

WILTON L. WAINWRIGHT,

Plaintiff,

VS.

W. R. STUART,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

TO THE HONORABLE F. W. HARE, JUDGE OF SAID COURT:

And now comes W. R. STUART, Defendant in the above styled cause and respectfully represents and shows unto your Honor and this Honorable Court as follows:

FIRST:

That heretofore, on to-wit, the 19th day of January, 1935, suit was filed against him by the above Plaintiff, in the Circuit Court of Baldwin County, Alabama, law side.

SECOND:

That, on to-wit, April 26th, 1935, another suit has been filed against him by the above Plaintiff.

THIRD:

That both suits involved the same claim or subject matter.

FOURTH:

That the first suit filed by the above named Plaintiff, on to-wit, the 19th day of January, 1935, was, on to-wit, February 5th, 1935, dismissed by the Court, and the following order entered upon the trial docket "2/5/35 Dismissed for want of prosecution".

FIFTH:

That the costs incurred in the former suit filed by the Plaintiff against him and which was dismissed by the Court, were not paid before the second suit was filed, and have not been paid up to this time.

WHEREFORE the Defendant, W. R. STUART, prays that the suit filed by the Plaintiff, on to-wit, April 26th, 1935, be forthwith dismissed.

W. R. Stuart

Reuben Hall

Attorneys for Defendant.

Copy of above motion mailed to Hon. B. F. McMillan Jr., Attorney for the Plaintiff, this May 2nd, 1935.

Robert L. Deech
Clerk

The above and foregoing motion is set down for hearing in chambers at Moundville, Ala. at 10 A.M. Tuesday, May 21st, 1935. The Clerk will notify the attys for parties -

This May 3rd 1935 -

D. W. Hare
Judge

142

~~WILTON L. WAINWRIGHT~~
Wick

WILTON L. WAINWRIGHT,
Plaintiff,

VS.

W. R. STUART,
Defendant.

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

Filed this 2 day of
May, 1935.

R. L. Quinn
Clerk.

WILTON L. WAINWRIGHT,
Plaintiff,

-vs-

W. R. STUART,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW NO. 142

Answering interrogatories propounded by defendant,
plaintiff says:

Wilton L. Wainwright, 52 years, Perdido, Alabama. The defendant owes me \$300.00 for money deposited with him and he agreed to return. I delivered check for this money to him because he demanded it as a condition to accepting bond for my brother. The money was paid on a check written by the defendant and signed by me. I have no copy of the check and am advised that a copy would not be competent evidence. I will however, present the original if the court so directs.

I do not know who actually received the money, but the check was written by the defendant and signed by me in the manner he directed. I never heard of O.C. Hall signing as security for my brother, my information is that he did not. I made no arrangement and had no negotiations with him with reference to the then transaction. I delivered my check to the defendant at his request in connection with a bond for my brother charged with a crime, and it was paid.

I decline to answer the question asked in paragraph No. 11 because I am advised that I have no right to do so and that if I did answer it would be incompetent, irrelevant and immaterial. I do not know whether an indictment was found against O.C. Hall or not, nor whether he got my money, but if he did it was by arrangement between him and defendant. I think that defendant was in business with Mr. Hall, but do not know the arrangements between them.

I have discussed the matter with defendant in trying to collect the money and have always claimed that he owed it. I am interested only in getting the money justly due me by the defendant. I do not care whether he gets it from Mr. Hall or not, or how he gets it if he gets it honestly. Defendant didn't deny owing me, but he simply didn't pay. I do not know whether he said he received the money or not, but I do know that he received my check on which the money was paid.

I have filed suit against the defendant, but don't know the dates nor what the bill of complaint contained. The present suit involves a claim between me and defendant and is filed in the court referred to in question No. 20. I never paid any money to O.C. Hall, but signed a check which the defendant demanded and which he wrote. I don't personally know what he did with it. I have no copy of the check and am advised that I don't have to make a copy, but I will deliver the original check if the court requires it.

STATE OF ALABAMA,
COUNTY OF

Before me, Edgar R. Camp, a Notary Public, in and for said State and County, personally appeared Wilton L. Wainwright, who being sworn says that the foregoing answers are true.

Wilton L. Wainwright

Sworn to and subscribed before me
this 10 day of June, 1935.

Edgar R. Camp
Notary Public

Civil

NO.

142

RECORDED

7 Nov 90

WILTON L. WAINWRIGHT

VS

W.R. STUART,

ANSWERS TO INTERROGATORIES

*Filed Jan 14 1935
Robert L. Duck
clerk*



[Handwritten signature]

[Handwritten signature]

2

WILTON L. WAINWRIGHT,
Plaintiff,

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

VS.

AT LAW,

W. R. STUART,

NO. 142.

Defendant.

And now comes the Defendant and for answer to the Plaintiff's complaint and to each count thereof, separately and severally, says:

ONE:

That the facts therein alleged are untrue.

TWO:

That the accounts sued on are barred by the statute of limitation of three years.

Beebe & Haege
Attorneys for Defendant.

Civil-142-Jury

RECORDED
7-2-35

WILTON L. WAINWRIGHT,

Plaintiff,

VS.

W. R. STUART,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 142.

ANSWER

Filed this 20th day of Aug.,
1935.

Robert S. Duck
Clerk.

MAY 19 1936

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

OCTOBER TERM, 1935-36.

1 Div. 242.

Wilton L. Wainwright

v.

W. R. Stuart

Appeal from Baldwin Circuit Court.

Action in assumpsit. From a judgment for defendant,
plaintiff appeals.

SAMFORD, JUDGE.

The action was on the common counts. The pleas were the general issue and the statute of limitation of three years. At the conclusion of the evidence, the Court, at the request of defendant, gave the general charge in his behalf.

Ernest Wainwright was convicted in the Circuit Court of

2.
Baldwin County and from that judgment the defendant, Wainwright, took an appeal to this Court. The plaintiff in this case, desiring to make bond for Ernest Wainwright, made application to this defendant, who was at that time Sheriff of Baldwin County, having custody of Ernest, for bail pending appeal and presented him an appearance bond, signed by Ernest, himself and John Hadley. In addition to the bond signed as above, the defendant required plaintiff to deposit with him \$300.00 in cash, to which this plaintiff agreed, on the condition that the money should be returned to him on the termination of the appeal and the surrender of Ernest to abide the judgment. Not having the money there present, this defendant prepared a check on a bank at Atmore for the amount, payable to O. C. Hall, Cashier, signed by this plaintiff and delivered to this defendant. At the time of the delivery of the check, defendant assured plaintiff that the money would be returned upon compliance by Ernest with the conditions of the appearance bond. The check was dated 5/25/31 and was cleared and paid. The criminal case was determined against Ernest, and on April 28th, 1932, Ernest was delivered to the Sheriff in compliance with the terms of the appearance bond, and plaintiff then and there demanded the return of the \$300.00 placed on deposit with defendant and thereupon defendant failed or refused to return the money, which he still retains. This suit was filed April 26th, 1935.

