

CHARLES E. SMITH and WINSTON)	
EARL SMITH, as co-executors	)	IN THE CIRCUIT COURT OF
under the Last Will and Testa-)	
ment of John Ed Smith, Deceased,)	
	)	BALDWIN COUNTY, ALABAMA
Plaintiffs,)	
vs.	)	LAW SIDE. NO. 8241.
CATHERINE CLEMENTS,)	
)	
Defendant.)	

AMENDED COMPLAINT

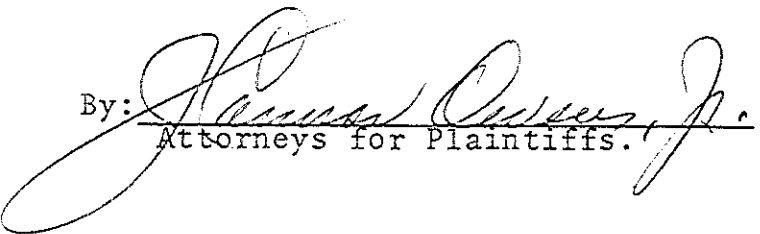
Now come the Plaintiffs in the above styled cause and amend the complaint heretofore filed in said cause, so that as amended, the same shall read as follows:

The Plaintiffs claim of the Defendant, the following personal property, to-wit:

One (1) 1966 Plymouth Station Wagon, Serial Number
RL45-D67-249106,

with the value of the hire or use thereof during the detention,
to-wit, June 29, 1968.

OWENS AND PATTON

By: 
Attorneys for Plaintiffs.

I, the undersigned, one of the attorneys of record for the Plaintiffs in the foregoing cause, do hereby certify that I have caused a copy of the foregoing amended complaint to be served on Kenneth Cooper, the attorney of record for the Defendant, by placing the same in the United States Mail, properly addressed, with postage prepaid, this 14th day of April, 1969.

FILED

APR 15 1969

ALICE J. DUCK CLERK
REGISTER

CHARLES E. SMITH and
WINSTON EARL SMITH, as
Co-Executors under the
Last Will and Testament
of John Ed Smith, Deceased,

Plaintiffs,

Vs.

CATHERINE CLEMENTS,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

LAW SIDE

CASE NO. 8241

ANSWER

Comes now the Defendant, Catherine Clements, and for answer
to the AMENDED COMPLAINT saith:

1. Not guilty.
2. General issue.

And now having answered the AMENDED COMPLAINT heretofore
filed in this case, answereth further by the following special
plea, to-wit:

Your Defendant makes known that the automobile claimed by
the Plaintiffs is the personal property of the Defendant, in
that it was given to Defendant by her late brother, John Ed
Smith, now deceased, prior to his death; and that since the
time of said gift the said automobile has been under the control
of your petitioner.

Catherine Clements
Kenneth Cooper
DEFENDANT

STATE OF ALABAMA
BALDWIN COUNTY


Before me, Kenneth Cooper, Notary Public, State At Large,
State of Alabama, personally appeared Catherine Clements, who
being known to me, and by me first being duly sworn, deposes and
says on oath that she is the Defendant in the above-styled cause,
and has personal knowledge of the facts stated in the foregoing
plea, and that the said statements of facts therein contained are
true and correct.

Catherine Clements
CATHERINE CLEMENTS

Subscribed and sworn to before me this 17 day of June
_____, 1969.

Kenneth Cooper
NOTARY PUBLIC,
STATE AT LARGE, STATE OF ALABAMA

I certify that I have mailed a copy of the foregoing ANSWER to Hon. J. Connor Owens, Jr., Attorney At Law, Bay Minette, Alabama, by depositing the same in United States Mail, postage prepaid, at Bay Minette, Alabama, on this 17 day of June, 1969.


ATTORNEY FOR DEFENDANT

FILED

JUN 18 1969

ALICE J. DUCK CLERK
REGISTER

220.87-46

We The jury find for the defendant
Winona Wrenn
Foreman

FILED

JUN 18 1969

ALICE J. DUCK
CLERK
REGISTER

CHARLES E. SMITH and WINSTON)	
EARL SMITH, as Co-executors	)	IN THE CIRCUIT COURT OF
under the Last Will and Testa-)	
ment of John Ed Smith, Deceased,)	
	)	BALDWIN COUNTY, ALABAMA
Plaintiffs,)	
vs.)	
	)	LAW SIDE. NO. 8241.
CATHERINE CLEMENTS, ET AL.,)	
)	
Defendants.)	

TO: MR. KENNETH COOPER
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

NOTICE OF DEPOSITION

Please take notice that at 9:00 o'clock A. M., on the 25th day of February, 1969, at the office of Mrs. Louise Dusenbury in the Courthouse of Baldwin County, Bay Minette, Alabama, the Plaintiffs will take the pre-trial deposition of Mrs. Catherine Clements, upon oral examination pursuant to Title 7, Section 474(1) et seq., Code of Alabama of 1940 as recompiled in 1958, before Mrs. Louise Dusenbury, an officer duly authorized to administer oaths in the County of Baldwin, State of Alabama, and duly authorized to take depositions and swear witnesses in said County and State. The oral examination will continue from day to day until completed and you are invited to attend if you so desire.

