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ATTORNEYS AT LAW
1011-15 MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA

September 5, 1931

Hon. F. W. Hare,
Judge of Circuit Court,
Monroeville, Alabama.

Re: State Bank of Elberta vs. Arbo

Dear Judge:

We have already furnished you a brief in the above case and beg to file the following as our answer to the brief as prepared by Mr. Rickarby, representing the complainant.

In the outset, we will again admit that where a mortgage is executed on property a lien does not die when the indebtedness is barred for any reason. We thought that we had made this clear in our original brief, but Mr. Rickarby doesn't seem to have reached this conclusion, and we again repeat our admission. We also admit that the statutory proviso is cumulated, and have never contended to the contrary, and this brings us down again to the proposition whether the equity side of your court has any authority to enter a decree ordering personal property to be sold, based upon a statutory lien and where the debt has become barred and the payment thereof by the administrator has been prohibited.

The cases as cited by Mr. Rickarby, Smith vs. Gillen, Trawick vs. Hagler and Mahorn vs. Haddock are all based upon mortgages or contractual liens, and we have, at

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no time, attempted to argue that liens given by contract can not be enforced, even if the debt is barred.

Let us take the case of McKinney vs. Benagh, 48 Ala., page 358, and which Mr. Rickarby urgently insists supports his contention, and we find this statement of facts:

It will be found that in this case there was a written contract expressly giving a lien. The contract is set out in the opinion and the opinion is based upon said contract, therefore, this case is one based upon a contractual lien and does not have application to our contention as to a statutory lien. In short, this case has as its basis for a lien a mortgage, and that portion of the opinion as cited so graciously by Mr. Rickarby clearly shows that the opinion is based upon the fact that it is a contract lien.

Then take his next authority, McDonald vs. Morrison, 50 Ala. page 30, and it will be ascertained that it was also a rental contract and the court used this language:

"This is a lien which grows out of the contract, and the process of attachment is allowed to enforce this lien."

So it will be seen that this case is approvingly cited in the case, supra, which is also based upon an express contract for rent and bears no analogy to the case in question, the case in question being simply a statutory lien.

It might be well, at this point, to ascertain what is a lien, and we shall illustrate this by a case

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based upon a statutory lien and the definition therein given is given as the substantiation of our contention. In the case of Sorsby vs. Woodlawn Lumber Company, 202 Ala. and on page 568, will be found the following language:

"The lien the materialman or mechanic acquires is by virtue of the statutes only, and the requirements of the statutes as to acquiring and enforcing it must be pursued, else it is lost or does not exist. The lien is neither property nor is it a right in or to the property; it is neither a jus in re nor a jus ad rem. It is simply a right to charge the property which it affects with the payment of a particular debt."

We can imagine no better illustration than this above one to absolutely support our contention, the statute expressly giving a materialman's lien and mechanic's lien upon property which they have worked or for which they have furnished material, but expressly does this decision hold that such lien does not give any right in the property but is simply "a right to charge the property which it affects with the payment of a particular debt." It also gives a time limit in which this process of protecting the payment of debt must be begun as well as the method of how it should be begun and unless these, both time and method, are complied with, there is no right of action left in any court.

Complainant in this case relies upon Section 7000 of the Code, which gives a statutory lien upon the stock of any stockholder or any debt due the bank by such stockholder, and is expressly based upon there being a debt or liability. ^{Because of} But complainant's failure to comply with

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Section 5815 of the Code the laws says that the complainant's original claim was barred and the respondent was prohibited from paying it. Section 7000 gives the complainant no right in or to the property in question, but simply gives a lien for any debt or liability and when the bill was filed in this court, as admitted by the bill itself, there is no debt or liability. Now this is what is known as a statutory lien and this is the type of lien which is referred to in the case of Long vs. King, 117 Ala. page 431, and which we cited and quoted from as supporting our contention. This case specifically says there is a broad distinction between a contractual lien and statutory lien, and further says what the limitations on a statutory lien are, and we again quote and cite it as in our original brief, contending that it supports absolutely our theory in this case. Take the portion which Mr. Rickarby accuses the writer of "blandly ignoring" in his original brief. It has no affect whatever upon the right to assert in a court of equity an equitable title to property, the legal title to which was in the decedent in his lifetime, and to show that in equity and good conscience the property is not, in fact, the part of the assets of the estate; nor upon his right, where the facts authorize it, to have an equitable lien declared and enforced against such property for his reimbursement.

Then using the definition of a lien of this character as given before, "it is neither a jus in re nor

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jus ad rem. It is simply a right to charge the property which it affects with the payment of a particular debt. So, the stock in question was a part of the assets of the estate, is a part of the assets of the estate and there existed nothing but a statutory lien which was simply a right to, and which carried no interest or title, of itself, to the shares of stock as owned by decedent at the time of his death. So we do not regret having cited the Long case, but again refer to it, showing the distinction as between a contractual lien and a statutory lien and especially so as Mr. Rickarby has cited no case which was not based upon a contractual lien. The complainant had the same type of lien upon this stock that a materialman or mechanic is given in the Code, and it being no property or right in or to the property itself, it evaporates with the death of the debt or liability.

Mr. Rickarby says the statute does not say that the claim is nullified, which simply means of no force or effect, but we think that when the statute does say that the claim is barred and the administrator is prohibited from paying it, it has suffered quite a stroke of paralysis and made nothing in the eyes of the law, and therefore, it has been nullified.

To repeat and to conclude, we again call the court's attention to the fact that every authority cited by Mr. Rickarby is based upon a contractual lien, and in

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none of them is it held that a statutory lien existst longer than the debt or liability for which it was given by statute to protect if due diligence be exercised.

We again repeat that the law has stepped in and told in plain English the respondent in this cause that he or she is prohibited from paying this obligation, and it would certainly be inequitable to now say, there being no contractual lien, there being no right in or to the property of any type whatsoever, there being no equitable lien, that the estate must be penalized because of the fact that she has obeyed the law in not doing something which the law itself prohibited.

We therefore respectfully submit that Mr. Rickarby's brief has thrown no light whatsoever upon the question at issue for he is dealing entirely with contractual liens and the case in hand is purely a statutory lien.

The demurrers should be sustained.

Respectfully submitted,
GORDON, EDINGTON & LEIGH
By *RE Gordon*

Attorneys for Respondent

REG/L

C.C. to Mr. Rickarby

STATE BANK OF ELBERTA,

Complainant,

VS.

~~Richard W. Webb~~, as Administrator,

Respondent.

