

JOHN V. DUCK
~~DUCK & LACEY~~
Attorneys at Law

P. O. DRAWER A-J - FAIRHOPE, ALABAMA

M E S S A G E

R E P L Y

TO Mrs. Alice J. Duck

Bay Minette, Ala.

DATE

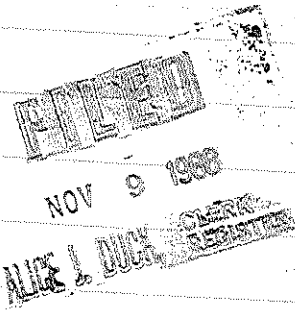
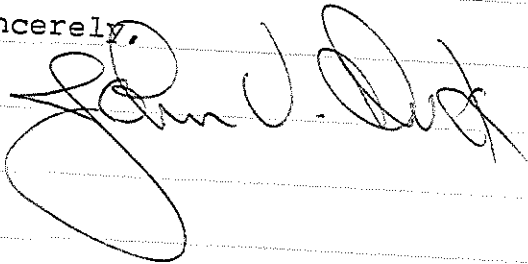
DATE November 7, 1966

Re: Baker vs. Cumbie. Civil No. 6774

Dear Mrs. Duck:

Enclosed please find Amended Bill of
Complaint to be filed in captioned case.

Sincerely,



SIGNED

SIGNED

AVAILABLE FROM GRAYARC CO., INC.
THIRD AVE., B'KLYN 32, N. Y.

THIS COPY FOR PERSON ADDRESSED

R. N. BAKER,)
Plaintiff,)
vs.)
W. A. CUMBIE,)
Defendant.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 6774

Comes now the Plaintiff in the above styled cause, and amends the Bill of Complaint filed herein to read as follows:

Plaintiff claims of the Defendant the sum of THREE THOUSAND (\$3,000.00) DOLLARS as damages, for that, on to-wit: the 1st day of November, 1963, the Defendant leased to the Plaintiff by written lease, a store building and lot in Daphne, Alabama, known as CUMBIE & RODGERS HARDWARE COMPANY on Highway No. U S. 98 in Daphne, Alabama, for the sum of ONE HUNDRED FIFTY (\$150.00) DOLLARS per month.

That in and by the terms of said lease, the Defendant, as Lessor, agreed to maintain the said building as to roof and exterior condition and to leave the fixtures in the said building.

Plaintiff avers that soon after he occupied the said building and while the lease was in full force and effect, the roof began to leak and that he gave due notice to the Defendant to repair said roof in accordance with the terms and conditions of the written lease, and that the Defendant failed and refused to repair said roof, and that due to the failure of the Defendant to repair the said roof, the goods and merchandise belonging to the Plaintiff was badly damaged by water, and that he was forced to sell the goods and merchandise at a greatly reduced price, all to his damage as aforesaid.


ATTORNEY FOR PLAINTIFF

Filed 11-9-66
A. J. French
Clerk

R. N. BAKER,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
vs.)	
W. A. CUMBIE,	)	LAW SIDE. NO. 6774
Defendant.)	

DEMURRER:

Now comes the Defendant in the above styled cause, and demurs to the complaint as last amended, and as grounds therefor, assigns the following, both separately and severally:

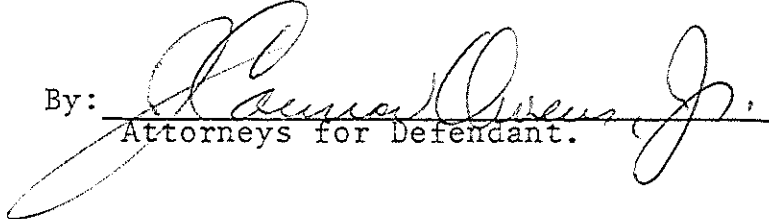
1. Said complaint does not state a cause of action.
2. Said complaint does not allege the date of damage.
3. Said complaint does not allege the particular goods and merchandise damaged.
4. Said complaint does not allege the date of notice given to repair the roof.
5. Said complaint does not allege whether notice was written or oral.
6. Said complaint does not allege that the Defendant received the alleged notice.
7. The allegation that Defendant "failed and refused to repair said roof in accordance with the terms of lease" is vague and contradictory.
8. For it does not appear that the terms "failed and refused" are synonymous.
9. There is a misjoinder of causes of action in that a failure to maintain a roof in a satisfactory state of repair would sound in tort and a refusal to do so would result in a breach of contract.
10. For it does not clearly appear from the complaint as amended whether the said action is based upon a negligent performance of said contract or upon a refusal to perform said contract.