OWENS AND PATTON

By:

James Owens, Jr.
Attorneys for Plaintiffs.

I, the undersigned, one of the attorneys of record for the Plaintiffs in the foregoing cause, do hereby certify that I have caused a copy of the foregoing to be served on Kenneth Cooper, the attorney of record for the Defendant, Catherine Clements, by placing the same in the U. S. Mail, properly addressed, with postage prepaid, this 13th day of February, 1969.

FILED

FEB 14 1969

ALICE J. DUCK CLERK
REGISTER

STATE OF ALABAMA)
 (
BALDWIN COUNTY)

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

You are hereby commanded to summon CATHERINE CLEMENTS, JOHN DOE and RICHARD ROE, a person, firm or corporation, who claims, or otherwise in in control of the propertysued for and whose exact name or names to the Plaintiffs are otherwise unknown, but will be added by amendment when ascertained, to appear within thirty days from the service of this writ, in the Circuit Court to be held for said County at the place of holding the same, then and there to answer the complaint of CHARLES E. SMITH and WINSTON EARL SMITH, as co-executors under the Last Will and Testament of John Ed Smith, Deceased.

WITNESS my hand this 30th day of July, 1968.

Reed J. Lee
Clerk.

CHARLES E. SMITH and WINSTON)	
EARL SMITH, as Co-executors)	
under the Last Will and Testa-)	
ment of John Ed Smith, Deceased,	)	IN THE CIRCUIT COURT OF
)	
Plaintiffs,)	
	)	BALDWIN COUNTY, ALABAMA
vs.)	
)	
CATHERINE CLEMENTS, JOHN DOE	)	LAW SIDE.
and RICHARD ROE, a person, firm	)	<i>7/20/68</i>
or corporation, who claims or)	
otherwise is in control of the)	
property sued for and whose ex-)	
act names or name to the Plaintiffs)	
is otherwise unknown but will be)	
added by amendment when ascertain-)	
ed,)	
)	
Defendants.)	

The Plaintiffs claim of the Defendants the following personal property, to-wit:

One (1) 1966 Plymouth Station Wagon;
One (1) 7-1/2 H.P. Outboard Motor;
One (1) Electric Trolling Motor
Two (2) Power Mowers
One (1) 32 Automatic Pistol with holster;
One (1) 22 Automatic Rifle;
One (1) 32 Automatic Rifle;
Various Hand tools;
All personal effects of John Ed Smith, Deceased;

All personal property that belonged to Vennie Lou Smith, Deceased, consisting of certain china, crystal, linens, pictures, etc.

with the value of the hire or use thereof during the detention, to-wit, June 29, 1968.

OWENS AND PATTON

By: J. Cameron Owens, Jr.
Attorneys for Plaintiffs.

We the jury find for
the defendant.

Cornel M. Reed

Return
720,8241

Charles E. Smith
et al.

TO THE SHERIFF OF SAID COUNTY:

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

Lucy M. Reed
Clerk.

US

Catherine Clements
et al.

FILED

JUL 30 1968

WILLIAM J. JONES
CLERK
REGISTER

James M. Reed

Received 30 day of July 1968
and on 1 day of July 1968
served a copy of the within
on Catherine Clements
Y service on

TAYLOR WILKINS Sheriff
By W. C. Zeileck
D. S.
C. M. Reed et al.

By attached one
1966 Plymouth station
wagon
1 one Power windows
either Property
not found

W. C. Zeileck

CHARLES E. SMITH and WINSTON
EARL SMITH, as co-executors
under the Last Will and Testa-
ment of John Ed Smith, Deceased,

Plaintiffs.

vs.

CATHERINE CLEMENTS, JOHN DOE and
RICHARD ROE, a person, firm or
corporation, who claims or other-
wise is in control of the proper-
ty sued for and whose exact names
or name to the Plaintiffs is other-
wise unknown but will be added by
amendment when ascertained,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE. CASE NO. 8241

MOTION TO STRIKE:

Now come the Plaintiffs in the above styled cause and moves
the Court to strike the following Defendants as parties to said
cause:

"JOHN DOE and RICHARD ROE, a person, firm or corporation, who
claims or otherwise is in control of the property sued for and
whose exact names or name to the Plaintiffs is otherwise unknown
but will be added by amendment when ascertained".

OWENS AND PATTON

By: *J. Edward Owens, Jr.*
Attorneys for Plaintiffs.