)
)
) IN THE CIRCUIT COURT OF
)
) BALDWIN COUNTY, ALABAMA.
)
) In Equity.

This matter is submitted for decree on motion to reconsider a decree overruling demurrers heretofore entered in this cause, and upon a consideration of said motion, the Court is of the opinion that same is not well taken .

Is therefore, ordered, adjudged and decreed by the Court that said motion to reconsider be, and the same hereby is, overruled and denied.

The respondent is allowed twenty days from this date to file answer to the original bill.

This the 1st., day of December, 1931.

F. W. Hare
Judge.

STATE BANK OF ELBERTA,
Complainant.

IN EQUITY.

VS
Richard J. Asher, as Adm'r.
~~ALMA J. ARBO~~, et al
Respondent

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

The parties to this cause hereby agree that same
be forthwith submitted to the court for final decree upon
the bill, answer and agreed statement of facts.

Dated this 17th day of February, 1932.

Elliot B. Rinehart
Solicitor for Complainant.

Gordon Lounston Leigh
Solicitors for Respondent.

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STATE BANK OF ELBERTA

Complainant.

VS

ALMA J. ARBO, ET AL.

Respondent.

AGREEMENT FOR SUBMISSION.

Filed Feb 25/1932
T. W. McConnaughy
Register

*For Agreement
Bill of Complaint
at Grand National
of 1932*

STATE BANK OF ALBERTA
Complainant

VS

Richard J. Arbo, as

~~ADMINISTRATOR~~ ARBO, ADMX.

Respondent.

IN EQUITY.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

This cause, coming on to be heard upon the demurrers of the Respondent, R. J. Arbo, Administrator, filed to the bill of Complaint and upon consideration of the briefs filed by the Solicitors of the parties, the Court is of the opinion that said demurrers should be and the same are hereby over ruled.

It is ordered that the Respondent answer the Bill of Complaint within ^{thirty}~~twenty~~ days from this date.

Done in term time at Bay Minette this the 14th day of
September, 1931.

F. W. Hare

Judge.

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RECORDED

STATE BANK OF ELBERTA
Complainant.

VS.

ALMA F. ARBO, ADMX.
Respondent.

DECREE OVER RULING
DEMURRERS.

Filed Sept 17/1931
G. W. McInnis
Register

DEC 22 1932

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1932-33.

1 Div. 736.

Richard Arbo, Admr.

v.

State Bank of Elberta,

Appeal from Baldwin Circuit Court,
In Equity.

FOSTER, J.

The question in this case is whether the failure to comply with the statute of non-claim (section 5815, Code) prevents the enforcement of the lien provided for in section 7000, in favor of a corporation against its stockholders on their shares of stock to collect a debt for borrowed money. The suit is in equity, and the claim was not filed or presented so as to comply with section 5815, Code. The chancery court held that the lien is enforceable on the stock.

2.

Appellant seeks to apply a distinction drawn in some of the cases between a lien created by law and one created by contract, in that the former is dissolved by the death and insolvency of the debtor, but not so as to the latter. -

McKinney v. Benagh, 48 Ala. 352, 362; Long v. King, 117 Ala. 423, 431.

But when we analyze the holding as to such liens we find that the lien which is said thus to die is not such as grows out of a contract, though declared by law, as one which the law creates to secure a debt under stipulated circumstances. In McKinney v. Benagh, supra, it was held that a landlord's lien to secure advances to a tenant to make the crop is not within this definition of a statutory as distinguished from a contract lien. When a contract is made with no expressed stipulation for a lien, but under circumstances where the law establishes one, it is as though the parties had thus expressed in their contract. To have a different effect it must be so agreed. - Such a lien is one which springs from a contract, though the contract makes no reference to it. - McDonald v. Morrison, 50 Ala. 30.

But those which are said to die with the death and insolvency of defendant, and not allowed to be revived, are such as are created by the institution of certain proceedings, when they did not otherwise exist, as by garnishment, or attachment, and which do not survive the death and insolvency of defendant, because when a judgment is rendered against the administrator of an insolvent estate, the court does not order

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an execution on such judgment, but orders that the same be certified as an established claim to the probate court of said county. - McKinney v. Benagh, supra (p. 362); McEachin v. Reid, 40 Ala. 410. The lien is said not to be lost by the death of defendant, but by the judicial declaration that his estate, after his death, is insolvent. - Phillips v. Ash, 65 Ala. 414; Woolfolk v. Ingram, 53 Ala. 11, 16; Lamar v. Gunter, 39 Ala. 324; Hale v. Cummings, 3 Ala. 398.

In Helfman v. Ellison, 51 Ala. 543, it was held that when a creditor's bill is filed by a simple contract creditor, to set aside a fraudulent conveyance, it cannot be continued if the debt is barred by the statute of non-claim, because "the fraudulent grantee is to be taken and deemed as an executor de son tort," - that he is therefore entitled to prefer any defense to the debt which the rightful administrator could set up. The lien created by law upon the filing of the bill was not discussed. - McCarty v. Robinson, 222 Ala. 287, 131 So. 895.

Of course if the lien sought is statutory, and does not arise out of contract, and does not exist after a contingency provided by law, it cannot be enforced after such contingency has occurred. But a lien is a property right when it grows out of contract, though provided by law and usually survives the death and insolvency or bankruptcy of the debtor.

This Court has through a long line of cases held that though the failure to present the claim as a debt against the estate bars its collection out of the estate as a simple creditor, it does not prevent the enforcement of a lien contracted to secure it. - Duval v. McLaskey, 1 Ala. 745; Flinn v. Barber, 61 Ala. 530; Smith v. Gillam, 80 Ala. 296; Traweck v. Hagler, 199 Ala. 664, 667, 75 So. 156; Rives v. Cabel, 213 Ala. 206, 104 So. 420.

4.

But appellant argues that a different result follows when the effort is to enforce a lien created by law, such as this one is claimed to be, because of the argument that the statute of non-claim not only bars the collection of the debt but nullifies and destroys it, and in that respect is distinguished from the bar of the statute of limitation. To this we say, it is essentially a lien created by contract though declared by law, and there is no distinction in principle such as argued, between it and one which the debtor expressly creates.