The fact that the check for \$300.00 was made payable to O. C. Hall, at the instance of the defendant, does not change the character of the transaction between this plaintiff and this defendant. The deposit was made with defendant and the relation of debtor and creditor immediately arose, subject to the conditions under which the deposit was made. 16 Corpus Juris 24.

The approval of the appearance bond in the appeal case of Ernest Wainwright, while irregular, was still valid and binding. Code 1923, Sec. 3383, as amended, Acts 1931, p. 675; Michie's Cum. Sup., Sec. 3383.

The action in this case is based upon a verbal contract

5.
between plaintiff and defendant and, therefore, the appeal bond in the criminal case and the judgment in the Court of Appeals were collateral to the issue and therefore the best evidence rule is not here applicable. Stearns v. Edmonds, 189 Ala. 487; 12 Vol. Ala. & So. Digest, Ev. Key No. 171.

The Court, in giving to the defendant the general charge, took the view that the \$300.00 paid by plaintiff had never been traced into the hands of this defendant. In this, he fell into error. The entire negotiation for the deposit of the money was with this defendant. He it was who demanded its payment; he wrote the check and selected the payee; he gave the assurance of the return of the money. Hall was in no sense the agent of plaintiff, but he was the agent of this defendant and the payment of the check to Hall was to all intents and purposes a payment to the defendant and upon the conditions of the deposit being complied with, defendant became obligated upon demand to pay the money to the plaintiff.

Under the undisputed evidence in this case, all of the conditions under which the \$300.00 was paid were complied with and, this being so, the plaintiff was entitled to a judgment.

The judgment is reversed and the cause is remanded.

REVERSED AND REMANDED.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

12th Div., No. 242
Wilton L. Wainwright Appellant.....
v.
W. R. Stuenkel Appellee.....
From Baldwin Circuit Court
The State of Alabama,
City and County of Montgomery. }

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

Witness, Charles Bricken, Jr., Clerk of the Court

of Appeals of Alabama, at the Capitol, this the

19th day of May, 1936

Charles Bricken, Jr.
Clerk of the Court of Appeals of Alabama.

THE COURT OF APPEALS OF ALABAMA

1st Div., No. 242

Wilton L.
Wainwright
Appellant
vs.

W. R. Stuart
Appellee

From Baldwin Court.
Brown

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY, ALA., 1934

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term, 1935

To the Clerk of the Circuit Court of Baldwin County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court of said County, in a certain cause lately pending in said Court between

Wilton L. Wainwright, Appellant,

and

W. R. Stinson, Appellee,

wherein by said Court, at the Aug Term, 1935, it was considered adversely to said appellant, were brought before our Court of Appeals, by appeal taken, pursuant to law, on behalf of said appellant.

Now, it is hereby certified, That it was thereupon considered by our Court of Appeals on the 19th day of May 1936, that said judgment of said Circuit Court be reversed and annulled, and the cause remanded to said Court for further proceedings therein; and that it was further considered that the appellee pay

the costs accruing on said appeal in this Court and in the Court below

Witness Charles Bricken, Jr., Clerk of the Court
of Appeals of Alabama, at the Capitol, this the

19th day of May 1936

Charles Bricken, Jr.
Clerk of the Court of Appeals of Alabama.

142

RECORDED

Quick

8-380

The Court of Appeals of Alabama

October Term, 1931

1 sh
Div. No. 242

Wilton L.
Warrigler
Appellant.....

v.

W. R. Stuenkel
Appellee.....

From Baldwin Circuit Court

CERTIFICATE OF REVERSAL

The State of Alabama, }
Baldwin County. } Filed
this 31 day of May 1936
J. H. Stuenkel
Clerk

WILTON L. WAINWRIGHT,

Plaintiff,

VS.

W. R. STUART,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 142.

Interrogatories propounded to the Defendant by the Plaintiff under Article 10, Chapter 290, of the 1923 Code of Alabama:

ONE: Please state your name, age and place of residence.

TWO: You are claiming of the Defendant Three Hundred (\$300.00) Dollars, by account on to-wit, April 29th, 1932.

Please state for what or in what manner the Defendant is supposed to be indebted to you.

THREE: Please state whether or not you delivered the money claimed, to-wit, Three Hundred (\$300.00) Dollars, to the Defendant or to some other person. If to some other person, please state the name of that person.

FOUR: If you state that the amount was delivered to the Defendant, then please state for what purpose said money was paid over or delivered to him.

FIVE: If you state that the money was paid over or delivered to the Defendant, then please state when, how and where it was done, and for what purpose.

SIX: Please state how or in what manner the money was paid by you to the Defendant and whether in cash or by check. If by check, please attach a copy of the check to your answers to

these interrogatories.

SEVEN: Please state if it isn't a fact that the money you alleged to have been paid over to the Defendant was, in fact, paid to O. C. Hall. If you state that it was paid to O. C. Hall, then please state whether in cash or by check, and if by check, please attach a copy of said check to your answers to these interrogatories.

EIGHT: Please state if it isn't a fact that the amount sued on was, in fact, paid over to O. C. Hall as security for his signing a bond for your brother. If you state that it was, please advise if this Defendant was present at the time of the transaction between you and O. C. Hall.

NINE: Please state if it isn't a fact that you, at no time, delivered or paid over any money to this Defendant.

TEN: Please state if it isn't a fact that the money you are claiming is the bond which you placed in connection with a criminal prosecution against your brother, in Baldwin County, Alabama.

ELEVEN: Please state if it isn't a fact that you, some-time ago, appeared before a Grand Jury in Baldwin County, Alabama, and gave testimony involving an embezzlement charge against O. C. Hall, in connection with the money which you are claiming from this Defendant.

TWELVE: Please state if it isn't a fact that an indictment was rendered against O. C. Hall, in connection with the money which you are now claiming against this Defendant.

THIRTEEN: Please state if it isn't a fact that you testified before the Grand Jury that the money which you are now claiming against this Defendant was paid over to and received by O. C. Hall, in connection with the bond for your brother, who was under a criminal prosecution in Baldwin County, Alabama.

~~an criminal prosecution in Baldwin County, Alabama.~~

FOURTEEN: Please state if it isn't a fact that the money which you are now claiming from this Defendant was in fact paid over to and received by O. C. Hall and never received by this Defendant.

FIFTEEN: Please state if it isn't a fact that you have often discussed this matter with this Defendant and on each occasion stated that you were claiming said amount from O. C. Hall.

SIXTEEN: Please state if it isn't a fact that you approached this Defendant and requested him to assist you in collecting the said amount from the said O. C. Hall.

SEVENTEEN: Please state if it isn't a fact that on every occasion you have mentioned the matter of the money, which you are now claiming against this Defendant, that the Defendant denied any and all liability and told you that the money was not paid to or received by him.

EIGHTEEN: Please state if it isn't a fact that you filed suit in the Circuit Court of Baldwin County, Alabama, on to-wit, January 19th, 1935, against this Defendant, in an effort to collect the same money which is discussed in the present suit.

NINETEEN: Please state if it isn't a fact that you alleged in that complaint that the money was due for an account, on to-wit, sometime in the year 1931.