I, the undersigned, one of the attorneys of record for the
Plaintiffs in the foregoing cause, do hereby certify that I have
caused a copy of the foregoing motion to be served on Kenneth
Cooper, the attorney of record for the Defendant, Catherine
Clements, by placing the same in the United States Mail, properly
addressed, with postage prepaid, this 14th day of April, 1969.

J. Edward Owens, Jr.

FILED

APR 15 1969

ALICE J. DUCK CLERK
REGISTER

BAILEE'S RECEIPT

BAY MINETTE, ALA., August 1 19 68

The State of Alabama, }
Baldwin County

Charles H. Smith et al
vs.
Catherine Clements, et al
Civil #8241

I hereby agree to take, care for and preserve as the Bailee of..... Taylor Wilkins

Sheriff of Baldwin County, Alabama, the following described personal property this day levied upon under Writ of Fieri Facias, Attachment, Detinue, issued out of the Circuit Justice Civil Court of Baldwin County, Alabama, in the above styled case, to-wit:

One 1966 Plymouth Station Wagon
One 7--1/2 H.P. Outboard Motor ✓
One Electric Trolling Motor ✓
Two Power Mowers
One 32 Automatic Pistol with holster ✓
One 22 Automatic Rifle ✓
One 32 Automatic Rifle ✓
Various Hand tools ✓
All personal effects of John Ed Smith, Deceased
All personal property that belonged to Vennie Lou Smith, Deceased, consisting of certain china, crystal, linens, pictures, etc.

I further agree to deliver the above described personal property to the said..... Taylor Wilkins

Taylor Wilkins....., Sheriff of Baldwin County, Alabama, upon his written order of demand.

Catherine Clements
....., Bailee.

Witness : W. G. Zeller

DIV. NO. _____

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 8241

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 CHARLES E. SMITH and WINSTON EARL SMITH, as Co-Executors under the last will and Testament of JOHN ED SMITH, deceased, was plaintiff, and CATHERINE CLEMENTS

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

And I further certify that the said Plaintiffs did on the 24th day of July, 1969, 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 J. Connor Owens, Jr. 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 24th day of July, 1969

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

(Code 1940, Title 7, Sec. 767)

Charles E. Smith et al
vs. Catherine Clements et al

ND 8641

JURY LIST - JUNE 15, 1970

1. Anderson, Raymond, Farmer, Summerdale
2. Baggett, M. H., Civil Service, Stapleton
3. Barbarow, Cecil E., Retired, Bay Minette
4. ~~Beasley, Wilson C., Store Owner, Bay Minette~~
5. Broughton, Joe N., Merchant, Cross Roads
6. Eloyd, Bung, Merchant, Fairhope
7. Clopton, Eddie, Janitor, Bay Minette
8. Cox, Y. A., Jr., Stockton
9. Fell, Neal J., Farmer, Lillian
10. Flowers, Elvin A., Farmer, Robertsdale
11. Hardy, Frank, Janitor, Bay Minette
12. Head, Mary Lou, Stapleton
13. Johnson, Ralph R., Minister, Bay Minette
14. Lazzari, Joe, Jr., Farmer, Belforest
15. Leatherwood, L. J., Teacher, Bay Minette
16. Leatherwood, Ruby, Teacher, Bay Minette
17. Lynd, Joe E., Plumber, Bay Minette
18. Manning, Wesley W., Civil Service, Foley
19. Means, Vera, Teacher, Bay Minette
20. Morse, Wilson W., Civil Service, Foley
21. Palmer, James J., Farmer, Robertsdale
22. Roberts, Howard, Civil Service, Stapleton
23. Rockwell, Oliver M., Fairhope
24. Ruple, Leroy, Engineer, Bay Minette
25. Valrie, William, Daphne Pottery, Daphne
26. Whidbee, Ellis, Shipyard Worker, Perdido
27. Whidbee, Melzie, Shipyard Worker, Perdido
28. Wright, Justice D., Forester, Bay Minette
29. Brabner, Martin J., Jr., South Central Bell, Bay Minette
30. Calloway, John, Fisherman, Gulf Shores
31. Chestang, Jas. Paper Mill, Bay Minette
32. Day, Bernice, Stockton
33. Fackler, Paul, W., Mechanic, Loxley
34. Friel, W.E., Retired, Bay Minette
35. Gilbert, Annie Ree, Housewife, Bay Minette
36. Hudson, Ethel, Maid, Bay Minette
37. Myrick, T.C., Fairhope
38. Smith, Columbus, Retired, Stockton
39. Therrell, E. L. Doris, Housewife, Daphne
40. Trawick, Emma D., Stockton
41. Ward, John, International Paper, Spanish Fort
42. Whitten, Lewis S. Electrician, Fairhope
43. Woolf, Burnette K., Housewife, Stockton
44. Wrenn, Walter P., Retired, Bay Minette
45. Wrenn, Wynona Housewife, Bay Minette
46. Stacey, William B., Operator Union Carbide, Bay Minette

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P. XXXXX XXXXX
D. XXXXX XXXXX

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THE STATE OF ALABAMA, } CIRCUIT COURT.
COUNTY. } AUGUST Term, 1968

KNOW ALL MEN BY THESE PRESENTS:

That we, Catherine M. Clements, Sidney K. Smith and R.C. (Dick) Smith
are held and firmly bound unto Charles E. Smith and Winston Earl Smith

in the sum of Two Thousand (\$2,000.00) Dollars,

for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators,
jointly and severally, firmly by these presents.

