

CECIL KILPATRICK,

Plaintiff,

vs.

NEWTON W. McINTYRE,

Defendant.

Y

Y

Y

Y

Y

Y

Y

Y

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

NO. 5488

ORDER

This cause coming on to be heard and having been made to appear to the Court by counsel for the parties that a settlement between the parties has been reached; and it further appearing to the Court that in and by the terms of such settlement said case is to be dismissed and both parties relieved of any further liability to each other; and the court having considered all of the above, it is therefore

ORDERED and DECREED by the Circuit Court of Baldwin County, Alabama, as follows:

1. That this case be, and the same is hereby dismissed;
2. That the Plaintiff and the surety on his bond be, and they are hereby relieved of any and all liability to the Defendant for and on account of the seizure of the automobile which is the subject of this suit or from any liability, whether in tort or in contract to the Defendant now existing or claimed to be existing by the Defendant; and the Defendant is hereby relieved of any and all liability to the Plaintiff, whether in tort or in contract now existing or claimed to be existing by the Plaintiff; and
3. That the Plaintiff is hereby taxed with the cost of this suit.

Done this the 15 day of July, 1963.

Hubert M. Hance
Circuit Judge

APPROVED:

Newton W. McIntyre
Attorney for Plaintiff

C. L. D. Thompson
Attorney for Defendant

FILED

JUL 15 1963

ALICE J. DUCK, CLERK
REGISTER

MATRANGA & STOKES
ATTORNEYS AT LAW
308-309 VAN ANTWERP BUILDING
MOBILE, ALABAMA

JOSEPH M. MATRANGA
BEN F. STOKES, III

May 7, 1963

P. O. BOX 293
TELEPHONE HE 3-1634

Mrs. Alice J. Duck, Clerk
Baldwin County Courthouse
Bay Minette, Alabama


Re: Cecil Kilpatrick vs. Newton W. McIntyre

Dear Mrs. Duck:

In the above case, Mr. C. LeNoir Thompson, attorney for Newton W. McIntyre, filed a motion under Title 7, Section 933, to bring in my client, G. F. C. Credit Corporation as a party defendant in this suit. I enclose an acceptance of service for the said G. F. C. Credit Corporation and I would appreciate your filing the same and sending a copy to the other attorneys involved.

Further, I would appreciate your kindness in sending to me a copy of the complaint and other pleadings filed in the case, in order that I might familiarize myself with the matter. Please also notify me when the case is set for trial, as well as any preliminary motions which might be set for hearing.

Sincerely yours,



B. F. Stokes, III

BFS:j

cc: Mr. C. LeNoir Thompson

CECIL KILPATRICK	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
NEWTON W. MCINTYRE	X	AT LAW NO. <u>5488</u>
Defendant	X	

Comes the defendant in the above styled cause and propounds the following interrogatories to the plaintiff, Cecil Kilpatrick:

1. State your name.
2. Are you the plaintiff in this case?
3. Did you enter into any written agreements or contracts with the defendant herein?
4. If your answer is "yes", attach a copy of each agreement entered into.
5. Did you extend credit to the defendant?
6. If your answer is "yes", state the amount of credit extended and the commodities sold to give credit to the defendant at the time he opened his business.
7. Was one of the commodities gasoline?
8. If your answer is "yes", did you have your tank truck driver put any gasoline into the filling station tanks under the control of the defendant as part of the credit agreement?
9. Was there an agreement concerning the defendant's payment for this gasoline?
10. State the gallonage and price of the gasoline delivered under the credit agreement.
11. Did the defendant give you a promissory note and/or chattel mortgage?
12. State the basis on which the defendant gave this note or chattel mortgage and the provisions for defendant to pay same.
13. Do your records reveal a charge of 1¢ per gallon collected in addition to the regular sale price of the gasoline?
14. If your answer is "yes", then state what this charge of 1¢ per gallon is to pay.
15. Is there a basis in any of the agreements entered into between you and the defendant whereby certain monies were to be collected on every delivery which monies were termed "fixed charged"?

16. If your answer is "yes", to the preceding question, state what these "fixed charges" covered and what debt these "fixed charges" were collected in payment for.

17. In filing suit against the defendant for the automobile taken under a writ of detinue, state the basis of this suit showing in your statement what failure of the defendant brought about this suit.

18. If this suit was brought on the basis of a promissory note, attach a statement of the payments credited against the note and the balance due under the note.

