

## COMPLAINT AND SUMMONS

REPORT TO GENERAL SESSIONS  
COURTROOM "B" FIRST FLOOR

The State of Alabama, }  
MOBILE COUNTY

TO THE SHERIFF OF MOBILE COUNTY—GREETINGS:

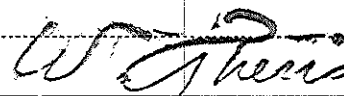
You are hereby commanded to summon..... CHARLES MASON

to be and appear before the Court of General Sessions of Mobile County at the Courthouse of Mobile  
County, on the 27 day of June, 19<sup>67</sup> at the hour of 9:00 A.M.,  
then and there to answer a complaint of..... THE AMERICAN NATIONAL BANK & TRUST  
COMPANY OF MOBILE, A National Banking Association,

of a debt or other demand not exceeding Seven Hundred Fifty Dollars.

Herein fail not and have you then and there this precept with your doings.

Witness my hand, this 22 day of May, 19<sup>67</sup>.



Clerk of the Court of General Sessions of Mobile County.

Cause of Action .....

#/  
**COMPLAINT AND SUMMONS**

Atty. for Plaintiff: Hamilton, Denniston,  
Butler & Riddick  
Atty. for Defendant:

**THE COURT OF GENERAL SESSIONS  
OF MOBILE COUNTY**

No. 56967

Ret.

June 27, 1967

THE AMERICAN NAT'L BANK & TRUST CO.,  
A Nat'l Banking Association,  
VS.

CHARLES MASON  
1104 Grove Avenue,  
Bay Minette, Alabama

Continued To

Executed by Service on

Defendant

This ..... day ....., 19.....

Sheriff of Mobile County

By .....  
Deputy Sheriff

#1  
THE AMERICAN NATIONAL BANK &  
TRUST COMPANY OF MOBILE, A  
National Banking Association,

Plaintiff,

-vs-

CHARLES MASON,

Defendant

Ø IN THE COURT OF  
Ø GENERAL SESSIONS OF  
Ø MOBILE COUNTY, ALABAMA.

Ø

Ø

Ø

CASE NO. \_\_\_\_\_

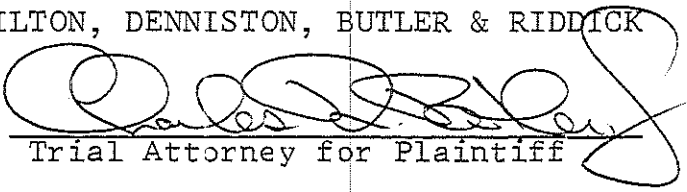
COUNT ONE

The Plaintiff claims of the Defendant the sum of, to-wit, FOUR HUNDRED ONE AND 36/100 DOLLARS (\$401.36), balance due by promissory note made by the Defendant on, to-wit, May 22, 1964, and payable in eighteen (18) successive monthly installments beginning on, to-wit, June 22, 1964. Plaintiff further alleges that in said note, and as a part of the consideration thereof, the Defendant agreed that in the event of default in the payment of any one of said installments when due, the holder of said note shall have the right to declare the entire indebtedness immediately due and payable, and the Plaintiff alleges that there has been a default in the payment of said installments, and the Plaintiff has elected to declare the entire indebtedness due and payable.

The Plaintiff further alleges that in said note and as a part of the consideration thereof, the Defendant waived all rights of exemption under the Constitution and Laws of the State of Alabama, and agreed to pay all costs of collection or securing or attempting to collect or secure said note, including a reasonable attorney's fee, which such attorney's fee the Plaintiff claims and alleges to be, to-wit, ONE HUNDRED THIRTY DOLLARS (\$130.00).

HAMILTON, DENNISTON, BUTLER & RIDDICK

BY:

  
Trial Attorney for Plaintiff

Defendant may be served at:

1104 Grove Avenue  
Bay Minette, Alabama.

# #2 COMPLAINT AND SUMMONS

REPORT TO GENERAL SESSIONS  
COURTROOM "B" FIRST FLOOR

The State of Alabama, }  
MOBILE COUNTY

TO THE SHERIFF OF MOBILE COUNTY—GREETINGS:

You are hereby commanded to summon CHARLES MASON

to be and appear before the Court of General Sessions of Mobile County at the Courthouse of Mobile County, on the 27 day of June, 1967 at the hour of 9:00 A.M., then and there to answer a complaint of THE AMERICAN NATIONAL BANK & TRUST COMPANY OF MOBILE, A National Banking Association,

of a debt or other demand not exceeding Seven Hundred Fifty Dollars.

