

JAMES A. KELLY, doing business  
under the trade name of Kelly  
Bros., Nurseries,

Plaintiff,

- vs -

WILLIAM B. BURMEISTER & A. J.  
HARTUNG,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

SHERIFF'S NOTICE

To William B. Burmeister, Secretary of Hartung Cut Flower Company,  
a Corporation:

You are hereby notified that by virtue of an execution issued out of the Circuit Court of Baldwin County, Alabama, on the 12th day of April, 1935, commanding me to make out of the property of the above named defendants the sum of \$2309.35, and the additional sum of \$30.95 costs, I have this day levied upon 100 shares of the capital stock of said Hartung Cut Flower Company, as the property of William B. Burmeister and I have levied upon 99 shares of the capital stock of Hartung Cut Flower Company as the property of A. J. Hartung.

This notice is given as required by Section 6998 of the Code of Alabama, 1923, to you as secretary and custodian of the books of transfer of the said Hartung Cut Flower Company, a corporation.

Dated this 19th day of April, 1935.

M. W. Wilkins  
Sheriff

State of Alabama  
Baldwin County  
Served to within

notice by delivering a  
true copy thereof to W.B.  
Burmeister, Secretary of  
Hartung Bros. Flower Co.,  
this 19<sup>th</sup> day of April, 1935

M. H. Wilkins  
Sheriff.

89  
IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

JAMES A. KELLY, doing business  
under the trade name of Kelly  
Bros., Nurseries,  
Plaintiff,

- vs -

WILLIAM B. BURMEISTER & A. J.  
HARTUNG,  
Defendants.

SHERIFF'S NOTICE

Rec in office  
4/12/35  
M. H. Wilkins - Sheriff

LLOYD A. MAGNEY

JAMES A KELLY, doing business under  
the trade name of KELLY BROTHERS  
NURSERIES,

Plaintiff,

-vs-

WILLIAM B. BURMEISTER and A. J. HARTUNG,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

Come the defendants, by their attorney of record, and suggest

their bankruptcy, adjudication in which was made under date  
of May 15th in the U. S. District Court for the Southern  
District of Alabama, at Mobile.

*Wm. B. Burmeister*  
Attorney for Defendant.

RECORDED

489

*Quick*

Kelly--

VS

Furmeister,

Suggestion of Bankruptcy,

Filed, May 20th, 1935.

*Robert S. Duck*  
Clerk

Copy to L.A. Magney, 5/21/35

# The State of Alabama

## Baldwin County

## CIRCUIT COURT

No. 89 April Term, 1935

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

You are hereby commanded, That of the goods and chattels, lands and tenements of Mathew B. Burmeister + A. I. Hartung Defendants,

you cause to be made the sum of 2309.35 Dollars,

which James A. Kelley, Kelly Bros. Nurseries Plaintiffs

recovered of them on the 11 day of April 1935 by

the Judgment of our Circuit Court, held for the County of Baldwin, besides the sum of Twenty-four and 20/100 Dollars

costs of suit, and have the same to render to the said Robert S. Duck

and make return of this Writ and the execution thereof, according to law.

Interest from April 11, 1935, to date of collection.Witness my hand, this 11 day of April 1935Robert S. Duck - Clerk

CLERK'S FEES	AMOUNT	SHERIFF'S FEES	AMOUNT
For every Summons & Complaint \$1.25	1 25	For Levying an Attachment \$3.00	
Each copy thereof 2 30	60	Entering and Returning Attachment 25	
Entering a Sheriff's Return 20	20	Summoning Garnishee 1.50	1 50
Docketing 25	25	Serving Summons on Writ 1.50	1 50
Entering Appearance 20	20	Serving Notice Sci. Fa. Notice, etc. 65	
Filings 9 10	90	Serving Subpoenas 65	
Every order made in Court 30	30	Empanelling Jury 75	75
Copy thereof 25	25	Entering and Returning Execution 25	
Every Trial with or without Jury 75	75	Collecting Cost Execution 1.50	<del>1 50</del>
Entering up Judgment or copy thereof 30	30	Executing a Writ of Possession 2.50	
Issuing Execution 50	50	Taking and Approving Bonds 1.00	
Docketing Execution 25	25	Commissions <u>Interrogatories</u>	1 50
Entering Return on Execution 20	20	Sheriff's Commission for Property	
Issuing Subpoenas 30		Sold under Attachment	
Administering Oath 25		Seizing Personal Property on Writ	
Issuing each Attachment, taking bond 1.00		of Detinue 3.00	
Filing Attachment 10			
Each Summons for Garnishee 50	50	RECAPITULATION	
Each Copy 50		Judgment for <u>Pd.</u> for \$ <u>2309.35</u>	
Notice to Deft. in Garnishee on Summons and copy, per 100 words 20		Interest from <u>April 11, 1935</u>	
Commissions to take Depositions or Copy 75	75	Damages	10 95
Order to Execute Writ of Inquiry 30	30	Clerk's Fees 7 00	5 25
Copy of Interrogatories. 15c per hundred words or 2 50	1 50	Sheriff's Fees 5 00	
Filing each Deposition and endorsing same 20	20	Justice of Peace Fees	
Final Record, per hundred words 15	1 50	Witness Fees in Justice of Peace Court	
Every Certificate 50		Constable's Fees	
Taking Bond not Otherwise Provided for 75		Commissioner's Fees C.	
Witness Certificates 25		Printer's Fees	
Continuance 10		Witness Fee in Circuit Court	
Certificate of Judgment 50	50	Former Clerk's Fee	
Order of Publication 1.00		Stenographer's Fee — \$5.00	5 00
		Trial Tax — \$3.00	3 00
	10 95		2 4 20
			# 235 3.55

No. 89

THE STATE OF ALABAMA,  
Baldwin County

CIRCUIT COURT

*James A. Wilby, et al.*

Plaintiffs

vs.