To the argument that the statute of non-claim is more than a statute of limitations and cancels the debt, not merely the remedy, as held in some of our cases (Branch Bank v. Hawkins, 12 Ala. 755; Halfman v. Ellison, 51 Ala. 543, 545), it is only necessary to say that this aspect of the effect of the statute was not overlooked in Smith v. Gillam, *supra*, in which it is pointed out that the discharge of the debt by operation of law does not affect it except as against the debtor, but not as against a surety who continues liable for it, and not so as to prevent the enforcement of liens for its security. That case also cites Flinn v. Barber, 61 Ala. 530, to the effect that the lien created by law in favor of a vendor to secure the purchase price is not affected by the statute of non-claim; though this is a lien not included in the stipulations of a contract.

We take it that the questions submitted on this appeal have long since been correctly determined in favor of the ruling of the chancery court.

Affirmed.

Anderson, C.J., Gardner and Bouldin, JJ., concur.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 736

Richard Arbo, Admstr., Appellant,

vs.

State Bank of Elberta, Appellee,

From Baldwin Circuit Court.

The State of Alabama,
City and County of Montgomery.]

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to 4 inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme

Court of Alabama, at the Capitol, this the

22 day of Dec., 1932

Robert F. Ligon
Clerk of the Supreme Court of Alabama.

The Supreme Court of Alabama.

OCTOBER TERM, 192³²⁻³

1 Div., No. 736

Arbo, Admr.

Appellant,

VS.

State Bank of
Elerda

Appellee.

From Baldwin Circuit Court.
In Eq.

COPY OF OPINION

BROWN PRINTING CO. MONTGOMERY.

Filed Dec 27/1932
T. W. Rice
Register

STATE BANK OF ELBERTA,

Complainant.

VS

Richard J. Arbo, as Adminr,

~~ALMA J. ARBO, et al~~

Respondent.

IN EQUITY.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

This cause coming on to be heard, was submitted by agreement of the parties for decree upon the pleadings and agreed statement of facts and upon consideration thereof the Court is of the opinion that the Complainant is entitled to relief as prayed in the bill.

It is therefore ADJUDGED and DECREED that Complainant, State Bank of Elberta, has a lien upon the five shares of its capital stock standing in the name of the decedent, Gustav Koch, to the extent of the indebtedness of the said Koch to Complainant.

IT IS FURTHER ORDERED that the Register of this Court within thirty days from this date, after giving not less than three days notice to the solicitors of the parties, hold a reference to ascertain the amount of the debt due from the late Gustav Koch to Complainant, including the proper amount to be allowed Complainant for solicitor's fees incurred in the prosecution of this cause; that return of said findings be made forthwith and lie over for objections or exceptions thereto.

IT IS FURTHER ORDERED AND DECREED that if no exceptions or objections be interposed within three days after said findings be filed, or, being interposed, be not sustained, and if the amount ascertained to be due be not paid by Respondent within ten days after said report has lain over without objection, or if excepted to, the amount due has been fixed by the court, the said stock or as much thereof as may be necessary for the purpose, shall be sold by the Register of this Court at public outcry to the highest bidder for cash in front of the Court House of Bay Minette, after giving notice of the time, place

and terms of sale by publication in two consecutive issues of some newspaper published in the town of Foley, Alabama, the first publication to be not less than ten days prior to the date of sale; that out of the proceeds of such sale there be paid the amount ascertained to be due Complainant, including the solicitor's fee, and the remainder, if any, to be paid over to Defendant.

IT IS FURTHER ORDERED that Complainant issue proper certificate of stock to the purchaser at such sale upon surrender of the original certificates.

IT IS FURTHER ORDERED AND DECREED that from the sum realized from said sale the amount of Complainant's debt be paid to Complainant by the Register, the balance, if any, after paying the costs hereof, to be paid to Respondent.

IT IS FURTHER ORDERED that Respondent pay the costs of this proceeding, for which execution may issue.

Done at Bay Minette, this the 25th day of February, 1932.

A. W. Hare
Judge Circuit Court.

STATE BANK OF ELBERTA.

Complainant.

VS

ALMA J. ARBO, Admx., et al.

Respondent.

IN EQUITY.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

REPLY BRIEF OF COMPLAINANT ON DEMURRERS:

Respondent contends that our bill to enforce the lien given a corporation upon its capital stock in the hands of a debtor can not be enforced, because the debtor died and no claim was filed against the estate within twelve months. His position is based upon what we contend are the wrong premises, namely:

1. That failure to present the claim in time nullifies not only the debt but the lien securing it.

2. That the prohibition of the executor to pay a non-claimed debt out of the general assets of the estate also prohibits its being collected out of the res by a provision that the law expressly provides for that purpose, namely the enforcement of the lien.

3.. He admits that our lien, if one of contract, can be enforced but erroneously claims that it is a lien given by law.

4. He asserts that for such a lien to be one of contract it must be created by express words and not by statute.

On each of these four assertions we emphatically take issue, and claim ample authority for so doing.

Before discussing the merits of Respondent's demurrers, we point out that the method given by Code Section 7000 for asserting a corporation's lien upon stock belonging to its debtor

is not exclusive.

Code Section 8935.

Rowe vs Bank 207 Ala. 384. 92 So. 643.

Crawford vs Twin City 216 Ala. 216. 113 So. 61.

Let us now take up what we submit are the four fallacies in Respondent's brief:

ONE: THAT FAILURE TO PRESENT THE CLAIM IN TIME NULLIFIED NOT ONLY THE DEBT BUT THE LIEN SECURING IT.

Code Section 5815 cited by Respondent, while saying that non-presented claims are barred and their payment prohibited, nowhere says that such claims are nullified.

The case of Smith et al vs Gillam in 80 Ala. on page 300 says;

"It has long been settled in this State that the failure of a mortgagee to present his claim for the mortgage debt, within the time prescribed by the statute of non-claim, does not affect his specific lien in, or title to the property. The claim itself as a moneyed demand is declared to be "forever barred," and it is no doubt extinguished so far as the general liability of the decedent's estate is concerned. Duval v. McLoskey, 1 Ala. 708; Code, 1876 #2597. But claims of title, whether legal or equitable, do not come within the statute, and, as observed in Locke v. Palmer, 26 Ala. 312, 324, 'Can not, in any just sense be said to be claims against the estate of the deceased; (but) on the contrary, the right to recover is based upon the fact that the property claimed does not belong to the estate.' -- Rhodes vs Hannah's Adm'r. 66 Ala. 215. . . . We consider this to be a rule of property in this State, which is not to be disturbed except by legislative enactment.

This case is confirmed in Traweck vs Hagler, 199 Ala. 664 (75 So. 156) where, on page 667 Mr. Justice Summerville says:

"So far as the preservation and enforcement of a specific lien upon an intestate's property is concerned, it is certainly not necessary to file with the personal representative a claim for the debt which supports the lien, but in order to preserve the debt as a charge upon the intestate's general estate such a filing is necessary. Smith v Gillam, 80 Ala. 300."

