

6th Div. 235

179



John I Leonard

vs

First Term



Lawrence Rockwell et al

Appeal from Jefferson Chancery Court

TRANSCRIPT.

NUMBER 3831.

App

Submitt

Mr. 25 Write to John Vandy for copy of
affidavit

Copy of Docket & Decisions of Court

June 15th 1907
Affidavit
Warrant

J. F. Leonard before C. E. Elder as Commissioner at such time and place as he may appoint.

W. K. Terry,
Solicitor for complainant
John Vary,
Solicitor for respondent.

Lurena Roebuck,)
vs)
John F. Leonard.)

It is hereby agreed by and between counsel for complainant and respondent in this cause, that the testimony of H.B. Kimball, Ben F. Meyer and Will Hayes be taken by C.E. Elder, as Commissioner, without the issuance of a commission.

W. K. Terry,
John Vary, Sol. for deft.

Deposition of John F. Leonard.

My name is John F. Leonard. Mr. Dorrity told me that I could buy Lurena's Roebuck's interest in her father's estate, consisting of 80 acres of land lying the other side of Irondale, about three miles distant therefrom. He told me that I could buy it for \$15.00.

Did he or not tell you that he had an interest in the land?

(Complainant objects to the question on the ground that it calls for illegal evidence, not proper way to prove title, and calls for hearsay.)

He told me that he and Clark ~~Roebuck~~ owned an undivided interest in 40 acres, and that Mrs. Wideman owned the other 40 acres.

(Complainant moves to exclude the answer on the same grounds assigned as objections to the question.)

This land is about three or three and one half miles from Irondale, on the mountain. The land referred to in the NE $\frac{1}{4}$ of SE $\frac{1}{4}$, and SE $\frac{1}{4}$ of SE $\frac{1}{4}$, of Section 30, Township 17, Range 1 West, which is a correct description. After Dorrity told me about this land, I went out to see Lurena Roebuck. Before she married her name was Lurena Ellard. John Vary went with me when I went out to see her. He went out as Notary Public. He went to take her acknowledgement to the deed, in case we made a trade. John Vary was there with me all the time while I was there. I made a trade with her about the land. I first agreed to give her \$20.00 for the land. She said that she was perfectly satisfied with the trade and said that that was more than she expected to get out of it.

Did she or not say the land had been sold for taxes?

(Complainant objects to the question that it is not the best evidence of the sale.)

Yes.

(Complainant moves to exclude the answer on the same grounds assigned as objections to the question.)

She told me that there was a lawsuit about this land. She told me that there were other parties claiming this land. She and her husband came down to my place of business and I paid them \$35.00 purchase money for the land. His wife was with him at the time he signed the deed. And at the time I paid him the balance of the \$35.00 purchase money for the land.

Did you or not know of this land being sold for taxes, and the litigation pending? (No objections.)

I knew of the litigation pending in the name of Lurenaillard who is now Lurena Reebusk, and of the land being sold for taxes and being claimed by other parties before I bought the land. I think that the price paid is all that it was worth at the time I bought same. I do not know the value of land out in that vicinity.

Would you or not, taking into the consideration the circumstances and surroundings in regard to the taxes and litigation, have given any more for this land than you gave for it?

(Complainant objects to the question on the ground that it calls for incompetent and illegal testimony.)

No.

(Complainant moves to exclude the answer on the same grounds assigned as objections to the question.)

Did her husband express himself with being perfectly satisfied with this trade?

(Complainant objects to the question on the ground that it calls for incompetent, irrelevant, immaterial and illegal testimony.)

He did.

(Complainant moves to exclude the answer on the same grounds as assigned to the question.)

I paid the balance of \$15.00, making the total purchase money \$35.00.

Was he or not perfectly satisfied with the trade?

(Complainant objects to the question that it calls for a conclusion of the witness, irrelevant and immaterial testimony.)

He was.

(Complainant moves to exclude the answer on the same grounds assigned as objections to the question.)

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was or not his wife, Laura, married with the
trade? (Complainant objects to the question on the ground that it
calls for a conclusion of the witness.)

She was.
(Complainant moves to exclude the answer on the same grounds
assigned as objections to the question.)

