

# Shepherd, pro ami., v. Shaefer et al.

## Transcription

(This manuscript was transcribed and edited on FromThePage, June 2025.)

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1 Div. No 58.

Filed Jan. 4, 1871 Booth Clk

Sarah Sheppard by next friend vs. D.F & F Shaefer Etal

Transcript to Supreme Court 5<sup>th</sup> District Eastern Division, Chancery Court, (Lee & Chambers Co<sup>s</sup>.)

(Certiorari on dem of [?] ordered)

Affirmed Jany 12 1871

Saffold

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Caption Be it remembered that heretofore, to wit; at a Chancery Court for the 5<sup>th</sup> District (Composed of the Counties of Lee and Chambers) of the Eastern Division of the State of Alabama, begun and held in the town of Opelika Lee County Ala - on Thursday the 18<sup>th</sup> day of November A.D. 1869, the same being the November Term of said Court, the following proceedings were had to wit: Present the Hon B.B. M<sup>c</sup>Craw, Chancellor

Original Bill Sarah Sheppard by her next friend H.W. Finney N<sup>o</sup> 242 } vs. David F. Shaefer Frederica Shaefer & W<sup>m</sup> W Sheppard } To the Honorable B.B. M<sup>c</sup>Craw, Chancellor of the Eastern Division of the State of Alabama.

1<sup>st</sup> Your oratrix, Sarah Sheppard, who sues by her next friend Howard W. Finney, respectfully represents unto your Honor, that she is the wife of William W. Sheppard, who with your Oratrix reside in the County of Chambers in said state and that each of them together with Oratrixes next friend and over Twenty one years.

2<sup>nd</sup> Your Oratrix states charges and avers. that on

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Original Bill or about the first of October 1865 She owned and possessed a separate statutory estate of Fifteen Hundred Dollars in Treasury notes of the United States commonly called "Green Backs", which estate come to her Control by inheritance Since 1<sup>st</sup> Jany 1855

3<sup>rd</sup> That on or about the first day of October A.D. one thousand Eight Hundred and sixty five her Said husband bought of and from one D.F. Shaefer certain houses and lots in the town of Bluffton in said County and State. Known and distinguished as lots number one, four and five in the plan of said town, and also Known and distinguished as the Alabama House, on said lots then is now located a valuable Tavern and the other necessary out buildings.

4 That on or about the first day of November A.D. one thousand Eight Hundred and sixty five the said W.W. Sheppard, went into the possession of said property, taking with him your Oratrix and his family which consists of several Minor Children, who on wholly dependent upon your Oratrix and the said William W<sup>s</sup> individual exertions for maintenance, support and education.

5<sup>th</sup> That said money was obtained from the control and possession of your Oratrix to procure and keep her peace with the said William W. and paid

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as a part of purchase money for said lots, and without her consent and approbation and against her better Judgment and remonstrance.

6<sup>th</sup> That the purchase of said lots by the said W.W. Sheppard, from the said D.F. Shaefer, the Said William W. Sheppard gave to the said D.F. Shaefer his promissory note for Eighteen Hundred dollars there abouts, payable to said Shaefer, twelve months after date or at a time near thereto. The purchase money for said lot being Thirty three Hundred dollars or thereabouts.

7<sup>th</sup> That immediately after the maturity of said note the said Shaefer filed a Bill in your Honors Court for the sale of Said lots for the payment of said note the balance of the purchase money of said lots.

8<sup>th</sup> That at the Fall Term 1867 of your Honors Court, held at Opelika in District No 5 of said Division, a decree was rendered in favor of said Shaefer and against the said William W. Sheppard, ordering directing and commanding the sale of said lots for the payment of said note and the costs of suit and to put the purchaser thereof in possession of said House and lots.

9<sup>th</sup> That on or about the first Monday in January A.D. one thousand eight hundred and sixty eight the Register of said District in pursuance of and by the authority of said decree Sold said House & lots.