TWENTY: Please state if it isn't a fact that the present suit involves the same parties and the same subject matter as the suit filed in the Circuit Court of Baldwin County, Alabama, on January 19th, 1935, and which was dismissed for want of prosecution.

TWENTY-ONE: Please state if it isn't a fact that the money which you are now claiming against this Defendant was, in fact, paid by you to O. C. Hall, as an officer of the Baldwin County Bank of Bay Minette, Alabama, and by him deposited to his account in said bank.

TWENTY-TWO: If you state that the amount claimed was paid by check, please attach a copy of the check, if you have it, together with the endorsement thereon. If you do not have a copy of the check, then please state the name of the payee therein, the date and the amount of the check.

Beebe & Hall
Attorneys for Defendant.

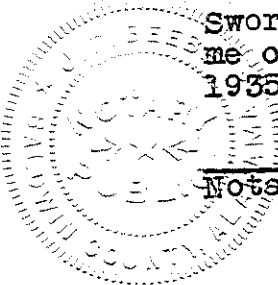
STATE OF ALABAMA)
BALDWIN COUNTY.)

Before me, the undersigned authority, in and for said State and County, personally appeared Hubert M. Hall, who being a member of the partnership of Beebe & Hall, who is known to me and who, having been by me first duly sworn, deposes and says that he is the attorney of record for W. R. Stuart in a case pending in the Circuit Court of Baldwin County, Alabama, Law Side, against Wilton L. Wainwright, as Plaintiff; that true answers to the foregoing interrogatories will be material testimony for the Defendant in said cause.

Hubert M. Hall

Sworn to and subscribed before
me on this the 30th day of May,
1935.

J. P. Beebe
Notary Public, Baldwin County,
Alabama.



Dec in office
6/1/35
Duffellkins Rr

RECORDED

WILTON L. WAINWRIGHT,
Plaintiff,
VS.
W. R. STUART,
Defendant.

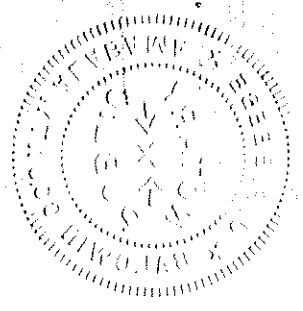
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
AT LAW
NO. 142.

INTERROGATORIES

Filed this 31 day of May,
1935.
Ralph L. Duck
Clerk.

Received 6 Day of June 1935
and on 6 Day of June 1935
I served a copy of the within Interrogatories
on B. F. W. & Malcomby

BY Wm. L. HOLCOMBES JR., CLERK
BY Wm. L. Holcombes Jr.



THE STATE OF ALABAMA, } No. 142 } CIRCUIT COURT,
BALDWIN COUNTY. } Term, 193

To Any Sheriff of the State of Alabama, Greeting:
You are hereby commanded, That of the goods and chattels, lands and tenements of
_____ Plaintiff in the suit,
you cause to be made the sum of _____ Dollars,
costs of suit, created by said Plaintiff, for that, whereas, on the _____ day of
_____ 193, the said Plaintiff recovered by the Judgment of the said Circuit Court
of said County, against _____ Defendant
to the suit, the sum of _____ Dollars,
besides _____ Dollars, costs of suit;
upon which Judgment an Execution has been issued and returned by the Sheriff, "No property found."

AND HAVE YOU THAT MONEY ready to render to _____
Clerk of said Court, and make return of this Writ and the execution thereof, according to law.
Witness my hand, this _____ day of _____ 193.

| | | CLERK'S FEES | | SHERIFF'S FEES | | Clerk. | |
|---|--------|--------------|-----|--|------|---------|-------|
| | | Dollars | Cts | | | Dollars | Cents |
| 690 130 \$40 | | | | | | | |
| For every Summons and Complaint | \$1 25 | 1 25 | | For Levying an Attachment | 3 00 | | |
| Each copy thereof | 30 | 3 00 | | Entering and Returning Attachment | 25 | | |
| Entering a Sheriff's Return | 20 | 2 00 | | Summoning Garnishee | 1 50 | 1 50 | ✓ |
| Docketing | 25 | 2 50 | | Serving Summons on Writ | 1 50 | 1 50 | ✓ |
| Entering Appearance | 20 | 2 00 | | Serving Notice Sci. Fa. Notice, etc. | 65 | | |
| Filing | 10 | 1 00 | | Serving Subpoenas | 65 | 1 45 | ✓ |
| Every order made in Court | 30 | 3 00 | | Empanelling Jury | 75 | 75 | ✓ |
| Copy thereof | 25 | | | Entering and Returning Execution | 25 | | |
| Every Trial with or without Jury | 75 | 7 50 | | Collecting Costs Execution | 1 50 | | |
| Entering up Judgment, or copy thereof | 30 | 3 00 | | Executing a Writ of Possession | 2 50 | | |
| Issuing Execution | 50 | 5 00 | | Taking and Approving Bonds | 1 00 | | |
| Docketing Execution | 25 | | | Commissions | | 1 50 | |
| Entering Return on Execution | 20 | | | Sheriff's Commission for Property Sold | | | |
| Issuing Subpoenas | 30 | 3 00 | | Under Attachment | | 2 45 | ✓ |
| Administering Oath | 25 | | | Seizing Personal Property on Writ of De- | | | |
| Issuing each Attachment Taking Bond | 1 00 | | | tinue | 3 00 | | |
| Filing Attachment | 10 | | | | | | |
| Each Summons for Garnishee | 50 | | | | | | |
| Each Copy | 50 | | | | | | |
| Notice to Deft in Garnishee on Summons | | | | | | | |
| and Copy, per 100 words | 20 | | | | | | |
| Commissions to take Depositions or copy | 75 | | | | | | |
| Order to Execute Writ of Inquiry | 30 | | | | | | |
| Copy of Interrogators. 15c per hundred | 50 | 1 00 | | | | | |
| words or | | | | | | | |
| Filing each Deposition and endorsing | 20 | | | | | | |
| same | | | | | | | |
| Final Record, per hundred words | 15 | | | | | | |
| Every Certificate | 50 | | | | | | |
| Taking Bond not Otherwise Provided for | 75 | | | | | | |
| Witness Certificates | 25 | | | | | | |
| Continuance | 10 | | | | | | |
| Certificate of Judgment | 50 | | | | | | |
| Order of Publication | 1 00 | | | | | | |
| Tramps | | 16 00 | | | | | |

RECAPITULATION
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BALDWIN COUNTY.

193 ---, levied

day of

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~~Handwritten notes and calculations, including:~~

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- ~~35620~~
- ~~20689~~
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- ~~24855~~
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 36.15
 Sheriff.

0.617
0.091
0.052

THE STATE OF ALABAMA }
Baldwin County }

This day of 193.....

Received in office

193

Sheriff's Execution Docket, Page

Sheriff's Fee Book, - - - - Page-----

**The State of Alabama,
Baldwin County.**

CIRCUIT COURT

Plaintiff

vs.

Defendant

Civil Execution for Costs Against Plaintiff.