Did or not they both each individually tell you that they
both got more out of this land than they ever expected to get?

(Complainant objects to the question on the ground that it
calls for illegal and incompetent testimony.)

They did.
(Complainant moves to exclude the answer on the same grounds
assigned as objections to the question.)

She is a mulatto woman. Her husband is brown skin.
Are they or not above the ordinary intelligence of their
class in society?

(Complainant objects to the question on the ground that it
calls for a conclusion of the witness, illegal and incompetent testimony.)

They are.
(Complainant moves to exclude the answer on the same grounds
as assigned as objections to the question.)

I knew that this land was covered with scrub undergrowth
timber at the time I purchased same from Laura Roebuck and her husband.

Did you or not take into consideration that the land was
covered with scrub growth of timber, and taxes due upon it for which it
had been sold, and the litigation pending and claimants to said land,
when you paid the \$35.00 for the land, and taking these things into con-
sideration, would you have paid more than you did for it?

(Complainant objects to the question on the grounds that it
calls for illegal, incompetent and irrelevant testimony, and that it
calls for a conclusion of the witness.)

I would not; I consider that I paid a big price for it.

(Complainant moves to exclude the answer on the same grounds
assigned as objections to the question.)

The State of Alabama,)

Jefferson County.)

E X H I B I T "A".

KNOW ALL MEN BY THESE PRESENTS, That for and in considera-

12 (Complainant moves to exclude the answer on the same grounds assigned as objections to the question.)

Did you or not know when this land was bought, that you were going to have litigation about it?

(Complainant objects to the question on the grounds that it calls for a conclusion of the witness, incompetent, immaterial and irrelevant testimony.)

I expected to have litigation with the parties who bought it for taxes, who were Vadebouncoeur, Dorrity and Clark and Mrs. Wideman, E. M. George and J. D. Moseley.

(Complainant moves to exclude the answer on the same grounds assigned as objections to the question.)

I offer in evidence the certified copies of the following deeds; Probate Judge of Jefferson County to J. D. Moseley; F. M. George to Joe Hagood; F. M. Vadebouncoeur from State of Alabama; deed from F. M. Vadebouncoeur to Clark & Dorrity; State of Alabama to A. J. Wideman, and State of Alabama to F. M. Vadebouncoeur. Exhibit "C".

(Complainant objects to the introduction in evidence of the above set out certified copies of deeds, on the following grounds, to-wit: because said certified copies are not the best evidence; because no title is shown to have existed in the State of Alabama or in the Probate Judge from whom said deeds purport to have originated; because said deeds purport to convey whatever title they purport to convey from the State of Alabama and no title is shown to have ever been in the State of Alabama to the land used for in this cause; complainant objects especially to the introduction of the deed of F. M. George to Joe Hagood on the ground that no title is shown in the said F. M. George; that at the time of the execution of said deed, and on the ground that the deed offered is a copy and not the best evidence. Complainant objects to the copy of the deed from Probate Judge of Jefferson County to John D. Moseley; first, that it is not the best evidence; that no title is shown to have existed in the State of Alabama to said property at the time of the execution of said deed; because it is not shown that said property was advertised for sale as required by law; because said deed is over five years old and no possession has been shown in said grantor; complainant objects to the copy of the deed from the State of Alabama to F. M. Vadebouncoeur on the following grounds, to-wit;

(1) Because no title has ever been shown in the State to said land.

Lurener Roebuck,)

vs)

John F. Leonard.)

In Chancery at Birmingham, Ala.

Testimony taken before the Register 11/17/1906.

