



Office of Circuit Judge

NINETEENTH JUDICIAL CIRCUIT

CLANTON, ALABAMA

JOSEPH J. MULLINS
CIRCUIT JUDGE

REBECCA DELENE CLECKLER
COURT REPORTER

August 25, 1965

Mrs. Alice J. Duck, Clerk
Circuit Court
Baldwin County, Alabama
C/O Courthouse
Bay Minette, Alabama

6572

Dear Mrs. Duck:

I am enclosing herein a decree in the matter of the State of Alabama, Informant, vs. J. B. Blackburn, Defendant, which I tried a few days ago when I was in your County. I believe this decree correctly reflects my judgment in the matter.

I have also forwarded a copy of this letter, together with a copy of this decree, to Mr. Nettles, Mr. Cooper, and Mr. Blackburn, and should either of the three have any objections to the wording of the decree, I would appreciate your letting me know immediately to the end that a proper decree might be drawn that would be satisfactory to all of the parties.

I enjoyed being in Baldwin County a few days ago with you.

With kindest personal regards, I am

Yours very truly,

Joseph J. Mullins
Joseph J. Mullins

JJM:rdc

Enclosure: 1

CC: Honorable Bert S. Nettles
CC: Honorable Kenneth Cooper
CC: Honorable J. B. Blackburn

STATE OF ALABAMA, Informant : IN THE CIRCUIT COURT OF
vs. : BALDWIN COUNTY, ALABAMA
AT LAW,
J. B. BLACKBURN, Contemnor : CASE NUMBER: 6572

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

You are hereby commanded to summon J. B. Blackburn, to appear before the Circuit Court, to be held for said county, at the place of holding the same on the 17 day of August 1965, then and there to answer the Information filed by the State of Alabama, a copy of which is hereto attached, in accordance with the order of the Hon. Joseph J. Mullins, a copy of which is hereby set out below.

Witness my hand this 2 day of July, 1965.


CLERK OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

STATE OF ALABAMA, Informant : IN THE CIRCUIT COURT OF
vs. : BALDWIN COUNTY, ALABAMA
AT LAW
J. B. BLACKBURN, Contemnor : CASE NUMBER: 6572

The above and foregoing Information having been filed by the State of Alabama, Informant, against J. B. Blackburn, Contemnor, the same having been presented to the Honorable Telfair J. Mashburn, Jr., Judge of the 28th Judicial Circuit Baldwin County, Alabama, and by him referred to the undersigned Joseph J. Mullins, the Judge who tried the circuit court case in question herein, it is,

Ordered by the undersigned Joseph J. Mullins, as Special Judge of the 28th Judicial Circuit, Baldwin County, Alabama, that a copy of the said Information be forthwith served upon the said J. B. Blackburn, and that he, the said J. B. Blackburn, be and he is hereby commanded to appear before

the said Circuit Court of Baldwin County, Alabama, on the
12th day of August, 1965, at 10:30 o'clock, and then
and there show cause why he should not be adjudged in contempt
of the said Circuit Court of Baldwin County, Alabama, for and
on account of having willfully and unlawfully interfered
with property in gremio legis of the said Circuit Court of
Baldwin County, Alabama.

Witness my hand this 1st day of July, 1965.

Joseph J. Mullin
CIRCUIT JUDGE

FILED
JUL 7 1965
ALBANY, ALA.

I hereby accept copy of the
foregoing Notice this 2nd day
of July 1965

Kenneth Cooper

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Service accepted
this 6th day of
July 1965.
J. B. Blackburn

STATE OF ALABAMA,)	
VS.)	IN THE CIRCUIT COURT OF
)	BALDWIN COUNTY, ALABAMA
J. B. BLACKBURN,)	AT LAW NO. 6572
Defendant.)	

DEMURRER TO PETITION

Now comes the defendant, by his attorney, and demurs to the petition heretofore filed in this cause and as grounds of such demurrer assigns, separately and severally, the following:

1. It does not state a cause of action.
2. It affirmatively appears from the allegations of the said petition that the defendant is not guilty of contempt.
3. No facts are alleged to show that the defendant is guilty of contempt.
4. No facts are alleged to show any misbehavior on the part of the defendant in his official transactions.
5. No facts are alleged to show that the defendant has disobeyed or resisted any officer of the court.
6. No facts are alleged to show any disobedience or resistance of the defendant to any lawful writ, process, order, rule, decree or command of any court.
7. No facts are alleged to show that the defendant has abused the process of the proceedings of this court.
8. No facts are alleged to show that the defendant has unlawfully interfered with any process or proceeding of this court.
9. No facts are alleged to show that the defendant is guilty of contempt as provided in Title 13, Section 2 of the Code of Alabama.

10. There is a misjoinder of causes of action.

11. No facts are alleged to show any duty on the defendant to pay attorney's fees to the attorneys who have filed this proceeding.

12. No facts are alleged to show any duty on the defendant to pay interest on the proceeds of the judgment in the condemnation case.