11. For that it does not appear from said complaint as amended how the Plaintiff suffered water damage from the alleged failure of the Defendant to complete a fence.

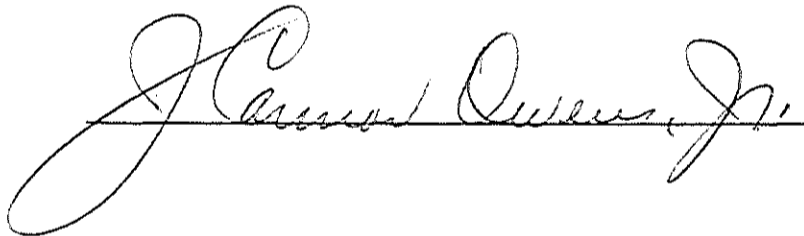
12. For aught it appears, there was no obligation specifically set forth in the said lease as to how the Defendant was to repair the roof.

OWENS AND PATTON

By:


Attorneys for Defendant.

I, the undersigned Attorney of Record for the Defendant in the foregoing cause, do hereby certify that I have caused a copy of the foregoing demurrer to be served on John V. Duck, the attorney of record for the Plaintiff in said cause, by placing the same in the United States Mail, properly addressed with postage prepaid, this 15th day of April, 1969.



FILED

APR 16 1969

ALICE J. DUCK

CLERK
REGISTER

R. N. BAKER,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
vs.	)	AT LAW, CASE NO. 6774
W. A. CUMBIE,)	
Defendant.)	

AMENDED BILL OF COMPLAINT

Comes now the Plaintiff in the above styled cause, and amends the last amended Bill of Complaint filed herein as follows:

Plaintiff claims of the Defendant the sum of THREE THOUSAND (\$3,000.00) DOLLARS as damages for that on, to-wit: the 1st day of November, 1963, the Defendant leased to the Plaintiff by written lease, a copy of said lease being attached to the original Bill of Complaint and incorporated herein as though fully set out, a store building and lot in Daphne, Alabama known as Cumbie & Rogers Hardware Company on Highway No. U. S. 98 in Daphne, Alabama for the sum of ONE HUNDRED FIFTY (\$150.00) DOLLARS per month.

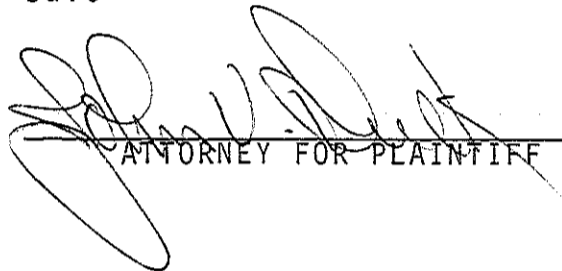
That in and by the terms of said lease, the Defendant, as Lessor, agreed to maintain the said building as to the roof and exterior condition and to leave the fixtures in said building.

Plaintiff avers that during the existence of the said lease and while the said lease was in full force and effect, the roof began to leak and that the Plaintiff gave due notice during the term of the lease to the Defendant to repair the said roof in accordance with the terms and conditions of the written lease, and that the Defendant refused to repair said roof and that due to the failure of the Defendant to repair the roof in accordance with the terms of the lease, the goods and merchandise belonging to the Plaintiff was damaged by water.

Plaintiff further alleges that in and by the terms of said lease, the Defendant agreed to complete a fence around the back of said property and complete a lumber shed that was under construction at the time the lease was executed by Plaintiff and the Defendant, and the Plaintiff avers that the Defendant breached

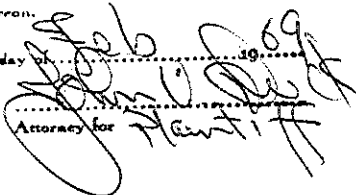
the lease in that the fence was not completed and that the lumber shed was not completed and that the Plaintiff suffered water damage due to the said breach.