Lurener Roebuck, being first duly sworn testified:

I am the complainant in this cause and am 22 years of age and reside in Jefferson County, Alabama. Mr. John F. Leonard, the respondent, is over the age of 21 years of age and resides in Jefferson County, Alabama. I live about a mile and a half in the country above East Lake. I was living there on and prior to the 30th day of May, 1906. Prior to that date I was the owner of the $32\frac{1}{2}$ of the $32\frac{1}{2}$ and the $32\frac{1}{2}$ of the $32\frac{1}{2}$, Sec. 30, Tp. 17, R. 1 West, in Jefferson County, Alabama. I am the only child of Jackson Ellard, deceased. He owned the land in his life time; he entered it. I know Mr. John F. Leonard. On the 30th day of May, 1906, he came out to my house to see me. He came to my house at about 11 A.M. on that day and asked me would I sell him my claim in 30 acres of land that Mr. Dougherty was in possession; I told him I did not know what about it; that I did not want to sell it; and he said that makes no difference he wanted to buy it; that Mr. Dougherty sent him out there. I told him that I did not know anything about it; that my uncle was attending to it, and he said that Mr. Dougherty said he had already seen my uncle about it and he said it would be all right. I told him that I didn't want to sell it unless I could see my uncle. And he said, Oh well I want to buy it, and Mr. Dougherty sent me out here; and he said that he would give me \$10.00 down then if I would sell it. He said that if it was not agreeable to my husband that he would give me the money back; I told him that I did not want to take that, and he told me to take it anyhow and me and my husband could come into town and sign that I was willing to take it. But I was not willing to take it. He went ahead and gave me \$10.00 and told me to sign my name that he had paid me ten dollars, and I signed my name and he told me then to come into town and get the rest of the money if my husband was willing to it. When we came into town he was not willing to take that for it, and I offered him the money back and he agreed to give \$35.00, and paid \$5.00 that day, and I came back and he paid me the other \$20.00; he paid me in all \$35.00. I told him that I was not satisfied with it. He says well you have got to be; I have got the whole forty now. I told him I did not sell but 20 acres. He did not ask me to sell him but 20 acres.

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Mamma told him that she had something to say in it, and she was going to see if she could not get it back. He said all right that he had done bought it and had the whole thing. We come on away then and left him alone. We then come to see Mr. Terry about it. He told me he would do all he could for me. He said he would come over here and see how much the deed was for. (objection by Mr. Vary to what Mr. Terry said on ground that it is hearsay evidence, and that it is irrelevant and immaterial and because the witness W.K. Terry is here to testify himself.) Mr. Terry came back and wrote to me that the deed called for 80 acres. (Objected to on ground that it is not responsive to the question.) I went back to Mr. Leonard and told him I would give him his money back. Before that time I thought I had sold him 20 acres. Before I went to Mr. Terry's office I did not know that I had deeded him more than 20 acres. After I found out that I had deeded him more than 20 acres, I went to see Mr. Leonard when I came back to town, after receiving a letter from Mr. Terry. I told him that he had got the whole 80 and I did not know I was deeding him the whole 80. He said, "Well you have". I asked him then would he give me the land back and take his money and he said "No, if I lose, I lose". that he would not take my money back. I told him I wanted him to take it back, or I would try the law about it, and he said for me to tell my lawyer to pop his whip. I told him all right. Then I left. I told him I would give him back the money, but I did not have it with me at that time. He said he did not want it. I am colored. I have never had any experience in business affairs. I know nothing about land numbers. I do not know how many acres of land there are in quarter sections. Mr. Leonard read that deed over to me. When he read it over to me, I did not know how many acres there were in the deed. He said 20 acres. Mr. Leonard said that he was buying the 20 acres that Mr. Dougherty was in possession of. I relied on what Mr. Leonard told me. I sold it to him for 20 acres because he told me it was 20 acres. That land is worth \$30.00 per acre. The 30th of May, 1906, it was worth \$30.00 an acre.

Cross Examination.

When I signed the deed, Mr. Jno. Vary was present and Mr. Leonard. Mr. Vary told me he was a Notary Public to take my acknowledgement to the deed. My mother is living. This land is two miles from Ironton. I have a lawsuit over a part of this land about the part claimed by Mrs. Wideman. The land has been sold for taxes, all of it. Mr. Dougherty had no claim to it as a tax title. Mr. Wideman claims that he has a tax title

to the land.

Q- Have you got a lawsuit with a man by the name of Schultz over this land? (Objected to on ground that it is res inter alios acta, and incompetent, irrelevant and immaterial.)

A- Yes.