13. No facts are alleged to show any improper conduct on the part of the defendant.

14. No facts are alleged to show any illegal conduct on the part of the defendant.

15. No facts are alleged to show any wrongful conduct on the part of the defendant.

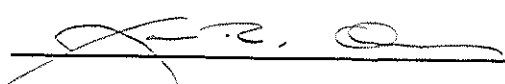
16. No facts are alleged to show any contemptuous conduct by the defendant.

17. It affirmatively appears that the defendant is not guilty of any contemptuous behavior or conduct.

18. No facts are alleged to show that this court has any authority in this proceeding to order the defendant to repay the proceeds of the said \$25,000.00 judgment to the Clerk of this court.

19. It affirmatively appears from the said petition that the said condemnation case had not been appealed at the time the proceeds of the judgment therein in favor of the defendants was paid to their said attorney, the defendant in this case.

20. No facts are alleged to show that the proceeds of the judgment in the said condemnation case were wrongfully paid to the defendant in this case.


Attorney for Defendant

I hereby certify that I delivered a copy of the above and foregoing demurrer to the attorneys for the plaintiff in open court on the date on which this demurrer was filed.



Attorney for Defendant

Filed 8-12-65
Anita J. Wick
clerk

STATE OF ALABAMA,

Informant,

vs.

J. B. BLACKBURN,

Defendant.

: IN THE CIRCUIT COURT OF

: BALDWIN COUNTY, ALABAMA,

: AT LAW

: CASE NO: 6572.

NOTICE OF APPEAL AND SECURITY FOR COSTS THEREOF

Comes now the petitioner or informant, State of Alabama, in the above styled cause, and appeals to the Supreme Court of Alabama from the final judgment/rendered in this case in and by the Circuit Court of Baldwin County, Alabama, At Law, on, to-wit, the 12th day of August, 1965.

Kenneth Cooper
Bert L. Nettles
Duly Appointed Special Assistants
Attorney General for State of Alabama

SECURITY FOR COSTS

I, the undersigned, do hereby acknowledge myself as security for all costs of the foregoing appeal to the Supreme Court of Alabama taken by the petitioner or informant State of Alabama.

Kenneth Cooper
ATTORNEY FOR PLAINTIFF

Taken and approved on this

11 day of Sept, 1965.

Archie J. Duck +
CLERK, CIRCUIT COURT, BALDWIN COUNTY, ALABAMA

Filed 9-11-65
Archie J. Duck
clerk

STATE OF ALABAMA,)
 Informant,) IN THE CIRCUIT COURT OF
 VS.) BALDWIN COUNTY, ALABAMA
 J. B. BLACKBURN,) AT LAW NO. 6572
 Defendant.)

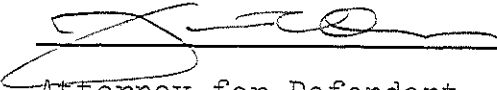
ANSWER

Now comes the defendant, by his attorney, and for answer to the petition heretofore filed in this cause, says:

1. He admits the allegations of Paragraph 1 of the petition.
2. He admits that the said condemnation suit was tried in the Circuit Court of Baldwin County, Alabama, on, to-wit, March 9, 1965, and further admits the allegations of Paragraph 2 of the said petition.
3. He admits the allegations of Paragraph 3 of the petition.
4. He admits the allegations of Paragraph 4 of the petition.
5. He admits the allegations of Paragraph 5 of the petition.
6. Defendant denies the allegations of Paragraph 8 of the petition, and for further answer to Paragraph 8 of the said petition the defendant alleges that on May 26, 1965, he deducted from the proceeds of the award in the said condemnation case his fee amounting to the sum of \$2325.00 and on the said date paid \$22,675.00 of the proceeds of the said award or judgment to Wayne Huggins and Geraldine Huggins, the defendants and property owners named in the said condemnation case.
7. Defendant denies each and all of the other allegations of the said petition and demands strict proof of same.
8. For further answer to the said petition, the defendant alleges that in the performance of his duties and responsibilities as attorney for Wayne Huggins and Geraldine Huggins, the defendants

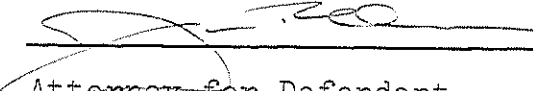
in the said condemnation case, he collected the proceeds of the award or judgment in the said case, deducted his fee therefrom and promptly paid the balance thereof to his said clients. Defendant further alleges that the said acts on his part were not contemptuous and that he is not guilty of contemptuous conduct in connection with any of the matters and things alleged in the said petition.

WHEREFORE, defendant prays that he be discharged with his reasonable costs in this behalf expended.



Attorney for Defendant

I hereby certify that I delivered a copy of the above and foregoing answer to the attorneys for the plaintiff in open court on the date on which this answer was filed.



Attorney for Defendant

Filed 8-12-65
Elmer J. Duck
clerk

STATE OF ALABAMA, Informant : IN THE CIRCUIT COURT OF
vs. : BALDWIN COUNTY, ALABAMA
J. B. BLACKBURN, Contemnor : AT LAW
: CASE NO: 720.65712

TO THE HONORABLE TELFAIR J. MASHBURN, JR., JUDGE OF THE 28th
JUDICIAL CIRCUIT, BALDWIN COUNTY, ALABAMA.