Herein fail not and have you then and there this precept with your doings.

Witness my hand, this 22 day of May, 1967.

  
Clerk of the Court of General Sessions of Mobile County.

Cause of Action .....

**COMPLAINT AND SUMMONS**

Atty. for Plaintiff: Hamilton, Denniston,  
Atty. for Defendant: Butler & Riddick

**THE COURT OF GENERAL SESSIONS  
OF MOBILE COUNTY**

No. 56967

Ret.

June 27, 1967

**THE AMERICAN NAT'L BANK & TRUST CO.,  
A Nat'l Banking Association,  
VS.**

**CHARLES MASON  
1104 Grove Avenue,  
Bay Minette, Alabama**

Continued To

**RECEIVED**

**JUN 7 1967**

**TAYLOR WILKINS  
SHERIFF**

Sheriff's return  
Executed by Service on  
Charles Mason  
Defendant

This 12 day June, 1967  
Sheriff of Mobile County

By W. A. Zolbert  
Deputy Sheriff

D. V. Will

REC'D. SHERIFF DEPT.  
MOBILE COUNTY, ALA.

MAY 23 8 39 AM '67

BY

REC'D. SHERIFF DEPT.  
MOBILE COUNTY, ALA.

JUN 14 8 07 AM

BY

Sheriff claims 4 miles at

Ten Cents per mile Total \$ 40

TAYLOR WILKINS, Sheriff

BY W. A. Zolbert  
DEPUTY SHERIFF

#3-A  
C. LENOIR THOMPSON

Attorney-At-Law

BAY MINETTE, ALABAMA

Office Phone: 937-3921

36507

Residence Phone: 937-7487

August 10, 1967

Honorable Paul W. Brunson  
Judge of the Court of  
General Sessions of  
Mobile County, Alabama  
Mobile County Court House  
Mobile, Alabama

Re: The American National Bank &  
Trust Company v. Charles Mason  
General Sessions Case #56,967

Dear Judge Brunson:

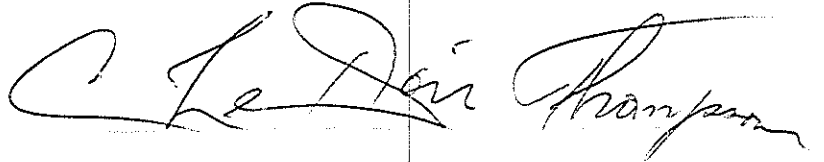
Attached is a short brief on the plea in abatement in the  
above styled cause.

Inasmuch as this boy has been in Baldwin County for years,  
I am respectfully sending you this brief.

Should you feel however, that the word "permanent" be  
inserted in an amended copy, the time of his residence under  
the plea be reduced from the time of executing the instrument  
of indebtedness to the time it became in default, that of  
course, can also be included by amendment and established by  
the evidence.

Thank you for your patience in considering the brief.

Yours very truly,



CLT/hm

cc: Honorable Charles R. Butler, Jr.  
Attorney at Law  
P. O. Box 1743  
Mobile, Alabama 36601

THE AMERICAN NATIONAL BANK & TRUST COMPANY OF MOBILE, a NATIONAL BANKING ASSOCIATION  
Plaintiff  
vs  
CHARLES MASON  
Defendant

IN THE COURT OF GENERAL SESSIONS OF MOBILE COUNTY, ALABAMA

CASE NO. 56967

Comes the defendant in the above-entitled cause, appearing specially and only for the purpose of filing this plea, and says that the said American National Bank & Trust Company of Mobile, a national banking association, plaintiff in this cause, ought not to have and maintain its said action for the defendant says separately and severally, as follows, to-wit:

FIRST

That the said defendant is a resident of Baldwin County, Alabama, and is not a resident of Mobile County, Alabama.

SECOND

That the said defendant resides in Bay Minette, Baldwin County, Alabama, and resided at this address when the alleged evidence of indebtedness was executed and has continued to reside at said address until the present date.

