fails to allege a tender to the said Respondents, or either of them, of the full and lawful amount due the said Respondents.

SIXTH.

That the said bill of complaint does not allege sufficient facts to show wherein the statements furnished to the said Complainant by the said Respondent, W. H. KING, were incomplete or incorrect ~~and~~ and the averments therein are a mere conclusion of the pleader.

SEVENTH.

That the said bill of complaint fails to allege that at the time of the foreclosure of the said mortgage by the Federal Land Bank of New Orleans that the Complainant was the owner of the property sought to be redeemed.


Solicitor for the Respondent, W. H. King,

RECORDED

I. E. CLARK,
Complainant,

vs.

W. H. KING, et al.,
Respondents.

DEMURRER

Filed April 27, 1940.

R. S. Duch
Register.

JOHN P. BEEBE

ATTORNEY AT LAW

LAMBERT BUILDING

RAY MINETTE ALABAMA

I. E. CLARK
Complainant
VS.
THE FEDERAL LAND BANK
OF NEW ORLEANS, ET AL.
Respondent

IN THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA
IN EQUITY

Comes the respondent, THE FEDERAL LAND BANK OF NEW ORLEANS, a corporation, in the above styled cause and demurs to the bill of complaint filed in said cause and to each and every count or paragraph thereof separately and severally, and for grounds of demurrer this respondent assigns the following:

I

That said bill of complaint is without equity.

II

That said bill of complaint is not in form as required by law in that said complainant fails to aver that he has tendered the necessary amount of money for the redemption of the property sought to be redeemed and has failed to allege an excuse for the failure to tender the amount necessary to perfect redemption.

III

That said bill of complaint fails to allege that the complainant had complied with Section 10143 of the 1923 Code of Alabama.

IV

That said bill of complaint fails to allege that statements of the amount necessary to redeem were not furnished him by the respondent within the time required by Section 10144 of the 1923 Code of Alabama.

V

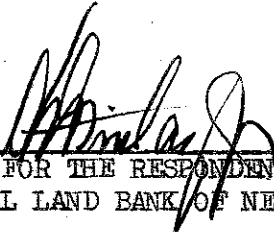
That said bill of complaint does not specifically allege wherein the statements furnished by the respondent were incorrect and incomplete and said allegation that each of these statements shows on its face that it is incorrect and incomplete is a mere conclusion of the pleader.

VI

That said complaint fails to allege a tender to the respondent, W. H. KING, of the amount legally due this respondent.

VII

That said allegations relative to the alleged damages sustained by the complainant are mere conclusions of the pleader and do not set forth sufficient facts to inform the respondents what they will be called upon to defend.



SOLICITOR FOR THE RESPONDENT,
THE FEDERAL LAND BANK OF NEW ORLEANS

I. E. CLARK,
Complainant,

vs.

W. H. KING, et al.,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Comes the Respondent, W. H. KING, in the above entitled cause and files additional demurrers to the said bill of complaint and to each count separately and severally thereof and as grounds therefor, says:

FIRST

That the said bill of complaint fails to allege that the said Complainant paid into court the amount furnished to the said Complainant by itemized statement of the said Respondents.

SECOND

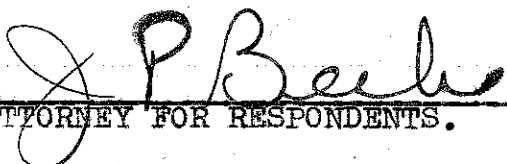
That the said bill of complaint fails to allege that the said Complainant tendered to the record title holder of the said property sought to be redeemed the amount necessary to effect the said redemption.

THIRD

That the said bill of complaint fails to allege sufficient facts to show that the Complainant is entitled to redeem the said property from mortgage foreclosure.

FOURTH

That the said bill of complaint fails to allege sufficient facts to show that the said Complainant has complied with the provision of the Code of 1923, Section 10147.


ATTORNEY FOR RESPONDENTS.

<p>I. E. CLARK,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">VS.</p> <p>FEDERAL LAND BANK OF NEW ORLEANS, a Corporation, and W. H. KING,</p> <p style="padding-left: 100px;">Respondents.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>In the Circuit Court of Baldwin County, Alabama.</p> <p style="text-align: center;">In Equity.</p>
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The Bill alleges that the Federal Land Bank foreclosed a mortgage here sought to be redeemed, and became the purchaser, afterwards conveying the land to the Respondent, King, reserving to itself a one-half interest in the mineral rights in the land conveyed by the mortgage and foreclosure deed. If entitled to redeem at all the mortgagor, or the assignee of his statutory right of redemption, has a right to redeem the entire property including the mineral rights. In such a case he could not ascertain what amount it would be proper for him to tender to the separate Respondents, and he had a right to resort to equity to settle this matter without the necessity of any tender, a court of equity having the power to adjust all differences between the parties.

The Register will enroll the following


D E C R E E

This matter coming on to be heard as submitted for decree on the demurrer of the Respondent, W. H. King, and also the demurrer of the Respondent, Federal Land Bank of New Orleans, a Corporation, and upon consideration thereof I am of the opinion that said demurrers are not well taken.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED By the Court that said demurrers, separately and severally, be, and the same hereby are, overruled.

Respondents are allowed thirty days from the filing of this decree to answer the bill of complaint.

This 29th day of October, 1940.



 Judge

I. E. O'NEIL,

Complainant,

vs.

FEDERAL LAND BANK OF NEW
ORLEANS, a Corporation, and
W. H. KING,

Respondents.

In the Circuit Court of
Eastern Louisiana, Orleans Parish,
in Equity.

*Filed October 30 1940
W. S. Dault, Reporter*

*These amendments
approved*

The bill alleges that the Federal Land Bank of New Orleans
a mortgage was sought to be released, and because the proceeds
afterwards conveying the land to the respondent King, reserving
to itself a one-half interest in the mineral rights in the land
conveyed by the mortgage and respondent King. It is alleged to
redem at all the mortgage, or the assignee of the mortgage
right of redemption, has a right to redeem the entire property
including the mineral rights. In such a case he could not
ascertain what amount it would be proper for him to tender to
the separate respondents, and he had a right to resort to equity
to settle this matter without the necessity of any tender, a
course of equity giving the power to adjust all differences
between the parties.

The register will enroll the following

AMENDMENTS

This matter coming on to be heard as submitted for
decree on the return of the respondent, W. H. KING, and also
the return of the respondent, Federal Land Bank of New Orleans,
a Corporation, and upon consideration thereof I am of the opinion
that said amendments are not well taken.
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the
court that said amendments, separately and severally, be, and the
same hereby are, overruled.
Respondents are allowed thirty days from the filing of
this decree to answer the bill of complaint.
This 29th day of October, 1940.

RECORDED