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4

Original Bill in the town of Opelika in said state to the highest bidder for cash, when the said D.F. Shaefer bid off the said lots for the sum of about nineteen Hundred dollars. and took Said Registers Deed to said lots or property in the name of Frederica Shaefer the wife of the said D.F. Shaefer to defraud the rights of Oratrix.

10<sup>th</sup> That said D.F. Shaefer and Frederica Shaefer or either of them or any one for them has paid any money on or about said last purchase or sale except the costs of suit or Some other inconsiderable Sum

11<sup>th</sup> That said William W. while he had the possession and control, of said lots made valuable and permanent improvements. thereon which has greatly enhanced the value of said lots.

12<sup>th</sup> That said Fifteen Hundred dollars being the identical money so as aforesaid mentioned by your Oratrix was paid by the said William W. to said D.F. on the purchase of said lots of which the said D.F. had express notice, and all the circumstances. herein mentioned attending the same were such as to put him upon inquiry.

13<sup>th</sup> That immediately upon said Registers Sale and the Deed aforesaid, possession of said lots were demanded by said D.F. Shaefer for and in behalf of said Frederica the wife of D.F. which the said W.W. refused to give, while your Oratrix being

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5

Original Bill unadvised of her legal rights, averse to law, and desirous of peace and quiet and a roof to shelter herself and minor offspring, rented said property until about the fifteenth day of December One Thousand eight Hundred and sixty eight from said D.F. as the agent of said Frederica, for the sum of One Hundred and fifty dollars, one hundred and twenty five of which sum has been paid by your Oratrix.

14 That said D.F. and Frederica Shaefer before the time of said renting had expired gave your oratrix notice to quit or leave said lots or promises and shortly thereafter commenced in the Justice Court of Beat number Seven of Chambers County Alabama an action of unlawful detainer against Oratrix and the said William W. for the obtaining and recovery of the possession of said lots or premises before J.M. Hill an Justice of the Peace of said County and has actually gone against your Oratrix and the said W.W.

15<sup>th</sup> That her said husband at the time of the purchase of Said lots or premises of and from the said D.F. and for a long time before, was greatly dissipating and drinking & had so indulged that his mind and habits totally unfitted him for the discharge of the ordinary business of life and that he so continued for a long time after said purchase of said William from said D.F. of said lots

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Original Bill or premises all of which was and is fully Known by said D. F. Shaefer and F Shaefer.

16<sup>th</sup> That the said William W, is not a fit and proper person to control or manage the separate estate of your Oratrix or to make any prudent and fair trade. The said William W. having for a long time been intemperate, the disastrous results of the war to the So called Confederate States and the loss of property has impaired the mind of the said W. W. and wholly disqualifies him for the prudent and discreet management of the separate estate of your Oratrix.

17 That your Oratrix has so ever been ready and willing to award, do for and give to the said D.F. and Frederica, or either of them full and complete justice in the premises, and hereby tenders and offers to do all, each and every other matter or thing that may be held, ordered or decreed by your Honor and states avers & charges that your Oratrix has So offered to do before the filing of this Bill of hers

18 Your Oratrix further states charges and avers, that she is poor has a large and dependent family, who are mainly dependent on her individual exertions for Support, clothing, maintenance and education and that she has diligently and faithfully tried to get and give sufficient security to obtain or procure an attachment or

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Original Bill other remedy for the enforcement of her rights, and that she has no rich or influential friends or relatives near to her or which She can get, who are willing or able to protect or defend her in and about her suit

19<sup>th</sup> That said D.F. Shaefer is wholly insolvent and resides out of the state and has no other property than mentioned in said bill, & without protection she may be irredeemably injured, stating, charging and avering that said property is not now worth nor was it at said purchase, with all the improvements thereon, likely to be for some time worth the money that has been paid the said D.F. Shaefer by the said William for said lots, which money is and was the separate es Statutory estate of your Oratrix and came to her by inheritance since the first of January 1855.