THIRD

That the said defendant has never resided in Mobile County, Alabama.

Wherefore, defendant says that the Court of General Sessions of Mobile County, Alabama, is without jurisdiction to try and determine this cause, and that this said action should be abated, and prays the judgment of this Honorable Court whether the plaintiff should be allowed to further maintain this suit.

Charles Mason  
Defendant

Clifford Simpson  
Attorney for defendant.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, C. Le Desir Thompson, a  
Notary Public, in and for said County, in said State, personally  
appeared Charles Mason, who, being known to me, and by me first  
duly sworn, deposes and says on oath:

That he is the defendant in the above entitled cause and  
has personal knowledge of the facts stated in the foregoing  
pleas and that the said statements of fact therein contained  
are true.

Charles Mason  
Charles Mason

Sworn to and subscribed before me, this 16 day of  
June, 1967.

C. Le Desir Thompson  
Notary Public, Baldwin County, Alabama.

I hereby certify that I have this \_\_\_\_\_ day of June, 1967,  
mailed a copy of the foregoing plea to the venue to Honorable  
Charles R. Butler, attorney for plaintiff, to his address in  
Mobile, Alabama,



#4

THE AMERICAN NATIONAL BANK & TRUST COMPANY OF MOBILE, a NATIONAL BANKING ASSOCIATION,	Ø	IN THE COURT OF
	Ø	GENERAL SESSIONS OF
Plaintiff,	Ø	MOBILE COUNTY, ALABAMA
-vs-	Ø	
CHARLES MASON,	Ø	
Defendant.	Ø	CASE NO. 56,967

DEMURRER

Comes now the Plaintiff in the above styled cause and demurs, separately and severally, to Defendant's Plea in Abatement heretofore filed herein and to each ground thereof on the following separate and several grounds, viz:

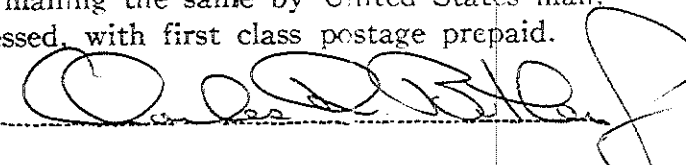
1. Said plea is legally insufficient.
2. Said plea fails to allege that when this suit was commenced Defendant had a permanent residence in Baldwin County.
3. For aught that appears therefrom, Defendant had a permanent residence in Mobile County at the time this suit was commenced.
4. For aught that appears therefrom, Defendant was a permanent resident of Mobile County at the time this suit was commenced.
5. For aught that appears therefrom, Defendant was a permanent resident of Mobile County at the time the cause of action made the basis of this suit arose.

HAMILTON, DENNISTON, BUTLER & RIDDICK

BY:   
Trial Attorney for Plaintiff

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 29<sup>th</sup> day of JUNE, 1967, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States mail, properly addressed, with first class postage prepaid.



JUN 29 1967

#5

VS

7-25-67 Pltf's Demurrers to Deft. Plea In Abatement filed 6-29-67  
8-8-67

9-5-67 Confess Plea in Abatement and request transfer to Baldwin County - Paul W. Brunson

Witness my hand this the 27th day of September, 1967.

544

#6

Hamilton, Denniston  
ATTORNEYS FOR PLTF:-  
Butler + Riddick

# COST BILL

THE STATE OF ALABAMA } The Court of General Sessions  
MOBILE COUNTY } of Mobile County

The American Nat. Bank & Trust Co. Plaintiff  
Charles Mason Defendant  
CASE NO. 56967

## COURT FEES

Summons and proceedings thereon to judgment .....	\$1.00
Docketing each cause .....	.10
Attachment Bond and Affidavit .....	1.50
Issuing each Attachment .....	.50
Summoning Garnishee and taking examination .....	.75
Subpoena for each witness .....	.15
Execution and taxing costs thereon .....	.50
Each appeal or certiorari, including bond and certificate of proceedings .....	1.00
Every necessary Certificate or Notice not otherwise provided for .....	.25
For issuing each Writ of Detinue .....	.50
For each Scire Facias, or notice in the nature thereof .....	.50
Every other Bond .....	.50
Administering an oath and certifying the same .....	.25
Issuing Notice of Appeal .....	.25
Law Library Fee .....	1.00
Judgment Ni Si against Garnishee .....	.50
Writ of Discovery .....	.50
Writ of Contempt .....	.50
Writ of Arrest .....	.50
Alias Summons .....	1.00
Witness Fee fifty cents for each day's attendance .....	