It has been about three months since I have seen this land. I estimate the value of this land for farming purposes. I do not know the market value of land in the vicinity of my land. I don't know Mr. Fulham's place. Joe Hagood's place joins my place on the North. I do not know who joins me on the South. On the East Harrison Grace adjoins me. On the West Barry Hall adjoins me. I am a mulatto woman. I have been to school a little bit. I can read and write a little, not much.

Re-direct.

Q- On what do you base your knowledge on of what land is worth up there?

A- Uncle Hardy Hall told me what land was worth up there.

(Objected to on ground that it is hearsay evidence and because witness does not know of her own knowledge the market value of land in that vicinity.)

I do not know how far that land is from Birmingham, it is east from Irondale.

Q- Do you know of any land having been sold up there recently?

(Objected to on ground that question does not specify whether it was before or after this law suit, and because witness does not know the value of land in that vicinity and because irrelevant.)

A- I do not. This is the only transaction in land I have ever had.

(This last sentence of witness was in response to a question asked by Mr. Terry, counsel for complainant; after witness had answered the question, Mr. Vary said counsel objected to the question. The commissioner made the remark that a question could not be objected to after it had been answered.)

Mr. Vary was present when the deed was signed. That was Mr. Leonard's first visit to me. I know Mr. Vary's face. I did not sign up any deed in town. (The last sentence was in response to a question asked by Mr. Terry, counsel for complainant. After the question had been answered, it was objected to by Mr. Vary, counsel for the respondent, upon the ground that it is no new matter brought out by the cross-examination or inquired about.)

Q- Was anybody else present at the time you signed this deed except Mr. Vary, Mr. Leonard and yourself? (Objected to on ground that it calls for no matter cross examined about.)

A- No sir.

Q- When did your husband sign the deed?
(Objected to on ground that it is no new matter brought out on cross examination and is same old matter he has inquired about.)

A- Along about the first of June. He signed it down at Mr. Leonard's place of business. I was there. That was before I came to Mr. Terry's office about it.

Lurener Roebuck.

Testimony of Isham Roebuck.

I am the husband of Lurener Roebuck. I am 24 years old. I did not know anything about the sale of this land. I was at work at the time. I came in that night and my wife said there was a man out there to see her about buying her share in 20 acres of land. I signed the deed down at Mr. Leonard's place of business. Mr. Leonard was present. My wife was there but was in another room at the time I signed. She was not satisfied to take the \$10.00 for it, and was not either and I told her if he couldn't give her more than that just to give the land to him. He said "How much to you want", that is what Mr. Leonard said. "I will give \$1 \$35.00" Mr. Leonard was doing business for a man in Montgomery. Then he asked me to sign the deed and before I signed the deed I said to him "I want satisfaction, and if I don't get it, I want you to take the money back". He said "Yes", before Jno. Vary. Then I signed the deed and walked out. Mr. Leonard said the deed called for 20 acres. I couldn't read and did not read the deed. That is the only deed I signed for Mr. Leonard. The only writing I can do is to write my name.

Q- Do you know anything about your wife offering Mr. Leonard his money back? (Objected to because question does not say anything about the kind of money that was offered.)

A- I do. It was here in town where Mr. Leonard works. She went to him and called him out and said "Mr. Leonard I did not know that you got all the land; you just bought my share of 20 acres". He says "No I got the whole 80", she says "Here's your money back". He says "No I don't want it". She says "Well I will go and see a lawyer about it". He tells her "All right, go ahead and pop your whip. When that offer was made to Mr. Leonard I was present and my mother and her un-

le and Mr. Leonard. I can't think of the man's name in Montgomery. I think it was Dougherty.

Cross Examination.

I am colored. I am brown skin. I never went to school. We tendered Mr. Leonard \$35.00 in green back. I did not count it out the money to him, because he said he did not want it. I never pulled out the money in my hand and offered it to him. My mother-in-law did not do more talking at that time than the rest of us. This conversation was after I had signed the deed. It was longer than two or three weeks.

Lurander Roebuck, et al.,)

Isham Roebuck.

vs)

John F. Leonard.)

In Chancery at Birmingham,
Alabama.

Testimony taken December 20, 1906, before Register.