Plaintiff further avers that the said lease was entered into on the 1st day of November, 1963 for a term of ONE (1) YEAR with an option to renew for one year or from year to year for a period not exceeding five years, and that notice was given to the Defendant while the lease was still in full force and effect and that the Defendant refused to repair said roof, complete the building according to the terms of the lease, all to the damage of the Plaintiff, hence this suit


ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 20th day of Feb 1969

Attorney for Plaintiff

FILED

FEB 20 1969

ALICE J. BAKER CLERK
REGISTER

R. N. BAKER,	)	IN THE CIRCUIT COURT OF
Plaintiff,)	
vs.	)	BALDWIN COUNTY, ALABAMA
W. A. CUMBIE,	)	LAW SIDE. NO. 6774
Defendant.)	

DEMURRER:

Now comes the Defendant in the above styled cause, and demurs to the complaint as last amended, and as grounds therefor, assigns the following, both separately and severally:

1. Said complaint does not state a cause of action.
2. Said complaint does not allege the date of damage.
3. Said complaint does not allege the particular goods and merchandise damaged.
4. Said complaint does not allege the date of notice given to repair the roof.
5. Said complaint does not allege whether notice was written or oral.
6. Said complaint does not allege that the Defendant received the alleged notice.
7. The allegation that Defendant "failed and refused to repair said roof in accordance with the terms of lease" is vague and contradictory.
8. For it does not appear that the terms "failed and refused" are synonymous.
9. There is a misjoinder of causes of action in that a failure to maintain a roof in a satisfactory state of repair would sound in tort and a refusal to do so would result in a breach of contract.
10. For it does not clearly appear from complaint whether the said action is based upon a negligent performance of said contract or upon a refusal to perform said contract.

11. For that it does not appear from said complaint how the Plaintiff suffered water damage from the alleged failure of the Defendant to complete a fence.

OWENS AND PATTON

By: *J. Cannon Owens, Jr.*
Attorneys for Defendant.

I, the undersigned Attorney of Record for the Defendant in the foregoing cause, do hereby certify that I have this day mailed a copy of the foregoing demurrer to John V. Duck, the attorney of record for the Plaintiff in the within styled cause, by United States Mail, properly addressed, with postage prepaid, on this 9 day of June, 1967.

J. Cannon Owens, Jr.

FILED
JUN 9 1967
ALICE J. DUK, CLERK
REGISTER

R. N. BAKER,	)	IN THE CIRCUIT COURT OF	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA	
vs.	)	AT LAW	NO. 6774
W. A. CUMBIE,)		
Defendant.)		

AMENDED BILL OF COMPLAINT

Comes now the Plaintiff in the above styled cause, and amends the last amended Bill of Complaint filed herein to read as follows:

Plaintiff claims of the Defendant the sum of THREE THOUSAND (\$3,000.00) DOLLARS as damages for that on, to-wit: the 1st day of November, 1963, the Defendant leased to the Plaintiff by a written lease, a copy of said lease is attached hereto and made a part hereof, as though fully incorporated herein, a store building and lot in Daphne, Alabama known as Cumbie & Rogers Hardware Company on Highway No. U.S. 98 in Daphne, Alabama for the sum of ONE HUNDRED FIFTY (\$150.00) DOLLARS per month.

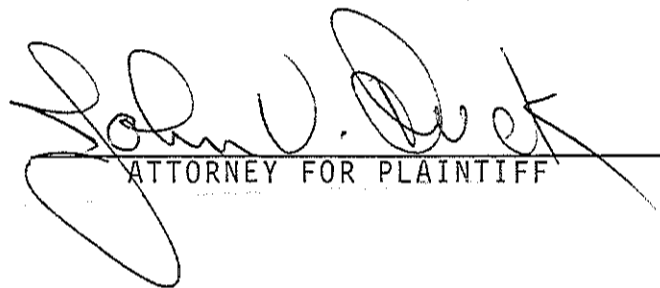
That in and by the terms of said lease, the Defendant, as Lessor, agreed to maintain the said building as to roof and exterior condition and to leave the fixtures in the said building.