*William B. Younts*

*V. A. G. Sponting*

Defendants

CIVIL EXECUTION

Judgment for \_\_\_\_\_ for \$ \_\_\_\_\_

Interest from \_\_\_\_\_ 193 \_\_\_\_\_

to \_\_\_\_\_ 193 \_\_\_\_\_ \$ \_\_\_\_\_

Damages \_\_\_\_\_ \$ \_\_\_\_\_

Costs \_\_\_\_\_ \$ \_\_\_\_\_

Total - - - \$ \_\_\_\_\_

Civil Fee Book \_\_\_\_\_ Page \_\_\_\_\_

Execution Docket \_\_\_\_\_ Page \_\_\_\_\_

Filed \_\_\_\_\_ 193 \_\_\_\_\_

Clerk.

Plaintiff's Attorney.

Defendant's Attorney.

COLLECT COST FROM

THE STATE OF ALABAMA,  
Baldwin County

I hereby certify that the within Judgment and Costs in this case are correct, and there was a waiver of exemption as to personal property under the Constitution and Laws of Alabama.

This \_\_\_\_\_ day of \_\_\_\_\_ 193 \_\_\_\_\_

Clerk.

RECEIVED IN OFFICE

\_\_\_\_\_ 193 \_\_\_\_\_

Sheriff

Sheriff's Execution Docket, Page \_\_\_\_\_

Sheriff's Fee Book, Page \_\_\_\_\_

Clerk's Civil Fee Book, Page \_\_\_\_\_

Clerk's Civil Execution Docket, Page \_\_\_\_\_

*2,333.55*

By virtue of the within execution, I have, at \_\_\_\_\_ o'clock, \_\_\_\_\_ M., this \_\_\_\_\_ day of \_\_\_\_\_ 193 \_\_\_\_\_, levied

The State of Alabama  
Baldwin County

*3400*

4.75  
3.50  
2.50  
2.50  
5.00  
2.85  
3.90  
25.00

25-  
3.50  
1.5  
3.90

5.00  
3.50  
2.50  
2.50  
5.00  
3.00  
25.00

THE STATE OF ALABAMA, }  
BALDWIN COUNTY

CIRCUIT COURT

Personally appeared before me, *Robert S. Deuch*, T. W. RICHMOND, Clerk of the Circuit Court in and for Baldwin County and State aforesaid *Lloyd A. Magnay*

who being duly sworn, on oath says, that a regular *Spring* Term

of the Circuit Court of Baldwin County, to-wit: on the *11* day of *April*

19*25*, *James A. Kelly*, doing business as *Kelly Bros. Nurseries* recovered a judgment against *William B. Burmeister and A. J. Hartung*

for the sum of *\$7209<sup>35</sup>* Dollars,

besides costs of suit; that said judgment remains wholly unsatisfied and in full force and effect: that

*Hartung, Lee & Flower Company, a corporation,* is

supposed to be indebted to or have effects of the said *William B. Burmeister and A. J. Hartung*

in *its* possession, or under *its* control, and that he believes process of

Garnishment against said *Hartung, Lee & Flower Company* is necessary to obtain satisfaction of said Judgment.

Sworn to and subscribed this *11*

day of *April* A. D. 19*25*

*Robert S. Deuch*  
Clerk.

*Lloyd A. Magnay*

No.

89

## CIRCUIT COURT

Kelly

VS.

Burmester &

Hartung

### AFFIDAVIT

Filed in Office,

April 11

1935

Robert S. Luck

Clerk.

Gill Printing Co., Mobile, Ala.



# GARNISHMENT ON JUDGMENT

The State of Alabama, }  
BALDWIN COUNTY

CIRCUIT COURT BALDWIN COUNTY

April TERM, 1935

To Any Sheriff of the State of Alabama—Greeting:

WHEREAS, At a regular Spring Term, 1935, of the Circuit Court of Baldwin County, to-wit: On the 11th day of April, 1935 being a regular day of said term James A. Kelly, doing buisness under the trade name of Kelly Bros. Nurseries, recovered judgment against William B. Burmeister and A. J. Hartung,

for the sum of \$2309.35 Dollars, and cost of suit, and affidavit having been made by Lloyd A. Magney, that process of garnishment is believed to be necessary to obtain satisfaction of such Judgment, and that the following named persons or corporations, viz:

Hartung Cut Flower Company, a Corporation,

has or is believed to have in its possession, or under its control money or effects belonging to said defendant or that it is, or is believed to be indebted to said defendant or to be liable to them, or to one of them on a contract for the delivery of personal property, or on a contract for the payment of money which may be discharged by the delivery of personal property or which is payable in personal property.

You are Therefore Hereby Commanded to Summon

Hartung Cut Flower Company, a Corporation,

to be and appear before the honorable the Circuit Court for Baldwin County, at the Court House thereof, in the City of Bay Minette, on or within thirty days from service hereof A. D. 1935 then and there within the three first days of the term, to answer on oath, whether at the time of the service of the garnishment, or at the time making its answer, or at any time intervening the time of serving the garnishment and making the answer it was indebted to said defendant and whether it will not be indebted in future to said defendant by a contract then existing, and whether by a contract then existing it is, or are, liable to said defendants for the delivery of personal property, or for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property, and whether it has not in its possession or under its control money or effects belonging to the defendant William B. Burmeister, and A. J. Hartung

Herein fail not, and have you then and there this Writ.

Robert S. Duck,  
Witness, LAWYER, Clerk of said Court, this 11th

day of April A. D. 1935

Issued 11th day of April A. D. 1935

ATTEST:

*Robert S. Duck* Clerk.