20<sup>th</sup> That said Frederica and D.F. Shaefer are each over the age of Twenty one years and reside in the city of West Point, County of Troup and State of Georgia, that William W. Sheppard is over Twenty one years of age and resides at Bluffton in the County of Chambers and State of Alabama

Prayer. 1<sup>st</sup> The premises considered your Oratrix humbly prays your Honor that upon a final hearing of this her Bill of Complaint, that the said Money or United States Treasury notes commonly called "Green Backs" be ordered, adjudged and decreed her separate

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8

Original Bill Statutory estate.

2<sup>nd</sup> That your Oratrix be ordered, adjudged and decreed to have a lien on said lots and premises for said money.

3<sup>rd</sup> That a reasonable time be allowed the said D.F. and Frederica for the repayment of the said money so as aforesaid mentioned with interest thereon.

4<sup>th</sup> That the Register and Master of your Honors Court be ordered and decreed to take and state an account between your Oratrix and the said D.F. and Frederica Shaefer or either of them allowing the said D.F. and Frederica Shaffer or either of them the reasonable rent of said lots or premises, deducting therefrom ther amount paid them or either of them on said renting by your Oratrix and that may be due or to come due, and charging the said DF & F Shaefer or either of them with the lawful interest on said Fifteen Hundred dollars from the time received until it is paid to your Oratrix

5<sup>th</sup> That should Frederica and D.F. fail or refuse to pay to your Oratrix said Fifteen Hundred dollars. at the time to be set and prescribed by your Honor, then that said lots and premises be ordered, adjudged and decreed to be Sold upon such terms and time as may seem just and proper to your Honor. The proceeds arising therefrom after the payment of the necessary cost.

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Original Bill in this suit Should the said D.F. and Frederica be unable to pay the same be ordered, adjudged and decreed to be paid over to your Oratrix as her separate Statutory estate,

7<sup>th</sup> That the Said William W. Sheppard be removed as trustee of your oratrix's Separate Statutory estate and if it should seem meet and proper, that another person should be appointed ~~Trustee~~ in his stead as her Trustee

8<sup>th</sup> That each of said parties towit D.F and Frederica Shaefer and the said William W. Sheppard be made parties Defendants to this Bill the said DF & Frederica by publication as required by your Honors Court be made parties Defendant and the said William by service of Subpoena under the rule of your Honors Court.

9<sup>th</sup> That each of said Defendants answer fully and particularly each and every statement, charge and specification in this your Oratrix's Bill particularly, & freely under oath, and for further prayer in this behalf your Oratrix asks your Honor by an order to command the Said James M Hill to stay and abstain from all further proceedings in said suit of unlawful detainer until your Oratrix's Bill shall be determined in your Honors Court asin duty bound she will ever pray -

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10

That if your Oratrix has in any way mistaken her rights or remedy in her prayer, then for all Such other further and general relief as her case may demand or require or that may to your Honor's Court pertain as in duty bound she will ever pray &c. Cicero D. Hudson Sol for Complt.

Affidavit The State of Alabama Chambers County } Before me Felix T. Hudson a Justice of the Peace in and for said county personally came Sarah Sheppard the Complainant in the foregoing Bill who after being duly sworn states that the facts stated in the foregoing Bill as of her own knowledge are true and those stated on information and belief she beleives to be true. Sarah Sheppard Sworn and Subscribed to before me this 6<sup>th</sup> May A.D. 1869 Felix T. Hudson Justice of the Peace. }

Amendment The respondents each will answer each averment, Specification and Charge in the foregoing Bill fully and particularly without oath. C.D. Hudson Complts Sol Filed in my office May 27<sup>th</sup> 1869. W.H. M<sup>c</sup>Namee Register I acknowledge due & legal service of the within Bill and waive subpoena and publication for D.F. Shaefer and Frederica Shaefer . This 30<sup>th</sup> June 1869 E. G. Richards Sols for D.F. Shaefer & F Shaefer