Sealed with our seals and dated, this 3 rd. day of August 1968

The Condition of the above Obligation is Such, That whereas the said Charles E. Smith
and Winston Earl Smith did on the 30th day
of July 1968, sue out of the Circuit

Court of said County a writ in detinue, directed to any Sheriff of the State of Alabama, and commanding
him to take into his possession the following property, sued for in action of detinue, to wit:

One 1966 Plymouth Station Wagon and One Power Mower

which said writ was placed in the hands of Taylor Wilkins
Sheriff of the County of Baldwin, on the 31st day
of July 1968, and executed by him on the 1st day of
August 1968, by taking into his possession One 1966 Plymouth
Station Wagon and One Power Mower

and whereas the above bound Catherine M. Clements

has within five days from the execution of said writ entered into this bond as required by law, and here-
by obtain possession of said property.

No. 82411

The State of Alabama,

COUNTY,

COURT.

SHERIFF'S OFFICE

vs.

Plaintiff.

VOL

61

Defendant.

DETINUE REPLEVIN BOND, DEFENDANT.

PAGE 328

Filed _____ 19__

Sheriff.

Sheriff's Execution Docket, page _____

Taken and approved.

Sheriff.

(L.S.)

(L.S.)

(L.S.)

(L.S.)

Witness our hands and seals, this 3rd day of August 19 68

above bond.

severally certify that they have property free from all encumbrance to the full amount of the

now, or may hereafter have, under the Constitution and Laws of Alabama, and they hereby

And we, and each of us, hereby waive all rights of claim of exemption we or either of us have

force and effect.

tion as may accrue from said detention, then this obligation to be void, otherwise to remain in full

be cast in said suit, deliver the property replevied, and also pay all the costs and such damages for de-

thirty days after the determination of said suit, if the said Catherine M Clements

Now, if the said Catherine M Clements shall well and truly, within

Earl Smith
VS
Catherine Clements

JURY LIST - JUNE 16, 1969

- ~~1. Bell, Bill, Brookley Field, Rosinton~~
- ~~2. Bettis, Carrie, Bay Minette~~
- ~~3. Boone, DeWitt, Ideal Cement Cost Controller, Spanish Fort~~
- ~~4. Brantley, Billy S., Salesman, Fairhope~~
- ~~5. Bryars, Mrs. Evelyn N. Bookkeeper, Stockton~~
6. Dean, Mildred S., Blacksher
7. Durant, Percy N., Merchant, Bay Minette
8. Dean, Thomas, Rabun
9. Ferguson, LeElla, Tensaw
- ~~10. Grimes, Aubrey Ulay, Stapleton~~
11. Head, Carrol M., Stapleton
- ~~12. James, Lonnie, Salesman, Bay Minette~~
- ~~13. Maradik, Paul Rudolph, Fairhope~~
- ~~14. MacNichols, Neal, Fairhope~~
15. Moorer, Uhle S., Laborer, Bay Minette
- ~~16. Presley, William Neal, Carpenter, Bay Minette~~
- ~~17. Quinley, Wilburn, Farmer, Bay Minette~~
18. Rider, Daniel T., Stapleton
- ~~19. Rost, Charles H., Fairhope~~
- ~~20. Northcutt, Cordie Merrill, Jr., Chemstrand, Robertsdale~~
- ~~21. Smith, Sidney K., Retired, Bay Minette~~
- ~~22. Still, Harry, Merchant, Bay Minette~~
23. Yarbrough, Clarence, Mechanic, Bay Minette
- ~~24. [unclear], [unclear], [unclear]~~
25. Mathews, Charles H., Furniture, Bay Minette
26. Quinley, David, Farmer, Bay Minette
27. Eddins, Rachel, Hurricane
28. Hall, Ausphern, Laborer, Stockton
29. Baggett, Cornelia, Bay Minette
- ~~30. Wiggin, James, Merchant, Stapleton~~
31. Jones, Willie, Farmer, Bay Minette
32. Overstreet, Earl A., Newport, Bay Minette
33. Blunt, Hugh Paul, Brookley Field, Bay Minette
34. Lamberth, Nathan C., Rabun
35. Boone, Opal, Blacksher
36. Boone, Kathryn, Blacksher
37. Moore, Marie O., Fairhope
38. Ruffles, Charles A. Fairhope