State of Alabama,  
Baldwin County

Served the within writ by delivering a copy thereof to W. B. Burmesiter, Secretary of Hartung Bros Flower Company this 19<sup>th</sup> day of April, 1935

M. S. Wilkins  
Sheriff.

Circuit Court, Baldwin County

No. 89

James A. Kelly, doing business under the trade name of Kelly Bros, Nurseries,  
VS. } GARNISHMENT ON JUDGMENT

William B. Burmesiter  
& A.J. Hartung

Issued 11th day of April 19235

Returnable Instantly day of 192

Rec in office  
4/12/35  
M. S. Wilkins  
Sheriff

Attorney.

CERTIFICATE OF JUDGMENT

The State of Alabama, }  
Baldwin County

Circuit Court, Spring Term, 19 35

James A. Kelly, doing business under

the trade name of Kelly Bros. Nurseries,

PLAINTIFF.

Vs.

William B. Burmeister & A. J. Hartung

DEFENDANT.

I, Robert S. Duck, Clerk of the Circuit Court of Baldwin County,

Alabama, do hereby certify that on the 11th day of April 19 35,

a Judgment was rendered by said Court in the above stated cause, wherein James A. Kelly,

doing business under the trade name of Kelly Bros Nurseries,

was Plaintiff and William B. Burmeister and A. J. Hartung

\_\_\_\_\_ was Defendant, in

favor of the said Plaintiff and against the said Defendant for the sum of \$2309.35

Two Thousnad Three Hundred Nine and 35/100 DOLLARS,

and for the sum of Thirty & 95/100 DOLLARS,

the costs in said suit and that Lloyd A. Magney

is the Attorneys of record for the Plaintiff  
in said cause.

Witness my hand this 13th day of April 1935

\_\_\_\_\_  
Clerk, Circuit Court, Baldwin County, Alabama.

89 ~~XXXXXXXXXX~~ *dash*

CERTIFICATE OF JUDGMENT

Kelly

, Plaintiff

Vs.

Burmeister

, Defendant

*Serve on John W. Allen  
Van Antwerp Bldg*

JAMES A. KELLY, doing business  
under the trade name of KELLY  
BROS. NURSERIES,

Plaintiff

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

- VS -

AFFIDAVIT

WILLIAM B. BURMEISTER & A. J.  
HARTUNG

Defendants

STATE OF ALABAMA)  
BALDWIN COUNTY)

Lloyd A. Magney, being first duly sworn on his oath, deposes  
and says that he is attorney of record for the plaintiff in the  
above entitled cause; that William F. Kelly is a material witness  
for the plaintiff in the above entitled cause, and that the said  
William F. Kelly is absent from the state and is a non-resident  
of the state of Alabama, residing in Dansville, New York.

That Retta G. Matson, whose address is Kramer Block,  
Corner of Main and Exchange Streets, Dansville, New York, is a  
competent and suitable person to act as commissioner to take the  
testimony of the said William F. Kelly, and that it is necessary  
that such testimony be taken by deposition.

Subscribed in my presence and sworn to before me this \_\_\_\_\_  
day of March, 1935.

\_\_\_\_\_  
Notary Public

FILED  
BALDWIN COUNTY, ALABAMA  
IN THE CIRCUIT COURT  
MAR 2 1935

BROS. NUMBERS, UNDER THE TRADE NAME OF KELLY JAMES A. KELLY, Doing business as standard gird

77-1115

- 27 -

JAMES A. KELLY, doing business under the trade name of KELLY BROS. NURSERIES,

BURBISTER & A. J.

Defendants.

transmitted

AFFIDAVIT

(AMERICAN TO  
MAGNETO  
BY  
A. Dyer,  
Attorney,  
Foley, Alabama

JAMES A. KELLY, and  
 under the trade  
 name of  
 BROS. NURS  
 vs  
 WILLIAM B. BURNETT,  
 HARTUNG,

Corner of Main and Exchange Streets, Danaville, New York, is a competent and suitable person to act as commissioner to take the testimony of the said William F. Kelly, and that it is necessary that such testimony be taken by deposition.

aint en erofed et nrowz bas someerig yv ni bedircedr3

.5391 ,noted to yss

CHILDREN

JAMES A. KELLY, doing business  
under the trade name of KELLY  
BROS. NURSERIES,

Plaintiff

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

- vs -

AFFIDAVIT

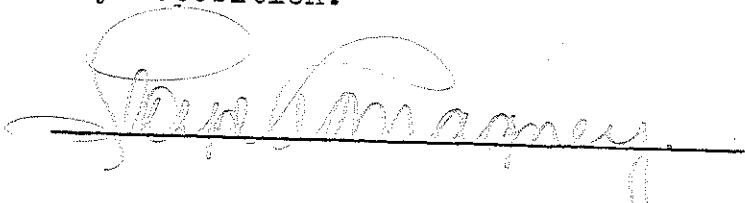
WILLIAM B. BURMEISTER & A. J.  
HARTUNG,

Defendants

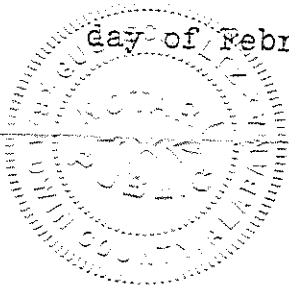
STATE OF ALABAMA }  
BALDWIN COUNTY }

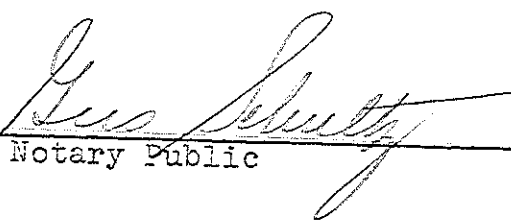
Lloyd A. Magney, being first duly sworn on his oath deposes and says that he is attorney of record for the plaintiff in the above entitled cause; that James A. Kelly is a material witness for the plaintiff in the above entitled cause, and that the said James A. Kelly is absent from the state and is a non-resident of the state of Alabama, residing in Dansville, New York.