An even later case citing both of these last quoted is

Rives v. Cabel 213 Ala. 206, 104 So. 420, which on page 208 holds

"But this bar of these debts for the failure of the mortgagee to present the claims for these debts within the time fixed by the statute does not affect the specific lien in or title to the real estate claims of title, legal or equitable do not come within the statute. This complainant had the right to present or file as the statute require, and have paid her out of the estate these debts due her . . . and her failure to do so, and have them paid out of the estate, would not bar or prevent or estop her from foreclosing the mortgage."

The case of Mahone vs Haddock 44 Ala. at page 99 is explicit on this point. See also Smith vs Rogers, 215 Ala. 584. (112 So. 193.) Headnote 6.

TWO: THAT THE PROHIBITION OF THE EXECUTOR TO PAY A NON-CLAIMED DEBT OUT OF THE GENERAL ASSETS OF THE ESTATE ALSO PROHIBITS ITS BEING COLLECTED OUT OF THE RES BY A PROVISION THAT THE LAW EXPRESSLY PROVIDES FOR THE PURPOSE, NAMELY THE ENFORCEMENT OF THE LIEN.

In support of his position here stated, Respondent cites quite confidently Long Adm'r. vs King 117 Ala. page 431, a case on which we too rely. Analyzed, this case bears us out. Referring to that portion of the opinion quoted on page 3 of respondent's brief, we italicize the assertion that those liens "dissolved by death of the one against whose property it is asserted, has application only to such liens as arise by operation of law for the enforcement of merely legal claims which are debts against the estate".

Respondent's counsel blandly ignores the remainder of that opinion, though quoted by them as follows:

"It has no effect whatever upon the right to assert in a court of equity an equitable title to property, the legal title to which was in the decedent in his lifetime, and to show that in equity and good conscience the property is not, in fact, a part

of the assets of the estate; not upon his right, where the facts authorize it, to have an equitable lien declared and enforced against such property for his reimbursement."

This decision alone, we respectfully urge, amply justifies our bill.

THREE: HE ADMITS THAT OUR LIEN, IF ONE OF CONTRACT, CAN BE ENFORCED BUT ERRONEOUSLY CLAIMS THAT IT IS A LIEN GIVEN BY LAW.

on page 2

This admission, found in the last paragraph of Respondent's brief, in effect admits the incorrectness of his propositions one and two quoted above. It goes still further and states Respondent out of court once it is established that our lien is one of contract. To sustain his contention he cites the case of McKinney vs Benagh, 48 Ala. 458, upon which we also rely, and quotes from page 362 of that case a holding that a lien by law is dissolved by the death of defendant. He does not quote, however, and we do, the remainder of this paragraph of the opinion.

"But this is not the case in the latter instance, where the lien grows out of contract, and the attachment is resorted to only as a means to enforce the lien, and does not create it. The lien in this case is security for the payment of the debt contracted for advances to make the crop. It is a lien not of law, but of contract, and attachment is a mode provided by law to enforce it. To dissolve the lien in such a case would be to violate the obligation of the defendant's contract. This is not permitted."

We submit that this last quotation emphatically bears out our position.

But the Respondent may here claim that the lien in this case was based under a written contract. True, but let us go one step further to the case of McDonald's Admr. vs Morrison, 50 Ala 30. This suit was on a landlord's lien given by statute and yet in the last paragraph on the opinion, citing as its authority McKinney vs Benagh, the Court says:

"The question here presented has already been determined by the court. The landlord has a lien on the crop grown on rented land, for the rent of the current year. This is a lien which grows out of the contract, and the process of attachment is allowed to enforce the lien. Rev. Code # 2961. It is not created by the levy of the attachment, and it is not dissolved by the death of the defendant and the insolvency of his estate, so far as the crop grown on the rented land is concerned. McKinney vs Benagh, June term, 1872, head-notes, p. 68."

It will be noted that the lien here enforced is our present Code section 8799 giving a landlord's lien on the property of sub-tenants and not a lien created "in haec verbae" and furthermore that the Court says "in ipissimus verbis", "that the lien grows out of the contract!"

FOURTH: HE ASSERTS THAT FOR SUCH A LIEN TO BE ONE OF CONTRACT IT MUST BE CREATED BY EXPRESS WORDS AND NOT BY STATUTE.

The case of McDonald's Adm'r. vs Morrison, 50 Ala 30 last cited effectually disposes of this contention also.

Respondent contends that the specific question involved in this case has not been passed upon by the Alabama courts. We submit that the cases cited by us clearly establish the contrary. The principle recognized by the authorities cited seems to have been overlooked by Respondent. These decisions hold that while a claim against the general property of an estate is barred by non-claim, a lien which existed during the lifetime of the decedent follows whatever property he owns into the hands of the administrator who takes title only to that portion of the res remaining after the lien is satisfied and that non-claim does not affect the right of the holder of the lien to assert his title against the res as we are seeking to do-- that the theory of the law is that "the property claimed does not belong to the estate." George vs George 67 Ala. 192, 195. Rives vs Cabel, cited above,

also expressly says that claims of title, legal or equitable, do not come within the statute of non-claims. Ours is distinctly a claim to the title of the bank-stock.

As to our claim being one of contract, the Court has but to visualize the situation shown by the bill. Gustav Koch, the decedent, borrows \$500.00 from Complainant Bank, which is glad to lend it to him knowing that in case of misfortune or death it is amply secured by its lien on the five shares of stock owned by Koch. This security is as much a collateral and a part of the contract as if Koch had attached a Liberty bond to his note and no court of equity will impair the obligation of this contract. As said in McKinney vs Benagh "To dissolve the lien in such a case would be to violate the obligation of the contract. This is not permitted."

The bona fides and moral right of our claim is unquestioned. The lien securing it grew out of an every day banking transaction, one of the frequent forms of contract; the stock securing this debt passed to the administrator subject to our lien, we having an undisputed title in it to the extent of \$500.00 and interest and to the extent of this lien the property did not pass. The present suit is to adjust this title and the coincident equities, pay decedent's honest debt and turn the remainder over to the heirs. Our bill has equity and should stand.

Respectfully submitted,

Elliott H. Rinsley
Solicitor for Complainant.

STATE BANK OF ELBERTA,

Complainant

vs.

