

Names:

Bledsoe, Arminta
Bledsoe, W. J.

Cabaniss, S. D.

Marks, Fitzpatrick &
Gregory

Places:

Huntsville, AL

Winchester, TN

Types:

correspondence

envelope

Dates:

May 27, 1887

May 29, 1887

CPB • 1888 1B12/13

Huntsville Ala Jan 12/88

Mr Geo G. Lilly
628 Market St
Chatanooga Tenn

Dear Sir.

We have your letter of 9th Inst. con-
ing two letters addressed to you by Mr A. E. Baines
of date Sept 28 & Dec 29th Uts.

Your complaint of great injury to, and
apprehended destruction of your Mill
property at Paint Rock Station, on the
R. R., ^{is not due them & is not worse} caused by reason of the booming
of logs, by the public, on your Mill pond
in such manner as to endanger your
Mill dam; and throwing saw dust in the
river - And you ask if the laws of this
Our State will protect your property or
not? Whether you have a remedy in Equity
& what we will charge for filing a bill
to prevent the loss of the value of your
mill property -

Names:

Baines, A. E.

Lilly, George G.

Places:

Chatanooga, TN

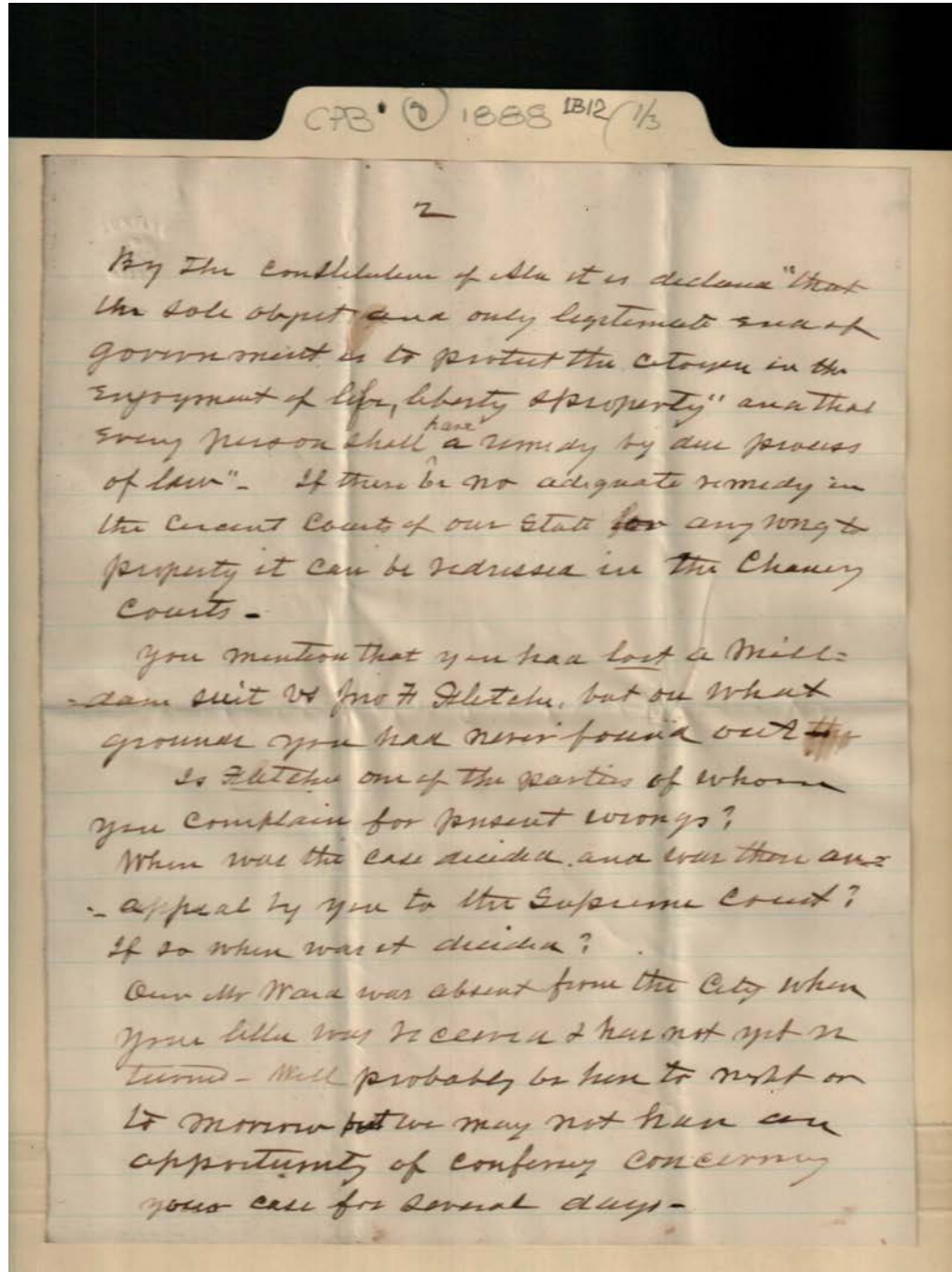
Huntsville, AL

Types:

legal correspondence

Dates:

Jan 12, 1888



Names:

Fletcher, John F.

Ward,

Places:

Huntsville, AL

Types:

legal correspondence

Dates:

Jan 12, 1888

CPB 1888 1B12/13

3

Do you mention that you only own five
acres of the Mill Site. Do you own the
bed of the Stream at your Mill Site? How
far above the dam do you own it?
How far above the dam do you own
the banks?
Are the boom moors to your land on
above it? Is the drift wood capable
of identification as to ownership thereof -
and in ordinary stages of the pond do the
drift wood float in water covering your
part of the bed of the Stream or above it?
What is your Mill property worth
if the wrongs of which you complain
go unredressed? What would it be
worth if such wrongs are redressed
by a Court of Equity -
Within the last two or three years you
had some correspondence with
us, about your Mill property -
If you perceive letters then written

Places:

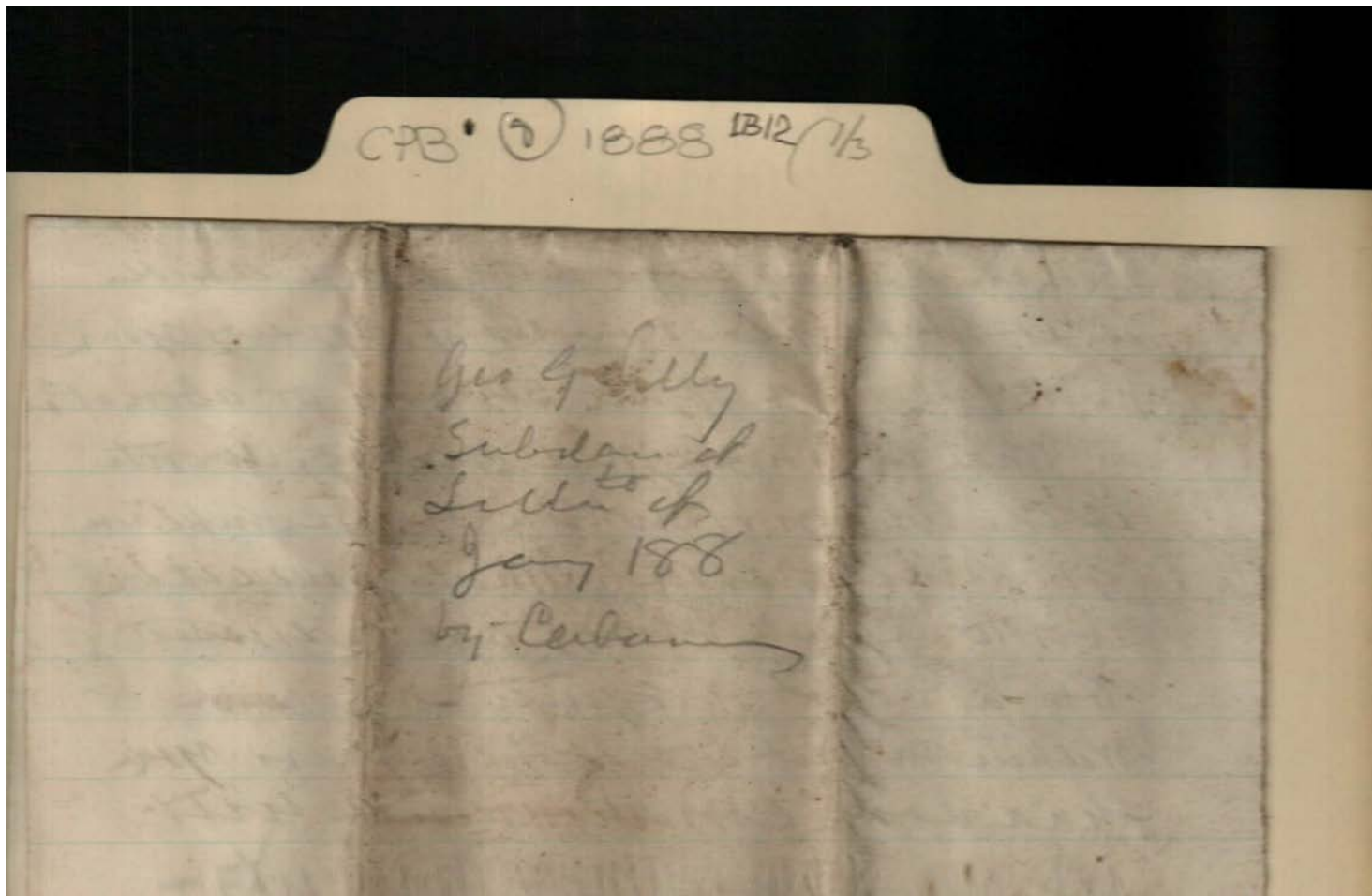
Huntsville, AL

Types:

legal correspondence

Dates:

Jan 12, 1888



Names:

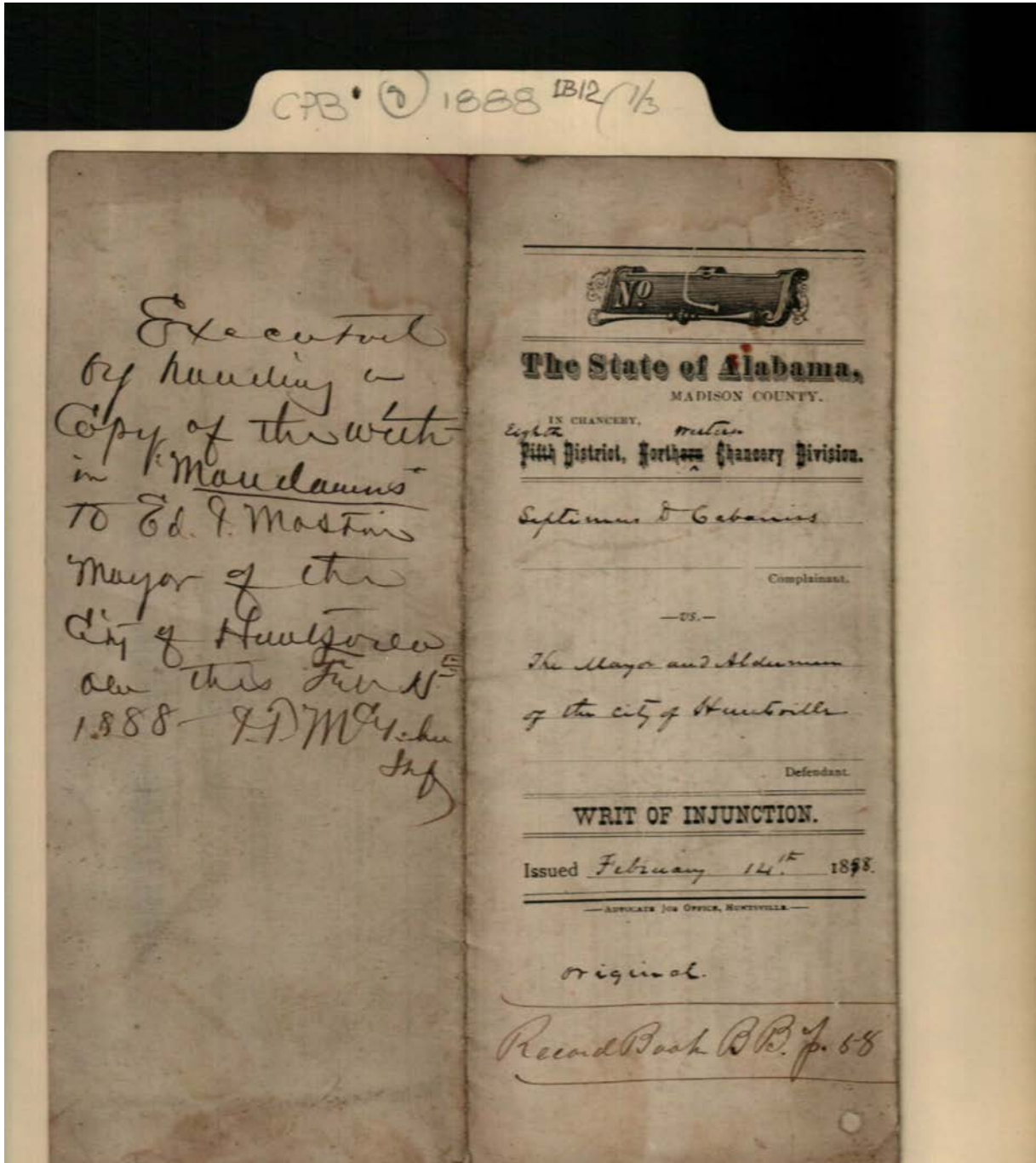
Lilly, George G.