That Retta G. Matson, whose address is Kramer Block, Corner of Main and Exchange Streets, Dansville, New York, is a competent and suitable person to act as commissioner to take the testimony of the said James A. Kelly, and that it is necessary that such testimony be taken by deposition.



Subscribed in my presence and sworn to before me this 23rd  
day of February, 1935.



  
Notary Public

89 July

~~RECORDED~~  
back

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

JAMES A. KELLY, doing business  
under the trade name of KELLY  
BROS. NURSERIES.

Plaintiff

- vs -

WILLIAM B. BURMEISTER and A. J.  
HARTUNG.

Defendants

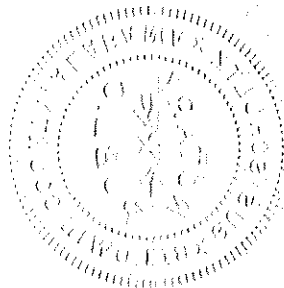
AFFIDAVIT

*Filed*

*February 23 1935.*

*Lloyd A. Magney*

Lloyd A. Magney  
Attorney  
Foley, Alabama.





JAMES A. KELLY, doing business  
under the trade name of KELLY  
BROS. NURSERIES,

Plaintiff,

-VS-

WILLIAM B. BURMEISTER & A.J. HARTUNG,

Defendants.

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IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW.

NOTICE --.

TO HON. JOHN N. ALLEN, ATTORNEY FOR THE ABOVE NAMED DEFENDANTS.

You are hereby notified that on the 23rd day of February, 1935, the affidavit of Lloyd A. Magney was filed in the above entitled cause stating that James A. Kelly is a material witness for the Plaintiff, and that the said James A. Kelly is a non-resident of the State of Alabama, residing in Dansville, New York, and that it is necessary to take the deposition of said James A. Kelly.

With said affidavit there was filed copies of interrogatories to the said James Kelly, a copy of which is attached to this notice.

The name of Retta G. Matson, whose address is Kramer Block, Corner of Main and Exchange Streets, Dansville, New York, is suggested as a competent person to act as commissioner to take said depositions.

You are allowed 10 days within which to make application for the oral examination of said witness or to file cross interrogatories as you may desire.

Dated this 25th day of February, 1935.

Reuben L. Dush  
Clerk of the Circuit Court.

*Service accepted - notice waived.*  
*John N. Allen,*  
*Att'y for deft.*

89

RECORDED  
DUCK

Kelly

VS

Burmeister

Notice of taking  
Testimony

Filed Feb 25, 1935

Robert S. Duck

*[Faint, illegible handwritten notes and signatures on the right side of the page]*

JAMES A. KELLY, doing business  
under the trade name of KELLY  
BROS. NURSERIES,

Plaintiff

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

- vs -

AFFIDAVIT

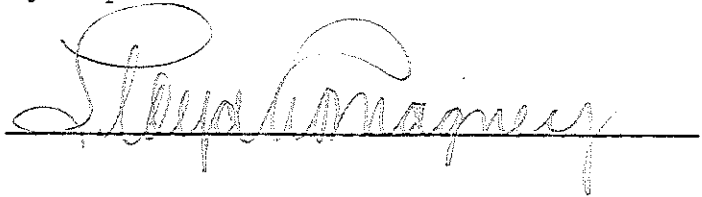
WILLIAM B. BURMEISTER & A. J.  
HARTUNG

Defendants

STATE OF ALABAMA)  
BALDWIN COUNTY)

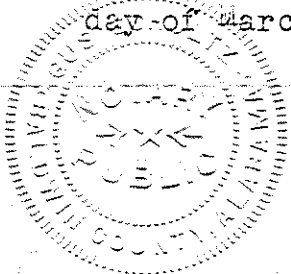
Lloyd A. Magney, being first duly sworn on his oath deposes  
and says that he is attorney of record for the plaintiff in the  
above entitled cause; that William F. Kelly is a material witness  
for the plaintiff in the above entitled cause, and that the said  
William F. Kelly is absent from the state and is a non-resident  
of the state of Alabama, residing in Dansville, New York.

That Retta G. Matson, whose address is Kramer Block,  
Corner of Main and Exchange Streets, Dansville, New York, is a  
competent and suitable person to act as commissioner to take the  
testimony of the said William F. Kelly, and that it is necessary  
that such testimony be taken by deposition.



Subscribed in my presence and sworn to before me this 2

day of March, 1935.



  
Notary Public

27 8 7  
IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

JAMES A. KELLY, doing business  
under the trade name of KELLY  
BROS. NURSERIES,

Plaintiff

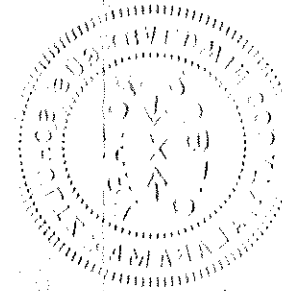
- VS -

WILLIAM B. BURMEISTER & A. J.  
HARTUNG,

Defendants

AFFIDAVIT

*Filed March 5 1955*  
*Lloyd A. Magney*  
Lloyd A. Magney  
Attorney  
Foley, Alabama.



JAMES A. KELLY, doing business  
under the trade name of KELLY  
BROS. NURSERIES,

Plaintiff,

-VS-

WILLIAM B. BURMEISTER & A.J. HARTUNG,

Defendants.

(  
)  
\* IN THE CIRCUIT COURT OF  
(  
)  
\* BALDWIN COUNTY, ALABAMA.  
(  
)  
\* AT LAW.

NOTICE --.

TO HON. JOHN N. ALLEN, ATTORNEY FOR THE ABOVE NAMED DEFENDANTS.