Costs, - - - - \$-----

Civil Fee Book ----- Page -----

Execution Docket Page

Filed _____, 193__

Clerk

Plaintiff's Attorney,

Defendant's Attorney.

Moore Printing Co.

The State of Alabama,
Baldwin County.

TO ANY SHERIFF OF THE STATE OF ALABAMA,—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON C. L. White Cashier. of the
Baldwin County Bank. and Bring with him all Books showing the Account
of O. C. Hall. for the years 1931 & 1932
at the instance of the Deft. if he should be found in your County, personally
to be and appear before the Circuit Court of Baldwin County at the present term thereof, to be holden at the Court
House in Bay Minette, to wit: on the 14th, day of Sept., 1936
at _____, and to bring with him and produce at the time and place aforesaid, to be used as evidence

(here describe it), _____

and then and there testify and the truth to speak concerning all and singular those things of which he may have knowledge, or the said instrument of writing doth import of, and concerning, and concerning a certain suit now pending and undetermined in said Court, wherein Wilton L Wainwright. Plaintiff
and W. R. Stuart. Defendant.

And this he shall in nowise omit, under penalties of what the law directs, and shall have you, then and there this writ with your endorsement thereon in what manner you have executed same.

Witness my hand, this 9th day of Sept. 19 36

Sept. 19 3
R. L. Huch

Clerk.

Executed by serving a copy
of the within writ on
Mr. C.L.White

This 12 day of Sept. 1936

M. H. Wilkins, Sheriff

By Louie Ryars DS

RECORDED
Duek
7-561

No. 142

THE STATE OF ALABAMA
Baldwin County

Wilton L Wainwright.

Plaintiff

VS. SUBPOENA DECUS TECUM

W R Stuart.

Defendant.

CIRCUIT COURT

WITNESSES:

C L White/

SET FOR TRIAL

14 day of Sept 1936

GILL PTG. CO., MOBILE

WILTON L. WALDRIGHT,

Plaintiff,

-vs-

W. R. STUART,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW NO. 142

1

1

Plaintiff demurs to pleas filed by defendant on to-wit May 31st, 1935 and to each of them separately and severally on the following grounds each of which is severally and separately assigned:

(1) The allegations of the pleas present no defense to this suit.

(2) The fact that a suit was previously brought involving the same parties and subject matter and was dismissed for want of prosecution is no bar to a subsequent action based on the same cause of action.

(3) The fact, if it be a fact, that plaintiff on January 19, 1935 filed in this court a suit involving the same parties and subject matter, which suit was dismissed February 5, 1935 for want of prosecution, does not amount to res adjudicata.

(4) The pleas admit the defendant received \$300.00 of plaintiff's money which he has failed to pay back and the fact, if it be a fact, that plaintiff's former suit for the recovery of this money was dismissed for want of prosecution would not bar another suit for the recovery of said money.

(5) The pleas state nothing that as a matter of law precludes plaintiff from recovering the amount claimed in this suit.

B. V. Reemick
Attorney for Plaintiff.

142

RECORDED

Mainwright

VS

Stuart

Plaintiff's Demurers
to Pleas

Filed July 22, 1935

Robert S. Duck
Clerk.

The State of Alabama
 Baldwin County--Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA--GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the

Second Monday in September 1935

in a certain cause in said Court wherein Wilton L Wainwright.

Plaintiff, and W R Stuart

Defendant, a judgment was rendered against said

Jury Verdict for the defendant.

to reverse which Verdict the said

Wilton L. Wainwright

has on this day applied for and obtained from this office an APPEAL, returnable to the

Spring Term of our Supreme. Court of the State of Alabama, to

be held at Montgomery, on the _____ day of _____, 1935 next,

and the necessary bond having been given by the said Wilton L Wainwright

with J S Havard, and

H B McGill

sureties,

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

W R Stuart.

or Beebe & Hall attorney^s, to appear at the

Spring Term of our said Supreme Court, to defend against the said

Appeal, if They think proper.

Robert S Duck.

WITNESS, ~~ATTEST~~ ^{RR} ~~Robert S Duck~~ Clerk of the Circuit Court of said County, this Third

day of December., A. D., 1935

Attest:

Robert S Duck Clerk.

Executed 12-7- 1935
by serving subpoena
on H. M. Hall
Member of firm
Beebe & Hall
M. H. Watkins
By C. V. Anderson

RECORDED
Quick
7-377

142

CIRCUIT COURT
BALDWIN COUNTY, ALA.

Wilton L Wainwright.

vs. { Citation in Appeal
W R Stuart.

Issued xxDec 3rd day of Dec. 1935

Moore Ptg. Co., Bay Minette

RECORDED
142 Dec
7-377

Wanright
vs

Stuart

Nature of appeal
and necessary fees
costs.

3 Dec. 35.
Return of

WILTON L. WAINWRIGHT,

Plaintiff,

-vs-

W. R. SEWART,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW. NUMBER 142.

The undersigned Wilton L. Wainwright takes appeal
to the Supreme Court in the foregoing cause and the undersigned
hereby acknowledge themselves as surety for ^{Costs of} said appeal. Dated
this November 30, 1935.

Wilton L. Wainwright

J. S. Howard

H. B. McGill

upward Dec 3 1935
Robert L. Lusk
Clk.

RECORDED
142 Duck
7-377

Warrington
vs

Stuart

Nature of appeal
and Security for
Costs.

3 Dec. 35.
Robert Stuart.

Warrington vs Stuart
Nature of appeal
and Security for
Costs.

WILTON L. WAINWRIGHT,
Plaintiff,
VS.
W. R. STUART,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
AT LAW
NO. 142.

And now comes the Defendant and prays the Court that the Plaintiff in this cause be not permitted to further prosecute this cause and for grounds thereof says:

ONE:

That suit was filed by the Plaintiff and against the Defendant on the 19th day of January, 1935, in the Circuit Court of Baldwin County, Alabama, Law Side, involving the same parties and the same subject matter, which suit was, on February 5th, 1935, dismissed for the want of prosecution.

TWO:

That a suit was filed by the Plaintiff in this cause against the Defendant involving the same subject matter, on the 19th day of January, 1935, in the Circuit Court of Baldwin County, Alabama, Law Side, and was, by said Court, on February 5th, 1935, dismissed by the Court, and the following was entered upon the docket: "2/5/35 Dismissed for want of prosecution".

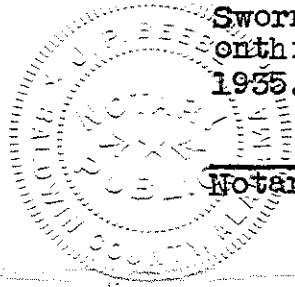
THREE:

That a former suit was filed by the above Plaintiff and against this Defendant, in the Circuit Court of Baldwin County, Alabama, on January 19th, 1935, and by this Court dismissed on February 5th, 1935, and the Plaintiff is thereby precluded from further prosecuting this cause.

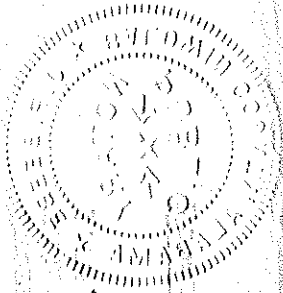
WHEREFORE the Defendant prays judgment of the said summons and complaint, and that the same be abated.