TOTAL \$

## SHERIFF'S FEES

Levying Attachment .....	6.00
Entering and returning same .....	.25
Summoning Garnishee and making return .....	1.50
Serving Summons and other mesne process, and returning the same .....	1.50
Summoning each Witness and returning Subpoena .....	.75
Collecting execution for costs only .....	1.50
Serving Scire Facias or other like notice .....	1.50
Serving any summons not herein provided for, and making return .....	1.50
Seizing personal property under Writ of Detinue .....	6.00
Taking care of such property, such just compensation as Court may fix .....	
Taking and approving bonds of every kind .....	2.00
When property is sold under execution or attachment .....	
Commission: .....	5%
When sale is stayed by restraining order .....	2 1/2%

Total \$  
GRAND TOTAL \$ 6.75

I respectfully call your attention to the above Court Cost Bill which if not paid by  
19....., it will be my unpleasant duty to issue execution on your property for the recovery of the same.  
G. V. ADAMS, Clerk.

# 7

# NOTICE of ~~APPEAL~~

STATE OF ALABAMA, }  
MOBILE COUNTY

The American National Bank & Trust Co.,  
A National Baking Association

Plaintiff

VS.

Charles Mason

Defendant

To Charles Mason

in said Cause: The American Nat. Bank & Trust Co. VS Charles Mason

You are hereby notified that The American National Bank & Trust Co.

the plaintiff in the above entitled cause has prayed and obtained a transfer to the Circuit Court of Baldwin County, Alabama ~~an appeal from the judgment therein rendered by~~  
~~from the~~ COURT OF GENERAL SESSIONS OF MOBILE COUNTY, and having complied with the requirements of the law in such cases made and provided, the same has been granted to the next term of the CIRCUIT COURT of Baldwin Co. Mobile County, to be held for said County, you are hereby notified accordingly.

Given under my hand this the 27 day of September 19 67

*J. D. Richardson*  
Clerk, Court of General Sessions of Mobile County, Civil Division

#7

Case No. 56967

**The American National Bank & Trust Co.**  
**A National Banking Association**

Plaintiff,

VS

Charles Mason

Defendant.

**TRANSFER**  
**NOTICE OF ~~ARREARS~~**

**Returnable To The Circuit Court OF**

**BALDWIN COUNTY**

Issued: September 27, 1967

Serve On:

HAMILTON, DENNISTON, BUTLER & RIDDICK

ATTORNEYS AND COUNSELLORS AT LAW  
AMERICAN NATIONAL BANK BUILDING

P. O. BOX 1743

MOBILE, ALABAMA

36601

THOMAS A. HAMILTON  
ROBERT P. DENNISTON  
CHARLES R. BUTLER  
HARRY H. RIDDICK  
OLIVER J. LATOUR, JR.

JAMES W. TARTLTON, III  
CHARLES R. BUTLER, JR.  
E. TED TAYLOR  
JANELLA J. WOOD

PETER HAMILTON (1838-1888)  
THOMAS A. HAMILTON (1844-1897)  
J. GAILLARD HAMILTON (1899-1956)

CABLE ADDRESS:  
HAMILTONS

TELEPHONE: 432-7517  
AREA CODE 205

August 9, 1967

Honorable Paul W. Brunson  
Judge of the Court of  
General Sessions of  
Mobile County, Alabama  
Mobile County Court House  
Mobile, Alabama

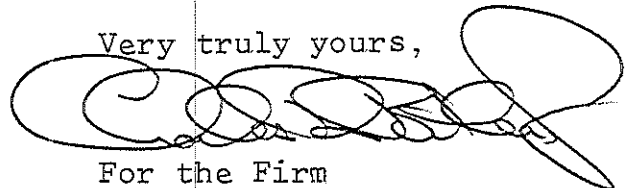
Re: The American National Bank &  
Trust Company v. Charles Mason  
General Sessions Case #56,967

Dear Judge Brunson:

Plaintiff has demurred to Defendant's  
Plea in Abatement of Venue, and the essence of Plaintiff's  
demurrer is that the Plea in Abatement is defective for  
failing to allege when this suit was commenced that Defendant  
had a permanent residence in Baldwin County. For aught that  
appears Defendant had a permanent residence in Mobile County  
when this suit was commenced. As authority for this propo-  
sition see Title 7, Section 54 and Cable-Shelby Burton Piano  
Co. 213 Ala. 565 (1925).