RICHARD J. ARBO, as Adminis-
trator,

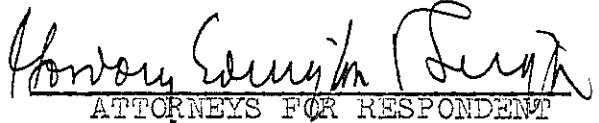
Respondent

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Now comes the respondent in the above entitled cause and asks for a re-hearing as to the Court's ruling in overruling the demurrers as filed by the respondent to the bill of complaint in the above said cause, and prays that this Honorable Court will withdraw said decree and enter another decree sustaining said demurrers, and in support of which motion the said respondent has this day furnished a brief and argument to F. W. Hare as Judge of said Court and Mr. E. G. Rickarby as attorney for complainant.

Respectfully submitted,


ATTORNEYS FOR RESPONDENT

TO THE HONORABLE FRANCIS W. HARE, JUDGE OF THE
CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA; SITTING IN EQUITY:

Comes the STATE BANK OF ELBERTA, and by this its
Bill of Complaint presented against ALMA JOHANNA ARBO, as Administra-
trix of the Estate of GUSTAV KOCH, Deceased, respectfully shows:

FIRST: That Complainant is a banking corporation,
organized and doing business under the laws of Alabama, with its
principal place of business at Elberta, in Baldwin County.

That the Defendant is the Administratrix of the
Estate of GUSTAV KOCH, Deceased, duly appointed as such by the
Probate Court of Baldwin County, on the 24th. day of May, 1928.

SECOND: That the said GUSTAV KOCH, on January 30,
1928, borrowed the sum of FIVE HUNDRED DOLLARS from Complainant, and
in evidence thereof executed a negotiable promissory note in favor
of Complainant, due six months after date, in said sum, which said
note is still due and unpaid. That at the time said note was execut-
ed, the said Koch was the owner in his own name of five shares of the
capital stock of Complainant Bank, which stock still stands in the
name of said Koch upon its books, and because of such ownership had
a substantial credit standing with said Bank, which naturally in-
fluenced said Bank in making the loan.

THIRD: That on or about the 1st. day of May, 1928,
the said Gustav Koch departed this life at Elberta, Alabama, leaving
assets in Baldwin County in value considerably in excess of all debts,
also a widow and a number of children, all of whom are of full age,
and reside, some in Baldwin County, some in Mobile County, and the
remainder in states other than Alabama. That on May 24th., 1928, a
daughter, the Defendant here, was granted by the Probate Court of
Baldwin County letters of administration upon the Estate of her late
father, but no further steps have been taken toward the administra-
tion of said estate, which is still pending.

FOURTH: That the Administratrix above named on
October 22, 1929, paid to Complainant the sum of SIXTY DOLLARS, as

interest upon the note of her late father up to January 30, 1930, but made no further payments because as she informed Complainant's solicitor, of litigation pending in the Probate Court, affecting Defendant's right to act as such Administratrix, but which litigation Complainant is informed is now in process of amicable settlement, so the Defendant's right to act as Administratrix is unquestioned.

FIFTH: Complainant further avers that Defendant, under advice of counsel, now states in response to Complainant's demand for payment of said note out of the assets of the estate, that she is without authority to make such payment, because of Complainant's failure to file a properly verified claim in the Probate Court of Baldwin County, within a year from the issue of letters of administration.

SIXTH: Complainant avers that because of the failure or inability of the Administratrix to pay the debt of Decedent, it is now compelled to look for satisfaction of its debt to the lien which it holds under section 7,000 of the Code of Alabama, upon the stock of the Bank standing in the name of the Decedent, Gustav Koch, for the debt due to a corporation by a stock holder, and to have said lien enforced and payment effected through the provisions of the Code section aforesaid, notice of said lien and demand for payment having been made upon the Administratrix for more than thirty days prior to the filing of this bill.

THE PREMISES CONSIDERED Complainant prays that Alma Johanna Arbo, as Administratrix, be made party defendant to this bill, and by appropriate process be notified to answer same within the time required by law.

Complainant further prays that upon the hearing of this cause, a decree be rendered recognizing the lien of Complainant upon the five shares of stock standing in the name of the late Gustav Koch, instructing the Register of this Court to hold a reference to ascertain the amount of debt due from the late Gustav Koch to Complainant, and decreeing that in the event that said debt is not paid forthwith, that said stock be sold by the Register of this Court at public outcry to the highest bidder for cash, after giving notice of the time and place of sale as required by law; that out of the proceeds of such

sale there be paid, first, the costs of this proceeding, second, the amount of Complainant's debt, including a reasonable attorney's fee as provided in the note, and the remainder, if any, to be paid over to Defendant; also that Complainant may have such other, further or different relief as to equity may seem meet.

Elliot H. Riskin

Solicitor for Complainant.

NOTE: The Respondent is required to answer each paragraph of the foregoing bill, but not under oath.

Elliot H. Riskin

Solicitor for Complainant.

CERTIFICATE OF JUDGMENT.

The State of Alabama, }
BALDWIN COUNTY.

Sept 24th
CIRCUIT COURT, 8th TERM, 192³⁰
/

L.A.Funk,

PLAINTIFF.

vs.

John P.Lederle,

DEFENDANT.

I, T. W. RICHESON, Clerk of the Circuit Court of Baldwin County, Alabama, do hereby
certify that on the 24th day of September 1930 192

a Judgment was rendered by said Court in the above stated cause, wherein

L.A.Funk,

was Plaintiff and

John P.Lederle,

was Defendant, in

favor of the said Plaintiff and against the said Defendant for the sum of

Fifty two (\$52.00)

DOLLARS,

and also for the sum of Ten and 95/100 (\$10.95)

DOLLARS,

the costs in said suit and that

Edward P.Totten,

is the Attorney of record for the Plaintiff

in said cause.

Witness my hand this 2nd day of October, 1930 192

T. W. Richeson

Clerk, Circuit Court, Baldwin County, Alabama.

CERTIFICATE OF JUDGMENT.

L. A. Funk,

, Plaintiff

Vs.

John P. Ederle,

, Defendant

Judgment herein
has been fully
satisfied, with costs,
and Clerk of Circuit
Court is authorized
and directed to
discharge same
upon the records.

Wm. P. Sotter
Attorney for
Judgment Creditor

8581 NOTE OF TESTIMONY

State Bank of Elberta, a
Corporation;

vs.

Alma J. Arbo et al,

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN EQUITY,
CIRCUIT COURT OF BALDWIN COUNTY.