You are hereby notified that on the 23rd day of February, 1935,  
the affidavit of Lloyd A. Magney was filed in the above entitled  
cause stating that James A. Kelly is a material witness for  
the Plaintiff, and that the said James A. Kelly is a non-resident  
of the State of Alabama, residing in Dansville, New York, and that  
it is necessary to take the deposition of said James A. Kelly.

With said affidavit there was filed copies of interrogatories  
to the said James Kelly, a copy of which is attached to this notice.

The name of Retta G. Matson, whose address is Kramer Block, Corner  
of Main and Exchange Streets, Dansville, New York, is suggested as  
a competent person to act as commissioner to take said depositions.

You are allowed 10 days within which to make application for the  
oral examination of said witness or to file cross interrogatories as  
you may desire.

Dated this 25th day of February, 1935.

*Robert S. Duck*

Clerk of the Circuit Court.

Jury  
RECORDED  
Case # 89

In the circuit Court  
of Baldwin County, Alabama  
at Law

Kelly Bros. Nurseries

VS

Bermeister & Hartung

Notice of Interrogatories  
to Attorney for Defendant

Filed - Feb 25, 1935  
Robert S. Duck  
Clerk

*Served on John N. Allen Van Antwerp Bldg.*

JAMES A. KELLY, doing business  
under the trade name of KELLY  
BROS. NURSERIES,

Plaintiff

- vs -

WILLIAM B. BURMEISTER & A. J.  
HARTUNG

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

INTERROGATORIES TO WILLIAM F. KELLY, WITNESS IN BEHALF OF THE PLAINTIFF.

1. Please state your name, your age and your place of residence.
2. Are you connected with Kelly Brothers Nurseries? If so, please state exactly the nature and extent of your connection.
3. Please state who is the sole owner and proprietor of Kelly Brothers Nurseries.
4. Do you know the defendants, William B. Burmeister and A. J. Hartung, or either of them? If so, please state the nature and extent of that acquaintance with them.
5. Did you, as an employee of Kelly Brothers Nurseries, know or have any business with B. & H. Nurseries, of Three Rivers, Michigan?
6. Do you know what B. & H. Nurseries was, whether a corporation or partnership, and who composed it?
7. Please state what you know about B. & H. Nurseries, its members and what, if any, business dealings you had with them as the employee and representative of Kelly Brothers Nurseries.
8. Did you, on or about the 11th day of October, 1930, sell some nursery stock to the defendants, William B. Burmeister and A. J. Hartung as B. & H. Nurseries at Three Rivers, Michigan?  
If so, what was the amount of the sale?
9. Was the sale of such stock made for cash or upon credit, and if upon credit did you receive any evidence of indebtedness for it?
10. Please look at this paper which the commissioner has marked exhibit 1, and state what it is.
11. Do you know, of your own knowledge, whether or not the note marked plaintiff's exhibit 1, or any part of it has ever been paid?

23  
# 89  
IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

Original

JAMES A. KELLY, doing business  
under the trade name of KELLY  
BROS. NURSERIES,

Plaintiff.

- VS -

WILLIAM B. BURMEISTER & A. J.  
HARTUNG,

Defendants.

INTERROGATORIES

Filed  
March 2 1935  
Lloyd A. Magney  
Attorney  
Foley, Alabama.

Harhope

S.D.P. 8  
Rec. in office  
3/2/35 M.H. Walker

Received 19 Day of March 19 35  
and on 22 Day of March 19 35  
I served 2 Copy of the within Interrogatories  
on John W. Allen  
by service on

R. L. HOLCOMBE, Sr., Sheriff  
By M. A. Bernhart D. S.



SCOTT W. CRANE  
ATTORNEY AND COUNSELLOR AT LAW  
M. & F. BANK BUILDING  
DANVILLE, N. Y.  
PHONE 150

April 8th 1937

R. S. Duck  
Register and Clerk  
Circuit Court, Baldwin Co.  
Bay Minette, Ala.

Re: Kelly vs. Burmeister and ano.

Dear Sir:

Your favor of the 5th inst. enclosing your  
check on The Merchants National Bank of Mobile to  
my order for \$5.00, in payment of my fees as  
Commissioner in the above case, has been received.

I thank you for your attention to the matter  
and this can be your receipt for the same.

Yours truly,

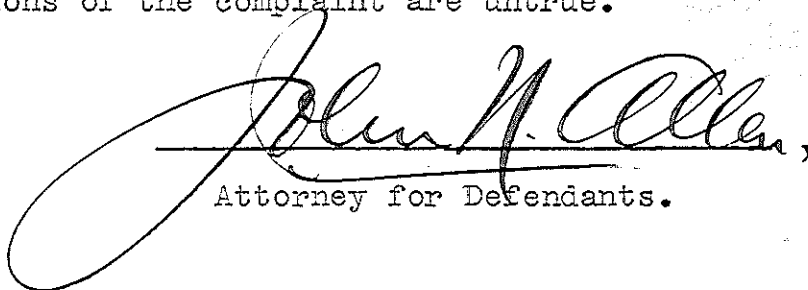
*Betta G. Watson*

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JAMES A. KELLY, doing business :  
under the trade name of Kelly :  
Bros., Nurseries, :  
Plaintiff, :  
-vs- :  
WILLIAM B. BURMEISTER & A. J. :  
HARTUNG, :  
Defendants. :  
-----

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA,  
AT LAW.

For answer to the complaint in the above entitled cause,  
the defendants say:

1. The allegations of the complaint are untrue.

  
Attorney for Defendants.

Defendants demand a trial of the above styled cause by a  
jury.

RECORDED  
1004

NO. 89

Filed November 13, 1934.

*W. A. Stone*  
Clerk.