Plaintiff avers that during the existence of the said lease and while the said lease was in full force and effect, the roof began to leak and that the Plaintiff gave due notice during the term of the lease to the Defendant to repair the said roof in accordance with the terms and conditions of the written lease, and that the Defendant failed and refused to repair said roof and that due to the failure of the Defendant to repair the roof in accordance with the terms of the lease, the goods and merchandise belonging to the Plaintiff was badly damaged by water.

Plaintiff further alleges that in and by the terms of said lease, the Defendant agreed to complete a fence around the back of the said property and complete a lumber shed that was under construction at the time the lease was entered into, and Plaintiff

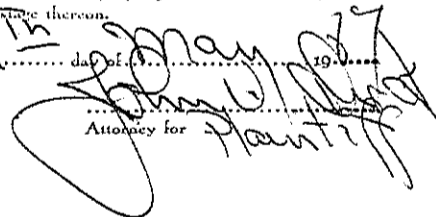
avers that the Defendant breached the conditions of the lease in that the fence was not completed and that the lumber shed was not completed and that the Plaintiff suffered water damage due to the said breach.

Plaintiff further avers that said lease was entered into on the 1st day of November, 1963 for a term of ONE (1) YEAR with an option to renew for one (1) year or from year to year for a period not exceeding five (5) years, and the due notice was given to the Defendant while the lease was still in full force and effect, and that the Defendant failed and refused to repair the said roof, complete the building according to the terms of the lease, all to the damage of the Plaintiff, hence this suit.


ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 17th day of May 1967

Attorney for Plaintiff

Filed 5-18-67
Deirdre French
clerk

STATE OF ALABAMA

BALDWIN COUNTY

d/b/a Cumble & Rodgers Hdwa. Co.

KNOW ALL MEN BY THESE PRESENTS, That I, W. A. Cumble/in consideration of the sum of Ten (\$10.00) Dollars and other valuable consideration paid to me by R. N. Baker and Hazel Baker, d/b/a R. N. Baker and Company do bargain, sell and deliver to the said parties d/b/a R. N. Baker and Company the stock of goods located in the building of Cumble & Rodgers Hardware Company in Daphne, Alabama, at the inventory price of said goods which inventory will be completed and identified by the signatures of the parties to this bill of sale within five days from this date, payment for said inventory value to be in cash at the time same is completed, together with the following personal items which are:

- 1 - metal safe
- 1 - code box
- 1 - file cabinet
- 1 - cash register
- 3 - gas space heaters
- 1 - set pipe dies
- 1 - pipe vise

As a part of said sale the following agreement is entered into by the parties to this instrument that the said W. A. Cumble does agree to let and the said R. N. Baker, et al, do agree to lease the premises occupied by the said hardware store for the sum of One Hundred Fifty (\$150.00) Dollars a month.

Said lessor agrees to maintain the said building as to roof and exterior condition and to leave the fixtures in the said building.

In addition thereto said lessor agrees to complete a fence around the corner of said property and to complete a lumber shed now under construction to the measurements of 60' x 18'.

The lessor and/or seller herein agrees not to go into the hardware business in the City of Daphne during the next two years so long as purchaser and lessee remain in possession of the property noted herein.

Seller and lessor agrees to insure the said building and should same be destroyed by fire, the rent will be suspended until the

said building has been replaced.

Said rental contract being for a period of one year from the date of execution and it is agreed that the lessee shall have the right or option of renewal for one year or not to exceed a total period of five years provided he shall exercise said option not less than thirty days before the expiration of this lease.

Witness our hands and seals this 1 day of Nov,

1963.

APPROVED:

CUMBIE & RODGERS HARDWARE CO.

Earl C. Rodgers
Earl C. Rodgers

BY: W. A. Cumbie
W. A. Cumbie

Norma C. Rodgers
Norma C. Rodgers

R. N. BAKER & COMPANY

BY: R. N. Baker

Executed in the presence of:

J. P. Thayer
J. P. Thayer
Baldwin Co

R. N. BAKER,)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
W. A. CUMBIE,)	
Defendant.	)	LAW SIDE. NO. 6774.

DEMURRER

Now comes the Defendant in the above styled cause, and demurs to the amended complaint heretofore filed against him, and as grounds therefor, assigns the following, both separately and severally:

1. Said complaint does not state a cause of action.
2. Said complaint does not allege the date the lease expired.
3. For aught that appears from the complaint, said lease had expired at time of damages alleged.
4. Said complaint does not set forth the lease upon which the action is based.
5. Said complaint does not allege the date of damage.
6. Said complaint does not allege the particular goods and merchandise damaged.
7. Said complaint does not allege the date of notice given to repair the roof.
8. Said complaint does not allege whether notice was written or oral.
9. Said complaint does not allege that the defendant received the alleged notice.
10. Said complaint does not allege that the Plaintiff was not in default under terms of said lease.
11. The allegation that Plaintiff was forced to sell his goods at a reduced price is not measure of damages.