W R Stuart

Sworn to and subscribed before me
on this the 31st day of May,
1935.



J. P. Bueh
Notary Public, Baldwin County,
Alabama.



142

RECORDED
check

WILTON L. WAINWRIGHT,

Plaintiff,

VS.

W. R. STUART,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 142.

Filed this 31st day of May,
1935.

Robert S. Duck
Clerk.

| NO. | NAME | OCCUPATION | ADDRESS |
|-----|------|------------|---------|
|-----|------|------------|---------|

[Handwritten signature]

Wainwright
Thrust

The State of Alabama,
Baldwin County.

TO ANY SHERIFF OF THE STATE OF ALABAMA,—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Mr. Jones. Cashier of the
First National Bank of Atmore.

at the instance of the Pltff. if he should be found in your County, personally

to be and appear before the Circuit Court of Baldwin County at the present term thereof, to be holden at the Court
House in Bay Minette, to wit: on the 14th day of Sept. 1936

at and to bring with him and produce at the time and place aforesaid, to be used as evidence

(here describe it),

All the records of the First National Bank of Atmore the Fact
and date of payment of Check by Wilton L Wainwright to O C Hall
Cashier for \$300.00 Dated May 25th 1931.

and then and there testify and the truth to speak concerning all and singular those things of which he may have knowl-
edge, or the said instrument of writing doth import of, and concerning, and concerning a certain suit now pending and
undetermined in said Court, wherein Wilton L Wainwright. Plaintiff
and W R Stuart. Defendant.

And this he shall in nowise omit, under penalties of what the law directs, and shall have you, then and there this writ
with your endorsement thereon in what manner you have executed same.

Witness my hand, this 9th day of Sept. 1936.

R. S. Duck

Clerk.

Executed by serving a copy
of the within writ on
Mr J. M. Jones Cashier of
the first National bank of Atmore

This 9th day of Sept. 1936

J. R. Roby, Sheriff.

By W. W. Wise D.S.

RECORDED

Atmore
Book
7-560

No. 142

THE STATE OF ALABAMA
Baldwin County

Wilton L. Wainwright.

Plaintiff

VS. SUBPOENA DECUS TECUM

W. R. Stuart.

Defendant.

CIRCUIT COURT

WITNESSES:

Mr Jones Cashier First National
Bank of Atmore.

SET FOR TRIAL

14th day of Sept. 192 36

GILL PTO. CO., MOBILE

THE STATE OF ALABAMA
COUNTY OF BALDWIN

1
*
1

NO 142

IN THE CIRCUIT COURT
OF BALDWIN COUNTY.

TO ANY SHERIFF OF THE STATE OF ALABAMA

You are hereby commanded to summon
W.R. STUART, to appear and plead, answer or demur, within thirty
days from the service hereof, to the Complaint filed in
the Circuit Court of Baldwin County, State of Alabama, at Bay
Minette, Alabama., against W. R. STUART, Defendant, by
WILTON L. WAINWRIGHT, Plaintiff.

WITNESS my hand this 26th day of
April, 1935.

Robert J. Quick

Clerk of the Circuit Court

.....

*we the jury
find in
favor of the
defendant.
Aubrey H. Thompson
Foreman.*

WILTON L. WAINWRIGHT,

PLAINTIFF,

VS

W. R. STUART,

DEFENDANT.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

FIRST.

Plaintiff claims of defendant \$300.00 due from him by account on to-wit April 29th, 1932, with interest thereon, which amount is still due and unpaid.

SECOND.

Plaintiff claims of defendant the further sum of \$300.00 due from him by account stated by the defendant and plaintiff on to-wit May 25th, 1932, with interest thereon, which amount is still due and unpaid.

THIRD.

Plaintiff claims of defendant the further sum of \$300.00 for money loaned by the plaintiff to defendant on to-wit May 25th, 1932, with interest thereon, which amount is still due and unpaid.

FOURTH.

Plaintiff claims of defendant the further sum of \$300.00 for money on to-wit the 25th day of May, 1932, received by the defendant for the use of plaintiff, which amount, with interest thereon, is still due and unpaid.

R. F. Revere
Attorney for Plaintiff.

Plaintiff demands a jury trial.

R. F. Revere
Attorney for Plaintiff.

S.D.P. 18
Rec in office
4/26/35

M. Wilkins

Executed May 3 1935
by serving copy of within Summons and
Complaint on W.R. Stuart

M. Wilkins Sheriff
By _____ Deputy Sheriff

142
RECORDED
Duck
Wilton L. Wainwright,
VS
W.R. Stuart,

SUMMONS COMPLAINT

Filed again 26 1935
Rat. & Dec.
Chas.

We the jury find for the Defendant
P.W. Chisley
Foreman

Approved for Sheriff
W. L. ...

Approved for Sheriff
W. L. ...

No. 142.....

Baldwin County, Circuit Court.

WILTON L. WAINWRIGHT,

Plaintiff,

VS.

W. R. STUART,

Defendant.

I, Robert S. Duck, Clerk of Circuit Court of Baldwin County, Alabama, hereby certify that in the cause of Wilton L. Wainwright, Plaintiff, VS. W. R. Stuart, Defendant, which was tried and determined in this Court on the 21st day of August, 1935, in which there was a judgement for _____ Dollars in favor of the defendant, the Plaintiff on the 3rd day of December, 1935, took an appeal to the Supreme Court of Alabama to be holden of and for said State.

I further certify that Wilton L. Wainwright, Plaintiff, filed security for cost of appeal, to the Supreme Court, on the 3rd day of December, 1935, and that Wilton L. Wainwright, J. S. Havard and H. B. McGill are sureties on the appeal bond.

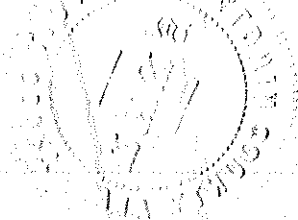
I further certify that notice of the said appeal was on the 7th day of December, 1935, served on H. M. Hall, member of firm of Beebe & Hall, as attorneys of record for said appellee, and that the amount sued for was THREE HUNDRED & NO/100 (\$300.00) DOLLARS.

Witness my hand and seal of this Court, this the 7th day of January, 1936.



Clerk of Circuit Court of
Baldwin County, Alabama.

RECORDED
Duck
7-377



Filed Jan. 7, 1936
Robert S. Duck,
Clerk.

STATE OF ALABAMA,
COUNTY OF BALDWIN.

IN THE CIRCUIT COURT OF SAID COUNTY,
FALL TERM, 1935.

WILTON L. WAINWRIGHT,
PLAINTIFF,
VS
W. R. STUART,
DEFENDANT.

BILL OF EXCEPTIONS.