Your Informant, The State of Alabama, respectfully shows to Your Honors, that J. B. Blackburn, who resides in Bay Minette, Baldwin County, Alabama, and who is over twenty-one years of age, is in contempt of this Honorable Court because the said J. B. Blackburn, within twelve months before the filing of this information and within the jurisdiction of this Court, committed the hereinbelow described separate and several acts of contempt of this Court:

1. On the 18th day of May, 1965, there was transferred to the custody of Mrs. Alice J. Duck, the Clerk of the Circuit Court of the 28th Judicial Circuit, Baldwin County, Alabama the sum of \$40,000.00, by the Honorable Harry M. D'Olive, the Probate Judge of Baldwin County, Alabama, said sum being the amount of the Commissioner's award of said Probate Court entered in the case of State of Alabama v. Wayne Huggins, et al (Baldwin County Circuit Court Case No: 6192) and the said \$40,000.00 having been paid into said Probate Court by the State of Alabama.

2. On the 9th day of March, 1965, a condemnation award in the amount of \$25,000 was rendered in said case by said Circuit Court following a jury trial. The State of Alabama filed a motion for a new trial therein on the 18th day of March, 1965, with the Honorable Joseph J. Mullins, Special Judge of said Circuit Court, specially continuing the hearing of said motion until the 15th day of May, 1965. Whereupon, on the aforesaid 15th day of May, 1965, the said Honorable Joseph J. Mullins overruled and denied said motion for a new

trial.

3. On the 18th day of May, 1965, J. B. Blackburn, attorney of record for the aforesaid Wayne Huggins, et al, appeared before the aforesaid Mrs. Alice J. Duck and procured from her the deliverance to him of \$25,000.00 of the monies deposited as aforesaid in this Honorable Court as aforesaid.

4. On the 28th day of May, 1965, the Honorable Kenneth Cooper, a Special Assistant Attorney General of the State of Alabama and appearing as an Attorney of Record for the State of Alabama in the aforesaid condemnation case, filed a notice of appeal in said case on behalf of the State of Alabama with the aforesaid Mrs. Alice J. Duck, Clerk of the aforesaid Circuit Court, and that at such time Mrs. Duck advised Mr. Cooper of the payment of said \$25,000.00 to Mr. Blackburn, as aforesaid.

5. On May 31, 1965, the aforesaid Kenneth Cooper delivered a letter to Mrs. Alice J. Duck requesting that she secure the return of the aforementioned \$25,000.00, said letter being dated May 31, 1965, a copy of which is marked for identification as Exhibit A and attached hereto and made a part hereof as if fully set out herein.

6. On the 15th day of June, 1965, the aforesaid Kenneth Cooper, accompanied by Bert S. Nettles and C. W. Coleman, conferred with Mrs. Alice J. Duck in her office; at which time Mrs. Duck stated to the aforesaid men that she had repeatedly requested of J. B. Blackburn to return the aforesaid \$25,000.00 to her, but that he had refused and failed to do so. Also, at that time Mrs. Duck delivered to Mr. Cooper a copy of a letter dated June 15, 1965, addressed to her from J. B. Blackburn. A copy of which is marked for identification as Exhibit B and attached hereto and made a part hereof as if fully set out herein.

7. On the 21st day of June, the aforesaid Kenneth Cooper again conferred with Mrs. Alice J. Duck, at which time he presented to her an affidavit prepared for her signature. At that time Mrs. Duck stated that the affidavit accurately reflected the facts pertaining to this matter, but that she would like to first show same to Mr. J. B. Blackburn, for his approval before she executed same. On the following day, June 22, 1965, Mrs. Duck returned the aforesaid affidavit (marked for identification as "Exhibit C" and attached hereto and made a part hereof as if fully set out herein) with the explanation that Mr. Blackburn had advised her not to sign any papers, instruments or documents relative to this matter.

8. Your Informant further shows unto your Honor that as of the filing of this information, the aforesaid \$25,000.00 remains in the custody of the aforesaid J. B. Blackburn.

Wherefore, the premises considered, your Informant respectfully prays that J. B. Blackburn be cited to appear before your Honor on such day at such time as your Honor may fix, to then and there show cause if any he has why he should not be adjudged in contempt of the Circuit Court of Baldwin County, for and on account of having willfully and unlawfully interfered with Property in gremio legis of the Circuit Court of Baldwin County, as charged in the information; and that on such hearing the said J. B. Blackburn be adjudged in contempt of this Honorable Court and punished for such contempt as provided by law, and that he be ordered to forthwith return and deliver to the Honorable Alice J. Duck, Clerk of the Circuit Court of Baldwin County, Alabama, the aforesaid \$25,000.00, including interest thereon at the rate of 6% from May 18, 1965, and that J. B. Blackburn be further ordered to pay the costs of this proceeding, including a reasonable attorney's fee to the solicitors for the Informant as fixed by this Honorable Court.