FILED

NOV 15 1966

ALICE J. BUCK, CLERK
REGISTER

Remond C. Cumbie, Jr.
Attorney for Defendant.

VOL 60 PAGE 805

I, the undersigned Attorney of Record for the Defendant in the foregoing cause, do hereby certify that I have this day mailed a copy of the foregoing demurrer to John V. Duck, the attorney for the Plaintiff in the within styled cause, properly addressed, with postage prepaid, on this the 11th day of November, 1966.

James Owen, Jr.

FILED

NOV 15 1966

ALICE A. DUCK, CLERK
REGISTER

R. N. BAKER,	)	IN THE CIRCUIT COURT OF	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA	
vs.	)	AT LAW	NO. 6774
W. A. CUMBIE,)		
Defendant.)		

Comes now the Plaintiff in the above styled cause, and amends the Bill of Complaint filed herein to read as follows:

Plaintiff claims of the Defendant the sum of THREE THOUSAND (\$3,000.00) DOLLARS as damages, for that, on to-wit: the 1st day of November, 1963, the Defendant leased to the Plaintiff by written lease, a store building and lot in Daphne, Alabama, known as CUMBIE & RODGERS HARDWARE COMPANY on Highway No. U S. 98 in Daphne, Alabama, for the sum of ONE HUNDRED FIFTY (\$150.00) DOLLARS per month.

That in and by the terms of said lease, the Defendant, as Lessor, agreed to maintain the said building as to roof and exterior condition and to leave the fixtures in the said building.

Plaintiff avers that soon after he occupied the said building and while the lease was in full force and effect, the roof began to leak and that he gave due notice to the Defendant to repair said roof in accordance with the terms and conditions of the written lease, and that the Defendant failed and refused to repair said roof, and that due to the failure of the Defendant to repair the said roof, the goods and merchandise belonging to the Plaintiff was badly damaged by water, and that he was forced to sell the goods and merchandise at a greatly reduced price, all to his damage as aforesaid.

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This..... day of..... 1966

Attorney for

ATTORNEY FOR PLAINTIFF

FILED

NOV 9 1966

ALICE J. DUCK

R. N. BAKER,) IN THE CIRCUIT COURT OF
Plaintiff,)
vs.) BALDWIN COUNTY, ALABAMA
W. A. CUMBIE,) LAW SIDE. NO. 6774.
Defendant.)

DEMURRER:

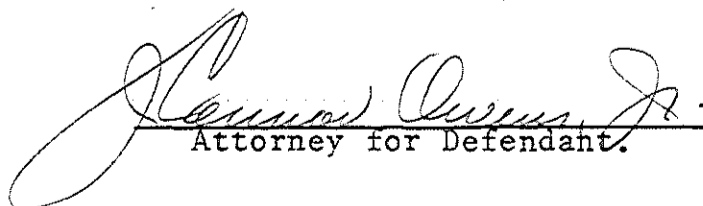
Now comes the Defendant in the above styled cause, and demurs to the complaint heretofore filed against him, and as grounds therefor, assigns the following, both separately and severally:

1. Said complaint does not state a cause of action.
2. Said complaint does not allege the date the lease expired.
3. For aught that appears from the complaint, said lease had expired at time of damages alleged.
4. Said complaint does not set forth the lease upon which the action is based.
5. Said complaint does not allege the date of damage.
6. Said complaint does not allege the particular goods and merchandise damaged.
7. Said complaint does not allege the date of notice given to repair the roof.
8. Said complaint does not allege whether notice was written or oral.
9. Said complaint does not allege that the defendant received the alleged notice.
10. Said complaint does not allege that the plaintiff was not in default under terms of said lease.
11. The allegation that plaintiff was forced to sell his goods at a reduced price is not measure of damages.