Ben Davis

Ben Davis being first duly sworn, testified:

My name is Ben Davis, and I live at Irondale, Alabama, in this county, and have lived there since 1899. I am not personally acquainted with the complainant in this suit. I am not interested in the result of this suit of Roebuck vs John F. Leonard. I know about what the lands sell for, and what they are worth in and around Irondale.

(Respondent objects to the question last asked, after it had been asked, on the ground that the proper predicate is not laid and because he has not described the land in this case sufficiently to know where it is located.)

I know the location of the property described in the Bill; and I know the market value of lands in that neighborhood and of that land. There is some 34 acres of the land near and adjoining that land sold for \$1000. The land described in the Bill is worth from \$20.00 to \$30.00 per acre. \$20.00 per acre would be a very low valuation of that land. I am practicing law in Birmingham.

20 and 30

Cross Examination.

I practice law in Birmingham, Alabama, I have worked in the Rolling Mill some, but have not engaged in any other business as a business. We have bought some land and sold a little, and have loaned money. I don't know whether I have been called a money lender or not. I know a man that bought 34 acres of land adjoining that in the Bill for \$1000; it was John F. Peace that bought that land. There was a small house on

the land. All I can say about the fencing is that the man that sold the land told me that it needed fencing and that he had rather sell the land than go to the expense of fixing up the fence, etc. It is on the old public road. I think the public road has been changed a little, but I am not sure about that; anyhow there is a road through there. I was over there last fall, passed by this land, but did not go through it then. I was going over about one and one-half miles from there to make out a deed for a man. The name of the man I went there to make a deed for was Glass, but cannot recall his first name; there are quite a number of Glasses over there. I am not sure about the number of acres Glass made the deed for. He lived right on the bank of the River. This man lives about 1- $\frac{1}{2}$ miles the other side further from Irondale than is the land described in the Bill; my impression is that he got \$70.00 per acre; there is quite a strip right along the river that is cleared up. It is just about the same as all the land over there; it is as good farming land as the rest of it is, no better and no worse I don't think. I should think that the land described in the Bill would be better an account of its location for farming purposes. I don't know how much of the land described in the Bill is cleared. It does not cost anything out in that country to clear the land; you can generally get something for the timber on the land if there is any there. I have been through there and know where the location of the land described in the Bill is, but will not say that I have been on the land, and don't know how much of the land is cleared; don't know what kind of timber is on the land, but the most of the land through there that has timber on it at all, has scrub timber on it. I don't know what it would cost to clear the specific piece of land described in the Bill. I knew Peter Blau when he lived. He was my father-in-law. In that general locality he had some land, about a mile or a mile and one-half from there. My wife has no land near there, but I have 23 acres about two miles from there. The estate of Blau has about 26 acres about a mile or a mile and one-half from there. I don't think the land in the Bill is nearer Birmingham than this land, but think it would be about the same the way you get to the land; I believe the road to the Blau land is a little better, though there is but little difference. I don't know of Mr. Blau offering this 26 acres to Mr. Fulghum at a certain price, but have heard him say that he would not sell it, but he may have offered it to Mr. Fulghum; I don't know about that. I know that Mr. Sternburg lives in the neighborhood of the land described in the Bill. Sternburg is the

that sold the place which is in less than one-half mile of this land the Hill. There was a small house on the Sternberg place; I don't know what improvements are on the Sternberg land except what he told me. Believe that a man could build a house like that on the Sternberg land for \$175 to \$200; he said there were some fruit trees on the land, but I don't know about that. I don't know about the value of fruit trees, nor how many acres he had in fruit trees. My impression is that a part of the fence around the Sternberg place was a rail fence; he had a barn on the place. Don't know what the barn was worth; I don't know whether he has any other out house on the place except the barn. I know Mr. Fulgham when I see him, but don't know that I am personally acquainted with him or not. I have an idea where his land is and the relations that exist between the Fulgham land and this land in the Hill; I don't think they join, but it may run down to this land. I know Jann Dougherty, but don't know how close his land is to this land.

Re-direct Examination.