THE STATE OF ALABAMA
BY: RICHMOND FLOWERS, ATTY. GEN.
Kenneth Cooper
KENNETH COOPER
Bert S. Nettles
BERT S. NETTLES, SPECIAL ASST.
ATTORNEY GENERAL

Kenneth Cooper, being duly sworn by the undersigned Notary Public, deposes and says that he is a properly appointed Special Assistant Attorney General for the State of Alabama and one of the attorneys of record in the foregoing condemnation case, that he is authorized to make this affidavit, and that the facts set out in the foregoing Information are true and correct.

Kenneth Cooper
KENNETH COOPER

Subscribed and sworn to
before me this 28 day of June, 1965.

Walter D. Lindsey
NOTARY PUBLIC, BALDWIN COUNTY, ALABAMA

FILED

JUN 28 1965

Alice L. Duck, CLERK
REGISTRAR

6-28-65 Referred To Honorable Joseph J. Mullins, the judge who tried this case —
J. Fair J. Mashburn, Judge.

The above and foregoing motion being presented to the Court, it is hereby ORDERED, ADJUDGED, AND DECREED by the Court that the same be, and the same is hereby set for an oral hearing before the Court on Thursday, August 12, 1965, at 10:30 o'clock, A. M.

ORDERED, ADJUDGED, AND DECREED by the Court on this the 30th. day of June, A. D., 1965.

Joseph J. Mullins
JOSEPH J. MULLINS, CIRCUIT JUDGE

May 31, 1965

Mrs. Alice J. Duck
Clerk Circuit Court
Bay Minette, Alabama

Re: State vs Wayne Huggins, et al
Circuit Court Case No. 6192


Dear Mrs. Duck:

Reference our conversation last Friday morning concerning Tract No. 9, I-10-1(11), owned by Huggins, et al, when I filed the State's Notice of appeal to the Supreme Court in above-styled case. As you will recall, you advised me last Friday that you had already paid to Mr. Blackburn, attorney for Mr. Huggins, the jury's award of \$25,000.00 for the Huggins Tract 9, which was paid subsequent to Judge Mullins' overruling the State's Motion for New Trial on 15 May of this month. You will also recall your statement that neither Hon Bert Nettles, nor myself, had given you any notice that the case was not going to be appealed to the Supreme Court.

Please consider this as an official request from the State of Alabama that you secure the return of the above-mentioned \$25,000.00 by June 3, 1965, and that it be held by you as all other similar fund are, and have been, held pending the outcome of the appeal in this case.

Copies of this letter are being forwarded to all interest parties.

Respectfully submitted,


Kenneth Cooper
Special Assistant Attorney General

KC/bs

cc: Hon Joseph Mullins
Hon Bert Nettles
Hon Harvey Elrod
Hon Charles Reynolds
Mr. F. A. Robinson

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EXHIBIT "A"

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

June 15, 1965

Mrs. Alice J. Duck
Clerk, Circuit Court
Bay Minette, Alabama

Dear Mrs. Duck:

I have read Mr. Kenneth Cooper's letter of May 31, addressed to you in connection with the payment to me as attorney for Wayne and Geraldine Huggins of the amount of the award in the condemnation suit in which the State of Alabama is petitioner and Wayne and Geraldine Huggins are defendants.

As previously stated to you and to Mr. Cooper, I will not refund this payment unless I am compelled to do so by a final order of a court of competent jurisdiction.

I explained to you when the payment was made to me as attorney for Mr. and Mrs. Huggins that I would protect you from any liability in the case.

If a suit is filed against you, I will see that it is defended without charge to you or the surety on your bond, and if there is a final judgment of a court of competent jurisdiction against you or against you and any other parties ordering a repayment of the money, the money will be repaid. It is available for repayment if such order should be made.

In referring above to a final judgment of a court of competent jurisdiction, I want it clearly understood that if I consider an appeal to be necessary, such appeal shall be taken and no repayment or refund of the money shall be required until the appeal is finally determined by the appellate court.

Very truly yours,

J. B. Blackburn
J. B. BLACKBURN

JBB:mlb

EXHIBIT "B"

STATE OF ALABAMA X

COUNTY OF BALDWIN X

Before me, the undersigned authority, personally appeared Alice J. Duck this _____ day of June, 1965, who, first being duly sworn by me, did depose and say as follows:

That she is the duly elected, and presently serving Clerk of the Circuit Court of the 28th Judicial Circuit, Baldwin County, Alabama; that the records of her said office show and reflect that on the 18th day of May, 1965 there was transferred to her custody as said Clerk of said Court, the sum of \$40,000.00 by Hon. Harry M. D'Olive, Probate Judge of Baldwin County, Alabama, said sum being the amount of the commissioners award of said Probate Court entered in the case of State of Alabama v. Wayne Huggins, et al, (Circuit Court Case number 6192) and the said \$40,000.00 having been paid into said Probate Court by the State of Alabama; that on the 9th day of March 1965, a condemnation award in the amount of \$25,000.00 was rendered by said Circuit Court following a jury trial; that the State of Alabama filed a Motion For/A New Trial therein on the 18th day of March, 1965, and that on said 18th day of March, 1965, the Hon. Joseph J. Mullins, Special Judge of said Circuit Court, specially continued the hearing of said Motion to the 15th day of May, 1965; that on the 15th day of May, 1965, said Hon. Joseph J. Mullins overruled and denied said Motion For A New Trial; that on the 18th day of May, 1965, the Hon. J. B. Blackburn, attorney of record for the aforesaid Wayne Huggins, et al, appeared before me and inquired as to whether the State of Alabama had filed an appeal in the aforesaid case (said case being No. 6192) (Circuit Court, Baldwin County, Alabama, At Law); that when I replied in the negative, he requested that I issue a check in my official capacity as clerk of said Court, payable to him in the amount of \$25,000.00 representing the amount of the Circuit Court award in the aforesaid case; that I did issue said check #3798 payable to him in said amount on the 18th day of May, 1965; that on the 28th day of May, 1965, Hon Kenneth Cooper,

A Special Assistant Attorney General of the State of Alabama, and appearing as an attorney of record herein for the State of Alabama, filed a Notice of Appeal in said case on behalf of the State of Alabama; that at such time I advised said Hon. Kenneth Cooper of the issuance of said check as aforesaid; that on the 31st day of May, 1965, I received a letter from said Kenneth Cooper, a copy of which is attached hereto and marked for identification as Exhibit "A"; that I have since repeatedly requested the aforesaid Hon. J. B. Blackburn to return the aforesaid \$25,000.00 to me, but that he has refused and failed to do so; that the aforesaid \$25,000.00 has to this date not been refunded to me; that the said Hon. J. B. Blackburn has stated to me that he will not repay or refund said money until he is compelled to do so by a final order of a court of competent jurisdiction; and that on the 15th day of June, 1965, I received a letter pertaining hereto from said Hon. J. B. Blackburn, a copy of which is attached hereto and marked for identification as Exhibit "B".

Sworn to and subscribed before me this ____ day of June, 1965.

NOTARY PUBLIC

FILED

JUN 28 1965

ALICE L. DUCK, CLERK
REGISTRAR

FEB 23 1967

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1966-67

State of Alabama

1 Div. 322

v.

J. B. Blackburn

Appeal from Baldwin Circuit Court

MERRILL, JUSTICE.

Counsel for the State of Alabama filed information charging appellee with contempt of court. Appellee's demurrer to the information was sustained, and upon being informed by State's counsel that they would not amend, the proceeding was dismissed. This appeal followed.

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The information or petition disclosed that an award of \$40,000 was made in the suit of State v. Wayne Huggins, in probate court, for condemnation of Huggins' land for highway purposes; that this award was paid into probate court and the State appealed to circuit court; that on March 9, 1965, a jury awarded Huggins \$25,000 as compensation and damages; that the State's motion for a new trial, timely filed, was overruled on May 15, 1965; that on May 18, 1965, appellee, attorney of record for Huggins, went to the circuit clerk's office and procured from her \$25,000 of the \$40,000 as satisfaction of the verdict and judgment; that the Special Assistant Attorney General filed an appeal for the State of Alabama to this court on May 28, 1965, and on that date he first learned that the clerk had paid the judgment, and he requested the clerk to secure the return of the money from appellee; that she made this request of appellee, but appellee informed her in writing that he would not refund the \$25,000 until ordered to do so by a court of competent jurisdiction, but that he would protect the clerk from any liability for having paid the amount of the judgment to him; and that appellee had not returned the money to the clerk.

The petition asked that appellee be adjudged in contempt of the Circuit Court of Baldwin County for "having willfully and unlawfully interfered with Property in gremio legis" of that court; that he be ordered to return the money to the clerk, including interest, and that a reasonable attorneys'

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fee be awarded to the attorneys representing the State of Alabama.

On the day set for the hearing on the demurrer to the petition, the trial court permitted the taking of testimony in support of the petition and the answer filed by appellee. The appellee and the Special Assistant Attorney General testified. The court announced that the taking of testimony would not prejudice his ruling on the demurrer and both sides agreed that the evidence be taken at that time. Later, the trial court sustained the demurrer, and being advised that the State would not amend its petition further, dismissed the petition.

We have concluded that the petition or information did not show that appellee was guilty of contempt. We have been influenced in that decision by two cases which were not cited to us by either side in brief or in oral argument. The first case is North Birmingham Trust & Savings Bank v. Hearn, 211 Ala. 18, 99 So. 175, where the register of the circuit court in equity and his bondsmen were sued because the register paid \$2,500.35 to Blackwood, a party to the suit, on the same day the final decree was rendered, even though the attorney for the bank had given notice to the register that, in the event of an adverse decision, an appeal would be taken, and requested notice of the decree as soon as rendered. The attorney first learned of the decree twenty-one days after it was rendered. We quote from the opinion by Bouldin, J.,:

"The primary question here is: What was the duty of the register, on coming in of the decree in favor of claimant Blackwood? The decree by its terms became presently operative. The payment of the money to Blackwood was not postponed by the decree. Our statutes fix the time when executions shall issue on judgments and decrees, but we find no statute nor rule, and none is suggested, authorizing a clerk or register to hold funds after decree directing them paid out, and naming no time therefor. The matter is left to the court to conserve funds intrusted to its keeping until the rights of parties are finally adjudicated. The execution of such decrees is not suspended by appeal, unless superseded as the law directs. We must conclude that under this decree it was the duty of the register to pay over this fund as directed on demand. A failure to do so would have subjected him to the motion provided in section 5922, Code of 1907.