BE IT KNOWN THAT AT SAID TERM OF THE SAID COURT AND ON
THE 11th DAY OF SEPTEMBER, 1935, THAT BEING A REGULAR DAY OF THE
REGULAR TERM OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN
THE CASE OF WILTON L. WAINWRIGHT, PLAINTIFF, VS W. R. STUART, DEFENDANT,
THE FOLLOWING PROCEEDINGS WERE HAD:

The witnesses in said cause were duly sworn by the Court
and placed under the rule and testified as follows:

WILTON L. WAINWRIGHT, the plaintiff, testified on direct examination as follows:

My name is Wilton L. Wainwright, ^{I am} the plaintiff in this suit. I am the brother of Ernest Wainwright who was convicted in this court in 1931 and took an appeal ^{to the Court of Appeals.} I came down here and made his bond which I signed that morning and John Hadley, whose signature was on the bond when I brought it here, had signed it a few days previously. I tendered that bond to Mr. Stuart, the sheriff, whom I told I would have to go to Atmore and make this bond and mail it back to him and he could turn the defendant out. He said he would not accept it up there and that the money which I was putting up on the bond at his request would absolutely have to be brought to him. He told me that if I would give him a check he would fix it. I handed him the check book and he walked in his office and sat down at the desk and made out the check which he held in his hand when he returned to me and said, "I made this check out to O. C. Hall, Cashier of the Bank, but the day this bond is released I will give you back your money". The check was handed witness and he testified: "This is the check that I gave him, made out in Mr. Stuart's handwriting, the defendant in this case. That was in May, 1931, and was conditioned on my brother appearing if the case was affirmed. My brother surrendered ~~XXXXXXX~~ on the 28th day of April, 1932. I brought him here and turned him over to Mr. Stuart, who put him back in jail that night. I returned the next day and told Mr. Stuart that he had the defendant in jail and I supposed the bond was satisfied, so I would get my money while I was down here. He said, "What money?". When I told him the money on the bond, he said I would have to go to see O. C. Hall. I did not know Mr. Hall and had never heard his name until Mr. Stuart told me he made the check to him. He told me he was putting the money up with Mr. Hall but when the condition of the bond was met I would get the money back. The check was given and paid at the bank and that \$300.00 has never been paid to me.

On cross examination by the defendant the witness testified:

I live four and a half miles north of Perdido Station in this county. Before this bond was made and the check made out I had

not known and never heard of Mr. O. C. Hall. I had never had any business with the Baldwin County Bank or gone in there. I don't remember going in there after this check was made out. I asked Mr. Hall about the money after the bond was released. This was a month or more after the bond was released and he told me he would see me in thirty minutes about the money. I have seen him three or four times since then but I have never asked him for my money or talked with him about it. I went before the Grand Jury and had Mr. Hall indicted for embezzling this money but I don't remember the date. I did not claim there that Mr. Hall got my money. Mr. Stuart and Frank Horne, who was then my attorney, advised me to do that. My brother was under an indictment here in jail. He had been convicted of burglary and taken an appeal to the Supreme Court. John Hadley came down with that bond with me. Mr. Stuart told me that the bond was not sufficient but that he would accept John Hadley on the bond. He did not tell me that he would recommend the bond to Mr. Richerson, the Clerk of the Court, who would have to approve the bond. I did not say I wanted to make a cash bond. Mr. Stuart told me he would accept the bond on condition that I bring John Hadley with me and put up \$300.00 on the bond. I did not ask Mr. Stuart to go to the Baldwin County Bank and introduce me to the parties there and he did not go and introduce me to Mr. Hall. After I signed the check which Mr. Stuart made out and he put it away in his desk I never saw it again ^{until} I got it back from the Bank in a statement. After I signed the check Mr. Stuart sent his deputy to the jail and got the defendant out. I did not go to the bank with Mr. Stuart and see Mr. Hall to make any arrangements to put that money up with him. I did not deliver the check there to him. I don't know that Mr. Hall received the money and deposited it in a special account there in the Bank, nor that Mr. Hall used the money. At the time I got that indictment against Mr. Hall I did not tell the Grand Jury that he had embezzled the money. I don't know the exact day that I demanded the money of Mr. Stuart, but as well as I can remember it was around the first of May, 1932. My brother surrendered to Mr. Stuart on the 28th day of April, 1932, and I think it was the next day that I came down and demanded the money. He told me then that Mr. Hall had the money.

That conversation took place at the foot of the stairs here in the Court House around noon. I didn't go from there to Mr. Hall. It was two or three weeks after that I came here and asked Mr. Stuart to go with me to see Mr. Hall and have some understanding about that money as I was needing it. He said that he would go but that it would do no good, as I could do as much good as he could. Then I went to Mr. Jenkins, my brother's attorney, and got him to make me acquainted with Mr. Hall. I asked Mr. Hall if he knew anything about my money. He said that he would see me in thirty minutes. I did not tell him that the bond had been satisfied and I wanted my money. My only conversation with Mr. Hall about the money was the question as to his knowledge of it and his reply that he would see me in thirty minutes. On the strength of this I got an indictment against Mr. Hall. I don't remember telling Mr. Stuart that Mr. Hall told me that he had my money but the bank had closed, but I wouldn't say I didn't tell him that.

On re-direct examination the witness testified:

I told the Grand Jury just what I have told these gentlemen. Mr. Jenkins took me to meet Mr. Hall because I did not know him, which was the first time I had ever seen him after the money became due. Mr. Stuart had told me that Mr. Hall had the money. Mr. Stuart and Frank Horne advised me to go before the Grand Jury. I never had a conversation with Mr. Tom Richerson nor paid any money to him. The check was ~~and paid by~~ in fact given ~~on~~ the First National Bank of Atmore to Mr. Stuart in his office in the court house. ~~I don't think Mr. Hall signed the bond.~~ *and was paid by the bank*

On re-cross examination by the defendant the witness testified:

I know that Mr. Hall's name was not signed to the bond. When I saw the bond J. T. Bradley's name was not signed on it. I don't know anything about Mr. Stuart handing over a bond to Mr. Richerson with O. C. Hall and J. T. Bradley as sureties on my brother's bond to the Supreme Court. I never talked to any lawyer about suing O. C. Hall.

ROBERT S. DUCK, a witness for the plaintiff, testified on direct examination as follows:

I am
My name is Robert S. Duck, Clerk of the Circuit Court of

ROBERT S. DUCK, the Clerk of Circuit Court of Baldwin County, a witness for plaintiff, testified on direct examination with reference to the bond as follows:

Q. Your name is Robert S. Duck? A. Yes, sir.

Q. You are the Clerk of the Circuit Court of Baldwin County? A. Yes, sir.

Q. And you have custody of the papers and records of this court?
A. Yes, sir.

Q. Have you the bond that was given in the case - appeal bond that was given in the case of Ernest Wainwright against the State?

A. No, sir, I couldn't find it.

Q. Have you looked for it where those bonds are usually kept? A. Yes, sir.

Q. And you couldn't find it in the file? A. No, sir, I couldn't find it.

Q. And you made a search for it? A. Yes, sir.

Q. Is that a copy of the transcript that went to the Supreme Court in this case? (handing witness document). A. Mr. McMillan, I wouldn't be sure, because this transcript didn't come out of my office. It wasn't part of the records that were in there when I took office.