THOMPSON & WHITE

BY:

C. LeNoir Thompson
Attorneys for defendant

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned Notary Public, in and for said State and County, personally appeared C. LeNoir Thompson, who being by me first duly sworn, deposes on oath and says as follows:

My name is C. LeNoir Thompson and I am one of the attorneys of record for the defendant in the above entitled cause, and as such, I am authorized to make this affidavit. I further state that the answer of the plaintiff to the foregoing interrogatories will, if truthfully made, be material evidence for the defendant on the trial of said cause.

C. LeNoir Thompson
C. LeNOIR THOMPSON

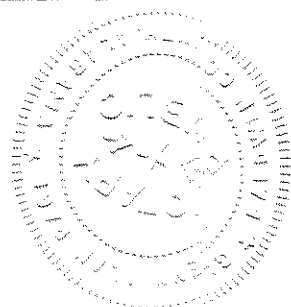
Subscribed and sworn to before me by the said C. LeNoir Thompson on this the 12th day of March, 1963.

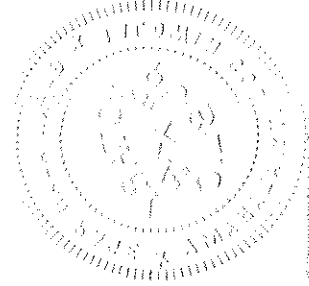
Glenn A. Page
Notary Public

FILED

MAR 12 1963

ALICE J. DUCK, CLERK
REGISTER





Received 13 day of Mar 1965
and on 15 day of March 1965
I served a copy of the within Order
on Norbert Stone

By service on _____

TAYLOR WILKINS, Sheriff
By W.A. Talbot O.
Om

Serve - N.C. Stone
by Chason + Stone

CECIL KILPATRICK	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
NEWTON W. MCINTYRE	X	AT LAW NO. 5488
Defendant	X	

Comes the defendant in the above styled cause and propounds the following interrogatories to Sinclair Refining Company, P. O. Box 1710, Atlanta, Georgia, as employer, contractor, supervisor or principal of Cecil Kilpatrick, Atmore, Alabama:

1. State the name of the official or official capacity of the individual answering this interrogatory.
2. State the capacity of employment or contract which Cecil Kilpatrick has with Sinclair Refining Company.
3. Examine the records in the office of Sinclair Refining Company concerning Newton W. McIntyre, Bay Minette, Alabama, noted as Account No. 0067 004 944 4 in your records and directing your attention to October 4, 1962, state the circumstances under which a charge of \$48.48 was entered against Newton W. McIntyre on October 4, 1962.
4. On October 4, 1962, state the circumstances and for what purpose the sum of \$346.51 was entered against the said Newton W. McIntyre?
5. Examine statements beginning with October 4, 1962 and ending February 27, 1963, and attach a statement of every payment made under a so-called "fixed charge", which payments were made on the basis of 1¢ per gallon of gas.
6. Attach a copy of any paper signed by Newton W. McIntyre and/or Cecil Kilpatrick providing for the payment of any indebtedness of the said Newton W. McIntyre at the rate of 1¢ a gallon of gas.
7. State the arrangement or attach a copy, if said arrangement is in writing, showing the basis of the \$394.99 total charge against Newton W. McIntyre by your company.



 Newton W. McIntyre

FILED

APR 27 1963

Alice J. Durr, REGISTER

THOMPSON & WHITE

BY: 

Attorneys for defendant

STATE OF ALABAMA

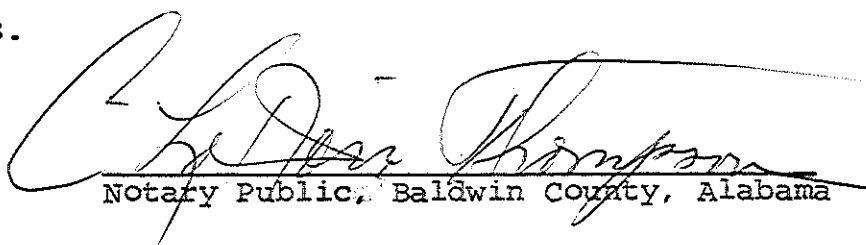
BALDWIN COUNTY

Before me, the undersigned Notary Public, in and for said State and County, personally appeared Newton W. McIntyre, who being by me first duly sworn, deposes on oath and says as follows:

My name is Newton W. McIntyre. I am the defendant in the above entitled cause and as such, I am authorized to make this affidavit. I further state that the answer of the said Sinclair Refining Company to the foregoing interrogatories will, if truthfully made, be material evidence for the defendant on the trial of said cause.