It is therefore respectfully submitted  
that Defendant's Plea in Abatement is defective and Plaintiff's  
demurrer to said plea should be sustained.

Very truly yours,



For the Firm

CRBjr:sm

cc: C. Lenoir Thompson, Esq.

# THE AMERICAN NATIONAL BANK & TRUST COMPANY OF MOBILE

No. 11

May 28

19 64

\$ 567 <sup>36</sup>

## RECORD OF PAYMENTS

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of THE AMERICAN NATIONAL BANK AND TRUST COMPANY OF MOBILE, at its Main Office in Mobile, Alabama,

the sum of \_\_\_\_\_ Dollars

payable in 18 installments of \$ 31.52 each except the last installment which is in the sum of

\$ \_\_\_\_\_ : the first installment shall be due on June 25 19 64

after date hereof, and one of such remaining installments shall be due on the \_\_\_\_\_ day of each successive month thereafter until the entire indebtedness evidenced hereby shall have been fully paid. Interest shall be payable on the respective installments at the rate of 8% per annum after maturity thereof.

In the event of default in the payment of any one or more of said monthly installments, when and as the same fall due, or in the event of death, insolvency of, general assignment by, judgment against, filing of petition in bankruptcy by or against, filing of application in any court for receiver for, or issuance of writ of garnishment or attachment against any party liable hereon or against any of the assets of any such party liable hereon, whether maker, endorser, surety or guarantor, or on the happening of any one or more of said events, the payee, its successors and assigns, shall have the right at its or their election, and without notice to the undersigned or any endorser hereof, to declare the entire indebtedness evidenced hereby immediately due and payable (less a sum equal to 8% per annum on the respective installments from the date of declaration to the respective dates of maturity) and to proceed in any lawful manner for the collection thereof. No delay in making such election shall be construed to waive the right to make the same. The holder hereof may note the fact of acceleration hereon with or without stating the specific ground for accelerating maturity, and whether or not noted hereon such election to accelerate shall be effective.

The parties to this instrument whether maker, endorser, surety, or guarantor, each for himself, hereby severally waive as to this debt, or any renewal hereof, all rights of exemption under the Constitution and Laws of Alabama, or of any State, as to personal property, and they each severally agree to pay all costs of collecting or securing or attempting to collect or secure this note, including a reasonable attorney's fee whether the same be collected or secured by or any attorney consulted with reference to suit or otherwise. And each maker, endorser, surety and guarantor of this note severally waives demand, presentment, protest, notice of protest, suit and all other requirements necessary to hold them, or any of them, and they severally agree that time of payment may be extended or renewal note taken or other indulgence granted without notice of or consent to such action, without release of liability as to any such party. The bank at which this note is payable is hereby authorized to apply, on or after maturity, to the payment of this debt, any funds or credit held by said bank, on deposit, in trust, or otherwise, for account of the maker, endorser, surety, guarantor, or any of them, but shall not be required to make such application unless it shall be so elect, nor be liable for any failure or omission in respect thereof.

It is understood and agreed that a late charge of five cents per dollar will be paid by the maker(s) on each installment more than fifteen days in arrears.

The undersigned have subscribed their names hereto without condition that any one else should sign or become bound hereon, and without any other condition whatever being made. The undersigned, if more than one, shall be jointly and severally liable hereunder.

ADDRESS:

715 Dodson Ave  
Bay Minette

SIGNATURE OF MAKER(S):

x Charles M. M...

DATE PAID	PAYMENTS	BALANCE
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		

September 27, 1967

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

RE: The American National Bank & Trust Co.