This cause is submitted in behalf of Complainant upon the original Bill of Complaint,
and agreed statement of facts

and in behalf of Defendant upon Respondent's answer and agreed statement of
facts,

W. H. Richardson

Register.

7
RECORDED

No. 941

THE STATE OF ALABAMA
BALDWIN COUNTY

IN EQUITY,
CIRCUIT COURT OF BALDWIN COUNTY.

State Bank of Elberta,
a Corporation

VS

Alma J. Arbo et al.

NOTE OF TESTIMONY

Filed in Open Court this 17th
day of Feb 1932

J. W. Rice

Register.

STATE BANK OF ELBERTA,

Complainant

vs.

ALMA JOHANNA ARBO, as Ad-
ministratrix,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY.

Now comes the respondent in the above entitled cause and demurs to the bill of complaint as filed therein upon the following grounds:

1. There is no equity in said bill of complaint.

2. Because the said bill of complaint shows on its face that complainant failed to file its claim against the estate of Gustav Koch within the time required by law; and the Court judicially knows that the said claim is barred and that the respondent is directly prohibited from paying same by the laws of Alabama.

3. Because the bill of complaint shows on its face that Gustav Koch, the maker of said note, died on or about the 1st day of May, 1928, that letters of administration were granted to the respondent on May 24, 1928, and that the complainant admits the inability of administratrix to pay the debt alleged, because complainant failed to file its claim against said estate within the time required by law, wherefore, the Court judicially knows that the estate is not liable by reason of Section 5815 of the Code of 1923, wherein is found the following language: "and if not presented within that time, they are forever barred and the payment or allowance thereof is prohibited."

4. Because said bill shows on its face that the maker of the note is dead, that administration was granted upon his estate and that the complainant failed to file its claim as is required by law, wherefore, there is no debt due by said estate for liability on the part of said estate now existing by reason of Section 5815 of the Code of 1923, and

therefore, there can be no lien, there being no debt.

5. Because the bill of complaint as a whole shows a failure of complainant to file said claim against the estate of Gustav Koch, and avers that on account of its failure to so file said claim that it is compelled to look to Section 7000 of the Code for a satisfaction of its debt, said bill ~~showing on its face that there is no debt, but that same has~~ been barred and the payment thereof has been prohibited by statute.

6. Because said bill shows on its face that there is no debt or liability existing on the part of the estate of Gustav Koch to the complainant, and therefore, there can be no lien on any property belonging to said estate.

7. Because said bill shows that it is seeking a relief upon a lien given by law, and not one created by contract, and fails to aver any facts to show that the estate of Gustav Koch is either indebted or liable to the complainant in any sum whatsoever at the time of the filing of this bill of complaint.

8. Because said bill shows on its face and admits that its only hope for relief is based upon a lien created by a statute, and yet fails to show the existence of any debt or liability on the part of the estate of Gustav Koch in favor of the complainant, and which the respondent is legally authorized to pay.

Gordon Dugan & Seigh
SOLICITORS FOR RESPONDENT

T. W. RICHERRSON
REGISTER AND CLERK OF THE CIRCUIT COURT
BALDWIN COUNTY
BAY MINETTE, ALA.

JUNE 29, 1952.

Received of Thomas W. Richerson, Register Three Hundred
Thirty Five & 50/100 Dollars, being balance after deduction
of Thirty-nine & 70/100 Dollars costs from the sum of Three
Hundred Seventy-five & no/100 Dollars, realized from the
sale of five shares of the capital stock of the Bank of
Elberta, sold this day at public outcry to Charles G.
Koehler, pursuant to the order of the Judge of the Circuit
Court embodied in the decree of February 25, 1952 rendered
in the case of State Bank of Elberta vs. Alma J. Arbo, Et al.,
pending in said Circuit Court.

State Bank of Elberta
Charles G. Koehler
Cashier

State Bank of Elberta.
Alfred M. Newman, Cashier.

STATE BANK OF ELBERTA,
Complainant,

E Q U I T Y .

IN THE CIRCUIT COURT OF
BALDWIN COUNTY.

Richard J. Arbo, as Adminr
~~ALMA J. ARBO~~, et al.,
Respondents,

THIS CAUSE COMING ON TO BE HEARD upon the exceptions of the Respondent to the report of the Register and same being duly argued by counsel and considered by the Court, and the Court being of the opinion that said exceptions are not well taken;

IT IS THEREFORE ORDERED that said exceptions be, and the same are hereby overruled.

(#674 02) *Twenty-four & 00/100* IT IS FURTHER ORDERED that the Report of the Register as read and filed, be in all respects confirmed and the sum of *Six Hundred,* dollars, with interest thereon from the date of the report be recognised and considered as the amount of Complainant's debt for which it has a lien upon the five shares of stock standing in the name of the late Gustav Koch and the the Register of this Court proceed to sell said stock and apply the proceeds of such sale in accordance with the terms of the decree heretofore rendered in this cause.

DONE at Bay Minette this the twenty-fifth day of May 1932.

J. W. Hare
Judge.

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STATE BANK OF ELBERTA,
Complainant,

vs

ALMA J. ARBO, et al.,
Respondent.

DECREE CONFIRMING REPORT OF
THE REGISTER.

Filed May 25th 1932.

Wm. B. B. B.
Register.

AFFIDAVIT OF PUBLICATION

FINAL NOTICE

State Bank of Elberta,
Complainant.

vs.

Alma J. Arbo, et al,
Respondents.

In Equity.

In the Circuit Court of
Baldwin County, Alabama.

Notice is hereby given that pursuant to the order embodied in the decree rendered in the above entitled case on February 25th, 1932, the undersigned will sell at public outcry to the highest bidder for cash in front of the Court House at Bay Minette on June 29th, 1932, at noon, five shares of the capital stock of the State Bank of Elberta standing in the name of Gustav Koch on the books of said Bank, the proceeds of said sale to be applied in accordance with the terms of the decree aforesaid.

Register Circuit Court.

T. W. RICHESON,

6-16-2t

I, V. V. Barchard, Manager

Barchard Publishing Company of the Onlooker, published weekly at Foley, Ala., do solemnly swear that a copy of the above notice, as per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof, for 2 consecutive weeks, commencing with the issue dated June 16, 1932 and ending with the issue dated June 23, 1932

Subscribed and sworn to before me this

day of June, 1932

Notary Public

June 24, 1932

Foley, Ala.,

Mrs. T. W. Richardson

Bay Minette, Ala.
IN ACCOUNT WITH

BARCHARD PUBLISHING CO.