Copy to Wagner 11/13/34

The State of Alabama, {  
Baldwin County

CIRCUIT COURT

To Retta G. Matson,Kramer Block, Corner of Main and Exchange Streets,Dansville, New York, -N-Y-

KNOW YE: That we, having full faith in your prudence and competency, have appointed you Commissioner, and by these presents do authorize you, at such time and place as you may appoint, to call before you and examine James A. Kelley and William F. Kelley

as witnesses in behalf of Plaintiff

in a cause pending in our Circuit

Court of Baldwin County, of said State, wherein

James A. Kelly, doing business under the trade name of Kelly  
Brothers Nurseries,

Complainant

and William B. Burmeister & A. J. Hartung,

Defendant,

on oath to be by you administered, upon themto take and certify the depositions of the witnesses and return the same to our Court, with all convenient speed, under your hand.Witness 25th day of March 19 35Rahit L. DuckCOMMISSIONER'S FEE, \$ 10.00

REGISTER

WITNESS' FEES, \$ None

NO. 89

The State of Alabama

BALDWIN COUNTY

CIRCUIT COURT

James A. Kelly

vs. Complainant

William B. Burmeister &

A.J. Hartung

Defendant

COMMISSION TO TAKE DEPOSITION

Retta G. Matson

COMMISSIONER:

WITNESSES:

James A. Kelly

William F. Kelly

INTERROGATORIES TO JAMES A. KELLY, WITNESS IN BEHALF OF THE PLAINTIFF

1. Please state your name, your age, your place of residence and your business.

2. Are you in any way connected with Kelly Bros. Nurseries? If so, please state exactly the nature and extent of your connection.

3. Do you know, either personally or in a business way, the defendants William B. Burmeister and A. J. Hartung, or either of them? If so, please state the nature and extent of that acquaintance with them.

4. Did you ever know or have business with B. & H. Nurseries, of Three Rivers, Michigan?

5. Do you know what B. & H. Nurseries was, whether a corporation or a partnership and who composed it?

6. Please state what you know about B. & H. Nurseries, its members and what, if any, business dealings you had with them.

7. Did you, on or about the 11th day of October, 1930, sell some nursery stock to the defendants, W. B. Burmeister and A. J. Hartung, as B. & H. Nurseries, at Three Rivers, Michigan? If so, what was the amount of the sale?

8. Was the price for such nursery stock paid in cash or did you receive some evidence of indebtedness for it?

9. Please look at this paper which is marked, plaintiff's exhibit 1, and state what it is?

10. Please look at the endorsements on the back of the note, plaintiff's exhibit 1, from which it would appear that the note has been transferred or negotiated by Kelly Bros. Nurseries and explain those endorsements.

11. Please state whether or not you are now the sole owner of this note, plaintiff's exhibit 1, and the only person interested in it.

12. Has any part of this note ever been paid?

13. What is the amount now due upon it?

14. Please state any other facts in connection with this transaction which you think the Court should know.

J. A. KELLY, doing business as the trade name of KELLY BROS. NURSERIES,

Plaintiff

WILLIAM B. BURMEISTER & A. J.

HARTUNG,

Defendants

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA  
AT LAW

89 - July

~~RECORDED~~

*Back*

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

JAMES A. KELLY, doing business  
under the trade name of KELLY  
BROS. NURSERIES,

Plaintiff

- vs -

WILLIAM B. BURMEISTER & A. J.  
HARTUNG

Defendants.

INTERROGATORIES

*Filed*

*February 23 1935*  
*Robert L. Dyer*

*Lloyd A. Hagney*  
Attorney  
Foley, Alabama.

*Leave on John W. Allen*  
*Van Antwerp Bld*

JAMES A. KELLY, doing business  
under the trade name of KELLY  
BROS. NURSERIES,

Plaintiff

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

- VS -

WILLIAM B. BURMEISTER & A. J.  
HARTUNG

Defendants.

INTERROGATORIES TO WILLIAM F. KELLY, WITNESS IN BEHALF OF THE PLAINTIFF.

1. Please state your name, your age and your place of residence.
2. Are you connected with Kelly Brothers Nurseries? If so, please state exactly the nature and extent of your connection.
3. Please state who is the sole owner and proprietor of Kelly Brothers Nurseries.
4. Do you know the defendants, William B. Burmeister and A. J. Hartung, or either of them? If so, please state the nature and extent of that acquaintance with them.
5. Did you, as an employee of Kelly Brothers Nurseries, know or have any business with B. & H. Nurseries, of Three Rivers, Michigan?
6. Do you know what B. & H. Nurseries was, whether a corporation or partnership, and who composed it?
7. Please state what you know about B. & H. Nurseries, its members and what, if any, business dealings you had with them as the employee and representative of Kelly Brothers Nurseries.
8. Did you, on or about the 11th day of October, 1930, sell some nursery stock to the defendants, William B. Burmeister and A. J. Hartung as B. & H. Nurseries at Three Rivers, Michigan?  
If so, what was the amount of the sale?
9. Was the sale of such stock made for cash or upon credit, and if upon credit did you receive any evidence of indebtedness for it?
10. Please look at this paper which the commissioner has marked exhibit 1, and state what it is.
11. Do you know, of your own knowledge, whether or not the note marked plaintiff's exhibit 1, or any part of it has ever been paid?





JAMES A. KELLY, doing business  
under the trade name of KELLY  
BROS. NURSERIES,

Plaintiff

-vs-

WILLIAM B. BURMEISTER & A. J.  
HARTUNG,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

Depositions of witnesses reduced, sworn and examined the  
3rd day of April 1935 upon interrogatories under a  
Commission issued out of the Circuit Court of the County of  
Baldwin and State of Alabama, in a cause therein pending  
between James A. Kelly, doing business under the trade name  
of Kelly Bros. Nurseries, complainant, and William B. Burmeister  
and A. J. Hartung, defendants, as follows:-

JAMES A. KELLY being duly and publicly sworn, pursuant  
to the directions hereto annexed, in answer to said interroga-  
tories, deposes and says as follows:

To the FIRST interrogatory, he says:-

My name is James A. Kelly. I am 69 years of age, reside at  
Dansville, N. Y. and am in the nursery business.