Types:

memo

Dates:

Jan 1888



Names:

Cabaniss, Septimus
D.

Mastin, Edward F.,
Mayor

Mayor & Aldermen
of City of

Huntsville

Places:

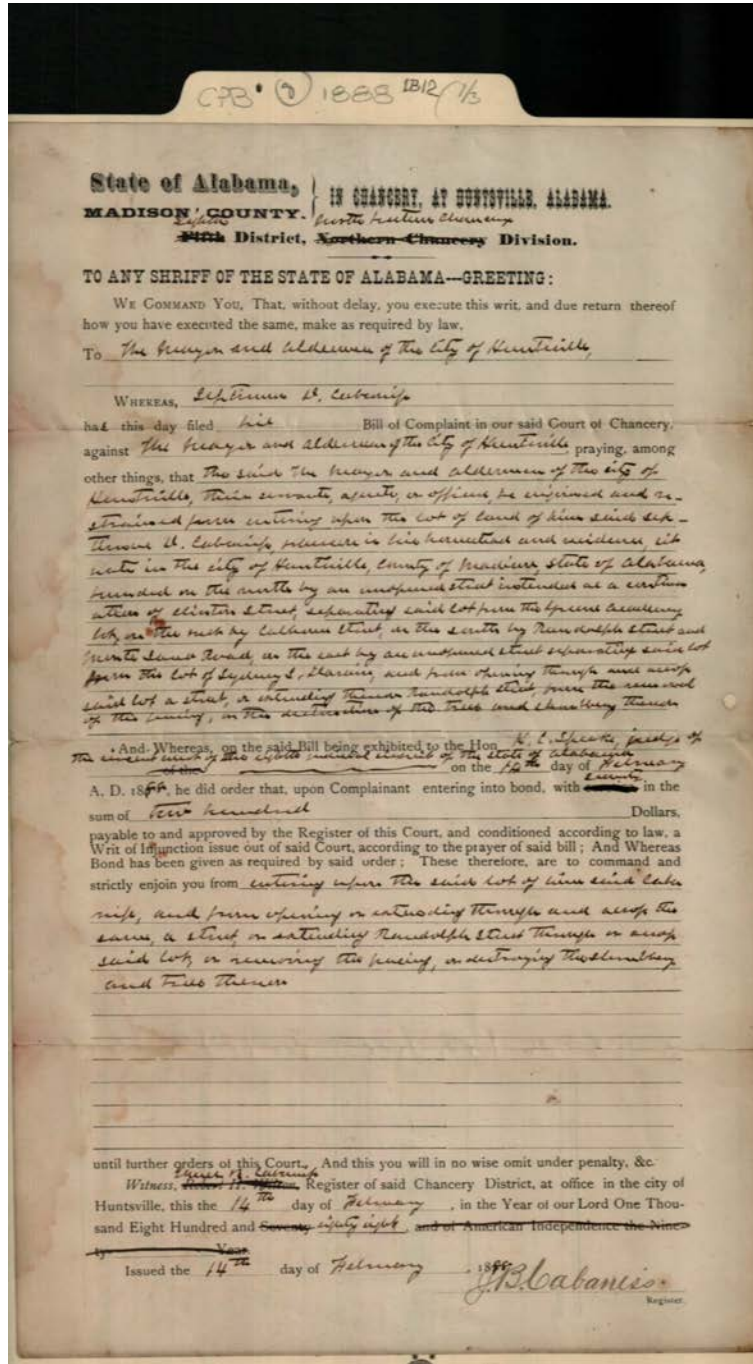
Huntsville, AL

Types:

injunction

Dates:

Feb 14, 1888



Names:

Mastin, Edward F.,
Mayor

Mayor & Aldermen
of City of

Huntsville

Places:

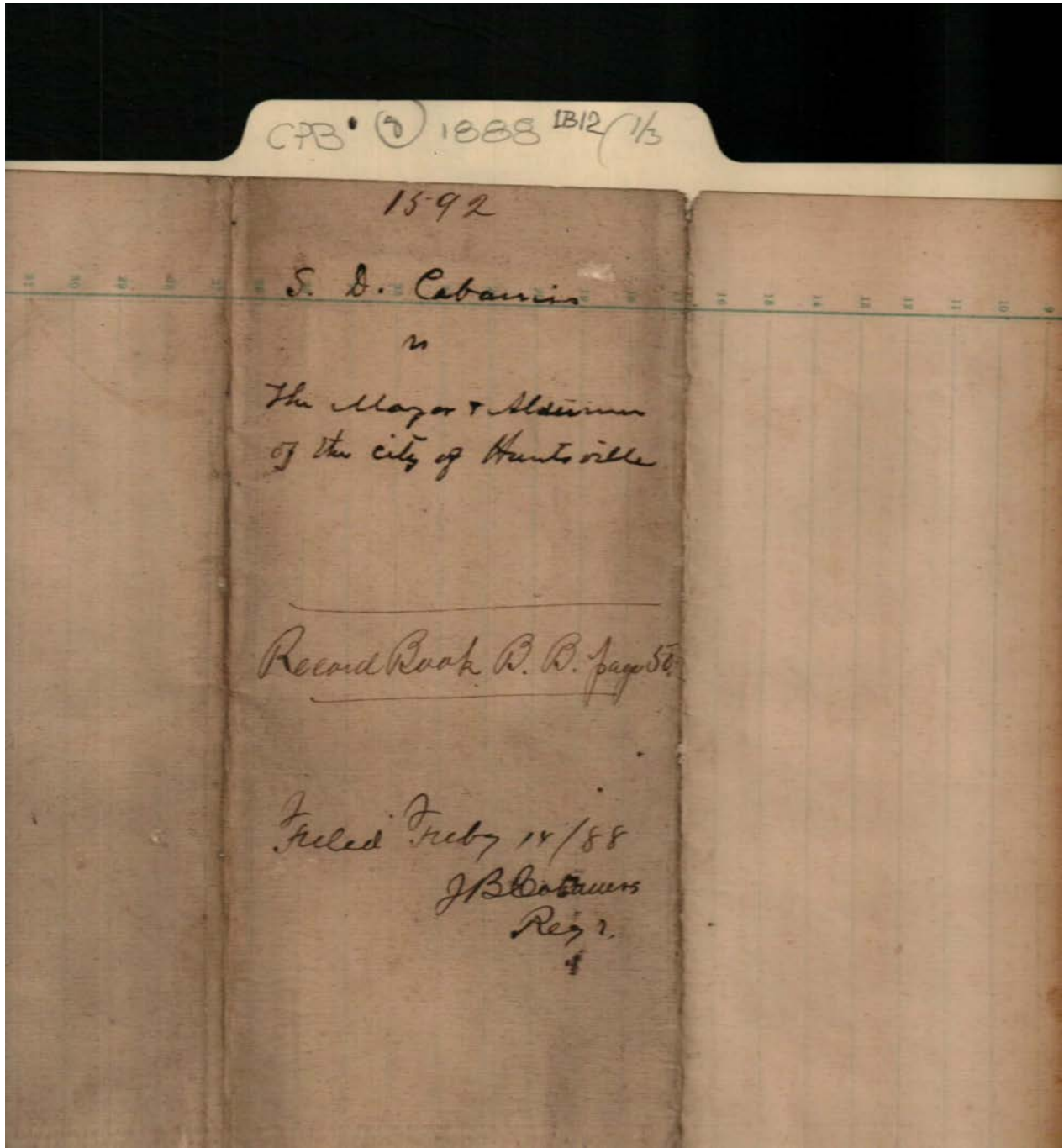
Huntsville, AL

Types:

injunction

Dates:

Feb 14, 1888



case 1592

Names:

Cabaniss, S. D.

Mayor & Aldermen
of City of

Huntsville

Places:

Huntsville, AL

Types:

chancery court

Dates:

Feb 14, 1888

CFB 1888 IB12/13

1 To the Chancellor of the North Western Division of Alabama sitting for the eighth District Court at Huntsville.

Septimus D Cabaniss a resident citizen of the city of Huntsville county of Madison and State of Alabama bring this his bill of complaint against the Mayor and Aldermen of the city of Huntsville a municipal corporation existing under the laws of the State of Alabama, and therefore your orator complaining that:

1. That your orator is now and has been for more than ~~thirty~~^{more than} forty five years last past seized and possessed in fee simple of a lot or parcel of ground situated in the city of Huntsville County of Madison State of Alabama containing between three and four acres lying in a compact body forming a square bounded on the north by an unopened street intended as a continuation of Clinton Street in said city and separating the said lot from the lot or parcel of ground known as the Gunn Academy lot on the West by Calhoun Street on the South by Randolph Street and North Lane Road or Camp Pike and on the East by an unopened street extending from the North Lane Road to Hobbes Street between the said lot and the lot now owned by one Sydney S Darwin formerly owned by one Theophilus Lacy deceased. On the said lot is situated the homestead and residence of your orator in which he and his family have resided continuously for more than forty years past.

case 1592

Names:

Cabaniss, Septimus
D.

Darwin, Sydney S.
Lacy, Theophilus

Mayor & Aldermen
of City of

Huntsville

Places:

Huntsville, AL

Types:

chancery court

Dates:

Feb 14, 1888

CFB • 1888 1B12/16

2. The defendant "The Mayor and Aldermen of the city of Huntsville" exists as a corporation under a special act of the General Assembly approved March 3, 1870 entitled "an act to establish a new charter for the city of Huntsville". The seventeenth section of said act, among other things, confers on the defendant power and authority "to keep in repair the streets, alleys, and avenues of said city; to discontinue and close them when expedient; to widen or change their direction, and to open new ones. And by the nineteenth section of said act, the mode of procedure which must be observed by the defendant whenever a street lane or alley is to be widened or extended, is prescribed. The mode of procedure so provided is the determining by the Mayor of proper freeholders inhabitants of the city, not directly interested in the land or lot through which such street or lane or alley is to be widened, extended, or opened, who being first sworn by the Mayor to assess and value what damages the owner will sustain by reason of the widening, extending or opening of such street lane or alley as proposed taking into consideration the benefits to said lot or land resulting therefrom shall assess such damages, or a majority of them being authorized to make the assessment. These provisions constitute the only power and authority which is by the said act of incorporation conferred on the said defendant to take care for the opening, widening, or extending of streets, lanes, or alleys, or the widening or extending of such streets, lanes, or alleys."