The Foley Onlooker

Robertsdale American

HIGH QUALITY JOB PRINTING

Balance as shown in last statement

June 16 Legal 2-t

1 83

FINAL NOTICE

State Bank of Elberta,
Complainant.

vs.

Alma T. Arbo, et al,
Respondents.

In Equity.

In the Circuit Court of
Baldwin County, Alabama.
Notice is hereby given that
pursuant to the order embodied in the
decree rendered in the above entitled
case on February 25th, 1932, the
undersigned will sell at public outcry
to the highest bidder for cash in
front of the Court House at Bay
Minette on June 29th, 1932, at noon,
five shares of the capital stock of the
State Bank of Elberta standing in the
name of Gustav Koch on the books
of said Bank, the proceeds of said
sale to be applied in accordance with
the terms of the decree aforesaid.
T. W. RICHMOND,
Register Circuit Court.
6-16-32

Paid 6-20-32
W. H. H.
Thank you

The State of Alabama,
Baldwin County

Circuit Court of Baldwin County, In Equity

To Any Sheriff of the State of Alabama--GREETING:

WE COMMAND YOU, That you summon Alma Johanna Arbo, as
Administratrix of the estate of Gustaf Koch, deceased,

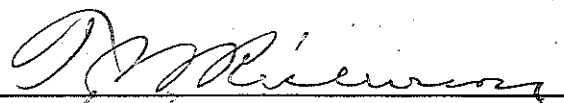
of Mobile County, to be and appear before the Judge of the Circuit Court
of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Sum-
mons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by
State Bank of Elberta,

against said Alma Johanna Arbo, as Administratrix of the estate of
Gustav Koch, deceased.

and further to do and perform what said Judge shall order and direct in that behalf. And this the
said Defendant shall in no wise omit, under penalty, etc. And we further command that you return
this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T. W. Richerson, Register of said Circuit Court, this 5th day of

February 1931.

 Register

N. B.—Any party defendant is entitled to a copy of the bill upon application to the Register.

10/20/27 *Alma's Case*

RECORDED

SERVE ON

Circuit Court of Baldwin County
In Equity

No. _____

SUMMONS

State Bank of Elberta,

vs.

Alma, Arbo as administratrix of the estate of Gustaf Koch, deceased.

Alma Johanna Arbo

E. G. Rickaby,

Solicitor for Complainant

Recorded in Vol. _____ Page _____

39.7.1 RECORDED

THE STATE OF ALABAMA,
BALDWIN COUNTY

Received in office this 10

day of Feb 1931

Dr. H. H. Thompson, Sheriff.

Executed this 12 day of

February 1931

by leaving a copy of the within Summons with

Alma Johanna Arbo

Defendant, deceased.
Dr. H. H. Thompson
Sheriff.

By *A. E. Turner*
Deputy Sheriff.

GORDON, EDINGTON & LEIGH

ATTORNEYS AT LAW

MOBILE, ALABAMA

ROBT, E. GORDON

DAVID H. EDINGTON
NORVILLE R. LEIGH, JR.

WILLIAM HAMILTON

June 22, 1932

Mr. T. W. Richerson,
Clerk of the Circuit Court,
Bay Minette, Ala.

Dear Sir:

We are herewith handing you notice of appeal and also an appeal bond in re State Bank of Elberta vs. Arbo, etal. The bondsmen, whom we personally know, are absolutely all right, own a great deal of property in Mobile and we are willing to guarantee the payment.

Will you please file this bond and notice of appeal in said cause and notify Mr. Rickaby thereof. Please advise whether or not you have approved same.

Thanking you for your favor and with best wishes,

Very sincerely yours,

GORDON, EDINGTON & LEIGH

By *R. E. Gordon*

REG/D
Encls.

TWENTY-FIRST JUDICIAL CIRCUIT

OF ALABAMA

F. W. HARE, JUDGE

M. R. FARISH, COURT REPORTER

MONROEVILLE, ALABAMA

December 1st., 1931.

Mr. T. W. Richerson,

Bay Minette, Alabama.

Dear Mr. Richerson:

I am enclosing decree in the matter
of State Bank of Elberta Vs. Arbo, which please file in
the cause.

Hope you are in good health and
enjoying yourself. I am planning to come down to see
you shortly.

With regards and best wishes, I am,

Your friend,

F. W. Hare

GORDON, EDINGTON & LEIGH

ATTORNEYS AT LAW

1011-15 MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

ROBT. E. GORDON
DAVID H. EDINGTON
NORVELLE R. LEIGH, JR.
WILLIAM HAMILTON

February 24, 1931

Mr. T. W. Richerson,
Clerk of the Circuit Court,
Bay Minette, Alabama.

Dear Sir:

We herewith hand you demurrers to be filed in
re: State Bank of Elberta vs. Alma Johanna Arbo, in equity.

Will you please file these, and if you see
proper, you can mail the inclosed copy to Mr. Rickarby at
Robertsdale.

Thanking you for your courtesies,

Sincerely yours,

GORDON, EDINGTON & LEIGH

By

R. E. Gordon

REG/L

inc.

LAW OFFICES
ELLIOTT G. RICKARBY
ROBERTSDALE, ALA.

March 22nd, 1932

Thomas W. Richerson, Esq.
Clerk Circuit Court
Bay Minette, Alabama

Dear Sir:

STATE BANK OF ELBERTA VS ARBO: You will remember that when the Judge signed a decree in this case on the 26th ultimo, he provided that you, as Register of the Court, should hold a reference within thirty days to ascertain the amount of the debt, including solicitor's fees and that you should give three days notice to this effect to the solicitor's of the parties. I therefore ask that you set this reference for ten o'clock on Saturday, March the 26th, giving the necessary notice to Messrs. Gordon, Edington & Leigh, solititors for respondent. On February 29th I wrote these gentlemen suggesting an agreement to save the trouble and expence of a reference, but this suggestion has been entirely ignored, hence my request.

Very truly yours,

Elliott G. Rickaby

R:F
72

The duplicate notice is for your files; there is no need of sending me one.

LAW OFFICES
RICKARBY & COBB
ROBERTSDALE, ALA.

September 3rd, 1931

Hon. F. W. Hare
Judge Circuit Court
Monroeville, Alabama

Dear Sir:

STATE BANK OF ELBERTA VS ARBO: With this I
hand you reply brief on demurrers in response to that
recently sent you by respondent's counsel, who, as per
agreement, sent a copy to this office. I am mailing
a copy of this brief to these gentlemen by this mail.

Very truly yours,

Elliott B. Rickaby
Solicitor for Complainant.