On and prior to the 30th day of May, 1906, the market value of this land is about the same. I think that since 1902, the land has been enhancing in value a little every year, at that time the land would be a bargain at \$20.00; out there we do not consider the improvements on the farm land in making prices on the land, for the improvements out there do not amount to much, and all the land is valued as so much per acre with out reference as to whether it has improvements on it or not.

Re-cross Examination.

We do not consider anything about the land except for farming purposes; there is no railroad out there.

Ben Davis.

L. Roebuck,)

vs)

J.F. Leonard.)

Testimony taken for the respondent 3/21/1907.

Mrs. A.J. Wideman being first duly sworn, testified:

My name is Mrs. A.J. Wideman and I know a tract of land up near Irondale known as the Ellard tract; I lived near that land, and adjoining it. I moved away from there last fall, in November I think. I lived on the 40 adjoining it. I had lived there five years, and I know the nature of the Ellard tract; it is a sandy clay land; it is a good

piece of farming land. Schultz lived on a part of that land awhile. That land makes pretty good crops; it is most of it good cultivatable land. The road from there to Irondale is tolerably good the most part of the way, and it is not so good after you get into the hills, but is a fair country road even there.

Cross Examination.

Q- Did you know this property has been sold for taxes?

(Objection on the ground that it calls for immaterial, irrelevant and illegal evidence.)

A- There was between 10 and 15 acres of this land we are speaking about. I worked some of this land myself, worked myself between 10 and 15 acres. It produced very well; don't know how much I made to the acre. I raised corn and potatoes and cotton; the balance of it was not cleared up, but was in the woods; but was all woods.

Q- How far is that land from Birmingham?

A- It is three miles from Irondale. I don't know how far from Birmingham.

Q- Did you know all the time that this land had been sold for taxes?

(Objected to because calling for incompetent and illegal testimony and it is not the proper way to show the sale of land for taxes.)

A- I knew that it was sold for taxes when we bought it. (Motion to exclude answer on same ground.)

Q- Did you know that Mrs. F.N. Vadebounour claimed this land at one time?

(Objected to because immaterial.)

A- I did not.

Q- Did you know that Jno. B. Mosely claimed this land at this time?

A- I did not.

Q- Did you know that Jno. Dorrity claimed some of this land at some time?

(Objected to because immaterial and illegal and not the proper way to prove ownership of property in real estate.)

A- Yes. (Motion to exclude answer on same ground as objection to question.)

Q- Was Jno. Dorrity exercising any actual ownership over this property?

(Objected to because it calls for immaterial and illegal testimony.)

A- I don't know.

Q- Was he claiming to own the property? (Objection, calls for incompetent, immaterial and illegal testimony.)

- A- Both parties claimed it. Jno. Dorrity and that other fellow. (Motion to exclude answer on same ground as to question.)
- Q- Who was the other fellow? (Objected to on ground that it is illegal and incompetent testimony.)
- A- Schultz. I heard that Lurener Roebuck had a lawsuit with Schultz about this property.
- Q- Was that before Mr. Leonard bought the land? (Objected to because it is not shown that Mr. Leonard bought the land.)
- A- I don't know Sir. I moved off from there some time last fall. I don't know whether the suit was pending at the time I left there or not. I heard about it after I left there. I heard about the Schultz suit.
- Q- Did you hear about the suit for taxes? (Objected to because it calls for illegal and incompetent testimony.)
- A- I heard something about some dispute over it. (Motion to exclude on same ground as next above.)
- Q- Did you ever know that a man named Clark lived on that land? (Objected to because calls for incompetent testimony.)
- A- I heard he lived there. (Motion to exclude because hearsay.)
I knew there was a Clark living there, but I didn't know what Clark. (Motion to exclude for same reason as next above.) I lived something like a half mile from there.
- Q- Did you hear anything about the death of Clark? (Objected to because calls for hearsay testimony.)
- A- Yes Sir. (Motion to exclude the answer on same ground.)
He died on this land.
- Q- Did his widow re-marry? (Objected because calls for irrelevant and incompetent testimony.)
- A- Yes Sir. (Motion to exclude on same ground.)
- Q- Whom did she marry? (Objected to because calls for illegal and incompetent testimony.)
- A- She married Schultz. (Motion to exclude on same ground.) They are not still living on the property.
- Q- You know that this land has been in litigation for a long time? (Objection because calls for irrelevant, incompetent and illegal testimony.)
- A- I heard them talking about it for some time.