To the SECOND interrogatory, he says:-

Individually, I am doing business under the trade name of  
"Kelly Brothers Nurseries". I am engaged in the nursery busi-  
ness under that name, alone.

To the THIRD interrogatory, he says:-

I have no personal acquaintance with William B. Burmeister or  
A. J. Hartung but have known them in a business way for some  
years and my traveling representative has called on them at  
their place of business several times.

*Retta M. Matson, Commissioner*

To the FOURTH interrogatory, he says:-

I had a large amount of correspondence with B. and H. Nurseries of Three Rivers, Michigan in the fall of 1929, which resulted in my selling them an order of trees, amounting to upwards of \$1700.00.

To the FIFTH interrogatory, he says:-

B. & H. Nurseries was a copartnership composed of William B. Burmeister and A. J. Hartung.

To the SIXTH interrogatory, he says:-

William B. Burmeister and A. J. Hartung were copartners, doing business under the trade name of "B. & H. Nurseries" and in the fall of 1929, I sold them an order of trees amounting to something upwards of \$1700.00. Later on, they gave their note for the amount of their purchase and that note has been renewed once or twice and nothing has been paid on it, other than interest.

To the SEVENTH interrogatory, he says:-

My sale of nursery stock to William B. Burmeister and A. J. Hartung, doing business at Three Rivers, Michigan, under the trade name of "B. & H. Nurseries" was not on or about the 11th day of October 1930. The sale was completed by correspondence during the previous fall and ~~winter~~ and the stock was delivered in March and April 1930. The purchase price of this stock so sold and delivered was \$1756.16.

To the EIGHTH interrogatory, he says:-

No part of the purchase price of said nursery stock was paid in cash but we received a note for the entire amount.

*Betta G. Matson, Commissioner*

To the NINTH interrogatory, he says:-

Paper marked "Plaintiff's Exhibit 1" is a promissory note of William B. Burmeister and A. J. Hartung, doing business under the name of "B. & H. Nurseries" which is written by Mr. Burmeister, dated October 11th, 1930 for \$1756.16 and interest on one month's time, payable to Kelly Brothers Nurseries. This note is a renewal of a note for a like amount and interest, given September 11th, 1930, on one month's time.

To the TENTH interrogatory, he says:-

The note dated October 11th, 1930 was endorsed by me and turned over to the Merchants and Farmers National Bank of Dansville, N. Y. and I received the cash on it. Subsequently, I paid the Bank in full for the note and the note was re-transferred back to me and this accounts for the endorsements on the back of the note.

To the ELEVENTH interrogatory, he says:-

I am now the sole owner of this note, marked "Plaintiff's Exhibit 1" and I am the only person interested in it.

To the TWELFTH interrogatory, he says:-

No part of this note has ever been paid.

To the THIRTEENTH interrogatory, he says:-

There is now past due and unpaid on this note, the sum of \$1756.16 with interest from the 11th day of October 1930.

*Petta G. Matson, Commissioner*

To the FOURTEENTH interrogatory, he says:-

The correspondence relative to this order for nursery stock covered a period of several months and while the letters were all over the name of "B. & H. Nurseries", about half of them were signed by William B. Burmeister and about half of them were signed by A. J. Hartung with their own individual signatures.

James A. Kelly

Examination by the undersigned taken  
and reduced to writing and carefully  
read to the witness and by the witness  
subscribed and sworn to this 3rd  
day of April 1935.

Betta G. Matson  
COMMISSIONER.

WILLIAM F. KELLY being duly and publicly sworn, pursuant to the directions hereto annexed. in answer to said interrogatories, deposes and says as follows:

To the FIRST interrogatory, he says:-

My name is William F. Kelly. I am 58 years of age and reside at Dansville, N. Y.

To the SECOND interrogatory, he says:-

I am connected with Kelly Brothers Nurseries; I am general manager of the business and as such, have full charge of all employees, the work and all transactions connected with the conduct of the business.

Betta G. Matson, Commissioner

To the THIRD interrogatory, he says:-

James A. Kelly of Dansville, N. Y. is sole owner and proprietor of Kelly Brothers Nurseries.

To the FOURTH interrogatory, he says:-

I know the defendants, William B. Burmeister and A. J. Hartung. I called upon them several times at their place of business at Three Rivers, Michigan and have had considerable correspondence with them in the last ten years. In a business way, I am well acquainted with both of them.

To the FIFTH interrogatory, he says:-

As an employee of Kelly Brothers Nurseries at different times, I called upon B. & H. Nurseries at Three Rivers, Michigan and made the acquaintance of both members of the firm and did a little business with them from time to time.

To the SIXTH interrogatory, he says:-

B. & H. Nurseries was a copartnership composed of William B. Burmeister and A. J. Hartung, who are the defendants in this action.

To the SEVENTH interrogatory, he says:-

As an employee and representative of Kelly Brothers Nurseries, in the fall of 1929 I called upon B. & H. Nurseries of Three Rivers, Michigan and had lengthy conferences with both members of the firm and I had to do with the correspondence between Kelly Brothers Nurseries and B. & H. Nurseries during the following winter, which resulted in a sale to B. & H. Nurseries of an order of trees amounting to upwards of \$1700.00.