Newton W. McIntyre

Subscribed and sworn to before me by the said Newton W. McIntyre on this the 29 day of April, 1963.


Notary Public, Baldwin County, Alabama

FILED

APR 29 1963

ALICE L. DUCK, CLERK
REGISTER

5488

Cecil Kilpatrick

vs.

Newton W. McIntyre

Received 1 day of May 1963

id on 2 May 1963

served at the within County

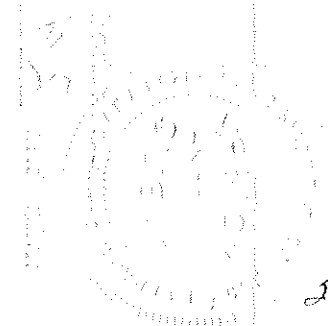
1 Norman Stone

y service of Johnny Chason

TAYLOR WILKINS, Sheriff

By W. A. Talbott D.

Om



serve! N. Stone

CECIL KILPATRICK

Plaintiff

vs

NEWTON W. MCINTYRE

Defendant

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 5488

Comes the defendant in the above styled cause and for answer to said complaint shows unto this Honorable Court as follows:

-1-

Defendant pleads non detinet.

-2-

The defendant for answer to the said complaint suggests that the said cause arises out of a chattel mortgage between the parties and petitions the Court to determine the unpaid balance, or indebtedness, if any.

-3-

The defendant for answer to the said complaint saith he has paid the debt, or demand, for the recovery of which this suit was brought, before the action was commenced.

-4-

Defendant avers that the consideration of the said chattel mortgage basis of this action, was security for certain credit to be allowed by the plaintiff to the defendant, whereas, the said credit was not allowed by the plaintiff to the defendant. Whereas, there was no consideration paid by the plaintiff to the defendant for the said mortgage and for the said note attached thereto.

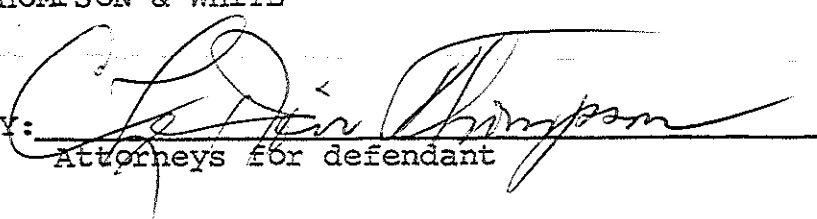
THOMPSON & WHITE

FILED

MAY 10 1963

ALICE J. DUCK, CLERK
REGISTER

BY:


Attorneys for defendant

CECIL KILPATRICK,

Plaintiff,

VS.

NEWTON W. McINTYRE,

Defendant.

IN THE

CIRCUIT COURT OF BALDWIN COUNTY,

ALABAMA.

NO. 5488

Comes now the Plaintiff in the above styled cause, by his Attorney and demurs to the motion heretofore filed in this cause on the 13th day of March, 1963, by the Defendant, and as grounds for said demurrer, assigns, separately and severally:

1. That said motion does not contain sufficient allegations to warrant the transfer of this cause to the equity side of the Court.

2. That said motion fails to allege any equitable defense to the cause of action declared on in the complaint, which would dispose of this litigation.

CHASON & STONE

BY: 

Attorneys for Plaintiff

FILED
MAY 29 1963
ALICE L. DUCK, CLERK
REGISTER

CECIL KILPATRICK)	IN THE CIRCUIT COURT OF
Plaintiff)	
vs.)	BALDWIN COUNTY, ALABAMA.
)	AT LAW.
NEWTON W. McINTYRE)	
Defendant.)	CASE NO. <u>57488</u>

Comes now G. F. C. Credit Corporation and shows unto the Court that it has received notice of the filing of the sworn petition by Newton W. McIntyre, defendant, under the provisions of Title 7, Section 933, Code of Alabama, praying that G. F. C. Credit Corporation be made a party defendant in the above styled cause.

Now, the said G. F. C. Credit Corporation does herewith accept notice of said petition and does hereby file its general appearance in this cause, giving its consent thereto and requesting that it be made a party defendant, as petitioned and the said G. F. C. Credit Corporation hereby submits itself to the jurisdiction of this Honorable Court and hereby waives all notices which it might otherwise be entitled to receive, in connection with being made a party defendant hereto.