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Subpoena on Original Bill The State of Alabama Lee County Office of the Register in Chancery at Opelika Ala for the 5<sup>th</sup> District (composed of Lee & Chambers Counties) of the Eastern Division of the State of Alabama. To any Sheriff of the State of Alabama - Greeting: You are hereby command to Summon William W. Sheppard, to appear within Thirty days next after the service hereof and plead answer or demur to a certain Bill of Complaint on file in our office wherein, Sarah Sheppard by her next friend H.W. Finney is Complainant and the said William W. Sheppard Etal are Defendants, as in default thereof said Bill may be taken pro confesso. Herein fail not, due return make of this writ as the law directs. Witness the hand of the Register of said Court this 28<sup>th</sup> day of June 1869. W<sup>m</sup> H. M<sup>c</sup>Namee Register in Chancery Received in Sheriffs office this 29<sup>th</sup> day of June 1869. R.J. Kellam Sheriff Executed by serving copy the 22<sup>nd</sup> day of July 1869. R.J. Kellam Sheriff

Amendment allowed by order of Special Chancellor. § 21 Oratrix further charges and avers that said money was obtained from the said W.W. by D.F Shaefer by arrangement & agreement with the said

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Amendments allowed by Special Chancellor W.W. and the said D.F. Shaefer to defraud and obtain the money of Oratrix.

§ 22 Oratrix further charges and avers that said Deed was made to said F Shaefer with a full knowledge by said F Shaefer of Complainants rights and that she paid no money or other valuable consideration therefor under an agreement and arrangement with her said husband D.F. Shaefer to impede obstruct and defeat Oratrix of her just rights

§ 23 Oratrix further charges and avers that the whole of the Transaction before mentioned in the sale and purchase of Said land & lots was concocted and made by this said D.F. Shaefer and the said W.W. Sheppard to defraud and get out of Oratrix said money. C.D. Hudson Complots Sol. Filed Nov 20<sup>th</sup> 1869. W.H M<sup>c</sup>Namee Register

Demurrer to original & Amended Bill Sarah Sheppard by next friend &c. v.s. W.W. Sheppard Etal } In Chancery at Opelika. Nov. Term 1869.

The Respondents D.F. Shaefer and Frederica Shaefer, under leave of the Court file the following demurrer to the Bill of Complt filed against them in this case and set down the following causes of

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13

Demurrer of Defts. demurrer.

1<sup>st</sup> There is no equity in the Bill.

2<sup>nd</sup> The Bill is uncertain and indefinite.

3<sup>rd</sup> The Bill fails to show any ~~cause~~ right to hold the said Defendants Shaefer and wife Trustees for the Complainant.

4<sup>th</sup> The Bill is multifarious

5<sup>th</sup> There is nothing in the Bill or its averments that raises a resulting ~~trust~~ or other trust in favor of the Complt. E.G. Richards & W.H. Barnes Sols for Shaefer & wife. Joinder in demurrer this 20<sup>th</sup> Nov 1869. C.D. Hudson Complots Sol. Filed in office Nov 20<sup>th</sup> 1869 W.H. M<sup>c</sup>Namee Register

Decree dismissing Bill Sarah Sheppard per pro Ami Howard W. Finney vs. D.F. Shaefer & F Shaefer & W.W. Sheppard } Original Bill in the Chancery Court held at Opelika.

D.F. Shaefer & Frederica Shaefer vs W.W Sheppard & Sarah Sheppard } Cross Bill The above Stated causes coming on to be heard on the demurrers before me as

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14

Decree dismissing Original Bill Special Chancellor (agreed on by the parties) in vacation and the counsel of all the parties appearing before me and expressly waiving all objection to my acting in vacation, the said causes are heard on the said demurrers and the Special Chancellor decides in favor of the demurrer of Defts to the original Bill filed in this cause, & this decision being made on terms the counsel for the Complainants to the original Bill, moves for leave to make Sundry amendments to said original Bill, which proposed matters by way of amendment being read, the Consel for the Defts to the original Bill object to their being allowed as amendments to the original Bill, because they were offered too late, and further object to them that their allowance would introduce an amended Bill Showing causes of action not cognate to the causes of action in the original Bill but

essentially variant therefrom, & make other objections thereto: And it is thereupon by the Special Chancellor, ordered, adjudged and decreed that the said proposed amendments be allowed on the payment of all the costs heretofore accrued in the said cause and the said admendments having been made as allowed to said original Bill, It is thereupon by the Special Chancellor, ordered, adjudged and decreed that the costs of this cause heretofore accrued be paid by the Complainants for which execution may issue, and the Defts to the original file their demurrer to