VS  
Charles Mason

Dear Mrs. Duck,

As provided by Act No. 76, Acts of Alabama, 1961, I am enclosing the following papers in the above styled case:

No. 1	Complaint and Summons
No. 2	Sheriff's Return on Complaint & Summons
No. 3 & 3A	Plea in Abatement
No. 4	Demurrers
No. 5	Certified Copy of Docket Sheet
No. 6	Cost Bill
No. 7	Notice of Transfer

Will you please acknowledge receipt of the above papers on the bottom of this letter and return to me in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation.

Yours very truly,

*J. D. Richardson*  
J. D. Richardson, Clerk

All papers in this cause received in The Circuit Court of Baldwin County, Alabama, this the 27 day of Sept, 1967.

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



# NOTICE of ~~APPEAL~~ ~~XXX~~

STATE OF ALABAMA, }  
MOBILE COUNTY }

The American National Bank & Trust Co.,  
National Baking Association

Plaintiff

VS.

Charles Mason

Defendant

Charles Mason

To

in said Cause: The American Nat. Bank & Trust Co. VS Charles Mason

You are hereby notified that The American National Bank & Trust Co.

the plaintiff in the above entitled cause has prayed and obtained a transfer to the Circuit Court of Baldwin County, Alabama, from the ~~judges of the~~ COURT OF GENERAL SESSIONS OF MOBILE COUNTY, and having complied with the requirements of the law in such cases made and provided, the same has been granted to the next term of the CIRCUIT COURT of <sup>Baldwin Co</sup> Mobile County, to be held for said County, you are hereby notified accordingly.

Given under my hand this the 27 day of September 19 67

J. D. Richardson  
Clerk, Court of General Sessions of Mobile County, Civil Division

Case No. 56967

*no. 7761*

American National Bank & Trust Co.  
National Banking Association

Plaintiff,

VS

Charles Mason

*1104 Drove Ave  
Bay Metette, Ala.*  
Defendant.

*Recd.  
Ed.*

TRANSFER  
NOTICE OF ~~ARREST~~

Returnable To The Circuit Court OF

BALDWIN COUNTY

Issued: September 27, 1967

Serve On:

REC'D SHERIFF DEPT.  
MOBILE COUNTY, ALA.

SEP 28 4 06 PM '67

BY

Received 29 day of Sept. 1967  
and on 10 day of Oct 1967  
I received a copy of the within Notice of Transfer  
by Charles Mason

By service on \_\_\_\_\_

TAYLOR WILKINS, Sheriff

By W. A. Talbert  
D. Vill

Sheriff claims 4 miles of

Ten Cents per mile Total \$ .40

TAYLOR WILKINS, Sheriff

BY W. A. Talbert  
DEPUTY SHERIFF

THE AMERICAN NATIONAL BANK &  
TRUST COMPANY OF MOBILE, a  
NATIONAL BANKING ASSOCIATION

Plaintiff

-VS-

CHARLES MASON

Defendant

IN THE COURT OF GENERAL SESSIONS OF  
MOBILE COUNTY, ALABAMA

CASE NO. 56,967

Attorney for Plaintiff:

Charles R. Butler, Jr.  
Attorney at Law  
American National Bank Building  
P. O. Box 1743  
Mobile, Alabama

Attorney for defendant:

C. LeNoir Thompson  
Attorney at Law  
P. O. Box 359  
Bay Minette, Alabama

STATEMENT OF THE CASE

Plaintiff filed the suit on a promissory note, alleged to be in default and sues for an attorney fee having defendant served in Baldwin County.

Defendant files a plea to the venue. Plaintiff demurs to the plea.

STATEMENT OF THE FACTS

The defendant is alleged to have executed a promissory note to the American National Bank on May 22, 1964, and to have defaulted on said note.

The suit is filed for the balance due on said note together with a reasonable attorney fee and the complaint carries the defendant's address at 1104 Grove Avenue, Bay Minette, Alabama, which the Court judicially knows is in Baldwin County.

Defendant filed a plea to the venue alleging himself to be a non-resident of Mobile County and a resident of Baldwin County and giving a better writ. Plaintiff demurs to the plea.

PROPOSITIONS OF LAW

1. Section 54. (10467) (6110) Venue of actions. -- All actions on contracts, except as may be otherwise provided, must be brought in the county in which the defendant or one of the defendants resides.....