3. The defendant, claiming to exercise this power and

case 1592

Names:

Mayor & Aldermen
of City of

Huntsville

Places:

Huntsville, AL

Types:

chancery court

Dates:

Feb 14, 1888

CFB • 1888 12/76

3

authority. has taken certain proceedings which are shown by a transcript thereof taken from the books of minutes kept by said defendant. Marked "A B" has with filed and prayed to be taken as part of this bill, whereby they claim the right to take of and from the aforesaid lot of your orator, a strip of land commencing at the junction of Randolph Street and the Monticello road or turnpike, running thence Eastwardly one hundred and twenty five feet five inches to the Western boundary of the unopened street between said lot of your orator and the ^{main} lot of said Decree. thence Southwardly fifty feet. thence Westwardly forty five feet five inches to said street. thence Eastwardly along the ^{Western} Eastern boundary of said road to the place of beginning, eighty five feet five inches.

4. Your orator states that as he is advised and believes, all the said proceedings are without the warrant of law, and that the defendant had not the right or power under the act of incorporation aforesaid to take private property for the opening widening or extending streets; that the said defendant being in making this said assessment, in violation of the constitution which was of force when the said act of incorporation was enacted, assumed to consider benefit which it was supposed would accrue to your orator from the opening or extension of said street, and did not assess the actual value of the land proposed to be taken independent of such benefit. The value of said land as

case 1592

Names:

Darwin, Sydney S.

Places:

Huntsville, AL

Types:

chancery court

Dates:

Feb 14, 1888

CFB • 1888 1B12/16

4 proposed to be taken greatly exceeded one hundred
 dollars, and your order could not be issued
 by any reasonable sum voluntarily to sell it
 and separate it from the remainder of the lot.

5. By the taking of said land as proposed your
 order's fence along said street was road for a
 distance of one hundred and twenty three feet and
 four inches would be removed and destroyed.
 Shrubby and trees growing on the said land
 which have been planted and tended for
 many years would be destroyed. Your order
 would be compelled to the erection of new
 fencing for a distance of one hundred and
 twenty feet and three inches. A small strip
 of land triangular in form, of about the
 following dimensions: the Eastern boundary
 whereof is twenty nine feet and four inches,
 the Southern boundary whereof is fifty four feet
 five inches, the Western boundary whereof is forty
 five feet five inches, would be separated by
 the said street entirely entirely from the
 remainder of the aforesaid lot of your order
 and rendered valuable to him.

6. On the 15th day of February 1888 the Mayor of the
 City of Huntsville tendered to your order the
 sum of one hundred dollars in payment of
 the aforesaid assessment, which your order
 declined to receive. The defendant threatens
 immediately to carry out the said proceedings
 by taking possession of the said land, the
 opening and extending of said street, the
 removing and destruction of your order's fence,
 and of the shrubby and trees growing on said land.

case 1592

Places:

Huntsville, AL

Types:

chancery court

Dates:

Feb 14, 1888

CFB 1888 1B12/16

7. A copy of the map survey or plat referred to in the proceedings of the defendants aforesaid, and purporting to have been made by James H. Mayhew City engineer is herewith filed marked "C.D." and proposed to be taken as a part of this bill. An examination of the same map will show the fact, as is the fact, that there is no public use or necessity to be promoted by the said proposed opening or extension of said Randolph Street. And the proposed opening or extension of said street will not lessen the distance to be traveled in going to or from the public square of the city, twenty yards. The proposed extension is less than ten yards along said unopened street from some point, said road or turnpike, which is the property of the North Alabama Improvement Company, the corporation mentioned in the

8. The opening ~~or~~ extension of said street as proposed and threatened through and across the aforesaid lot of your order is not necessary for and is not intended to promote the public use or convenience. The same is proposed and intended ~~with~~ ~~for~~ ~~the~~ ~~benefit~~ and to advance the pecuniary benefit interests and profits of the North Alabama Improvement Company a private corporation having and owning lands adjacent to the city of Huntsville which have always been used for agricultural purposes on which there is ~~no~~ ~~population~~ the great body of which lies without the boundaries or territorial limits of the said city. ~~and~~ ~~without~~ ~~the~~ ~~jurisdiction~~ ~~of~~ ~~the~~ ~~city~~ ~~of~~ ~~Huntsville~~ the said Randolph Street, as it now is and ever is

case 1592

Names:

Mayhew, James H.

North Alabama Improvement Co.

Places:

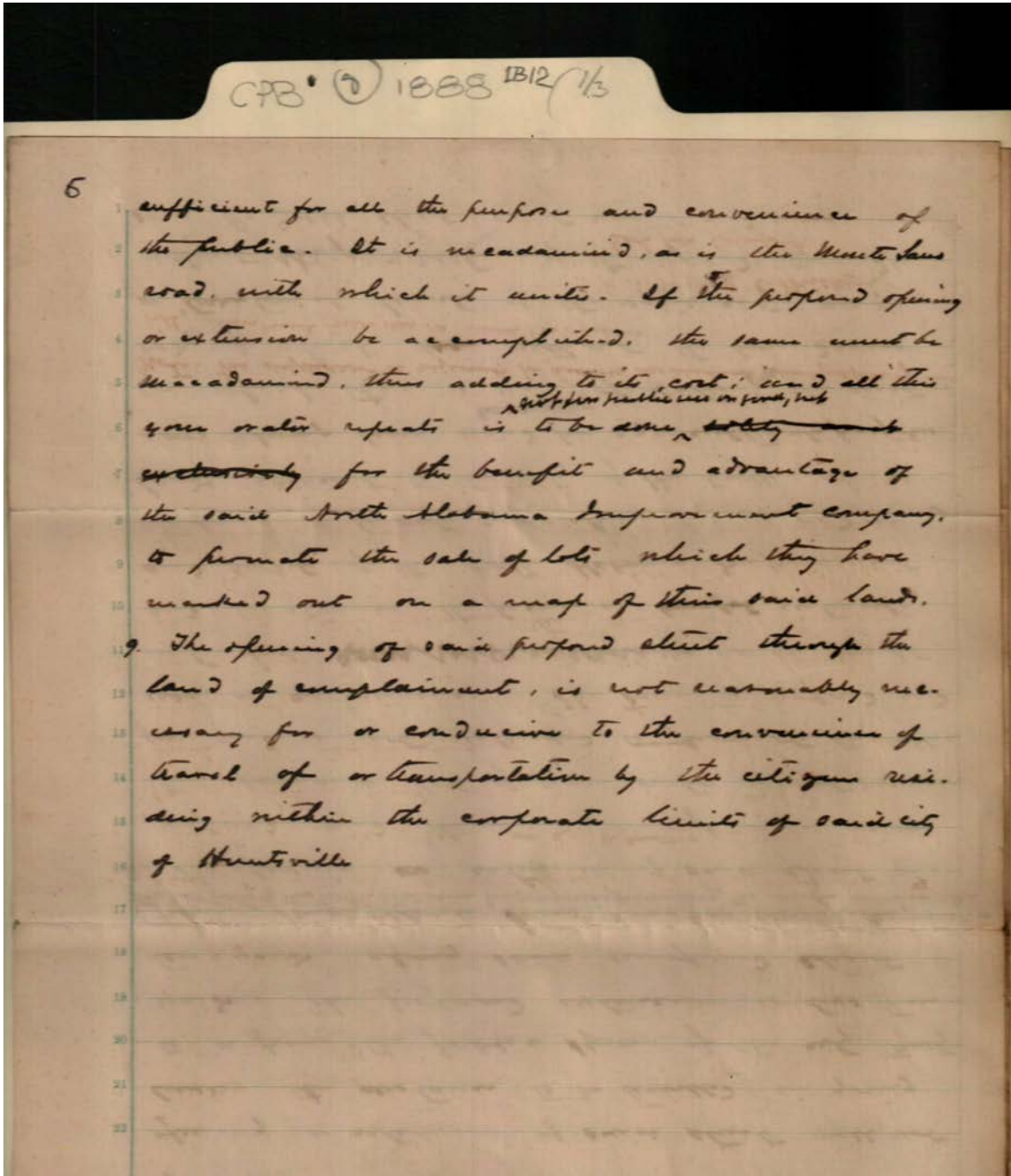
Huntsville, AL

Types:

chancery court

Dates:

Feb 14, 1888



case 1592

Names:

North Alabama
Improvement Co.

Places:

Huntsville, AL

Types:

chancery court

Dates:

Feb 14, 1888

C7B • © 1888 12/16

7

Do the and therefore that said defendant may show why your orator should not have the relief hereby prayed, and may then and perfect answer make to each of the statements herein contained as by the vote hereunder written the said defendant is required to answer;

Your orator prays that summons and all other useful process may issue directed to said defendant.

Your orator prays that the defendant, its servants, agents or officers be enjoined and restrained from entering upon the aforesaid lot of land of your orator, from the removal or destruction of your orator's fencing thereon, and from the destruction of the shrubbery and trees there growing, and from the opening or extending the said street as proposed and threatened through and across your orator's said lot; and for this purpose and to this end a temporary writ of injunction be granted to your orator, directed to the said defendant, its servants, agents or officers; and for all such other and further relief as to your honor may seem meet and the facts of the case may require.

R. C. Brickell and F. P. Ward
Sols for Complainant

Note: The defendant is required to answer the several paragraphs of this bill, numbered from one to nine inclusive

F. P. Ward, R. C. Brickell,
Sols for Complainant

case 1592

Names:

Brickell, R. C.

Ward, F. P.

Places:

Huntsville, AL

Types:

chancery court

Dates:

Feb 14, 1888

CFB 1888 B12/13

8

Before me H.C. Sprake Judge of
 8th Federal Circuit personally appeared
 the complainant, Septimus D. Cabaniss, who
 being duly sworn, deposed and said that
 the facts set forth in the foregoing bill are
 true to the best of his knowledge, information and belief
 sworn to and subscribed
 before me, Feb'y 14, 1888.

H.C. Sprake J. DeLoach's
 Judge

Wherein complainant
 and the name of his ^{known} ~~known~~
 secretary to be approved
 by the Register. In regard
 all conditions in
 required by law, the
 Register, will issue
 the writ of injunction
 prayed for in the
 foregoing bill, done
 on this the 14th day
 of February 1888

H.C. Sprake
 Judge of the
 Federal Circuit
 of Alabama

Huntville

case 1592

Names:

Cabaniss, Septimus
D.

Places:

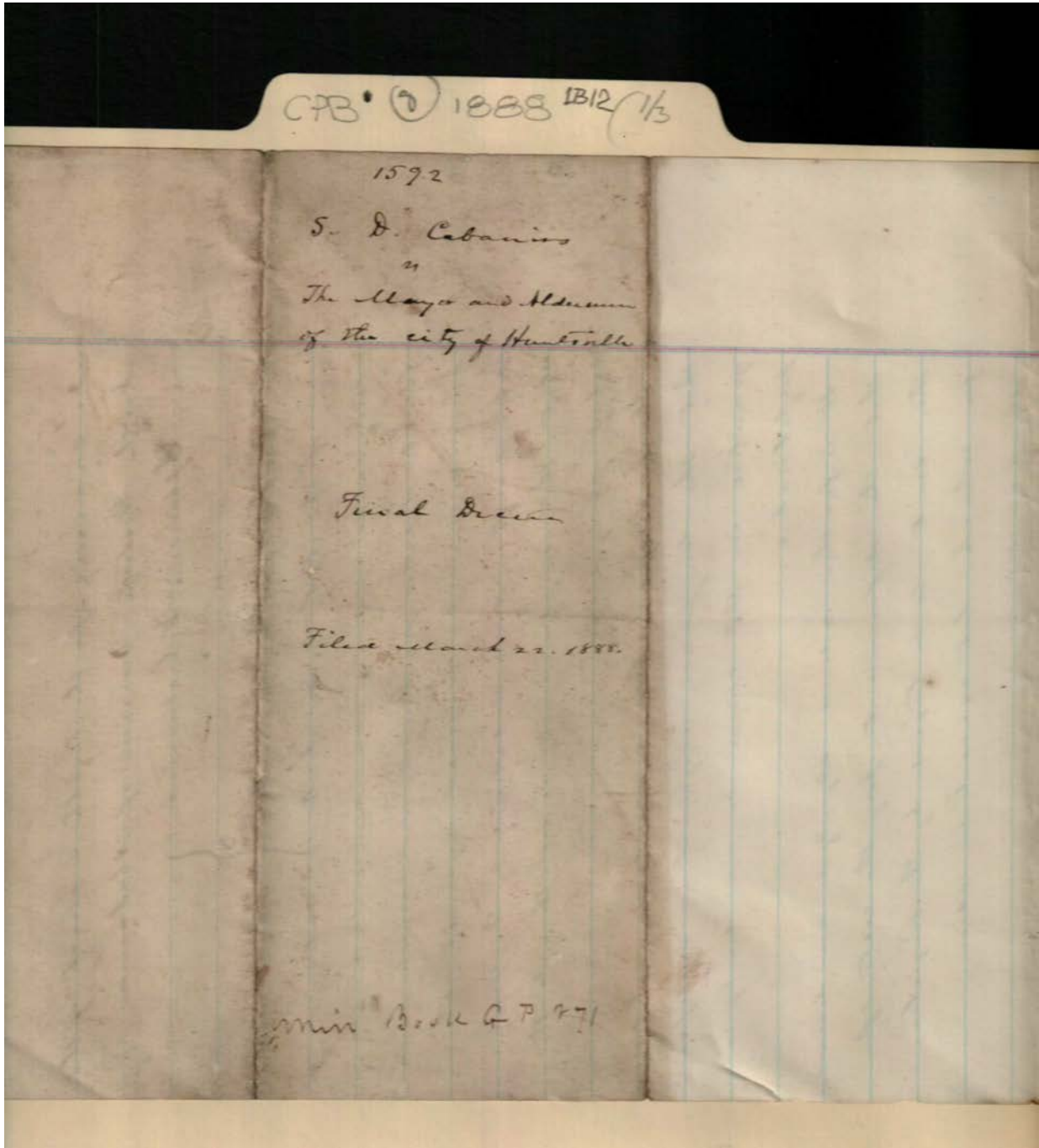
Huntsville, AL

Types:

chancery court

Dates:

Feb 14, 1888



case 1592

Names:

Cabaniss, S. D.

Mayor & Aldermen
of City of

Huntsville

Places:

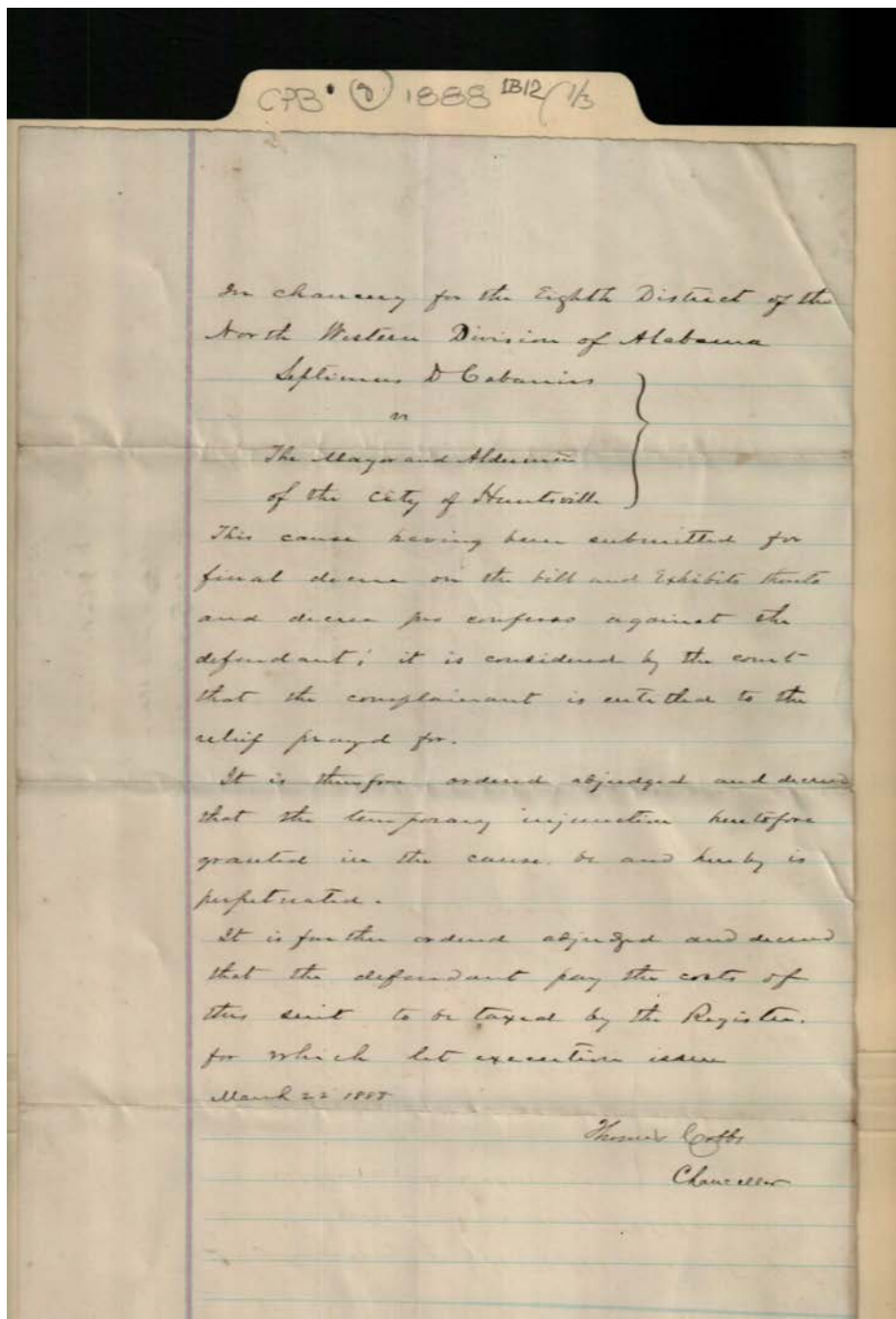
Huntsville, AL

Types:

chancery court

Dates:

Mar 22, 1888



case 1592

Names:

Cabaniss, Septimus
D.

Mayor & Aldermen
of City of

Huntsville

Places:

North Western
District of Alabama

Types:

chancery court

Dates:

Mar 22, 1888

CFB • 1888 1B12 7/3

W. J. Mastin to Ernest Robinson -
 Weed Rock M.M.M. - p. 479 - 1889, Vidette
 Feb 3

In consideration - of the East
 side & transfer of the East half - of Lat 66
 by the party of the 2nd Paul - to
 of 1st Paul - given, as long as
 after ~~transfer~~ the Western half
 of Lat 66 - in the town of Vidette.

Ernest Robinson to W. J. Mastin -
 conveys the East half of Paul - 66

Mastin 66 -
 Robinson 66 -

Names:

Mastin, W. J.

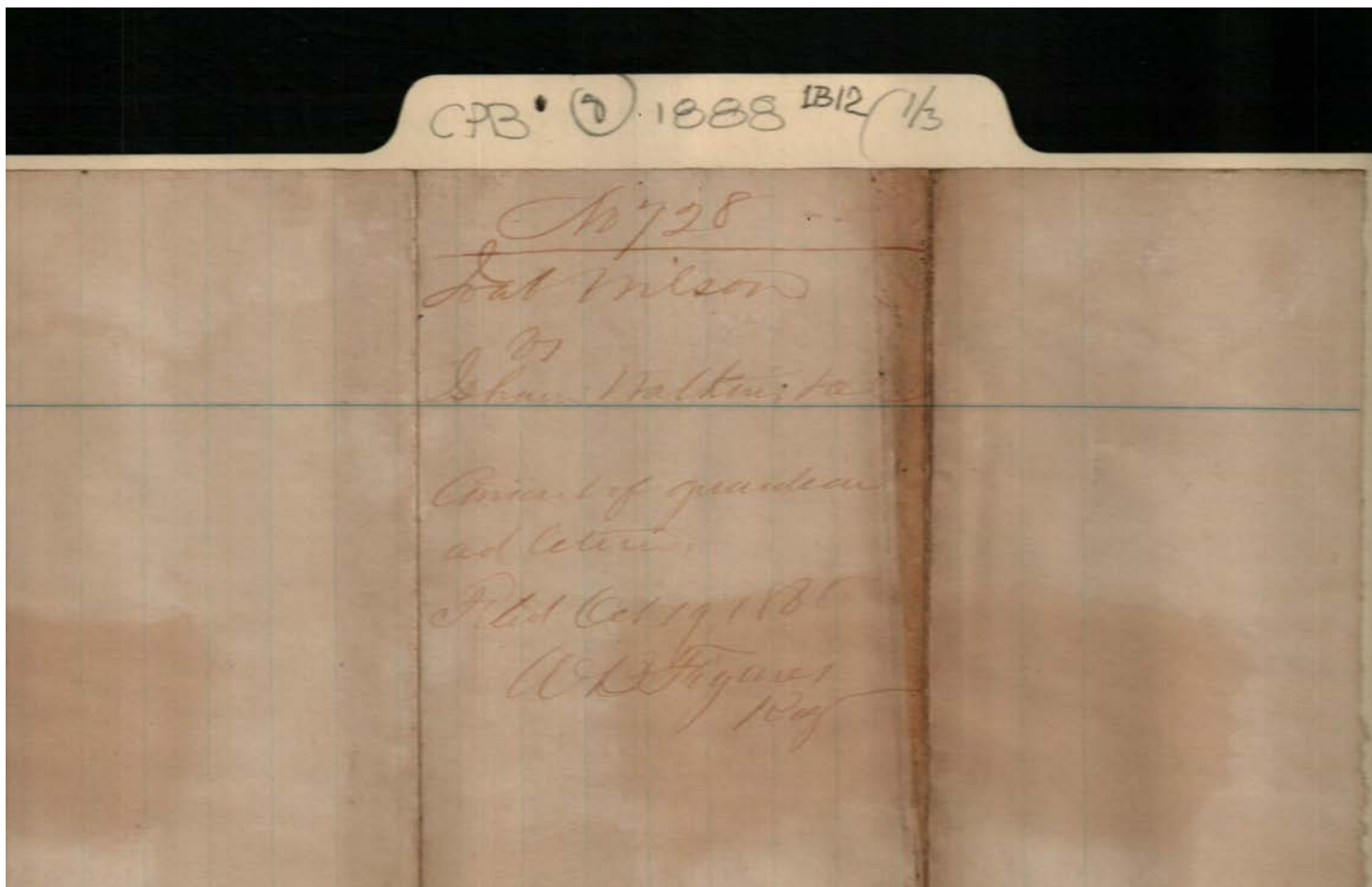
Robinson, Ernest

Types:

memo

Dates:

1889



Names:

Watkins, Isham

Wilson, Joab

Places:

Huntsville, AL

Types:

chancery court

Dates:

Oct 19, 1888

CPB • ① 1888 IB12 1/3

In the Chancery Court at Huntsville
Alabama

Joab Wilson
vs.
Isham Watkins
Father

I hereby consent to
act as guardian ad
litem for Anna Nimmo,
William P. Nimmo, Felix B. Nimmo, Sue
P. Nimmo, Molly R. Nimmo, Sarah B. Watkins &
James A. Watkins, who are infants
defendants in the above entitled
Cause

Wm Weeden

Names:

Nimmo, Anna
Nimmo, Molly R.

Nimmo, William P.
Watkins, Isham

Watkins, James A.
Watkins, Sarah B.