38	38
<u>5</u>	<u>7</u>
33	36
<u>12</u>	<u>12</u>
21	24

P XXXXX X ~~XXXX~~ + E

D XXXXX X ~~XXXX~~ + E

IN THE CIRCUIT COURT OF

Baldwin County

STATE OF ALABAMA

Baldwin County

Before me, the undersigned, a Notary Public in and for said County,

personally appeared J. CONNOR OWENS, JR. who being by me

duly sworn deposes and says that the property sued for in the complaint of CHARLES E. SMITH,

ET AL., vs. CATHERINE CLEMENTS, ET AL.,

filed in said Court, to-wit: 1966 Plymouth Station Wagon; 7-1/2 H.P. Outboard Motor; Electric Trolling Motor; 2-Power Mowers; 32 Automatic Pistol w/holster; 22 Automatic Rifle; 32 Automatic Rifle; various hand tools; all personal effects of John Ed. Smith, deceased; all personal property belonging to Vennie Lou Smith, deceased, consisting of certain china, crystal, linens, pictures, etc.

belongs to Charles E. Smith, et al., the plaintiff.

Sworn to and subscribed before me this 30th

day of July 19 68

Notary Public

IN THE CIRCUIT COURT OF

Baldwin County

STATE OF ALABAMA

Baldwin County

KNOW ALL MEN BY THESE PRESENTS, That we, Charles E. Smith

Principal, and
Sureties, are held and

firmly bound unto Catherine Clements, et al., his heirs, executors and admin-

istrators in the sum of Fifty and no/100----- Dollars,

for the payment of which we jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals and dated the 30th day of July 19 68

The condition of the above obligation is such that whereas, the above bound

Charles E. Smith, et al., has on the 30th day of

July 19 68 sued out a writ of detinue in the Circuit Court of Baldwin

County, returnable to the said Circuit Court against the said Catherine

Clements, et al., for the recovery of the following

described property, to-wit:

the property hereinabove described

Now, if the said Charles E. Smith, et al., shall fail in said suit

and shall pay to the said Catherine Clements, et al., the defendant in said suit, all such costs and damages as he may sustain by the wrongful complaint, then this obligation to

be void, otherwise, to remain in full force and effect.

Taken and approved this 30th day of July 19 68

(SEAL) (SEAL) (SEAL)

Clerk, Circuit Court

No. 82-ct 1

THE STATE OF ALABAMA

COUNTY

CIRCUIT COURT

Plaintiff

vs.

Defendant

Detinue -- Affidavit and Bond

Filed this 30 day of July 1966

Clerk

Dee J. Jacobs

CHARLES E. SMITH and WINSTON
EARL SMITH, as Co-executors
under the Last Will and Testa-
ment of John Ed Smith, Deceased,

Plaintiffs,

vs.

CATHERINE CLEMENTS, JOHN DOE
AND RICHARD DOE, a person, firm
or corporation, who claims or
otherwise is in control of the
property sued for and whose ex-
act names or name to the Plaintiffs
is otherwise unknown but will be
added by amendment when ascertain-
ed,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

LAW SIDE.

NO. 8241

Comes now the defendent Catherine Clements, a/k/a Catherine
M. Clements, and demurs to the complaint heretofore filed in this
cause, and to each and every count thereof, and assigns as grounds
therefor the following, to each and every count, to-wit

1. The Complaint fails to allege the date the value of the
hire or use of the items named therein began.
2. The Complaint fails to sufficiently describe the items
of personal property claimed.
3. The complaint fails to sufficiently describe the "various
Hand Tools" alleged to be personal property.
4. The Complaint fails to sufficiently describe the items
included of personal property described as "All personal effects
of John Ed Smith, Deceased."
5. The Complaint fails to sufficiently describe the items
included of personal property described as "All personal property
that belonged to Vennie Lou Smith, Deceased, consisting of certain
china, crystal, linens, pictures, etc."

FILED

AUG 5 1968

ALICE J. DICK

CLERK
REGISTER

Defendant Catherine Clements, a/k/a Catherine M. Clements, demands
a trial by jury in this cause.

Kenneth Cooper
ATTORNEY FOR DEFENDANT
CATHERINE CLEMENTS

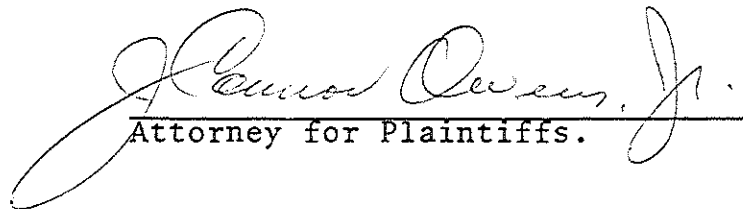
Kenneth Cooper
ATTORNEY FOR DEFENDANT
CATHERINE CLEMENTS

CHARLES E. SMITH and WINSTON)	
EARL SMITH, as Co-executors	)	IN THE CIRCUIT COURT OF
under the Last Will and)	
Testament of JOHN ED SMITH,	)	BALDWIN COUNTY, ALABAMA
Deceased,)	
Plaintiffs,)	
vs.	)	LAW SIDE. NO. 8241.
CATHERINE CLEMENTS,)	
Defendant.)	