Title 7, Section 54  
Code of Alabama

2. ~~SOMERVILLE, J.~~ (1) Every reasonable intendment, not contradicted by the face of the pleadings, will be made in favor of the jurisdiction of the circuit court. Hence a plea in abatement to the jurisdiction must allege facts which exclude every condition under which jurisdiction may be lawfully exercised by that court. Willard v. Zehr, 215 Ill. 148, 155, 74 N. E. 107; Moore v. Morris, 142 Ind. 354, 355, 41 N. E. 796; Cavin V. Hill, 83 Tex. 73, 18 S. W. 323. The authorities seem to go even further than this, and to require also that the true jurisdiction be affirmatively laid in the proper court.

Atlantic Coast Line R. Co. v.  
Ballard  
80 So. p. 436

3. The essential status to invite the application of the rule to which appellant appeals is that the pleading be equivocal, susceptible of two constructions; and when so framed, when so capable, the pleading must be construed against the pleader. Western Assu. Co. v. McLathery, 115 Ala. 213, 222, 22 South. 104, 67 Am. St. Rep. 26; 31 Cyc. pp. 78, 79; 4 Ency. Pl. & Pr. pp. 759-762. The pleading must be equivocal on its face.

The mere omission upon occasion of a necessary averment in order to constitute the pleading sufficient against demurrer does not afford the invitation to apply the rule of construction before stated, however fatal to the pleading, a well-directed demurrer may be because of omission of essential averment.

Zavelo v. J. S. Reeves & Co.  
54 So. 654

4. We are of opinion that this evidence showed that the defendant had a permanent residence in Winston County, and that he resided there within the meaning of the provision of the statute (Code, Section 6110) that "all actions of contract, except as may otherwise be provided, must be brought in the county in which the defendant, or one of the defendants, resides, if such defendant has within the state a permanent residence." The word "resides" may be used to signify where one temporarily abides. It may also be used to signify where he has a fixed and permanent home. It seems plain that it is in this latter sense that the word is used in the plea and in the statute. In both it is found in such a connection as to indicate the place at which the defendant has a permanent residence. The evidence showed that the defendant's legal residence or domicile was in Winston County, and that at the time of the institution of the suit he had not, within the meaning of his plea or of the statute, become a resident of another county. In other words, the plea was sustained by the evidence. Allgood v. Williams, 92 Ala. 551, 8 South. 722; Powers v. Bryant's Adm'r. 7 Port. 9, 15; 7 Words and Phrases, 6151, 6165. It follows that the judgment should have been in favor of the defendant on his plea in abatement.

Taylor v. Chattanooga Medicine Co.  
59 So. 707

5. We also call attention to Section 54, Title 7, Code of 1940, which in pertinent part reads as follows, "all other personal actions, if the defendant or one of the defendants has within the state a permanent residence, may be brought in the county of such residence, or in the county in which the act or omission complained of may have been done or may have occurred. \* \* \*"

Consideration of some Alabama decisions dealing with venue statutes which are predecessors of the present venue statutes may be helpful. In *Ashurst v. Gibson*, 57 Ala. 584, there was a bill filed to foreclose a mortgage of real and personal property against defendants residing in another county and district than that in which the bill was filed. This court said:

"\* \* \* The statute, prior to the act of March 17, 1873, required that bills against resident defendants should be filed in the district of the residence of a material defendant, unless the object was to enjoin proceedings or judgments in other courts, and then it must have been filed in the district in which such proceedings were pending or judgment rendered. Revised Code, Section 3326. The act of 1873, amendatory of this provision of the Code, authorized the filing of the bill, if real estate is the subject-matter of suit, in the county where the same or a material portion thereof, is situated. Pamp. Acts. 1872-3, p. 119; Code of 1876, Section 3760. The statute as amended, simply confers on a complainant the right of filing the bill in the county, in which the real estate or a material portion thereof, is situated. The jurisdiction of



the district of the residence of a material defendant remains. The locality of the real estate, and of residence, alike confer jurisdiction, and the complainant may, at his pleasure, elect the one or the other jurisdiction. The right of election is limited to suits, the subject-matter of which is real estate; and does not embrace other suits, having a different subject-matter. As to the personal property embraced in the mortgage, the court in which the bill is filed, was without jurisdiction, unless it attaches as an incident to the jurisdiction, by reason of the locality of a part of the land. The general policy of legislation is to subject the citizens to suits only in the county of his residence, whether the action is at law or in equity. As to suits at law, no freeholder, nor householder, can be sued out of the county of his permanent residence, as a general rule.