Cross.

When I referred to the 10 or 15 acres of land, I meant the 40 adjoining my land which I tanded, and I had no reference to the part where Schultz was.

L. D. Wideman.

Testimony of Jack Brown, he being first duly sworn;

My name is Jack Brown. I am a deputy Sheriff under F.L.Higdon. I know Laurener Roebuck. I know the location of some land that I put her in possession of and where Schultz lived. I put her in possession of that land recently. I don't know that I am acquainted with the values of farm land in Jefferson county, but I know what is generally asked for land around Irondale. Around Irondale they charge \$250.00 for lots 50 X 250. I never heard farm lands priced out there. I know how to form an estimate of farm lands. (Motion to exclude last clause because irrelevant and immaterial and witness has not shown that he is an expert on the value of farm lands, and witness has not shown that he has ever farmed in Jefferson county.) That land is a sandy land. It has some beautiful fruit trees on it.

(The respondent's attorney after the question has been asked and answered asks the commissioner to put down an objection to the question which has already been answered, which the commissioner refuses to do.) There were grape vines and out houses on the land, and fences.

Cross Examination.

I know the description of this land when I put the woman in possession of this land. The papers were served on Mr. Schultz. I don't remember how many acres the land was. I remember that it was in the form "North-east of etc. etc." To the best of my recollection it was 40 acres. I could not tell how many acres were cleared up, probably more than five acres cleared, but I could not say positively how many acres. It looked like there had been a good vineyard, 30 or 40 hills of vines.

Q- Did Schultz live on part of that tract last year? (Objected to because it is not shown by the witness specifically what tract of land he is speaking of, and because it is not identified by metes and bounds.)

A- He did. (Motion to exclude on same ground.)

Q- Do you know the market value of lands in that vicinity?

A- I do, I think. That land has been selling at \$15.00 and \$20.00 an

acre right along. The Alabama State Land sold some at \$20.00 an acre. (Motion to exclude the last statement upon the ground that it is not a criterion to go by, and the witness speaks from hearsay evidence and not as an expert.)

Q- What was that land where Schultz lived last year worth an acre? (Objection upon ground that witness not shown to be qualified to answer and is not shown to be acquainted with value of lands in that vicinity and not shown to be acquainted with value of land of any kinds, either agricultural or mineral.)

A- He told me that he refused \$20.00 an acre. (Objection to answer on same grounds and further that it is hearsay testimony.)

Q- What in your opinion is the market value of that land? (Objection upon ground that witness is not shown to be qualified to answer and not shown that witness is shown to be acquainted with value of land in that vicinity.)

A- My judgment is that it is \$20.00 an acre. (Motion to exclude upon same ground.)

Cross.

I could not say how many tracts of land Ellard owned when he died up there. I cannot give the dates and numbers of this land by government survey. The Alabama State Land Co. is across one 40 from this land in question. Part of this land was cleared. It costs about \$5.00 to \$8.00 an acre to clear it. There was some rock on this land, some of it outcropped and some not. You can see rock when Mrs. Schultz was there when I sent there. I think there was a garden spot there. There seemed to be a house on one side of the road and a house on the other. I couldn't say it was all under fence. I was acting as deputy sheriff; I had passed the place frequently. I went there at that time to put them in possession.

I could not say positively how long it has been since I put them in possession. It was some time in this month or in February, 1907. It has not been over three or four weeks ago. I do not remember what Court this writ of restitution came from. It was since Mr. Higdon came into office. The out-houses were ordinary farm houses. I don't know how much they were worth. I should say. I don't know whether it was worth \$50.00. There was a barn. It was worth \$25.00. There were two dwellings. I don't know what they were worth. I did not notice the soil being rocky. The road going from Irondale to this place is pretty fair until you leave the public road, which is about half mile from this place. The road after you leave the public road is rocky and mountainous.

Jack W. Brown.