* * * *

"We cannot too strongly urge the importance of protecting the rights of litigants to funds intrusted to the keeping of

5.

the court until their rights are finally determined. Confidence in the administration of justice is at stake. The usual and proper method is to incorporate in the decree itself an order postponing the disposition of the fund by the clerk or register for a fixed and reasonable time, and prescribing the amount of a supersedeas bond to be given under section 2875, Code of 1907, in case an appeal is prosecuted.

"It is just in this case to note that the decree was under the control of the court for 30 days after it was entered. During that period it was in the breast of the court. He had power to modify or vacate it. On motion, he could thus have retained jurisdiction over the parties, and required restitution of the fund, to be held intact pending appeal, upon giving the proper supersedeas bond. Acts 1915, p. 707, § 3; Barton v. Burton Mfg. Co., 202 Ala. 180, 79 South. 664; Ex parte Margart, 207 Ala. 604, 93 South. 505. But the register has no such power. It is his duty to execute the decree as directed. As said in Hovey v. McDonald, 109 U. S. 150, 162, 3 Sup. Ct. 136, 144 (27 L. Ed. 888), a similar case:

"'But if the court failed to do what it might properly have done, such failure ought not to be visited upon the receiver, who was the mere instrument and hand of the court, and subject to its order. It was his duty to obey the decree as made.'

"So far as we find, it is everywhere agreed that an officer of the court holding funds under order of the court having jurisdiction of the fund, and of the parties, is fully protected by a decree of the court adjudicating the right thereto and directing him to pay it over, although the time for appeal has not elapsed, or after appeal taken unless superseded, or otherwise held up. [Citing cases]."

The other case is the third appeal of First National Bank of Birmingham v. Garrison, 235 Ala. 687, 180 So. 690.

The plaintiff, in a garnishment proceeding, contested the answer of the bank garnishee. The contest proceedings were quashed and the garnishee discharged by order of the circuit court. On the second day after the discharge order, the garnishee paid out most of the funds subject to the garnishment on checks signed by the defendant. Within thirty days from the rendition of the discharge order, the plaintiff filed his security for cost of appeal and the order discharging the garnishee was reversed. The garnishee contended that

7.

it was not liable because it had been discharged and it honored checks on the funds and paid the money out before an appeal was taken.

This court held that the judgment discharging the garnishee was in the breast of the court for thirty days (Tit. 13, § 119), with full power to vacate the judgment on application or ex mero motu, and was still in fieri; that all persons were presumed to know this rule of law, and if the garnishee paid out the funds within this time "it must be held to have done so at its own risk." Two of the justices thought the ten days allowed by Tit. 13, § 119, before execution is issued was preferable as a reasonable time in which the plaintiff should take action, but they concurred that the thirty-day period should be allowed for perfecting an appeal, and supersedeas.

We agree with the following statement from the concurring opinion of Bouldin, J.,:

"We cannot sanction a rule which would allow a race of diligence between the defendant and the plaintiff, the one to draw the money, the other to institute legal measures to keep the subject matter of the suit in status quo."

Applying these principles to the instant case, we hold (1) that the respondent, counsel for plaintiff, was premature in requesting the clerk to pay the judgment to him; (2) that he was not guilty of contempt in requesting and receiving payment since no fraud or deceit or any other provision of Tit.

8.

13, § 2, Code 1940, was violated; (3) that petitioner's proper remedy was to bring the matter to the trial court's attention within the thirty-day period and it could have "required restitution of the fund, to be held intact pending appeal."

We suggest that trial courts might well follow the admonition in the Hearn case, 211 Ala. 18, 99 So. 175, and "incorporate in the decree itself an order postponing the disposition of the fund by the clerk or register for a fixed and reasonable time."

We have deliberately withheld the announcement of the result in this case until the condemnation case, State v. Huggins, 1 Div. 305, was decided. Since that judgment was reversed, the trial court will direct and order the respondent to restore the sum of \$25,000 to the clerk within ten days of the receipt of such direction and order.

In the instant case, the trial court correctly sustained the demurrer to the petition, and petitioner declining to plead further, correctly dismissed the petition.

AFFIRMED.

Livingston, C. J., Goodwyn and Harwood, JJ., concur.