*Petta G. Matson, Commissioner*

*Robert J. Matson, Commissioner*

by Mr. Burmeister.

under the name of "B. & H. Nurseries" and this note was written A. J. Hartung, the defendants in this action, doing business Kelly Brothers Nurseries, made by William B. Burmeister and for \$1756.16 and interest on one month's time, payable to purchase price of this nursery stock. It is a promissory note The paper marked "Exhibit 1" is the last note given for the To the TENTH interrogatory, he says:-

Last renewal of it was given on the 11th of October 1930. that note was renewed about the 11th of September 1930 and the first note was given for the purchase price of this stock and 1930. It was some weeks after the 1st of June 1930 that the and the sum of \$1756.16 was due and payable on the 1st of June The sale of that stock was not made for cash but upon credit To the NINTH interrogatory, he says:-

March and April 1930 and the amount of that sale was \$1756.16. getting the order in March 1930 and the goods were shipped in Nurseries during the following winter which resulted in our able correspondence between B. & H. Nurseries and Kelly Brothers sale of a good sized order of nursery stock. There was consider- business, in the fall of 1929 and started negotiations for the October 1930. I called upon the defendants, at their place of but the sale of this stock was made prior to the 11th day of and A. J. Hartung, as "B. & H. Nurseries" of Three Rivers, Michigan I sold some nursery stock to the defendants, William B. Burmeister To the EIGHTH interrogatory, he says:-

COMMISSIONER.

I, Retta G. Watson, do certify that JAMES A. KELLY and WILLIAM F. KELLY, the witnesses, personally appeared before me on the 3rd day of April 1935 at ten o'clock in the forenoon at The M and R Bank Building in the Village of Danville, in the State of New York and after being duly sworn, did each depose to the matters contained in the foregoing deposition subscribed by him and did, in my presence, subscribe the same and endorse the exhibit annexed thereto. That said depositions were duly taken and are a true record of the testimony of the witnesses and of all questions and answers required to be inserted and I further certify that I have subscribed my name to each single sheet thereof and to the exhibit.

STATE OF NEW YORK  
ss. )  
(COUNTY OF LIVINGSTON)

COMMISSIONER.

day of April 1935.

subscribed and sworn to this 3rd  
read to the witness and by the witness  
and reduced to writing and carefully  
Examination by the undersigned taken

To the ELEVENTH interrogatory, he says:-  
I know of my own knowledge that the note marked "Plaintiff's Exhibit 1" has never been paid nor has any part of it.



IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW.

JAMES A. KELLY, d/b under  
the trade name of KELLY  
BROS. NURSERIES,  
Plff.

vs.

WILLIAM B. BURMEISTER & A. J.  
HARTUNG,  
Dfts.

DEPOSITIONS.

Original

*We the jury find for the plaintiff and give his  
damages as:*

STATE OF ALABAMA }  
BALDWIN COUNTY }

TO ANY SHERIFF OF SAID COUNTY:

You are hereby commanded to summon William B. Burmeister and A. J. Hartung to appear within 30 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 James A. Kelly, doing business under the trade name of Kelly Bros. Nurseries.

Witness my hand this 18 day of October, 1934.

W. A. Stone  
CLERK

---ooo0000ooo---

JAMES A. KELLY, doing business  
under the trade name of KELLY  
BROS. NURSERIES,

PLAINTIFF.

- vs -

WILLIAM B. BURMEISTER & A. J.  
HARTUNG,

DEFENDANTS

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

COMPLAINT

Plaintiff claims of the Defendants the sum of \$1756.16 due from them by a promissory note made by them on the 11th day of October, 1930 and payable November 11th, 1930, together with the interest thereon.

Plaintiff avers that at the time of the making of said note the said Defendants William B. Burmeister and A. J. Hartung were co-partners, doing business under the firm name and style of B. & H. Nurseries, and that said note was signed "B. & H. Nurseries, by William B. Burmeister" and that thereby the said Defendants became and are jointly and severally liable to the Plaintiff.

That said sum of money is due and unpaid.

William B. Burmeister  
Attorney for Plaintiff.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

JAMES A. KELLY, doing business under the trade name of  
KELLY BROS. NURSERIES,

PLAINTIFF.

- VS -

WILLIAM B. BURMEISTER &  
A. J. HARTUNG,

DEFENDANTS

SUMMONS AND COMPLAINT

Filed Oct-18<sup>th</sup> 1934  
Wm. A. Stone,  
Clerk.

LLOYD A. MAGNEY  
ATTORNEY AT LAW  
FOLEY, ALABAMA

RECORDED

Executed October 15<sup>th</sup> 1934  
by serving copy of within Summons and  
Complaint on

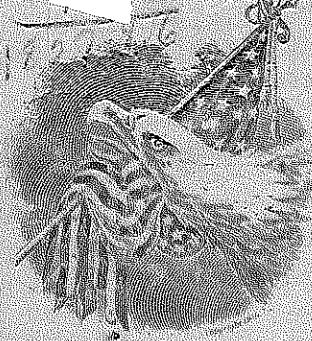
William B. Burmeister  
& A. J. Hartung

W. R. Stuart Sheriff  
By \_\_\_\_\_ Deputy Sheriff

We, the Jury, find:  
for the Plaintiff,  
and assess  
Plaintiff's damages  
at \$ 3509  
35

John H. Stark  
Foreman

17



\$ 10.20  
1756.16

One month 36 +

Three Rivers, Mich. Oct. 11

after date we promise to pay to  
the order of Kelly Brothers Nurseries.

\*\*\*\* Seventeen Hundred & Fifty Six 16/00 \*\*\*\* Dollars

Payable at First State Savings Bank

Value received with interest at 7 per cent per annum

E. & E. NURSERIES.

No 3999

Due Nov. 11, 1930

By *W. W. Hurmista*

At the execution of a Commission  
out of the Circuit Court, Baldwin County,  
Alabama, for the examination of witnesses  
between James A. Kelly, etc., plaintiff,  
against William B. Burmeister and the  
defendants, this paper writing of Plaintiff's  
Exhibit 1" was this 31st day of April 1935  
shown to James A. Kelly and William B. Kelly  
and by them deposited unto and subscribed  
by them at the time of their examination  
before me.

W. M. Matam, Commissioner  
J. A. Kelly

Plaintiff's Exhibit 1.

R. G. M. Comm.

Signatures of witnesses  
before Commissioner

James A. Kelly

William B. Kelly