

REQUESTED CHARGE NUMBER 1

The Court charges the Jury that where the purpose of a prosecution for issuance of a check without funds was to collect a debt, the prosecution constituted an abuse of criminal process.

Hotel Supply Company vs. Reid, 80 Southern 137, 16 Ala. App. 563.

Refused
Walter J. Judge

REQUESTED CHARGE NUMBER 2

The Court charges the Jury that where the purpose of a prosecution for issuance of a check without funds was to collect a debt, the prosecution constituted an abuse of criminal process.

Accordingly, if you are reasonably satisfied from a preponderance of the evidence that the purpose of the Plaintiff in initiating the criminal proceedings against the Defendant was to collect a debt, then you must return a verdict for the Defendant on the theory of abuse of process.

Refused
By J. W. Miller Jr.

REQUESTED CHARGE NUMBER 3

The Court charges the Jury that "abuse of process" implies the malicious and wrongful use of process regularly and rightfully issued; the malicious perversion of a regularly issued process to accomplish a purpose whereby a result not lawfully or properly obtainable under it is secured.

Refused
By William J. Judge

REQUESTED CHARGE NUMBER 4

With respect to the Defendant's charge of malicious prosecution, the burden is on the Defendant to prove by a preponderance of the evidence each of the following:

- (1) A judicial proceeding;
- (2) That it was instigated by the Plaintiff;
- (3) Want of probable cause;
- (4) Malice;
- (5) Termination of judicial proceedings favorably to the Defendant; and
- (6) Damages.

A handwritten signature in black ink, appearing to read "R. J. [unclear]". The signature is written in a cursive style with a large, sweeping initial letter.

REQUESTED CHARGE NUMBER 5

The Court charges the Jury that advice of counsel is not a defense to an action for malicious prosecution unless all the facts bearing on the guilt of the accused, known or ascertainable by reasonable inquiry, are fully and fairly disclosed to the attorney whose advice is sought.

*Robert
H. J. Walters Jr.
Judge*

REQUESTED CHARGE NUMBER 6

The Court charges the Jury that damages allowable for malicious prosecution are both compensatory and punitive.

Refused
By J. W. [unclear]
Judge

REQUESTED CHARGE NUMBER 7

The Court charges the Jury that punitive damages may be recovered for a malicious prosecution.

Richard
H. J. Winters, Jr.
Judge

REQUESTED CHARGE NUMBER 8

The Court charges the Jury that in an action for malicious prosecution, "malicious" implies the intentional doing of a wrongful act to the injury of another.

Refused
G. Walters, J.
Judge

REQUESTED CHARGE NUMBER 9

The Court charges the Jury that with respect to the Defendant's cause of action based on malicious prosecution, the Defendant has the burden of showing by a preponderance of the evidence each of the following:

(1) That the Plaintiff has prosecuted him, or caused him to be prosecuted, and that the prosecution is ended;

(2) That the prosecution on the part of the Plaintiff was both malicious and without probable cause, in consequence of which the Defendant was damaged.

Refused
W. J. [unclear]
Judge

REQUESTED CHARGE NUMBER 10

The Court charges the Jury that the term "secured party" means a lender, seller or other person in whose favor there is a security interest.

The term "security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation.

Ala. Code, Title 7A, Section 9-105(i)

Ala. Code, Title 7A, Section 1-201(37)

Revised
W. J. Williams, Jr.
Judge

REQUESTED CHARGE NUMBER 11

The Court charges the Jury that the law of the State of Alabama provides as follows:

"A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement or the like, and who receives a transfer of collateral from the secured party, or is subrogated to his rights, has thereafter the rights and duties of the secured party."

Ala. Code, Title 7A, Section 9-504(B)(5)

Accordingly, the Plaintiff, Charles Phillips, had all of the duties and responsibilities of a secured party after the date of the assignment of the promissory notes to him by the Bank.

Refused
G. J. Williams, Jr.
Judge

REQUESTED CHARGE NUMBER 12

The Court charges the Jury that, under Alabama law, upon default, a secured party has the right to sell, lease, or otherwise dispose of any or all collateral.

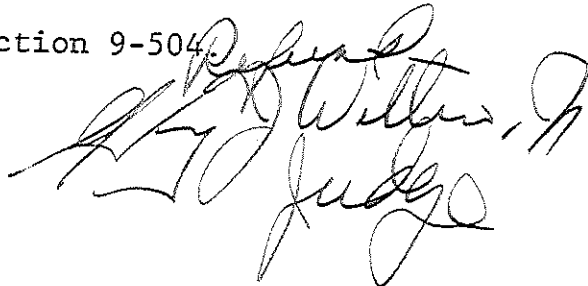
The sale of collateral may be made by a public or private sale.