Weeden, William
Wilson, Joab

Places:

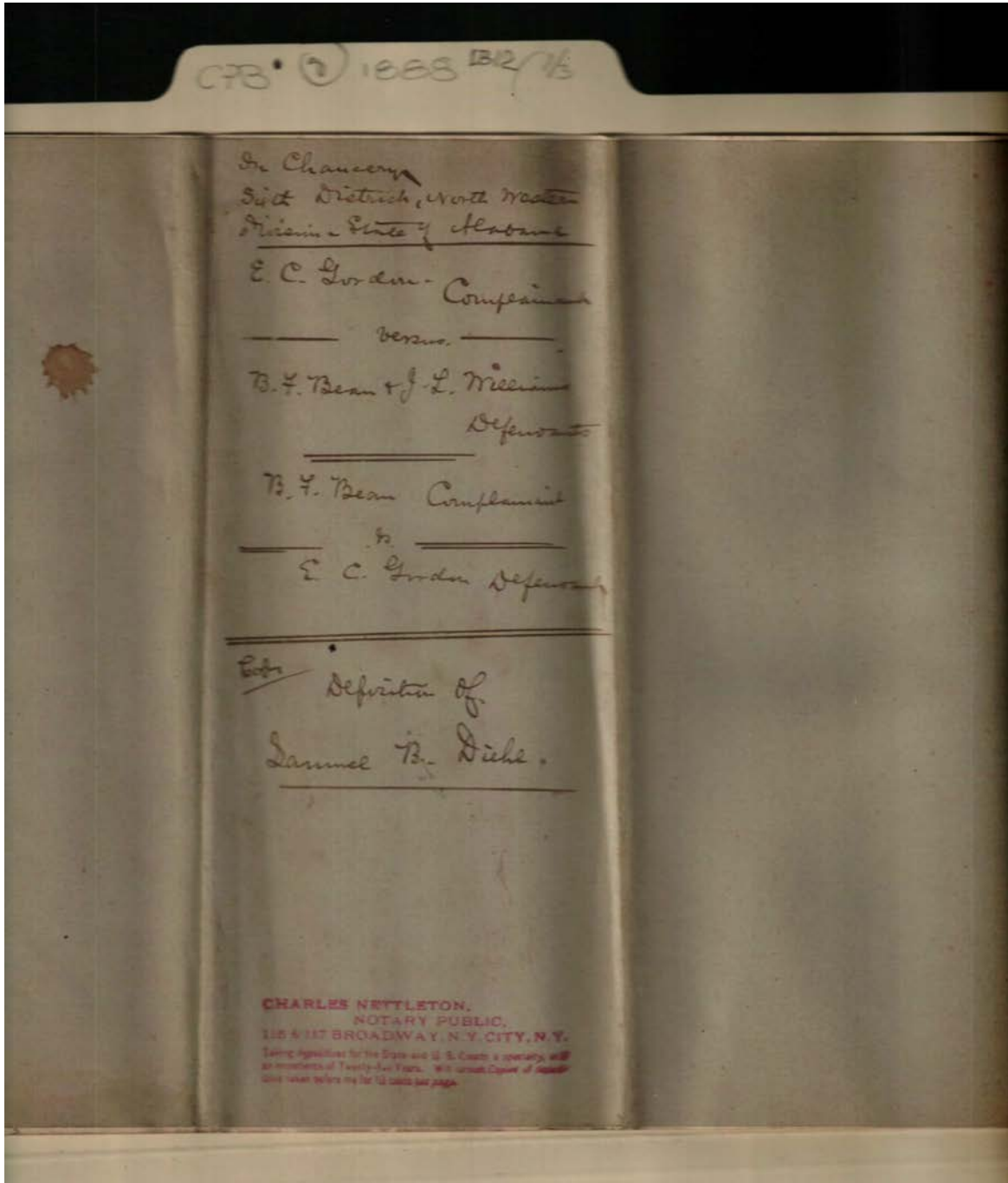
Huntsville, AL

Types:

chancery court

Dates:

Oct 19, 1888



Names:

Bean, B. F.

Diehl, Samuel B.

Gordon, E. C.

Williams, J. L.

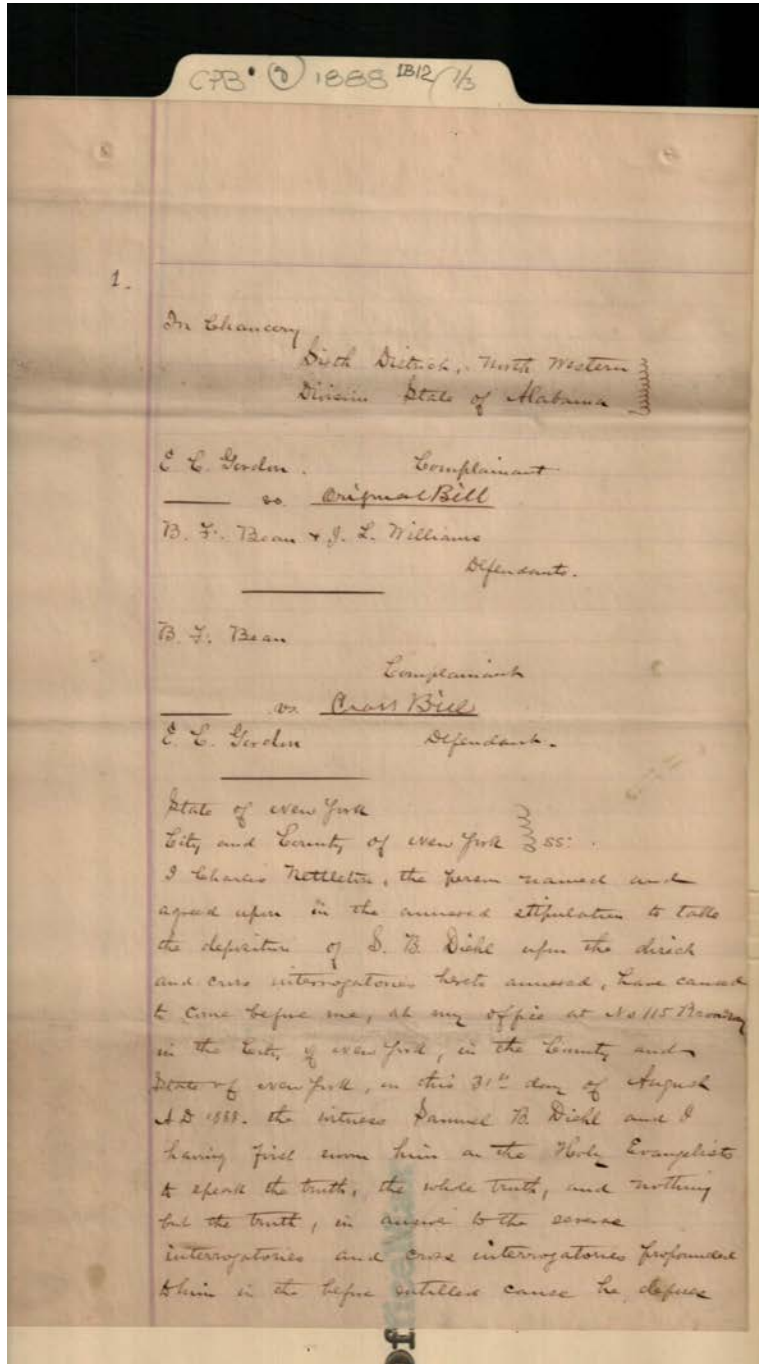
Places:

North Western
District of Alabama

Types:

chancery court

deposition



Names:

Bean, B. F.

Gordon, E. C.

Williams, J. L.

Places:

North Western
District of Alabama

Types:

chancery court

CFB • © 1888 1B12/13

2.

And says as follows:

To the first direct interrogation he saith -

1st I am acquainted with E. C. Gordon,
I first formed his acquaintance at Decatur,
Alabama in the month of January 1888.
I am unable to state the exact date.
It was about the 5th or 6th of that month.
I also know Mr. J. L. Williams - I first
made his acquaintance in the early part
of last January at Holton, Jackson County,
Kansas. I do not know either of the
other parties to this suit.

To the second direct interrogation he saith

2nd On Friday January 20th 1888, and on
Saturday January the 21st 1888, Mr. J. L. Williams
told me that he was interested in the
result of this suit -

To the third direct interrogation he saith

3rd I went to the office of Mr. J. L.
Williams, in Holton, Kansas a little before the
hour of three o'clock in the afternoon of the
20th day of January last past, and remained
there until about half past five o'clock -
I found Mr. Williams in his office,
and at his desk in the front part of the
office, near the door, by which the office
was entered from the hall - The

Names:

Diehl, Samuel B.

Gordon, E. C.

Williams, J. L.

Places:

North Western
District of Alabama

Types:

deposition

Dates:

Aug 31, 1888

3

3.

Office was one story up from the street,
the size of the office was about Eighteen
feet by Thirty feet -

I took a seat near Mr Williams and
near to his desk,

We had talked for a considerable time
on general topics of no special interest to
either of us, when I said to Mr Williams,
I got a letter to day from my friend at
Memphis in answer to a letter I wrote him
before I left New York,
He wrote me that he had been to that
town in Alabama, where you used to live
and bought several lots, but afterwards he
could not get the deeds to them,

Mr Williams said "is that so?"
I said "yes;" he bought from some land
Company, there was when it came to get
the deeds; there was some flaw.

It appears that a man sold the land
to the land Company, then refused to give
the deed, now what is that man's name?

Mr Williams then replied to me by
saying, was it Pleggs? I said, No.
Williams then said, Was it Littlejohn? I said
No. He then called two other names
and then said, "Was it Deam?" I then
said to him that is the name.

Mr Williams then said to me
"Why that is the land I sold E. C. Gordon"

Names:

Bean,
Gordon, E. C.

Littlejohn,
Skeggs,

Williams,

Places:

North Western
District of Alabama

Types:

deposition

Dates:

Aug 31, 1888

CFB 1888 1812/13

4

4.

I said to him "is that so?" and appeared surprised. He then said "No, he can't get the deed of that land it is in the Chancery Court, I have an interest in that land"

I said to him "is that a fact?"

He said "Yes; there is twenty acres in dispute. I leased those twenty acres from Bean until the first of December last and was to pay him fifty dollars an acre for it, I got disgusted with the place and sold the lease to Gordon for seventy dollars an acre; then Gordon sued Bean for the deed, and Bean put in a cross bill;

"Yes, we will beat Gordon too! those twenty acres adjoining my place; it was an Orchard. I sold out everything to E. C. Gordon" I then said, "I hope you will win it" Williams said "I hope so too, it will fit me nicely; I expect a letter every day from Bean with five hundred dollars in it, then when the case is settled I will get more, his (Beans) agent Skeggs was here to see me about two months ago about it."

On the next day the 21st of January I went to Mr Williams office again about the hour of nine o'clock in the forenoon, and had a further talk with Mr Williams - He sitting at his desk

Names:

Bean,

Gordon, E. C.

Skeggs,

Williams,

Places:

North Western
District of Alabama

Types:

deposition

Dates:

Aug 31, 1888

CPB • 1888 12/13

5.

and I sitting near it about the same as we sat in our interview of the day before. We first talked about other things, and about my leaving Holtton, when I must leave, and how long I must stay in Memphis.

I told Mr Williams that I must be in Memphis for about four days, and that when I saw my friend there, if he was worried about his purchase at Decatur, I must tell him that it was all right. Williams said "Yes" the heads of that Company are all rich men, but don't tell him (my friend) my name; say that you met a man in Kansas who owned that land, because no one in the wood knows that I have an interest in that land but Keller, Noble and you. I don't believe in "letting everybody know my business".

I said "that is right" I then asked Mr Williams: How much of an interest have you got in that land? he said: "If Bean wins the case I am to have half of it: it is Bean and myself against Gordon".

I then asked "Why is that Bean give you so much?"

He said "he (Bean) can't do anything without my evidence; that is the reason". I then said,

Names:

Bean,

Gordon,

Keller & Noble

Williams,

Places:

North Western
District of Alabama

Types:

deposition

Dates:

Aug 31, 1888

CFB 1888 1B12/16

6

6.

to him "you have given your evidence, taken here," he said. "Joe Keller and Noble took it"

I very soon left Mr Williams office and did not have any further interview with him except to bid him Good Bye -

To the fourth interrogatory he saith:

4^c In one of my interviews with Mr Williams on the 20th & 21st of January mentioned in my previous answer, he said to me that Mr Beans agent Mr Skeggs had been there to see him (Williams) about this suit, about a month before that time.

I looked in the Hotel Register of lists of Arrivals and there found Mr Skeggs name under date of December 6th 1887 as I can remember the date, I think of nothing else to state in answer to this fourth interrogatory -

To the same cross interrogatory he saith and propounded to him the witness Samuel B. Diehl answers and deposes as follows.