Testimony of J. A. Gaddis, who was first duly sworn;
I live at Kingston, Ala. I used to live up about Irondale,

lived up there ten years.

Q- Do you know that land out there about three miles from Irondale where Schultz lived at one time? (Objected to because it has not been shown whether it is North, East, South or West, and because counsel has not given a description of the land so that witness can know what land is meant, and because he has not given the notes and bounds of the land.)

A- Yes. (Motion to exclude the answer on same ground.) I know where Schultz lived last year. (Motion to exclude because I know where the tract of land is called theillard tract of you ride over it. I have gone through that settlement in various ways both by trails and public road. I know Mrs. Clark.

Q- When did Mrs. Clark marry? (Objection because calls for incompetent, immaterial and irrelevant testimony.)

A- She married John Schultz. (Motion to exclude answer on same ground.) I do not know how she came into possession of this land. In fact I don't know whether or not she ever taxed it. I know this land is in lawsuit.

Re-Direct.

That said work would interfere with the cultivation where it comes to the surface. I have seen it on the surface in about three spots. One place is about 16 feet square, the others about 10 by 12. Those are the only spots I have noticed on that land.

Re-Cross.

This 16 foot square I have mentioned is in the place that is cleared up.

J. A. Gaddis.

Testimony of W. K. Terry, he being duly sworn;

I don't know Will Hays. I never saw him before he was examined by the defendant in this case. I never went in company with the complainant in this case to Jno. P. Leonard's saloon. I never heard her say to Jno. P. Leonard that she was satisfied with any trade. I never saw the negro Will Hays at any time at John Leonard's saloon. I went down to John Leonard's saloon alone and told him that the complainant wanted to give him back his \$55.00 and asked him if he would not take it back and deed the property back to her. He told me that he would not do it. I thereupon told him that I would file a Bill in equity to get his deed

aside and he told me to pop my whip, and I filed the Bill. My first connection with any litigation in reference to the East half of the South-east quarter of Section 30, Tp. 17, Range 1 West, Jefferson County, Alabama, dates back to several years ago, when Harden Hall came to my office to consult me as an attorney with reference to the land in behalf of his niece Lurener Roebuck, then named Rena Ellard. I am a practicing attorney and have been practicing since 1890. I had Hall to have an abstract made of the property and examine the title. I found from an examination of that title that Jackson Ellard, the father of Complainant, entered the land and received a patent for it. Hall told me that Mrs. Wideman (Objection by respondent to anything Hall told witness on ground that it is hearsay evidence.) I found upon investigation that the land was in possession one 40, to-wit: the South-east quarter of the South-east quarter of Sec. 30, T. 17, was in possession of Mrs. A.J. Wideman, and that the other 40 was in the possession as I thought at that time, of J.J. Schultz. I afterwards discovered (Objection on ground that the time is not stated and don't describe the property specifically). I then thought that Schultz (Objection because there is nobody to ask the witness a question) was in possession (Motion to exclude) that Schultz was in possession of the whole of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Sec. 30, Tp. 17, R. 1 West. (Motion to exclude that the witness is a lawyer in the case and states his thoughts and the conclusion of the witness, third "I can't get the question down so that I can object to it according to law.") Hall and his niece employed me, his niece Lurener Roebuck, who was then Lurener Ellard, to institute suits against the parties in possession of said lands to recover the same. I accordingly went, filed actions of ejectment against Mrs. Wideman, who testified here to-day, and against J.J. Schultz. Schultz disclaimed as to the South half of the North-east quarter of the South-east quarter of Sec. 30, Tp. 17, R. 1 West, and pleaded not guilty as to the North $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 30, Tp. 17, R. 1 West. That suit has been tried and judgment was rendered in behalf of Lurener Roebuck, the plaintiff in this suit. I herewith offer a certified transcript of said suit and judgment and ask that it be marked Exhibit "A" and attached to my deposition as a part of the same. I have also recovered judgment against Mrs. Wideman in the City Court of Birmingham for the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 30, Tp. 17, R. 1 W. I also have a suit pending against John Dorrity for the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 30, Tp. 17, R. 1 W. That suit has not yet been tried. That is all the litigation that I know of that can affect this