R:F

72

cc Messrs. G. E. & L.

Complainant

VS.
Richard J. Arbo, as dnmr.
ALMA J. ARBO, ET AL,

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY.

4th. That on or about May 1st, 1928, Gustav Koch died leaving assets in Baldwin County, Alabama, considerably in excess of all debts, and also left a widow and several adult children; that on May 24th, 1928, Alma J. Arbo, a daughter of the deceased, was granted Letters of Administration upon said Estate, duly qualified as such Administratrix, and was such Administratrix at the time of her death.

5th. That Alma J. Arbo on or about October 22nd, 1929, paid complainant Sixty (\$60.00) Dollars as interest on the note of her late father up until January 30th, 1930, but has made no further payments upon her counsel advising her that she was prohibited as such Administratrix from paying said note, or the interest thereon, as the complainant never filed or presented its claim for same in the Probate Court of Baldwin County, Alabama, and where she was appointed Administratrix, or to her as such Administratrix.

6th. That Complainant, nor anyone on its behalf, has never filed or presented a claim for said note, or the indebtedness specified and described in the bill of complaint in this cause against the Estate of Gustav Koch in the Probate Court of Baldwin County, Alabama, nor has any such claim ever been filed with or presented to the Administratrix or Administrator of this Estate at any time, or as is required to be filed or presented by Sections 5815 and 5818 of the Code of Alabama and it is further agreed that said claim does not come within any of the exceptions, as provided by the statute to the general law that all such claims must be filed in the Probate Court in which the Letters of Administration are granted or with the Administrator or Administratrix within twelve (12) months from the time that same have accrued, or within twelve (12) months after the granting of letters Testamentary or of Administration.

7th. That prior to May 24th, 1928, the Cashier of Complainant Bank notified Mrs. Alma J. Arbo, the Administratrix aforesaid, that his Bank held for collection decedents note, to which she made no objection, and on October 22nd, 1929, paid \$60.00 (Sixty Dollars) as interest thereon, and that, aside from said Sixty Dollars so paid by the Administratrix no part of said note has been paid.

It is further agreed that said cause be now submitted for final decree upon the pleadings, the notes of evidence as

Dated this the sixth day of February, 1932.

Grocery Supply Corp
SOLICITORS FOR RESPONDENTS.

RICHARD J. ARBO, as
Administrator,
Respondent

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY.

Now comes the respondent in the above said cause, and his demurrers to the bill of complaint having been overruled, and the court giving respondent twenty days in which to answer said bill of complaint, and in conformity therewith and within the time prescribed, the respondent for answer to said bill of complaint says as follows:

That the allegations in the First paragraph of the bill of complaint are true so far as this respondent is informed and believes.

For answer to the Second paragraph the respondent admits that Gustav Koch did borrow the sum of Five Hundred (\$500.00) Dollars from said Bank on or about January 30, 1928, and did execute a negotiable promissory note, due six months after date, in said sum, in favor of the complainant, but denies that said note is now due and avers that said note constitutes no liability whatsoever against said estate now or at the time of the filing of said bill of complaint. The respondent further admits that the said Koch was the owner in his own name of five shares of capital stock in the complainant bank at the time he borrowed such money and that so far as this respondent knows the stock still stands in the name of the said Koch upon the Bank's books and does not know whether or not the fact of such ownership gave him any credit with the said bank or that said bank was naturally influenced thereby in making such loan.

For answer to the Third paragraph the respondent admits that Gustav Koch did depart this life on or about the first day of May, 1928, leaving property in Baldwin County, and also leaving a widow and a number of children, all of whom are over the age of twenty-one and some reside in Baldwin County and elsewhere. This respondent further admits that

a daughter of the decedent was granted letters of administration upon said estate and before said estate was closed and after this bill of complaint was filed that said daughter, and who was named as respondent in said bill of complaint, died and this respondent was appointed administrator of her said estate and has been substituted as party respondent in this cause, and that said estate is still not closed.

For answer to the Fourth paragraph, the respondent says that Alma Johanna Arbo, as administratrix of said estate, did pay the interest upon the note now in question, as is alleged, and further alleges that she had no authority to pay such interest under the laws of Alabama, and that her payment of said interest in nowise renewed, revived or extended the note as executed by Gustav Koch during his lifetime, the said complainant having failed to comply with the law as to filing its claim against the said estate within twelve months after letters had been issued to such administratrix.

For answer to the Fifth paragraph, this respondent admits that said respondent was advised that as such administratrix of said estate, she was without authority to pay said note as the complainant had failed to file said claim against said estate within twelve months after said letters of administration had been granted to the respondent, and that said claim has never been filed against said estate and that the said law expressly provides that where such claim has not been filed within the period of twelve months after the issuance of letters of administration the administrator is prohibited from paying such claim. And for further answer the respondent alleges that said Gustav Koch died, as is alleged in said bill of complaint, that letters of administration were granted upon his estate by the Probate Judge of Baldwin County, and that the administratrix duly qualified as such and that the complainant did not file said claim either with the administratrix or in the Probate Court of Baldwin County as is required by Section 5815 of the Code of 1923, and therefore, said claim is barred and the respondent was prohibited by such section of the

Code from the payment or allowance of same.

For answer to the Sixth paragraph the respondent says that because the complainant failed to file a properly verified claim in the Probate Court of Baldwin County within a year from the issue of letters of administration in the estate of Gustav Koch, that the said claim was, under Section 5815 of the Code of 1923, "forever barred and the payment or allowance is prohibited," and therefore, there being no debt, the complainant has no lien whatsoever upon the five shares of stock of the complainant bank, which now stands in the name of Gustav Koch, under Section 7000 of the Code of Alabama, said claim having been barred by the failure of complainant to file his claim with said administratrix or in the Probate Court of Baldwin County as is required by law, and therefore, there being no debt which was due and enforceable, that said lien did not exist at the time of the filing of this bill of complaint, and by reason thereof, the respondent denies that the complainant is entitled to a lien at this time upon said five shares of stock now standing in the name of said Gustav Koch, and that this respondent now has no right, title or interest in and to the said stock under and by virtue of Section 7000, for that by its own laches and failure to do that which the law expressly commanded and provided should be done in such matter, it suffered and allowed such claim to be barred, and the respondent prohibited from paying or allowing same by reason of such laches or failure.

Wherefore, the respondent having answered this bill of complaint in full prays that the Court will dismiss same and tax the complainant with the costs.

Horace E. Smith
SOLICITORS FOR RESPONDENT