I, Richard W. Neal, Deputy Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.
Witness my hand this 23 day of Feb 1967

Richard W. Neal
Deputy Clerk, Supreme Court of Alabama

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 1966-67

To the Clerk of the Circuit Court,

Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court of said county, in a certain cause lately pending in said Court between

State of Alabama, Appellant,

and

J. B. Blackburn, Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by our Supreme Court, on the 23 day of February, 1967, that said

Judgment of said Circuit Court be in all things affirmed, and that it was further considered, ordered, and adjudged that the ~~appellant~~ Circuit Court of Baldwin County enter in stanter an order directing Hon. J. B. Blackburn to restore the sum of \$25,000 to the Clerk of the Circuit Court within ten days of the receipt of such order, and

IT WAS FURTHER ORDERED AND ADJUDGED that the Appellee, J. B. Blackburn, pay

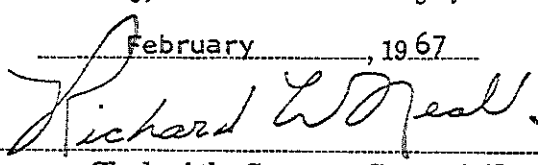
the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

Richard W. Neal, Deputy
Witness, ~~XXXXXX~~ Clerk of the Supreme

Court of Alabama, at the Judicial Department

Building, this the 23 day of

February, 1967


Deputy Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 19 66-67

1 Div., No. 322

State of Alabama

Appellant,

vs.

J. B. Blackburn

Appellee.

From Baldwin Circuit Court.

No. 6572
CERTIFICATE OF
AFFIRMANCE

The State of Alabama,

Baldwin County. } Filed

this 24 day of Feb 1967

W. J. Duck
Clerk

DIV. NO. _____

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 6572

THE STATE OF ALABAMA

Baldwin County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein State of Alabama

was plaintiff, and J.E. Blackburn

was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said State of Alabama did on the 11th day of September, 1965, pray for and obtain an appeal from the judgment of said Court to the Supreme Court of Alabama to reverse said judgment of said Court upon entering into bond with Kenneth Cooper

as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Baldwin County is hereto affixed, this the 15th day of September, 1965

Alice J. Duck
Clerk of the Circuit Court of
Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)



Office of Circuit Judge

NINETEENTH JUDICIAL CIRCUIT

CLANTON, ALABAMA

JOSEPH J. MULLINS
CIRCUIT JUDGE

REBECCA DELENE GLECKLER
COURT REPORTER

July 1, 1965

Mrs. Alice J. Duck, Clerk
Circuit Court, Baldwin County, Alabama
C/O Courthouse
Bay Minette, Alabama

Dear Mrs. Duck:

In Re: State Of Alabama vs. J. B. Blackburn,
Circuit Court, Baldwin County, Alabama,
Case Number 6572.

I am enclosing herein an order, which is a little more formal than the order which I mailed to you on yesterday.

I would appreciate it if you would file the order, and see to it that a copy, together with a copy of the papers I mailed to you yesterday, are given to Mr. Blackburn immediately.

In the order which I mailed to you yesterday, I set this matter for an oral hearing before me on August 12, 1965 at 10:30 o'clock, A. M. Of course, I realize that that date perhaps might not be satisfactory to all parties concerned. You might tell Mr. Blackburn, Mr. Nettles, and Mr. Cooper that if, for any reason, any of them are not available for the date set, please let me know immediately, and I will enter an order continuing it to another date upon which I can be available, and also which may conflict with their other engagements the least possible.

Due to prior commitments on my part, the date I have given is the earliest possible date that I can make myself available for the hearing.

With kindest personal regards, I am

Yours very truly,

Joseph J. Mullins
Joseph J. Mullins

JJM:rdc

Enclosure: 1

CC: Honorable Bert S. Nettles

CC: Honorable Kenneth Cooper

CC: Honorable Telfair J. Mashburn

CC: Honorable L. B. ...



Office of Circuit Judge

NINETEENTH JUDICIAL CIRCUIT

CLANTON, ALABAMA

JOSEPH J. MULLINS
CIRCUIT JUDGE

REBECCA DELENE CLECKLER
COURT REPORTER

June 30, 1965

Mrs. Alice J. Duck, Circuit Clerk
Baldwin County, Alabama
Bay Minette, Alabama, 36507

Dear Mrs. Duck:

In Re: Case Number 6572, Circuit Court of
Baldwin County, Alabama. -

I am returning to you herein petition, which you forwarded to me on June 28, 1965, together with an order setting the same for a hearing on the 12th. day of August, 1965, at 10:30 o'clock, A. M., as written on the last page of the motion.

It is necessary that you immediately prepare a complete and accurate copy of the motion, together with the order, and hand the same to the interested parties.

I am

Yours very truly,

Joseph J. Mullins
Joseph J. Mullins

JJM:rdc

Enclosure: 1

CC: Honorable Telfair J. Mashburn

CC: Honorable Kenneth Cooper

CC: Honorable J. B. Blackburn

CC: Mrs. Louise Dusenbury

STATE OF ALABAMA,)	
VS.)	IN THE CIRCUIT COURT OF
)	BALDWIN COUNTY, ALABAMA
J. B. BLACKBURN,)	AT LAW NO. 6572
Contemnor.)	