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15

Decree dismissing Bill the said amended Bill and for cause of demurrer allege that the amended Bill is without equity, also that it constitutes a bill for causes of action not cognate to the causes of action Shown in the original Bill and allege other causes of demurrer, and therefore the Same being considered, It is by the Special Chancellor, ordered, adjudged and decreed that the demurrer to the amended Bill be sustained and that this cause be dismissed out of this Court, without prejudice however to the filing of a new Bill for the Same causes of action, at the Costs of the Complainant to the original Bill and for which execution may issue. And to every ruling made against Complts to original Bill this Counsel excepted as it was made. Given under my hand this 20<sup>th</sup> Nov<sup>r</sup> 1869. G. D. Hooper acting as Special Chancellor in the above Stated Cause

Acknowledgement for costs The State of Alabama Chambers County } We the undersigned hereby acknowledge ourselves bound unto David F. Shaefer & Frederica Shaefer in the penal Sum of Two Hundred Dollars the payment of which well and truly to be made we hereby bind ourselves our heirs &c firmly by these presents.

The condition of the above obligation is Such that whereas, Sarah Sheppard by her next friend H.W. Finney has prayed for and taken an appeal

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Acknowledgment for cost to the Supreme Court of said State in the case of Sarah Sheppard by her next friend &c. vs. David F Shaefer Etal in the Chancery Court at Opelika Ala Now should the Said Sarah Sheppard prosecute her appeal to effect and pay all the costs that may accrue upon said appeal to the said Supreme Court then this obligation to be null and void otherwise to remain in full force and virtue. Sarah Sheppard {LS} John M Ward {LS} W.T Sheppard {LS} R.D. Sims {LS} Witness our hands & seals this the 17<sup>th</sup> day of December AD 1869. Approved Dec 17<sup>th</sup> 1869. W.H. M<sup>c</sup>Namee Register } Filed in office Dec 17<sup>th</sup> 1869 WH M<sup>c</sup>Namee Register

Citation on Appeal Sarah Sheppard by her next friend H.W. Finney vs. D.F. Shafer Etal } In Chancery at Opelika Ala. To David F Shaefer Frederica Shaefer and William W. Sheppard or E.G. Richards & W.H. Barnes Esqrs attorneys of record for D.F. & F Shaefer - Greeting. Whereas the Complainant Sarah Sheppard has this day taken an appeal from the Decree of the Chancery Court rendered in the above cause

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17

Citation on Appeal by George D. Hooper Esqr Special Chancellor, on the 20<sup>th</sup> day of November A.D. 1869, to the Supreme Court of the State of Alabama.

Now therefore you are hereby cited to appear and be present, at the next term of the Supreme Court. of the State of Alabama, to be holden in the City of Montgomery, Ala, on the 1<sup>st</sup> Monday in January AD 1870. The Same

being the January Term, then and there to defend on Said Appeal if you Shall think proper so to do Witness my hand this the 17<sup>th</sup> December AD 1869 William H. McNamee Register I accept due and legal Service of the within citation waive copy &c. this the 20<sup>th</sup> Dec 1869. E.G. Richards Attorney for D.F. Shaefer & F Shaefer

Certificate of Register The State of Alabama Chambers & Lee Counties } I William H. McNamee Register in Chancery for the 5<sup>th</sup> District (Composed of Lee and Chambers Counties) of the Eastern Division of the State of Alabama. do hereby certify that an appeal was taken from the Decree rendered by the Special Chancellor agreed upon in the above cause, on the 17<sup>th</sup> day of December A.D. 1869

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Certificate of Register I further certify that the foregoing pages from one to eighteen inclusive contain a true and correct transcript of the original Bill, Subpoena, amendment to original Bill, Demurrer of the Defendants to the original Bill and the Decree of the Special Chancellor agreed upon in Said Case, as the Same appears of Record and on file in my office, together with a true and exact copy of the Appeal Bond or acknowledgement for costs & the citation issued thereon.