Q. Is there anything about the transcript that you can identify, Mr. T. W. Richerson was the former clerk, wasn't he? A. Yes, sir.

Q. Look at that and see if there is anything about that that will enable you to identify it as being a copy of the appeal record made by Mr. Richerson? A. The clerk's certificate here signed by Mr. Richerson. I would say it was his signature, although the seal is not on it.

Q. It is signed by Mr. Richerson, the former Clerk? A. Yes, I would say that is his signature.

On cross-examination he testified:

Q. Mr. Duck, you say that record wasn't in your office? A. It wasn't in my office, Mr. Hybart, no, sir.

Q. Who was the first person you saw with it? A. Either Mr. McMillan or T. W. Richerson, Jr., I don't remember which. They were both together when I saw it.

On re-direct examination he testified:

Q. Isn't it a fact that these records were kept up there, these old transcripts are kept up in the loft here? A. I don't know; I never have been up there.

Q. You didn't see Mr. T. W. Richerson Jr., go up there and get it?
A. No, sir, but he brought it to my office.

On re-cross examination he testified:

Q. It wasn't a part of your office records when you took charge?
A. No, sir.

Q. And Mr. T. W. Richerson at that time wasn't connected with the Clerk's office? A. No, sir.

Q. And Mr. McMillan or Mr. Richerson was the one you saw with it?
A. Yes, sir one or the other, they were both together at the time.

Q. And you couldn't say whether that is a copy or not? A. No, sir.

On re-re direct examination he testified:

Q. You do recognize the signature of Mr. T. W. Richerson, the Clerk at that time? A. Yes, I would say that is Mr. Richerson's signature - yes, sir.

MR. McMILLAN: We offer this check in evidence. If the Court please, we offer this bond as copied in the record certified by Mr. T. W. Richerson, Clerk of the Court. My purpose in that is to show that the bond accepted and approved by W. R. Stuart was signed only by Ernest Wainwright, J. W. Hadley and Wilton Wainwright.

MR. HYBART: If the Court please, we object to the introduction of the record on the ground it is not the best evidence, and the record has not been properly accounted for. The evidence here is that record was first seen by the Clerk of the Court in the possession of parties not connected with the Clerk's office, and it is not the best evidence.

THE COURT: I will hear from you on the proposition that it is not the best evidence, Mr. McMillan.

MR. McMILLAN: It isn't the best evidence, may it please the Court, but we have the testimony of the Clerk of this Court that he has the records of the court, and that he has looked through all the files where the bonds are usually kept and can't find it. Now, we think that would be sufficient to offer secondary evidence. In regard to the secondary evidence we offer the certificate of the former officer of the Court, whose signature I think the Court judicially knows. And in addition the clerk certifies that it is a full and complete transcript of that proceeding.

THE COURT: Overrule the objection.

MR. HYBART: We except. Now, Your Honor please, we object to it on the further ground that the bond, the appeal bond, says "Approved, W. R. Stuart, Sheriff, by R. D. McPhaul, Deputy Sheriff." This bond should be approved only by the clerk of the court. The appeal bonds are approved by the Clerk of the Court.

THE COURT: There is no question but what its approval is not sufficient, and is unlawful. Neither the Sheriff nor his deputy had any right to approve the bond, but it is a record of the court and certified by the Clerk, and I overrule the objection.

MR. HYBART: We except. I would like to call your Honor's attention further that it doesn't bear the seal of the Clerk's office.

THE COURT: Yes, I see that. Is that necessary?

MR. HYBART: Yes, sir, that has to be on there, and it is necessary that the seal of the clerk be on there.

THE COURT: There is another proposition in this case. Why isn't the original transcript here if the original bond can't be found?

MR. McMILLAN: The original transcript is a part of the Supreme Court's records, and it would be impossible to get it here. They won't allow those records to be taken away. Of course, I could take the depositions of the Clerk of the Supreme Court up there, but if I did that would be secondary evidence. Your Honor knows that the law requires a copy to be made by the Clerk at the time he makes up the record to go to the Supreme Court.

- MR. HYBART: And that copy, if your Honor please, has got to be an identical copy with the Supreme Court's copy, and authenticated, and it can't be a copy unless authenticated in the same way. It is necessary that the seal be on there.
- THE COURT: Let's see that section of the code. Why couldn't the original be obtained from Montgomery?
- MR. McMILLAN: You can't get those records out of the Supreme Court, but I think this is as much an original as that up there.
- THE COURT: What does the law require? My recollection is that the usual practice is to turn that copy over to the defendant himself.
- MR. McMILLAN: I don't think it would make any difference for whose use the copy is made--
- MR. HYBART: The point I am making is that it is not sufficient, because the law requires it to be executed and sealed. That's one thing the law requires and---
- MR. McMILLAN: Another point I would like to call your Honor's attention to. This is not a suit on a bond. This arises collaterally. My purpose in offering that was to show the Sheriff was accepting the bond that was tendered him; that he got the \$300.00 and that Mr. Hall didn't sign the bond.
- THE COURT: But there is no evidence that this man approved it at all. The evidence shows it was approved by his deputy.
- MR. McMILLAN: I don't think the genuineness of the approval is of any moment.
- MR. HYBART: Now, if the Court please, this matter he is trying to get in is evidence of some kind and the rule is that when you introduce evidence you have to have the best evidence, and there isn't but one sort of authenticated document you can have and that is a document certified to by the Clerk and under the seal of his office.
- THE COURT: Since reflecting over the matter I have come to the conclusion that as the matter now stands the introduction of that bond is immaterial and illegal and irrelevant and I sustain the objection.
- MR. McMILLAN: We reserve an exception. Now, we offer it limited to this purpose, to show that the bondsmen that signed that bond were only the two that appear on there, and that Mr. Hall didn't sign the bond.
- MR. HYBART: We renew our objection.
- THE COURT: I sustain the objection.
- MR. McMILLAN: We reserve an exception.

Baldwin County, Alabama. I have custody of the papers and records of this court, but could find no record of an appeal bond given in the case of Ernest Wainwright against the State. I have looked for it where those bonds are usually kept and in the file but I couldn't find it. *Copy of a transcript to the Court of Appeals in the case of State of Alabama vs Ernest Wainwright was handed to the witness and he testified.* I wouldn't be sure that this is a copy of the transcript that went to the Supreme Court in this case because it did not come out of my office. It was not part of the records that were there when I took office. Mr. T. W. Richerson was the former clerk. The Clerk's certificate is here signed by Mr. Richerson. I would say it is his signature although the seal is not on it.

On cross-examination by the defendant the witness testified:

That record was not in my office. The first person I ever saw with it was either Mr. Richerson or Mr. McMillan, I don't remember which. They were both here together.

On re-direct examination the witness testified:

I recognize the signature of Mr. T. W. Richerson, the clerk at the time the appeal was taken and the signature attached to the carbon copy of the transcript of the appeal to the court of appeals is the signature of T. W. Richerson, clerk of the court at that time.