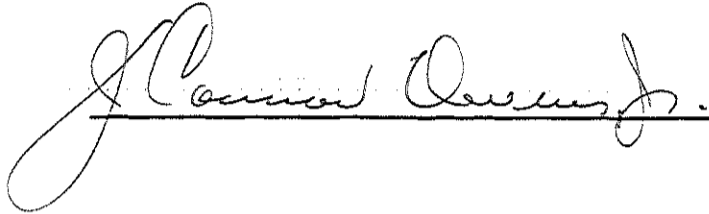
FILED

FEB 1 1966

ALICE I. DUCK, CLERK
REGISTER


Attorney for Defendant.

I, the undersigned, J. Connor Owens, Jr., do hereby certify that I have this day mailed a copy of the foregoing demurrer to John V. Duck, the attorney for the plaintiff in the within styled cause, properly addressed with postage prepaid, on this the 31st day of January, 1966.



FILED

FEB 1 1966

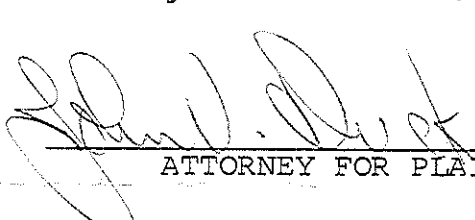
ALICE I. DUCK, CLERK
REGISTER

R. N. BAKER,) IN THE CIRCUIT COURT OF
Plaintiff,) BALDWIN COUNTY, ALABAMA
vs.) AT LAW
W. A. CUMBIE,)
Defendant.) *no. 6774*

Plaintiff claims of the Defendant the sum of THREE THOUSAND (\$3,000.00) DOLLARS as damages, for that on, to-wit: the 1st day of November, 1963, the Defendant leased to the Plaintiff, by written lease, a store building and lot in Daphne, Alabama, known as CUMBIE & RODGERS HARDWARE COMPANY on Highway No. U.S. 98 in Daphne, Alabama, for the sum of ONE HUNDRED FIFTY (\$150.00) DOLLARS per month.

That in and by the terms of said lease, the Defendant, as Lessor, agreed to maintain the said building as to roof and exterior condition and to leave the fixtures in the said building.

Plaintiff avers that soon after he occupied the said building and installed a hardware business therein, the roof began to leak and that he gave due notice to the Defendant to repair the said roof in accordance with the terms and agreement of the written lease, and that the Defendant failed and refused to repair the said roof, and that due to the failure of the Defendant to repair the said roof, the goods and merchandise belonging to the Plaintiff were badly damaged by water, and that he was forced to sell them at a greatly reduced price, all to his damage as aforesaid.


ATTORNEY FOR PLAINTIFF

Plaintiff respectfully demands a trial by Jury.


ATTORNEY FOR PLAINTIFF

FILED

DEC 4-65

AME L. DUCK, CLERK
REGISTER

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

STATE OF ALABAMA

Baldwin County

Circuit Court, Baldwin County

No.

.....TERM. 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon W. A. CUMBIE

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed
in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against.....

W. A. CUMBIE

Defendant.....

R. N. BAKER

by

Plaintiff.....

Witness my hand this.....

4

day of.....

Dec

1965

Clerk

Ef 1-24-65

801

No. 6774

Page.....

STATE OF ALABAMA
Baldwin County

CIRCUIT COURT

R. N. BAKER

Plaintiffs

vs.

W. A. CUMBIE

Defendants

SUMMONS AND COMPLAINT

Filed 19.....

DEC 4 1965

FILED
CLERK
REGISTER

Clerk

JOHN V. DUCK

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Spanish Fort, Alabama

RECEIVED
Received In Office

DEC 4 1965 19.....

TAYLOR WILKINS, Sheriff

SHERIFF

I have executed this summons

this 1-24 1966

by leaving a copy with

W. A. Cumbie

RECEIVED
SHERIFF

TAYLOR WILKINS

DEPUTY SHERIFF

ROY RANKELL

SHERIFF

Taylor Wilkins Sheriff

Roy Rankell Deputy Sheriff

Spanish Fort