In testimony whereof I have hereunto set my hand and Seal there being no seal attached to said office. This the 21<sup>st</sup> day of December AD 1869 William H. McNamee Register 5<sup>th</sup> Dist Eastern Div Ala

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Supreme Court of Alabama January Term 1870

And now at this term of the Court comes the Appellant and says that there is manifest error in the record, and sets the following down as her assignments of error.

1<sup>st</sup> There is equity in the bill

2<sup>nd</sup> Each demurrer should not have been sustained

3<sup>rd</sup> Each demurrer should have been sustained

4<sup>th</sup> The Court erred in charging the appellant with the costs of the cross bill

5<sup>th</sup> The Court manifestly erred in sustaining each demurrer as made

6<sup>th</sup> Upon a question of pleading the plaintiff should have been allowed the privilege of an amendment or amendments

7. The Court erred in Charging appellant with costs

8 The Court erred in Charging appellant with the costs of The amendment allowed C D Hudson Appellants Atty

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Return to Certiorari Filed July 1870. D.B. Booth Clerk

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Entry of Minutes of Chancery " " 1,2  
Certificate of Register " 2, 3

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1

Writ of Certiorari from Supreme Court The State of Alabama To the Register of the Chancery Court of Chancery Court of Lee and Chambers Counties: - Greeting: Whereas in a case now pending in our Supreme Court by Appeal from a Judgment of said Chancery Court at the November Term thereof 1869 between Sarah Sheppard pro Ami and D.F. Shaefer that, the said Appellees have to the Supreme Court, suggested that the Transcript of the record of said Chancery Court filed in said Supreme Court is incomplete.

We therefore command you to make diligent search of the records and proceedings in your office and certify together with this writ a full and complete transcript of said record, to our said Supreme Court at the Term thereof to be holden on the 1<sup>st</sup> Monday of June 1870 at Montgomery. Witness D.B. Booth Clerk of Said Supreme Court this 14<sup>th</sup> day of March A.D. 1870. D.B. Booth Clerk

Sarah Sheppard pro Ami vs. D.F. Shaefer & wife & WW Sheppard } Minutes of Chancery Court. November Term 1869. This cause being

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Minute Entry regularly reached and called for trial and the commissioned Chancellor having Since the last term concluded that he was incompetent, the parties Selected George D Hooper Esqr. a Solicitor of this Court in attendance thereon as Special Chancellor to preside therein at the present term. B.B. M<sup>c</sup>Crow Chancellor

Minute Entry Leave is granted the Complainants to ammend the Bill in this cause by adding foot note thereto and leave granted to Defts to Cross Bill to file their answers thereto, and Defendants to original Bill to incorporate demurrer in their answers and by consent of parties this cause is to be tried in vacation and Decree entered as in term time

Certificate of Register The State of Alabama Chambers & Lee Counties} I William H M<sup>c</sup>Namee Register and Master in Chancery for the 5<sup>th</sup> District (Composed of the Counties of Lee and Chambers) of the Eastern Division of the State of Alabama do hereby certify ~~and~~ that the foregoing pages numbered one and two include and contain a true and correct Transcript of the Writ of Certiorari issued from the Supreme Court of the State of Alabama to me in the cause of Sarah Sheppard pro Ami against D.F. Shaefer Etal. together with

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Certificate of Register certain other proceedings had and done in said cause in said Chancery Court, which together with the ~~file~~ Transcript heretofore filed in said cause in said Supreme Court, constitute and contain a true and correcty Transcript of all the papers and proceedings on file & of record in said cause in my office.

In testimoney whereof I have hereunto set my hand and private Seal (There being no seal of office This the 12 day of July A.D. 1870. William H. M<sup>c</sup>Namee Register for 5<sup>th</sup> District of the Eastern Div of Ala