To the first cross interrogatory he saith

12^d These interviews occurred in Mr Williams office at Hotel Hausens on the 20th & 21st days of January 1888 -

The other person who was present at these conversations, other than Mr Williams and

Names:

Bean,
Diehl, Samuel B.

Keller & Noble
Skeggs,

Williams,

Places:

North Western
District of Alabama

Types:

deposition

Dates:

Aug 31, 1888

CFB • 1888 1B12/13

7

7.

Myself or near enough so that they could have heard the conversation between Mr Williams and myself but Messrs Keller and Noble were at their desks in the rear part of the room about twenty feet from us.

2nd x

To the second Croft interrogation he said I did not seek my interview with Mr Williams of my own instance, I got my instructions from Mr Robert Pinkerton in New York, which caused me to have these interviews with Mr Williams in the early part of January 1888 - there was nobody present but Mr Pinkerton and myself.

3rd x

To the third Croft interrogation he said nothing was paid to me, or promised to be paid to me for seeking and reporting these interviews with Mr Williams. I was regularly employed at a salary by the Pinkerton National Detective Agency at their office in New York City and was paid that salary and nothing more for the work of seeing Mr Williams.

4th x

To the fourth Croft interrogation he said I lived in the City of Brooklyn in the State of New York at the time I

Names:

Keller & Noble

Pinkerton, Robert

Williams,

Places:

North Western
District of Alabama

Types:

deposition

Dates:

Aug 31, 1888

CTB • 1888 1B12/13

8.

undertook to have these interviews with
Mr Williams and to report them —

I was in the detective business
as an employee of the Pinkerton Detective
Agency attached to their Memphis office.

I still live at the same place and
am still engaged in the same business.

A. Samuel B. Diehl.

On the original the usual Certificate
follows the signature of the witness
C. H.

Names:

Diehl, Samuel B.

Places:

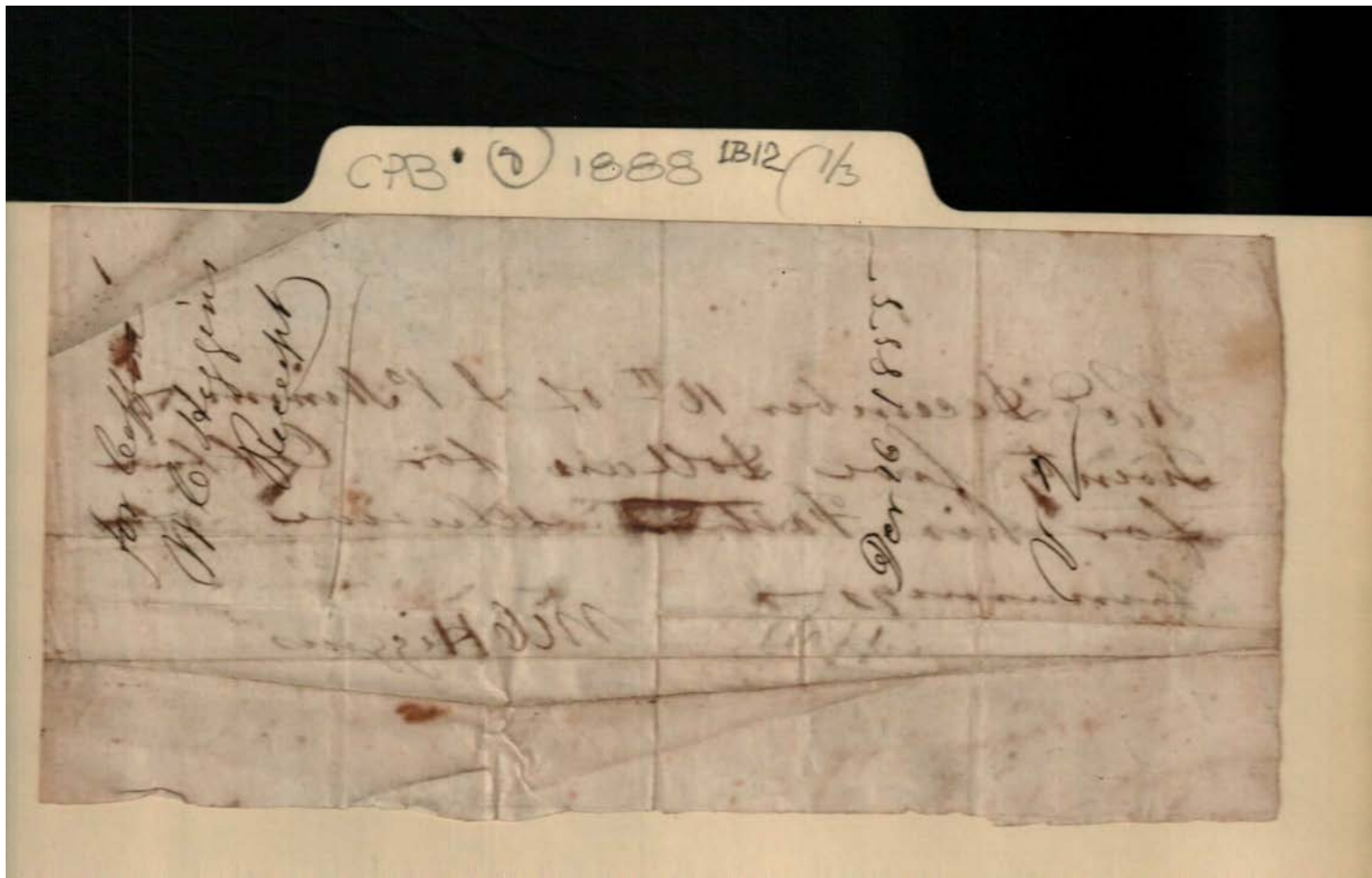
North Western
District of Alabama

Types:

deposition

Dates:

Aug 31, 1888



Names:

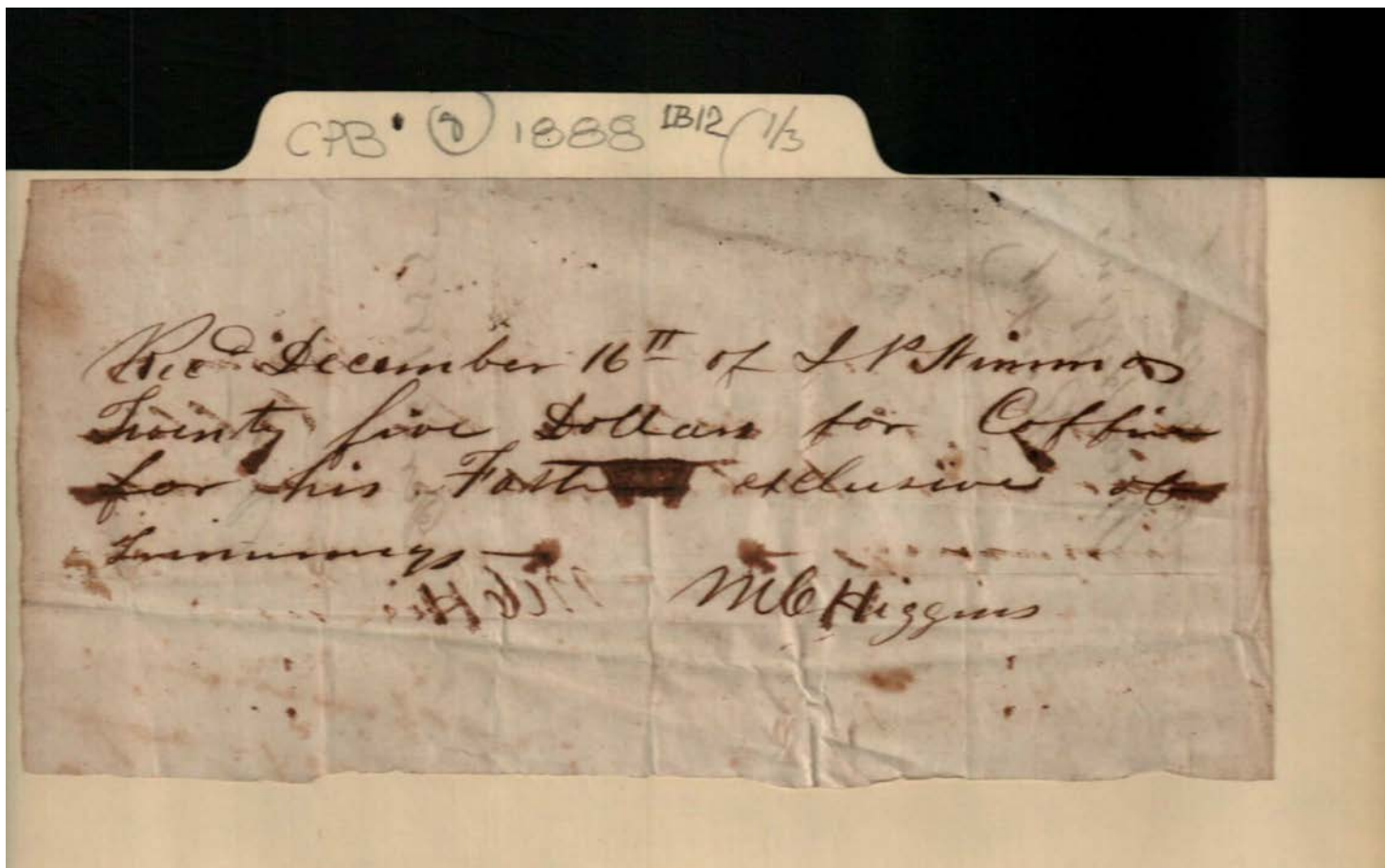
Higgins, W. C.

Types:

receipt

Dates:

Dec 16, 1888



Names:

Higgins, W. C.

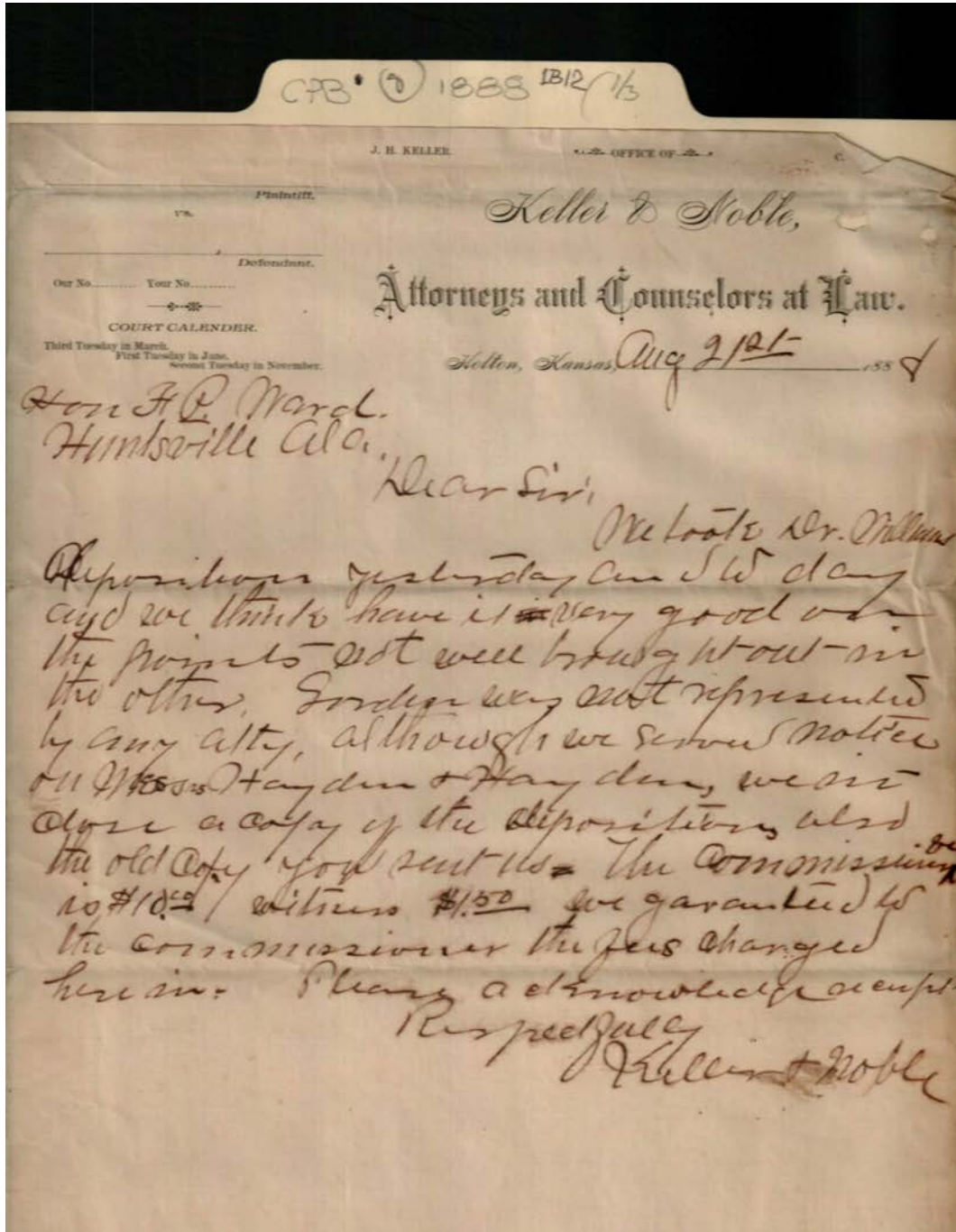
Nimmo, J. P.