Associated Grocers of Alabama

v.

Graves Co.

130 So. 2d 17

(Underscored for emphasis by counsel)

## ARGUMENT

The Court will note the law cited by the plaintiff in support of the demurrers filed and it is submitted that the case cited is not in point and should be disregarded because the case involved a corporation defendant and turned on the following quotation from the decision which clearly removes it as a case providing precedent in the instant case:

"(4) The plea of defendant Cable-Shelby-Burton Piano Company states:

'that on, to-wit, the 16th day of January, 1924, it was and is now domiciled in Jefferson County, Alabama, and was not engaged in business in Walker County, Alabama'.

These averments are insufficient under the statute to constitute a plea in abatement by this defendant. Section 6112, Code 1907, as amended Gen. Acts 1919, p. 240; section 10471, Code 1923. This defendant is a corporation. Under this statute (section 6112, Code 1907, as amended Acts 1919, p. 240), this suit for this cause of action may be instituted and maintained against this defendant in any county in which it does business by agent or was doing business by agent at the time the cause of action arose. It fails to allege in this plea that it was not doing business in Walker County, by agent, when this suit was commenced in the circuit court of Walker county. This rendered this plea defective and insufficient and subject to the demurrer, and the trial court did not err in sustaining plaintiff's demurrer to it."

Cable-Shelby-Burton Piano Co.

v.

Turbeville  
105 So. 555

Argument

The attention of the Court is called to the defendant's plea to the venue in which the defendant alleges that he is a resident of Baldwin County, Alabama, and not a resident of Mobile County and that he has never resided in Mobile County; and further that he resided in Bay Minette, Baldwin County, Alabama, when the alleged evidence of indebtedness was executed and continued to reside at said address until the present date.

The action sued on shows affirmatively that the evidence of indebtedness was executed on May 22, 1964, and the plea shows that he resided in Bay Minette on that date and continuously thereafter.

The Court will note that in Proposition of Law No. 3, the Supreme Court held, "the mere omission upon occasion of a necessary averment in order to constitute the pleading sufficient against demurrer does not afford the invitation to apply the rule of construction stated above which would cause the Court to construe this omission against the pleader.

The Code section, Title 7, Section 54 does not require interpretation. We respectfully submit on the basis of Proposition of Law No. 4 that the residence specified by the defendant is sufficient to justify setting the plea down for hearing to determine whether or not the evidence taken in support of the plea will disclose whether the plea should be sustained or the plea overruled.

The Court will note from Proposition of Law No. 4 and I quote, "The word "resides" may be used to signify where one temporarily abides. It may also be used to signify where he has a fixed and permanent home. It seems plain that it is in

this latter sense that the word is used in the plea and in the statute."

The attention of the Court is called to Proposition of Law No. 5 which counsel underscored as to the more pertinent part.

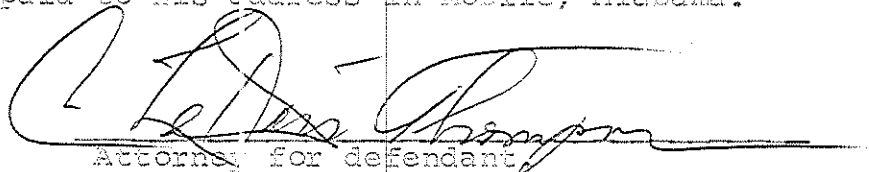
The Court's attention is respectfully pointed out that counsel has endeavored to express to the Court the law applicable which justifies overruling the demurrer and sustaining the plea unless the Court wishes to take testimony for the purpose of determining whether the evidence will support the plea.

The Court is again urged that the law so briefly cited by counsel for the plaintiff in support of the demurrer is misleading to the Court in that the decision applies as to the venue in corporations and the wording would have no application as to individual defendants.

Respectfully submitted,

  
Attorney for defendant.

I hereby certify that I have this 10 day of August, 1967, served a copy of the foregoing on Honorable Charles R. Butler, Jr., counsel for the plaintiff by depositing copy of same in the U. S. Mail, postage prepaid to his address in Mobile, Alabama.

  
Attorney for defendant.