Alabama law requires that notice be given to the debtor unless the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market. In all other cases some type of notice must be given.

In the case of a public sale, the secured party must give reasonable notice of the time and place of any such public sale.

In the case of a private sale or other disposition, the secured party must give reasonable advance notice of a specified time after which such private sale or intended disposition is to be made.

Ala. Code, Title 7A, Section 9-504


Judge

PLAINTIFF'S REQUESTED CHARGE NO. _____

THE COURT CHARGES YOU, LADIES AND GENTLEMEN OF THE JURY, THE COUNTER-CLAIM FILED BY THE DEFENDANT IN THIS CASE CLAIMS OF THE PLAINTIFF, CHARLES PHILLIPS, THE SUM OF \$ 100,000.00, AS DAMAGES FOR MALICIOUSLY, AND WITHOUT PROBABLE CAUSE THEREFOR, CAUSING THE DEFENDANT TO BE ARRESTED UNDER A WARRANT ISSUED BY Hon. Harry D'Olive, A Probate Judge, ^{subsequent to} ~~ON~~ THE 14th DAY OF October, 1976, ON A CHARGE OF FALSE PRETENSE, WHICH CHARGE, BEFORE THE COMMENCEMENT OF THIS ACTION, THE DEFENDANT AVERS HAS BEEN JUDICIALLY INVESTIGATED, AND SAID PROSECUTION ENDED, AND THE DEFENDANT DISCHARGED.

GIVEN _____, REFUSED


Circuit Judge

PLAINTIFF'S REQUESTED CHARGE NO. _____

THE COURT CHARGES YOU, LADIES AND GENTLEMEN OF THE JURY, THAT THE PLAINTIFF HAS FILED IN DEFENSE OF THIS ACTION AN ANSWER DENYING ALL OF THE MATERIAL AVERMENTS OF THE DEFENDANT'S COUNTER-CLAIM. THIS ANSWER PUTS IN ISSUE ALL OF THE MATERIAL AVERMENTS OF THE DEFENDANT'S COUNTER-CLAIM. THE BURDEN OF PROOF IS UPON THE DEFENDANT TO REASONABLY SATISFY YOU BY THE EVIDENCE OF THE TRUTHFULNESS OF ALL OF THE MATERIAL AVERMENTS OF THE COMPLAINT.

GIVEN _____, REFUSED


Circuit Judge

24.03
24.04

PLAINTIFF'S REQUESTED CHARGE NO. _____

THE COURT CHARGES YOU, LADIES AND GENTLEMEN OF THE JURY, THAT THE MATERIAL AVERMENTS OF THE DEFENDANT'S COUNTER-CLAIM WHICH ARE IN ISSUE ARE:

- (1) A CRIMINAL JUDICIAL PROCEEDING INSTITUTED BY THE PLAINTIFF AGAINST THE DEFENDANT.
- (2) THAT THE JUDICIAL PROCEEDINGS WERE INSTIGATED BY THE PLAINTIFF MALICIOUSLY.
- (3) THAT THE JUDICIAL PROCEEDINGS WERE INSTIGATED WITHOUT PROBABLE CAUSE.
- (4) THAT THE JUDICIAL PROCEEDINGS HAVE BEEN TERMINATED IN FAVOR OF THE DEFENDANT.
- (5) THAT THE DEFENDANT SUFFERED DAMAGE AS A PROXIMATE CONSEQUENCE OF THE PROSECUTION THEREOF.


GIVEN _____, REFUSED


Circuit Judge

PLAINTIFF'S REQUESTED CHARGE NO. _____

THE COURT CHARGES YOU, LADIES AND GENTLEMEN OF THE JURY, THAT IF YOU ARE REASONABLY SATISFIED FROM THE EVIDENCE THAT THE PLAINTIFF INSTITUTED A CRIMINAL PROSECUTION OF THE DEFENDANT AND THAT SUCH PROSECUTION HAS ENDED AND THE DEFENDANT DISCHARGED, YOU MUST THEN DETERMINE FROM THE EVIDENCE WHETHER OR NOT SUCH PROSECUTION BY THE PLAINTIFF WAS DONE MALICIOUSLY AND WITHOUT PROBABLE CAUSE.


GIVEN _____, REFUSED


Circuit Judge

PLAINTIFF'S REQUESTED CHARGE NO. _____

THE COURT CHARGES YOU, LADIES AND GENTLEMEN OF THE JURY, THAT A PARTY HAS PROBABLE CAUSE FOR INSTITUTION OF A CRIMINAL PROSECUTION WHEN HE HAS REASONABLE GROUNDS, SUPPORTED BY CIRCUMSTANCES SUFFICIENTLY STRONG IN THEMSELVES, TO WARRANT A CAUTIOUS MAN TO BELIEVE THAT THE PERSON ACCUSED IS GUILTY OF THE OFFENSE CHARGED.