G. F. C. CREDIT CORPORATION
BY: 

STATE OF ALABAMA
COUNTY OF MOBILE

Before me the undersigned authority personally appeared Robert Glasford who was by me duly sworn on oath to speak the truth and who stated and deposed that he is the Branch Manager of the said G. F. C. Credit Corporation, and as such, he is fully qualified to make and execute the within affidavit and further, that the facts and matters stated herein are true and correct.

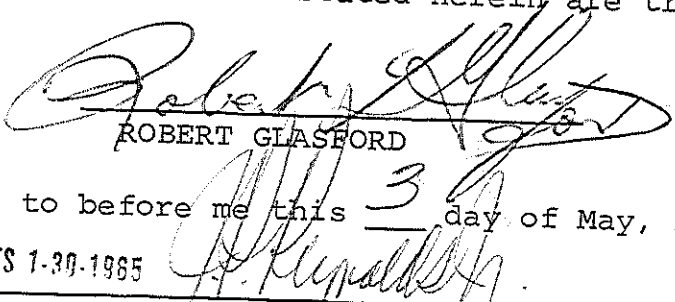
FILED

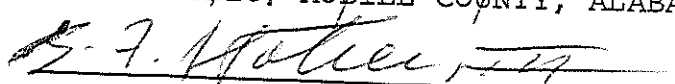
MAY 8 1963

ALICE I. DUCK, CLERK
REGISTER

Sworn and subscribed to before me this 3 day of May, 1963.

MY COMMISSION EXPIRES 1-30-1965


NOTARY PUBLIC, MOBILE COUNTY, ALABAMA.


ATTORNEY FOR G. F. C. CREDIT CORP.
(P.O. Box 243, Mobile, Ala.)

CECIL KILPATRICK

Plaintiff

vs

NEWTON W. MCINTYRE

Defendant

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. _____

Now comes Newton W. McIntyre and before issue is joined herein makes affidavit as provided in the Code of Alabama as amended, Title 7, Section 933, and says as follows:

I am the defendant named in the above styled suit.

GFC Credit Corporation of Alabama, a corporation who is not a party to this suit without collusion with me claims the chattel sued for.

Affiant further shows that on to-wit, the 28th day of February, 1962, he executed a chattel mortgage on said property, the subject of this suit which chattel mortgage is recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Mortgage Book 387 page 152.

Affiant further shows that on the day said detinue suit was sued out in this Court that the said mortgage was in arrears and in default. That the said mortgage to GFC Credit Corporation of Alabama is of record in the office of the Judge of Probate of Baldwin County, Alabama.

Affiant prays the said GFC Credit Corporation of Alabama, a corporation has offices at 1119 Springhill Avenue in Mobile, Alabama, and that said corporation be required to appear and make itself a party defendant and that a summons do issue to it requiring its appearance.

Newton W. McIntyre
Defendant

STATE OF ALABAMA
BALDWIN COUNTY

Before me, the undersigned authority, personally appeared Newton W. McIntyre who being duly sworn and being informed of the contents of the foregoing statement says that the facts stated therein are true and correct.

FILED

APR 22 1963

ALICE J. DUCK, CLERK
REGISTER

Charles E. Thompson
Notary Public, Baldwin County, Alabama

CECIL KILPATRICK	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
NEWTON W. MCINTYRE	X	AT LAW NO. _____
Defendant	X	

Now comes Newton W. McIntyre, the defendant in the above styled cause and alleges that he has an equitable defense to said action which can not be disposed of in the law side of the Court, and which depends upon the assertion of an equitable right by said claimant.

The said Newton W. McIntyre avers and shows that the substance of his equitable defense is as follows:

That the said Cecil Kilpatrick entered into with an agreement with the said Newton W. McIntyre during the latter part of 1962 whereby the said Cecil Kilpatrick put a certain gallonage of gasoline in the tanks at the filling station operated by the said Newton W. McIntyre in the Town of Bay Minette, Baldwin County, Alabama, and placed certain other items of merchandise in the custody of the said Newton W. McIntyre, all of which was done under an agreement between the parties, a part of which being that the said Newton W. McIntyre executed to the said Cecil Kilpatrick and/or his employer or distributor, a note in the amount of to-wit, \$394.00 together with an agreement which the said parties to this cause executed whereby the said note would be paid in words and figures as follows:

The sum of 1¢ on each gallon of gasoline delivered by the said Cecil Kilpatrick to the tanks of the said Newton W. McIntyre at the place aforesaid.