NOTICE OF APPEAL

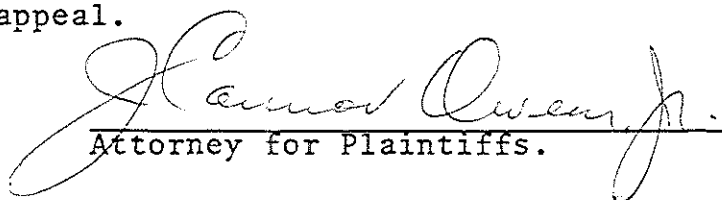
Now come the Plaintiffs, CHARLES E. SMITH and WINSTON EARL SMITH, as Co-executors under the Last Will and Testament of John Ed Smith, Deceased, and appeal to the Supreme Court of Alabama, from the judgment of this Court rendered in this cause on June 19, 1969.

DATED at Bay Minette, Alabama, this 23rd day of July, 1969.


Attorney for Plaintiffs.

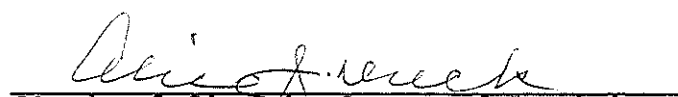
SECURITY FOR COSTS:

I, the undersigned, do hereby acknowledge myself security for the costs of said appeal.


Attorney for Plaintiffs.

Taken and approved on this the

24 day of July, 1969.


Clerk of Circuit Court of Baldwin
County, Alabama.

FILED

JUL 24 1969

ALICE J. DUCK CLERK
REGISTER

attached to D.S.

J. CONNOR OWENS, JR.
ATTORNEY AT LAW
DAHLBERG BUILDING
P. O. BOX 729
BAY MINETTE, ALABAMA 36507

July 30, 1970

TELEPHONE NO. 937-4661

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

Subject: Charles E. Smith and Earl Smith, as co-executors
of the Estate of John E. Smith, Deceased, vs.
Catherine Clements
Law Case No. 8241

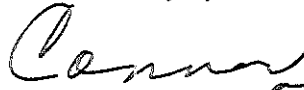
Dear Mrs. Duck:

This is with reference to the above styled matter recently tried by the Circuit Court and the amount of costs due of \$29.75.

Mr. Charles E. Smith, one of the executors, is out of the States at this time and will not return until sometime in September. Therefore, I would appreciate it if you would not issue execution for the collection of the court costs due in this matter. These costs must be paid from funds of the Estate and a check covering these costs cannot be issued until his return.

Thank you for your consideration in this matter.

Sincerely yours,



J. Connor Owens, Jr.

JCO:am

Handwritten calculations:
21.50
24.70
51.20

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS OF ALABAMA

October Term, 1969-70

1 Div. No. 14

To the Clerk ~~XXXXX~~ of the Circuit Court of 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

Charles E. Smith and Winston Earl Smith, as co-Appellant,
executors under the last will and testament of John E. Smith,
deceased and

Catherine Clements, Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before the Court of Civil Appeals, by appeal taken, pursuant to law, on behalf of said appellant;

Now, it is hereby certified:

That the Court of Civil Appeals on the 11th day of February, 1970, reversed and annulled the judgment of the Court below, and remanded the cause to said Court for further proceedings therein.

That the Court further ordered the appellee Catherine Clements

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

Witness, J. O. Sentell, Clerk of the Court of Civil Appeals of Alabama, at the Judicial Department

Building, this the 11th day of February, 1970.

J. O. Sentell
Clerk of the Court of Civil Appeals of Alabama.

THE COURT OF CIVIL APPEALS
OF ALABAMA

October Term, 1969-70

1 Div., No. 14

Charles E. Smith and

Winston Earl Smith, as co-
executors under the Appellant,
last will and testament of
John E. Smith, ^{vs.} deceased

Catherine Clements

Appellee.

From Baldwin Circuit Court.

No. 8241
CERTIFICATE OF
REVERSAL

The State of Alabama,
Baldwin County, } Filed

this 17 day of July, 1970

George J. Duck

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 19th

June, 196

~~Monday~~

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in a cer-

tain cause in said Court wherein CHARLES E. SMITH and WINSTON EARL SMITH, as Co-executors under the last Will and Testament of JOHN ED SMITH, Deceased Plaintiff, and CATHERINE CLEMENTS

Defendant, a judgement was rendered against said CHARLES E. SMITH and WINSTON EARL SMITH, as Co-executors under the last Will and ~~Plaintiffs~~ Testament of JOHN ED SMITH, Deceased

to reverse which Judgment the said Plaintiffs

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 19 next, and the necessary bond

having been given by the said J. Connor Owens, Jr.,

with

supplies.