Types:

receipt

Dates:

Dec 16, 1888



Names:

Clay, J. W.
Gordon,

Hayden & Hayden
Keller & Noble

Ward, F. P.
Williams, Dr.

Places:

Holton, KS

Huntsville, AL

Types:

legal correspondence

Dates:

Aug 21, 1888

CFB 1088 1B12/13

MacFarland, Reynolds & Harrison
59 & 61 Wall Street
New York Sept. 13. 1884

William W. MacFarland
Edwin S. Reynolds
Robert J. Harrison

F. P. Ward, Esq.
Huntsville, Ala.

Dear Sir: Your favour of 8th inst., with inclosure, was recd. by express. Mr. Grimball has already written to me, and given me a faint outline of the difficulty which had to be met and conquered, as he supposed. I had made some preliminary examination of the Statute in relation to the question at issue, and had arrived at a conclusion very similar to yours, after reading the Statute, which was correctly transcribed by Mr. Grimball in his letter to Mr. Lewis, in which it is stated that the Surrogate is the person to certify the records, in accordance with our Statute. There was an Act passed in 1863 which did empower the Surrogate to appoint a Clerk for the purpose of certifying orders, decrees and special proceedings.

page 1 of 3

Names:

Grimball,
Lewis,

MacFarland,
Reynolds &

Harrison
Ward, F. P.

Places:

Huntsville, AL

New York, NY

Types:

correspondence

Dates:

Sept 13, 1884

CPB 1888 1B12 7/3

William W. MacFarland
Alexander G. Reynolds
Robert S. Harrison

MacFarland, Reynolds & Harrison
39 & 61 Wall Street
New York

(J.P.W. 2)

but before this Clerk was authorized to
act an order had to be entered conferring
authority on him, and it was possible
at present. The Statute did not contemplate
a Clerk of the Surrogate's Court ex officio,
but any Clerk, or employee in his office
might be designated for that purpose.
Manifestly the Certification is under the
act of 1884 it is imperfect without the
order directing the Clerk so certifying
it empowers him to act. It may, however,
be that the law overlooked some Statute
peculiarly applicable to the Co. of N.Y.,
tho' I have made a tolerably careful exam-
ination of the Session Laws. I had
hoped to have an interview with the Sur-
rogate or his Chief Assistant, and therefore
had delayed answering your letter.

page 2 of 3

Names:

MacFarland,
Reynolds &

Harrison

Places:

New York, NY

Types:

correspondence

Dates:

Sept 13, 1884

CFB 1888 1B12 13

MacFarland, Reynolds & Harrison
59 & 61 Wall Street
New York. 1888

*William H. MacFarland
Stephen S. Reynolds
Robert S. Harrison*

(F.P.W.S.)

The Surrogate, however, has but just returned to the office from his vacation, and his absence is not return until Tuesday. In consequence I have not been able to have an interview with either. If there is any statute upon this subject doubtless one or the other of these gentlemen can refer me to it at once. — I shall of course write you as soon as I have seen the Surrogate, and I hope to include his papers at the same time. I have arranged to provide you with a copy of our Revised Statutes and any other law relating to this question at issue. I shall probably, however, see Mr. Grimball before the papers go off, unless you should write me that you needed them at once.

Yours faithfully,
Robert Harrison

page 3 of 3

Names:

Grimball,
Harrison, Robert

MacFarland,
Reynolds &

Harrison

Places:

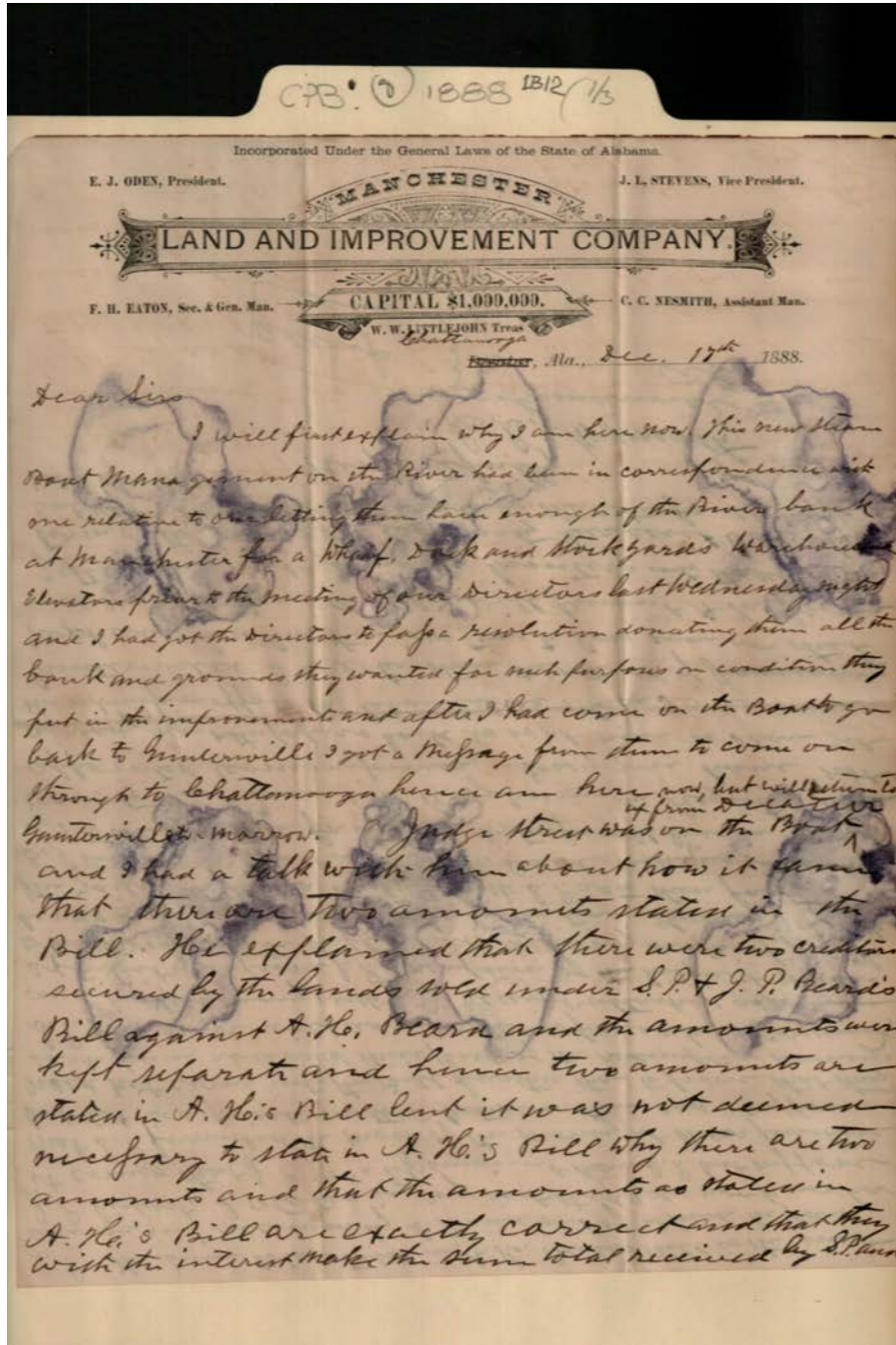
New York, NY

Types:

correspondence

Dates:

Sept 13, 1884



Names:

Beard, A. H.

Beard, J. P.

Beard, S. P.

Manchester Land & Improvement Co.

Street, Judge

Places:

Chattanooga, TN

Guntersville, AL

Types:

correspondence

Dates:

Dec 17, 1888

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J. P. The sum total stated in A. H. Beard's Bill is the correct amount received by S. P. and out of which he paid J. P. his part. I stated in my last that I do not know how it comes that J. P. got a larger amount than S. P. but suppose that S. P. furnished the most of the money at their purchase but that is a private matter between them and I suppose need not come into the Bill further than to prove that they each have received their parts of the redemption money. S. P.'s answer will admit that so far as he is concerned and his testimony with J. P.'s receipt attached as an exhibit will prove J. P.'s receipt of his part. It seems to me this ought to be sufficient. The money was paid to J. P. when he was sane and prior to the insurrection. Thomas J. Sparks the jailer will be a witness with S. P. as to their facts. S. P. lives on S. A. Street and A. H. Beard witnesses generally as to the general facts. The witnesses all live in Marshall County. Let Samuel K. Rayburn the Register be appointed commissioner. Now if you have not already sent the papers back do so at once so I can get the submission off to the Chancellor while I am in Guntersville. I will be there till the 1st of January next any how but there is no time to lose even at that and I greatly fear the delay will prevent A. H. from getting his suit against the trustees into the next term of the Jackson County Circuit Court but let us do the best we can so that the fault will not be ours. Respectfully
 C. C. Nesmith.
 Guntersville
 Ala

address

Names:

Beard, A. H.

Beard, J. P.

Beard, S. P.

Nesmith, C. C.

Rayburn, Samuel K.

Places:

Guntersville, AL

Types:

correspondence

Dates:

Dec 17, 1888

1

The contract as written is silent as to the quantity of the land - but so accedes as to be susceptible of accurate ascertainment - It may contain 100 acres or more or less than ten, It is silent as to its rental value, nor does it reserve rents to the vendor - nor is any note given for purchase ^{money}

I am not informed as to the circumstances and motives that led to the execution of a contract of ~~in contract~~ so unusual a character, (in former times)

The actual salable value of the land is the sum of its total value at the time of the agreement - the ^{reasons of} ^{speculations} ~~chances~~ of an increase of such value prior to July 1898, are circumstances that may be entitled to consideration in determining the intent of the parties, and the legal effect of the contract - and whether a specific performance can be afforded ~~enjoinder~~ by deed in equity -

Does the contract bind B. to do one certain thing ~~that~~ is to convey title on payment; with a penalty added to secure its prompt performance, as if he had given a title bond containing a penal sum, binding him to make title on payment of the ^{purchase} money & confer upon him the right on failure

Types:

legal notes

Dates:

1888

2

of payment to enforce it by suit at law
or bill in Chancery (or both in case
of Mortgage to secure payment of money)
and also the right to recover so much
penies resulting from default
ment - Or the whole of the penal
sum as liquidated damages, in addition
to the sum which may be realized from
a decree of sale of land to enforce pay-
ment of the \$50. per acre
or
Does it only entitle the vendor to one of the
two things, the payment of the \$50. per
acre, or the payment of the penal sum
to be forfeited on default of payment
of purchase money - ?
Does it confer on him the right to elect
which he will accept? Or
Does it confer on the vendee the right
to elect which he will pay? If there
be fifty acres & lands dependent
in salable value, can he discharge the
whole liability by payment of \$1000 - ?
If there be but 10 acres and no
forfeiture has been provided for as against
the vendee on default, would he have been
satisfied that it was a mere contract of
sale tantamount to a bond for title - j

Types:

legal notes

Dates:

1888

3

And that the vendor could in a court of Chancery subject the land to payment of the purchase money, & get a decree for any unsatisfied balance of too sale & that the court of Equity would not decree any thing else -

And if the floor is regarded as a penalty I suppose nothing could be recovered at law against vendee except actual damages resulting directly from the default of payment of purchase money -

nor any thing by the vendee except the land (in equity) and such damages in court of law as he actually sustains by non performance by vendee -

If there had been no boom in ~~Wisconsin~~ North Ala. I presume that the contract would have been so drawn as to exempt vendee from the risks & liabilities of the market as last above stated or suggested -

But I conjecture that both parties to the contract were influenced by the boom and that the vendee was either more hopeful than the vendor of an increase in the value of the land, or had ascertained that he could sell the it for considerably more than \$50.00 per acre and that its acquisition would enable

Types:

legal notes

Dates:

1888

4

to regulate a loan of his own hands
 on better terms than he could otherwise do.