That as the result of this credit advanced by the said Cecil Kilpatrick to the said Newton W. McIntyre, gasoline and other items were purchased from Cecil Kilpatrick at regular intervals and the sum of to-wit, \$61.00 was paid to Cecil Kilpatrick on the said note and chattel mortgage covering the automobile owned by the said Newton W. McIntyre in accordance with the agreement executed simultaneously with the said note and mortgage, subject of this suit.

The said Cecil Kilpatrick has claimed the car listed on said mortgage and taken possession of same under a Writ of Detinue, without an accounting between the parties.

Wherefore, the said defendant filed in this cause this his written motion and moves the Court to make and enter an appropriate

order transferring this cause from the law side of the Court to the equity side of the court.

Newton W. McIntyre
Defendant

STATE OF ALABAMA

BALDWIN COUNTY

Before me, C. L. Davis Thompson, a

Notary Public, in and for said County, in said State, personally appeared, Newton W. McIntyre, who has knowledge of the facts set forth in the foregoing claim, who, being by me first duly sworn, says on oath that the facts hereinabove set forth are true and correct, according to the best of his information, knowledge and belief.

Newton W. McIntyre
Newton W. McIntyre

Sworn to and subscribed before me this 12 day of March

1963.

C. L. Davis Thompson
Notary Public

FILED

MAR 13 1963

ALICE J. DUCK, CLERK
REGISTER

THE STATE OF ALABAMA }
Baldwin County }

CIRCUIT COURT
No. 5488

194

To Any Sheriff of the State of Alabama :

You Are Hereby Commanded to Summon Newton W. McIntyre

to appear within thirty days from the service of this writ, in the Circuit Court to be held for said County
at the place of holding the same, then and there to answer the complaint of Cecil Kilpatrick

Witness my hand this 27 day of February 1963

Alice J. Luck, Clerk.

COMPLAINT

CECIL KILPATRICK

NEWTON W. McINTYRE

Plaintiff Versus Defendant

The plaintiff claims of the defendant the following personal property, to-wit:

One (1) 1960 Ford 6 Cylinder 4-Door Fairlane Automobile

Serial Number 0A42V121236

with the value of the hire or use thereof during the detention, to-wit:

from February 25 1963, to February 27 1963

CHASON & STONE

By: Melburn Stone, Plaintiff's Attorney.

STATE OF ALABAMA
Baldwin County
CIRCUIT COURT

CECIL KILPATRICK

Plaintiff__

vs.

NEWTON W. MCINTYRE

Defendant__

Detinue Summons and Complaint

Filed February 27, 1963

_____, Clerk

CHASON & STONE

Plaintiff's Attorney

Defendant's Attorney

To the Sheriff of said County:

Whereas, the Plaintiff in the within stated cause has made affidavit and given bond as required by law you are hereby required to take the property mentioned in Complaint into your possession unless the Defendant gives bond payable to the Plaintiff with sufficient surety in double the amount of the value of the property, with condition that if the Defendant is cast in the suit he will within thirty days thereafter, deliver the property to the Plaintiff, and pay all damages and costs which may accrue from the detention thereof

Received 27 day of Feb, Clerk. 1963

and _____ day of _____, 19____

I send a copy of the within _____

on _____

by service on _____

TAYLOR WILKINS, Sheriff

By _____ D. S.

Defendant lives at

Stapleton or Bay Minette, Ala.

Received in office

_____, 1963

_____, Sheriff.

I have executed this summons

this 2-28, 1963

by leaving a copy with

Newton W McIntyre

Attached one 1960
Ford 6 Cylinder
4 Door Fairlane
Automobile Ser

N 0742 V 125236
3/5/63
Sup: Cecil
Another party made
Kilpatrick
Qas H. Lintley
and
returned to
justice action of
Taylor W. Wilkins, Sheriff
Deputy, Deputy Sheriff

Ombus

The State of Alabama, {

Baldwin County

KNOW ALL MEN BY THESE PRESENTS, That we, Cecil Kilpatrick

as Principal

and the undersignedare held and firmly bound unto Newton W. McIntyrein the sum of One Thousand Six Hundred (\$1,600.00) Dollars, for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators.Sealed with our seals and dated this 5th day of March 1963The condition of the above obligation is such that whereas the said CecilKilpatrick did, on the _____ dayof February 1963 sue out of the Circuit Court of Baldwin County,Alabama a writ of detinue directed to any Sheriff of the State of Alabama commanding him

to take into his possession the following property, to-wit: _____

One (1) 1960 Ford 6 Cylinder 4-Door Fairlane Automobile, SerialNumber 0A42V121236which said writ was placed in the hands of Taylor Wilkins,Sheriff of Baldwin County, Alabama, on the _____ day of February, 1963,and executed by him on the _____ day of February, 1963, by taking into his possession the following property, to-wit:One (1) 1960 Ford 6 Cylinder 4-Door Fairlane Automobile, SerialNumber 0A42V121236