Now, You Are Hereby Commanded, without delay, to cite the said Catherine Clements

or Kenneth Cooper

, attorney, to appear at the next Term of our

said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 24th

day of July, A. D., 1969.

Attest:

Alice J. Duck Clerk.

*Service Accepted this
 30th day of July, 1969
 Kenneth Cooper
 Attorney For Defendant*

8241

CIRCUIT COURT
Baldwin County, Alabama

CHARLES E. SMITH & WINSTON EARL SMITH,
As Co-executors under the Last Will and
Testament of JOHN ED SMITH, Deceased

Vs. } Citation in Appeal

CATHERINE CLEMENTS

Issued 24th day of July, 1969

serve: Kenneth Cooper

FEB 11 1970

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS
OCTOBER TERM, 1969-70

1 Div. 14

Charles E. Smith and Winston Earl Smith
as Co-executors Under the Last Will and
Testament of John E. Smith, Deceased

v.

Catherine Clements

Appeal From Baldwin Circuit Court

WRIGHT, JUDGE

This matter arose out of a suit in detinue filed by the co-executors of the estate of John D. Smith against appellee, Catherine Clements. Prior, or during trial by jury, all items of property originally included in the suit were struck by plaintiffs, except a 1966 Plymouth Station Wagon. Defendant executed a replevin bond and kept possession of the vehicle. Demurrer was filed. No ruling appears of record. An instrument headed "ANSWER" was filed by defendant saying,

"1. Not guilty.

"2. General issue."

This was in fact, plea rather than answer. The instrument further averred that the automobile claimed by plaintiffs

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was the property of defendant, having been given to her by her brother, John Ed Smith, prior to his death, and that it had been in her control since the time of the gift.

With issue joined, trial began. In brief, the evidence of plaintiffs, appellants here, was that the testator, John Ed Smith, purchased the automobile some three months prior to his death. A check for the purchase signed by the deceased was introduced, together with a bill of sale made out to deceased. Properly certified copies of the will and letters testamentary issued to plaintiffs were accepted in evidence. Testimony as to alternate value of the vehicle was presented, and plaintiffs rested.

Appellee's evidence was to the effect that shortly after purchase of the station wagon, the deceased became unable to drive, and that defendant was given possession of the car. She used it to drive the deceased and run errands for him. That shortly before his death, deceased gave her the second set of keys, and made the statement that he would not be able to drive any more, and that he wanted defendant to have the station wagon if anything happened to him. There were several witnesses who testified to having heard this, and similar statements by the deceased, John Ed Smith.

Mr. Smith died on June 29, 1969. Plaintiffs are his sons, and defendant his sister.

When plaintiffs and defendant rested the following occurred:

"THE COURT: Give me the general charge and we will find (sic) this up.

"MR. OWENS: May it please the Court - - -

"THE COURT: I am going to give the general charge to the jury; a man has a right to give property away and if you bring people in here that says that he gave it to her, there is

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nothing anybody could do but give it to her - -

"MR. OWENS: I take exception to the Court's statement.

"ORAL CHARGE OF THE COURT:

"LADIES AND GENTLEMEN OF THE JURY: I am giving you what is known as the General Charge which states: If you believe the evidence in this case your verdict must be for the defendant in this case, or that you can not find for the Plaintiff. The law is very clear; if it were real estate it is different, but personal property you can make a gift by handing it to a person; you don't have to sign a bill of sale. She could not testify that her brother gave her something with him dead, because the law says that a person interested in a transaction can't testify to a transaction with a dead man, but when she brought witnesses that said this man gave her the car, if you believe them there is nothing you can do but find for her.

"MR. OWEN: I would like to except to that part of the charge - -

"THE COURT: Except to the whole thing.

"MR. OWENS: I don't know whether that is good or not.

"THE COURT: I think that when I give this you are protected if I am wrong; there is no need of wasting time when I know what I am going to do.

"THE COURT: Give me the Complaint - I will read this charge to you: The Court charges you gentlemen of the jury if you believe the evidence in this case you must find for the defendant, Catherine Clements. When the Clerk gets back with the complaint, if you agree with me, let one of your number write on the back of the Complaint: We the jury find for the defendant, and sign it as foreman."

The record indicates that after the above action and remarks by the court, a verdict was returned for defendant. The case was not argued by counsel, nor were any further

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instructions, written or oral, given by the court.

This appeal is brought upon 3 assignments of error.

1. That the trial court erred in giving the affirmative charge with hypothesis in favor of defendant. 2. That the trial court erred in refusing to give the written requested affirmative charge with hypothesis in favor of plaintiff for the property sued for. 3. That the trial court erred in refusing to give the written requested affirmative charge with hypothesis in favor of plaintiffs for the automobile and its alternate value.

We shall first dispose of Assignments of Error 2 and 3.