GIVEN _____, REFUSED

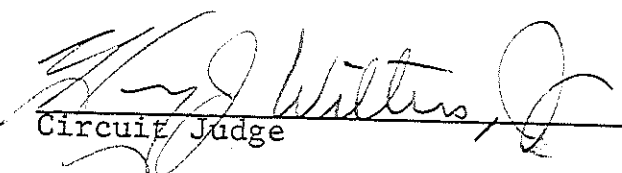

Circuit Judge

PLAINTIFF'S REQUESTED CHARGE NO. _____

THE COURT CHARGES YOU, LADIES AND GENTLEMEN OF THE JURY, THAT AS A DEFENSE IN THIS CASE THE PLAINTIFF SAYS THAT HE HAD PROBABLY CAUSE FOR INSTITUTING THE PROCEEDINGS COMPLAINED OF, IN THAT, BEFORE INSTITUTING THE PROCEEDINGS HE SOUGHT AND OBTAINED THE ADVICE OF A COMPETENT LAWYER WHO WAS FULLY INFORMED OF ALL THE MATERIAL FACTS OF THE CASE AND UPON THE ADVICE OF THE LAWYER HE INSTITUTED THE PROCEEDINGS COMPLAINED OF IN THE MALICIOUS PROSECUTION COUNT OF DEFENDANT'S COUNTER-CLAIM.

IF YOU ARE REASONABLY SATISFIED FROM THE EVIDENCE THAT BEFORE COMMENCING THE PROCEEDINGS COMPLAINED OF IN THE MALICIOUS PROSECUTION COUNT OF DEFENDANT'S COUNTER-CLAIM THE PLAINTIFF OBTAINED THE ADVICE OF A COMPETENT LAWYER AND DID FULLY INFORM THIS LAWYER OF ALL THE MATERIAL FACTS OF THE CASE AND IN RELIANCE ON THE ADVICE OF THIS LAWYER, INSTITUTED THE LEGAL ACTION COMPLAINED OF IN THE MALICIOUS PROSECUTION COUNT OF DEFENDANT'S COUNTER-CLAIM, THEN YOU MUST FIND THAT THE PLAINTIFF HAD PROBABLE CAUSE FOR INSTITUTING THE ACTION COMPLAINED OF, AND YOUR VERDICT MUST BE FOR THE PLAINTIFF.

GIVEN _____, REFUSED

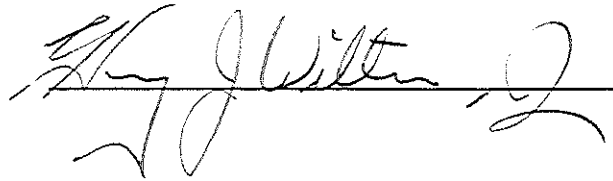

Circuit Judge

PLAINTIFF'S JURY CHARGE NO. _____

LADIES AND GENTLEMEN OF THE JURY, YOU ARE INSTRUCTED THAT YOU
CANNOT FIND FOR THE DEFENDANT, DWIGHT S. BOWMAN, ON HIS COUNTER-
CLAIM FOR MALICIOUS PROSECUTION.

Union Indemnity Co. v. Webster, 218 Ala. 468, 118 So. 794.

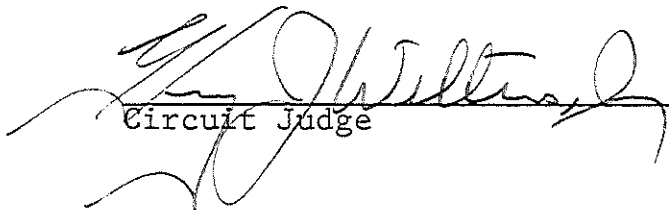
GIVEN _____, REFUSED ←

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PLAINTIFF'S JURY CHARGE NO. _____

LADIES AND GENTLEMEN OF THE JURY, YOU ARE INSTRUCTED THAT THE INDICTMENT BY THE GRAND JURY OF BALDWIN COUNTY, ALABAMA, OF THE DEFENDANT, DWIGHT S. BOWMAN, IS PRIMA FACIA EVIDENCE OF PROBABLE CAUSE ON THE PART OF THE PLAINTIFF, CHARLES PHILLIPS, TO HAVE THE DEFENDANT PROSECUTED.

GIVEN _____, REFUSED



Circuit Judge