And whereas the said Newton W. McIntyre Defendant in said writ, has failed and neglected for the space of five days from the execution of said writ to give bond and take possession of said property as authorized by law.

Now if the said Newton W. McIntyre Cecil Kilpatrick upon his failing in said suit shall deliver the said property to the Defendant within thirty days after judgment and pay all damages for the detention of the property and costs of suit, then this obligation to be void, otherwise to remain in full force and effect.

Cecil Kilpatrick (SEAL)

Fidelity and Deposit Co. of Maryland (SEAL)

by James H. Lindsey (SEAL)

Taken and approved this 5th day of March 1963

Taylor Wilkins
Sheriff, Baldwin County, Ala.

STATE OF ALABAMA

BALDWIN COUNTY

IN THE CIRCUIT COURT OF

BALDWIN COUNTY

Before me, _____, a Notary Public in and for said County,
personally appeared CECIL KILPATRICK who being by me
duly sworn deposes and says that the property sued for in the complaint of Cecil Kilpatrick
versus Newton W. McIntyre filed in said Court, to-wit:
One (1) 1960 Ford 6 Cylinder 4-Door Fairlane Automobile, Serial
Number 0A42V121236

belongs to Cecil Kilpatrick, the plaintiff.

Sworn to and subscribed before me this 27th

day of February 19 63.

Notary Public

STATE OF ALABAMA

BALDWIN COUNTY

IN THE CIRCUIT COURT OF

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, That we, Cecil Kilpatrick
_____, Principal, and
the undersigned _____, Sureties, are held and
firmly bound unto Newton W. McIntyre _____, his heirs, executors and admin-
istrators in the sum of ONE HUNDRED and No/100 (\$100.00) _____ Dollars,
for the payment of which we jointly and severally bind ourselves, our heirs, executors and adminis-
trators.

Sealed with our seals and dated the 27th day of February, 1963.

The condition of the above obligation is such that whereas, the above bound Cecil
Kilpatrick has on the _____ day of
February, 1963 sued out a writ of detinue in the Circuit Court of Baldwin
County, returnable to the said Circuit Court against the said Newton W.
McIntyre for the recovery of the following
described property, to-wit:

One (1) 1960 Ford 6 Cylinder 4-Door Fairlane Automobile, Serial
Number 0A42V121236

Now, if the said.....Cecil Kilpatrick.....shall fail in said suit and shall pay to the said.....Newton W. McIntyre....., the defendant in said suit, all such costs and damages as he may sustain by the wrongful complaint, then this obligation to be void, otherwise, to remain in full force and effect.

Taken and approved this 27 day of
February, 1963

Clerk, Circuit Court

Cise Kapatana (SEAL)

Fidelity + Deposit Co. of Md. (SEAL)

E. Karen Lindsay (SEAL)

#1 INSTRUCTIONS TO DELIVERING EMPLOYEE Deliver ONLY to addressee <input type="checkbox"/> Show address where delivered <i>(Additional charges required for these services)</i>	
RETURN RECEIPT Received the numbered article described on other side	
SIGNATURE OF NAME OF ADDRESSEE (If not by addressee) <i>Official agent</i>	
SIGNATURE OF ADDRESSER/AGENT (If any) <i>Richard A. Byrd</i>	
DATE DELIVERED MAY 2 - 1963	ADDRESS WHERE DELIVERED (Indicate building and apt. if D)

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

5488

POSTAGE WILL BE PAID BY ADDRESSEE
PAYMENT OF POSTAGE GUARANTEED



INSTRUCTIONS: Fill in items below and complete on other side when possible. Mailing charges and attach to back of article. Place on front of article Return Receipt Return.

REGISTERED NO.

NAME OF SENDER

Alice J. Duck, Clerk

CERTIFIED NO.

STREET AND NO. OR P. O. BOX

277606

P.O. Box 239

INSURED NO.

CITY, ZONE AND STATE

Bay Minette, Alabama

RECEIVED MAY 1934