It is clear from the record that plaintiffs in this case were not entitled to have given the affirmative charge. "Where the affirmative charge is refused and party requesting the charge appeals, the entire evidence is viewed in light most favorable to the opposite party and where reasonable inferences may be drawn adverse to party who requested the charge, trial court's action in refusing the charge must be affirmed." Adams v. Owen Ins. Co. of America, 88 So. 2d 331, 264 Ala. 572; Ala. Power Co. v. Scholz, 283 Ala. 232, 215 So. 2d 447; Lankford v. Mong, 283 Ala. 24, 214 So. 2d 301.

There is no question that the evidence in this case raised inferences from which a jury could reasonably find that the deceased had made a gift, ^{or causa mortis,} inter vivos, of the station wagon to defendant. There was no error in the trial court's refusal to give the written requested charges at the request of appellant as indicated by Assignments of Error 2 and 3.

We come now to Assignment of Error 1. In this instance, the appellant complains of the trial court's doing for the defendant what it refused to do for the plaintiffs, that is,

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give the affirmative charge with hypothesis.

Under the pleadings, as heretofore recited, the issue before the court was as to the superior title or right to possession of the property sued for, as between the parties. The plaintiffs introduced evidence as to their right to bring the action as legal representatives of the estate of the deceased. There was evidence of legal title into the deceased. Evidence of a gift inter vivos, or gift causa mortis, was presented by defendant.

It is the rule in this state that on reviewing the propriety of the affirmative charge for the defendant, we review the tendencies of the evidence in the light most favorable to plaintiff, and allow such reasonable inferences as the jury was free to draw. Cornelison v. Logan, 253 Ala. 618, 46 So. 2d 215, 21 ALR 2d 206; Wojciechowski v. L & N R Co., 277 Ala. 528, 173 So. 2d 72; Scott v. Southern Coach & Body Co., 280 Ala. 670, 197 So. 2d 775.

In this case, the evidence of the plaintiffs was more than sufficient to carry the burden of establishing a prima facie right to recover under the complaint. Under her plea and answer, the burden was upon the defendant to prove to the reasonable satisfaction of the jury that the deceased had given her the automobile.

In reviewing the evidence offered by the appellee in proof of her claim, its tendencies, and inferences arising therefrom, in a light most favorable to the plaintiffs, we cannot say it fails to furnish a gleam, glimmer, spark or scintilla in favor of plaintiffs.

In civil cases, the question must go to the jury, if the evidence, or reasonable inferences arising therefrom, furnish a mere gleam, glimmer, spark, the least particle, the smallest trace, a scintilla, in support of the theory. Brandwein v. Elliston, 268 Ala. 598, 109 So. 2d 687; Scott v. Southern

Coach & Body Co., supra.

It is our opinion this case should have been submitted to the jury for its consideration, after proper instructions as to the law of detinue and elements necessary to gifts inter vivos and gifts causa mortis.

For this reason, we are compelled to rule that the trial court erred in giving the affirmative charge with hypothesis in favor of defendant.

Though having disposed of the appeal upon assigned error, we feel it necessary to comment further upon the action of the trial court at the conclusion of the evidence. We have previously set out that part to which we now refer.

In open court, in the presence of the jury, before argument, and without any request from defendant, oral or written, the judge directed that he be given the "General Charge and we will find (sic) this up." (Underline ours.) He further stated categorically that he was going to give the "general charge to the jury;" and added the following comment, "a man has a right to give property away and if you bring people in here that says that he gave it to her, there is nothing anybody could do but give it to her."

Although exception was taken to this statement by appellant's counsel, it was not assigned as error on the appeal. We could not, therefore, consider it as basis for reversal.

Such comment upon the evidence before the jury was highly improper, and most prejudicial to plaintiffs. It is clear that the court was expressing an opinion as to the weight and effect of the evidence of defendant. It was so clear, that the subsequent affirmative charge with hypothesis given by the court, was in effect the "general charge" which the court first stated was going to be given. There is a

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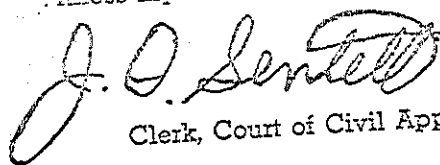
very distinct difference in the "general charge" and the affirmative charge with hypothesis. For the distinction we cite the outstanding article in Jones' Alabama Jury Instructions, Vol. 1, p. 181, written by Judge J. Russell McElroy.

To make even clearer the misunderstanding or misapplication of the affirmative charge with hypothesis in this instance, the record discloses that no further instructions were given, and no closing arguments by counsel were allowed. The jury was peremptorily given direction to enter a verdict if they agreed with the judge. We consider these actions by the trial judge highly irregular, and not conducive to proper respect for the impartiality of a trial judge.

REVERSED AND REMANDED.

I, J. O. Sontell, Clerk of the Court of Civil Appeals 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 11 day of Feb 19 70



Clerk, Court of Civil Appeals of Alabama