MOTION TO STRIKE

Now comes the defendant, by his attorney, and moves to strike the first sentence of Paragraph 6 of the petition heretofore filed in this cause, and as grounds of said motion says:

1. It is irrelevant.
2. It is irrelevant in that it is hearsay.

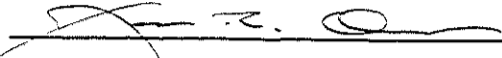
Now comes the defendant, by his attorney, and moves to strike Paragraph Numbered 7 of the petition heretofore filed in this cause, and as grounds of said motion says:

1. It is immaterial.

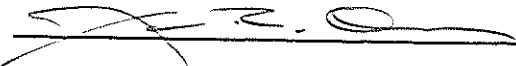
Now comes the defendant, by his attorney, and moves to strike the part or portion of the Prayer for Relief contained in the petition heretofore filed in this cause, which reads as follows: "and that he be ordered to forthwith return and deliver to the Honorable Alice J. Duck, Clerk of the Circuit Court of Baldwin County, Alabama, the aforesaid \$25,000.00, including interest thereon at the rate of 6% from May 18, 1965, and that J. B. Blackburn be further ordered to pay the costs of this proceeding, including a reasonable attorney's fee to the solicitors for the Informant as fixed by this Honorable Court," and as grounds of said motion says:

1. It is immaterial.
2. The relief prayed for cannot be granted in a contempt proceeding.
3. There is no valid, legal authority for charging the defendant with interest in a contempt proceeding.

4. There is no valid, legal authority for charging the defendant with an attorney's fee in a contempt proceeding.


Attorney for Defendant

I hereby certify that I delivered a copy of the above and foregoing motion to strike to the attorneys for the plaintiff in open court on the date on which this motion to strike was filed.


Attorney for Defendant

Filed 8-12-65
Wing J. Duck
Clerk

THE STATE OF ALABAMA
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 12th day of August, 1965 ~~Monday~~, 1965, in a certain cause in said Court wherein State of Alabama Plaintiff, and J.B. Blackburn Defendant, a judgement was rendered against said State of Alabama to reverse which Judgment, the said State of Alabama applied for and obtained from this office an APPEAL, returnable to the next Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the day of , 1965 next, and the necessary bond having been given by the said Kenneth Cooper, Attorney for Plaintiff with , ~~Sureties~~,

Now, You Are Hereby Commanded, without delay, to cite the said J.B. Blackburn ~~or~~ , attorney, to appear at the next Term of our said Supreme Court, to defend against the said Appeal, if he thinks proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 15th day of September, A. D., 1965.

Attest:

Service accepted Alice J. Duck, Clerk.
this 16th day
of September, 1965
J. B. Blackburn
Defendant

No. 6572

CIRCUIT COURT
Baldwin County, Alabama

State of Ala

Vs. } Citation in Appeal

J. B. Blackburn

Issued.....day of, 196.....,

STATE OF ALABAMA,
INFORMANT,
VS.
J. B. BLACKBURN,
DEFENDANT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
AT LAW
CASE NO. 6572.

O R D E R

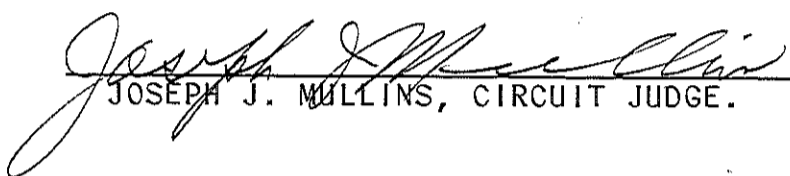
The Petition or Information herein having been submitted to this court, and the court having considered same, along with the responsive pleadings filed herein, and having heard arguments by counsel for the petitioner, and for the contemnor, in open court, on the 12th. day of August, 1965, and it being agreed, in open court, by all interested parties that the evidence in support of said petition, together with the answer, be heard, orally, by the Court, without prejudice to the right of the Defendant, to a ruling of the Court on his demurrers, and other motions, and pleadings filed in said cause on his behalf.

And after hearing said cause, the Court being of the opinion that it is without jurisdiction in this matter, and being of the opinion that said cause, at the time of the filing of said petition, was pending in the Supreme Court of the State of Alabama, on appeal, and that it would not be in keeping with the harmonious administration of justice for a Nisi Prais Court, to assume to act in a matter pending on appeal to the Appellate Court, in the absence of a direct statutory direction, and after a careful consideration of the pleadings, and the whole matter, the Court is of the opinion that the Defendant's demurrers to the petition should be sustained, and being advised by the Informant, the State of Alabama, by and through its Attorney, that Informant would not amend its petition any further;

It is, therefore, ORDERED, ADJUDGED, AND DECREED by the

Court that the demurrer to the petition, or information, be, and the same is hereby sustained, and the petition, or information, be, and the same is hereby dismissed, and the costs of these proceedings be, and the same are hereby taxed against the Petitioner, the State of Alabama, all for which let execution issue.

ORDERED, ADJUDGED, AND DECREED by the Court on this the 12th. day of August, A. D., 1965.


JOSEPH J. MULLINS, CIRCUIT JUDGE.

FILED

AUG 27 1965

AURE J. DUCK, CLERK
REGISTER