That the contract was in the nature
 of what is now generally called an
Option on the land bargained for,
 & was intended to be so advantageously
 drawn as to secure the vendee the
 right to take the land at \$50 per acre
 if he could, during 1887, make it available
 for a quarter price; & if he should
 fail to pay \$1000 for the chance
 of such profit -

That W. so understood it. That
 he was willing to debar himself from
 the privilege of selling to any one else
 for the year 1887 for ~~the~~
~~the~~ \$50.00 per acre, or more, in considera-
 tion of W.'s binding himself to pay either
 that much (\$50. per acre) on a forfeiture
 of \$1000 - In other words, W. was to
 have the option during 1887 to buy it at
 \$50. per acre, or pay \$1000 at end of the year
 if he should not elect to take it at
 that price -

If a collapse of the boom shall
 occur before next spring, the vendee's
 assignee will no doubt meet upon
 that construction - But I am not sure
 that it can be sustained by either of
 these parties - Unless oral evidence

Types:

legal notes

Dates:

1888

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can be admitted that will establish that such was the intent of the parties - I think the contract as written indicates the main purpose to have been a transfer of the land to W. and payment therefor to B. - that the forfeiture was an incident to that ^{purpose} & of minor importance -

As it takes two persons to make a contract, it must as a general rule take two to rescind it - I see no possible ground for B. to effect a rescission unless it be that W. has contracted to sell to A. prior to the time of the agreement between B. & W. and has used some unfair artifices to prevent B. from selling to A. or other persons.

It has been held that an agent professing to buy for himself may in fact buy for another & that the latter may enforce specific performance ^{if there was no substitute} ~~if there was no substitute~~

In view of the anomalous condition of real estate values during this Spring in some parts of it with the (which would be legitimate inducement in determining whether the \$1000 was assigned as a penalty or as liquidated damages) - I think it would be held that

Types:

legal notes

Dates:

1888

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that that sum was agreed upon as liquidated
damages & recognized as proper & binding
on both parties as such -

It has been held by some courts
that the remedy of liquidated damages
in a court of law does not preclude
a court of equity from enforcing
a specific performance -

See cases cited by Chitty vol 2. page
1315 - 20. and 1482 - a case in
2 Athens is p 371. is cited as a leading
case - & very much like this case

Very on Specific Performance
(See Walker Copy) & American notes
& Story's Equity, & 2 works are more
satisfactory than other book that
I have examined -

The doctrine is asserted that if
the penal sum is construed as penal
the Ct of Equity will enforce specific ^{performance}
if construed as liquidated damages
it may do it, or refuse accordingly
to nature of case -

It may be that penal or liquidated
damages although the language of
the agreement may seem to be in seeming
conflict with such remedy -

Woodward
27
Hofmann
2. Ath 371

Types:

legal notes

Dates:

1888

Court of Common Pleas
Pickaway Co. O.S.

Thomas George
Plaintiff

vs

The Emmit Mining Co.
James J. Hawkes Pres.
Otis Ballard Treasurer
of said Company
Defendants

Mar 17 1888
Entry

This day came the plaintiff and it appearing to the court that the order of enter pro se here to for on the 21st day of March 1888 made by Court that Just Laura Bone, who obtained some interest in the subject matter of this action, be required to enter her appearance and set up her claim, if any she had, within 30 days after the service of said order upon her in the manner prescribed by the Court, or be forever barred and precluded from setting up any claim for the stock or dividends in question set forth. And it further appearing to the Court by the return of the sheriff that a duly certified copy of said order had been duly served upon her the said Laura Bone in the manner prescribed

Names:

Ballard, Otis
Bone, Laura

Emmit Mining Co.,
The

George, Thomas
Hawkes, James A.

Places:

Pickaway Co.

Types:

court of common
pleas

Dates:

Mar 31, 1888

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by the order of the Court and receipt
of the same acknowledged by her more
than thirty days prior to the entering
of this decree herein; and it further
appearing to the Court that said Laura
Bone has failed and refused for more
than thirty days from the date of ser-
vice of said order of interpleader to obey
said order or enter any appearance herein
and still fails and refuses so to do; it
is therefore ordered adjudged and decreed
by the Court here that the said Laura
Bone be and hereby is forever barred
and precluded from any claim, interest
or ownership of the said 3000 shares of
stock in the Emmit Mining Company or
to the dividend now in the hands of
said Company set forth in petition
herein.

And therefore this cause coming on
for further hearing on the petition of
plaintiff against said Emmit Mining
Company defendant; and it appearing
to the Court that due and legal notice
and acknowledgment thereof had been
served on said defendant, and the said
Company having failed to plead answer
or disclaimer to said petition within the

Names:

Bone, Laura

Emmit Mining Co.,
The

Places:

Pickaway Co.

Types:

court of common
pleas

Dates:

Mar 31, 1888

CPB © 1888 IB12/13

time prescribed by law and the rules of this Court, it is ordered that a default be entered against them, and the matters and allegations of the petition be taken as confessed by said defendant the Emmit Mining Company. And thereupon came plaintiff and submitted his cause to the Court in favor of the petition and evidence and the cause having been seen and heard by the Court and the Court being fully advised in the premises do hereby adjudge and decree that the said Thomas George is and was at the time stated in the petition and long before that the lawful and true owner of the stock in petition set forth and described and entitled to have and receive from the said defendant the Emmit Mining Company a certificate for the same as also the dividend of \$90 as in petition alleged: And it is further ordered that said James W. Hawkes President of said Emmit Mining Company issue and deliver to said plaintiff Thomas George or to his attorney A. T. Walling a good and sufficient certificate for said 9000 shares of the capital stock of said Company in lieu of the

Names:

Emmit Mining Co.,
The

George, Thomas
Walling, A. T.

Places:

Pickaway Co.

Types:

court of common
pleas

Dates:

Mar 31, 1888

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3000 shares of said stock now standing
on the books of said Company in the
name of the said Laura Bone and the
original certificate be canceled on the
Books of said Company: And that the
said Otis Ballard, Treasurer pay over
to said Plaintiff or to his said attorney
the said sum of \$50 as prayed for in peti-
tion upon demand. And the said
Thomas George and said Laura Bone are
each and both required to return said
original certificate within fifteen days
from the date of this decree for cancel-
ation. And if not so returned then
said original certificate be and the
same hereby is declared null and void.
Plaintiff to pay costs. Costs paid.

Names:

Ballard, Otis

Bone, Laura

George, Thomas

Places:

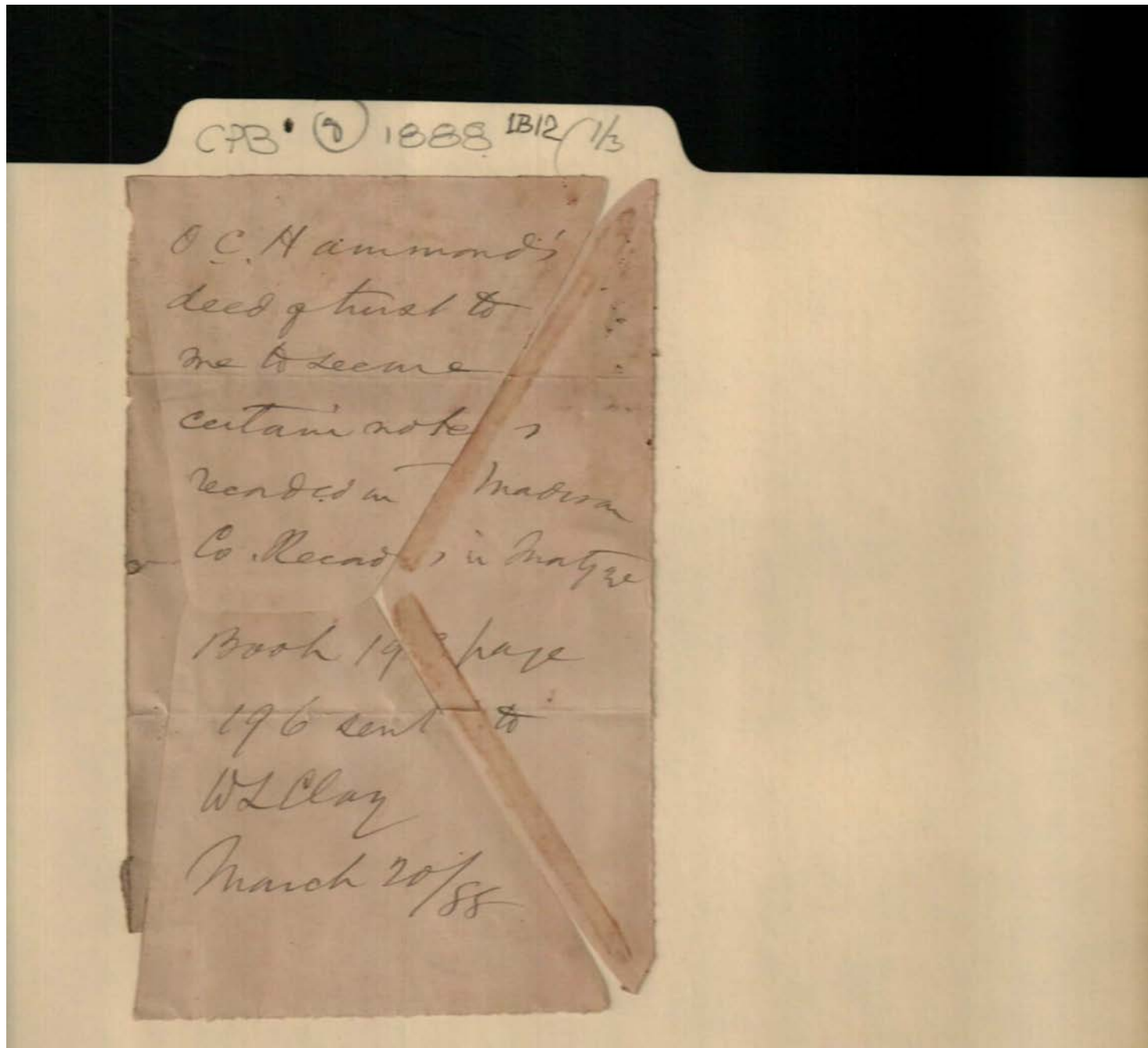
Pickaway Co.

Types:

court of common
pleas

Dates:

Mar 31, 1888



Names:

Clay, W. L.

Hammond, O. C.

Places:

Madison Co., AL

Types:

memo

Dates:

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Frances Cabaniss Roberts Collection

Preferred Citation: Frances Cabaniss Roberts Collection, Archives and Special Collections, M. Louis Salmon Library, University of Alabama in Huntsville, Huntsville, AL.

Collection Scope and Content: The Collection of 114 Linear ft. includes a total of 156 Archival Boxes. The Frances Cabaniss Roberts collection covers the historical records of the Cabaniss Roberts family. This collection contains extensive correspondence records of the Cabaniss Roberts family circa 1830 to 1930.

Archives/Special Collections Access Restrictions: None

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