At this point the plaintiff introduced in evidence the check which had been testified to and which was in words and figures as follows:

"The First National Bank,

Montmore, Alabama. 5/25, 1931

Pay to the
order of ----O. C. Hall, Cashier -----\$300.00

Three Hundred and No/100 -----Dollars.

No _____ Wilton L. Wainwright."

The check is stamped by the Bank PAID and the only endorsements on the back of the check are the following words and figures:

(1) Pay to the Order of Any Bank, Banker or Trust Company, Prior Endorsements Guaranteed, May 26, 1931, 61-258 Bay Minette, Ala. 61-258 BALDWIN COUNTY BANK O. C. HALL, Cashier. "

(2)"Pay to the Order of Any Bank, Banker or Trust Company,
All Prior Endorsements Guaranteed, MAY 27, 1931, The American National
Bank and Trust Company of Mobile, 61-35, Mobile, Ala, 61-35.

A. E. Vautrot, Cashier."

The plaintiff then offered in evidence the page of the trans-
cript to the Supreme Court in the case of Ernest Wainwright vs the

State in words and figures as follows; and stated to the court that his
purpose was to show that the bond accepted and approved by defendant was
signed only by Ernest Wainwright, J. W. Hadley and Wilton Wainwright:
"STATE OF ALABAMA, APPEAL BOND. IN THE CIRCUIT COURT,
BALDWIN COUNTY. SPRING TERM, 1931

KNOW ALL MEN BY THESE PRESENTS: That we, Ernest Wainwright,
J. W. Hadley, Wilton Wainwright and _____, are held and firmly bound
unto the State of Alabama, in the sum of Six Hundred Dollars (\$600.00)
for the payment of which well and truly to be made, we bind ourselves, our
heirs, executors and administrators, jointly and severally, firmly by
these presents.

Witness our hands and seals this _____ day of _____, 1931.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH: That whereas
the above bound Ernest Wainwright was on the first day of May, 1931,
convicted in the Circuit Court of Baldwin County, Alabama, of the of-
fense of petit larceny and by judgement of said court sentenced to ninety
days at hard labor, together with sufficient time to pay the costs at the
rate of seventy-five cents (75¢) per day.

AND WHEREAS, the said Ernest Wainwright has this day prayed
an appeal from said judgement to the Court of Appeals of Alabama;

Now, if the said Ernest Wainwright shall appear at the next
term of the Circuit Court of said County and from term to term there-
after until discharged and abide by and perform whatever sentence may
be adjudged against him on said appeal, then the above obligation to
be void, otherwise to remain in full force and effect.

Ernest Wainwright (SEAL)
J. W. Hadley (SEAL)
Wilton L. Wainwright (SEAL)

Approved, W. R. Stuart, Sheriff by
R. D. McPhaul, Deputy Sheriff.

Filed May 25th, 1931."

The defendant objected to the introduction of the record on the
ground that it is not the best evidence and the record has not been prop-
erly accounted for. The court overuled the defendant's objection and im-
mediately thereafter the defendant made a further objection on the ground
that the appeal bond said: "Approved, W. R. Stuart by R. D. McPhaul,
Deputy Sheriff" and on the ground that it does not bear the seal of the
clerk's office and on the ground that the copy "Has got to be an identi-
cal copy to the Supreme Court's copy and authenticated and can't be a copy
unless authenticated in the same way"; That it is not sufficient because
the law requires it to be executed and sealed. The Court then sustained
the defendant's objection, stating that the introduction of the bond is im-
material and illegal and irrelevant and to this ruling the plaintiff then
and there reserved an exception. The document was not allowed in evidence.

The plaintiff then stated that he offered the copy in evidence
and limited it to the purpose of showing that the bondsmen that signed the
bond were the only two that appear on the bond and that Mr. O. C. Hall did
not sign the bond. The defendant objected, the court sustained the objec-
tion, and the plaintiff reserved an exception. The document was not al-
lowed in evidence.

ANDREW WHITE, a witness for the plaintiff, testified on direct examination as follows:

I have been sworn. My name is Andrew White. I live near the Bridge Head, about five or six miles from Daphne. At the time this bond was tendered by Mr. Wilton Wainwright to Mr. Stuart I was downstairs at the Court House talking to Mr. Wainwright and Mr. Hadley. They went in and Mr. Wainwright gave Mr. Stuart permission to write the check which he did and Mr. Stuart told Mr. Wainwright: "You will get every bit of your money back with the time the trial comes up and your brother appears." I don't remember anything being said about a conference with Mr. Tom Richerson. The only people I saw present were Mr. Wainwright and Mr. Stuart. He didn't say he would pay the money back or how, only that he would get every bit of it back. That was when Mr. Wainwright gave Mr. Stuart his check book and Mr. Stuart wrote the check in Mr. Wainwright's stead, and the check was to go for the bond. To my best recollection Mr. Stuart held up the check and said, "I made this to Mr. O. C. Hall". That was after the check had already been written when Mr. Stuart said who the check was made payable to, but I don't remember his saying why it was made payable to Mr. Hall. I didn't see Mr. Hall there.

On cross examination the witness testified as follows:

I live near the bridge head, but I told you my postoffice address was Daphne. I met Mr. Wainwright right downstairs that day. I had known Mr. Wainwright prior to that time. The way I happened to know about this was that I was talking to Mr. Wainwright and Mr. Hadley. I had known Mr. Wainwright about twenty years before this. I had never lived in the community where Mr. Wainwright lives. We were all talking downstairs at the far end on the bench. I don't know where Mr. Stuart was at the time. I didn't see him until we went into his office. Not knowing anything like this was coming up, I had followed them from the bench talking. I don't know whether Mr. Wainwright had had a conversation with Mr. Stuart prior to the time I met him on the bench or not. I went on into the sheriff's office with Mr. Wainwright and Mr. Hadley. Both of them were in there at the time. The first thing said in that office was Mr. Wainwright's telling Mr. Stuart to make the check for the bond. I saw

no bond in there, only the check. He asked Mr. Stuart to make the check out. I don't remember his telling him what amount to write it for or what bank to write it on, but Mr. Stuart wrote the check. The next thing was Mr. Stuart's holding the check up and saying, "Mr. Wainwright, as soon as your brother appears to trial you will get every bit of your money back." I heard that and am sure that is what was said. As far as I know that is all that happened because I walked off then with Mr. Wainwright and Mr. Hadley, leaving the check with Mr. Stuart. I went out and saw them get in the car to go home. I don't know just how long this was after they left the sheriff's office, but it was a very short time. I don't know anything about any conversations they had before I went in there.

On re-direct examination the witness testified:

I think Mr. Ernest Wainwright was in jail at the time the bond was being made, but I do not know of my own knowledge anything except that the bond was being made for that. Mr. Hadley and Mr. Ernest Wainwright, Mr. Wilton Wainwright's brother, left with him after he gave the check. I guess Ernest was then released after the check was given, as that is what the bond was made for.

On re-cross examination the witness testified:

I don't know where Mr. Ernest Wainwright was at the time we were talking there. The first time I saw him that day was when he got in the car with his brother. I couldn't say how long this was after that conversation in the sheriff's office.

JOHN WILLIAM HADLEY, a witness for the plaintiff, testified on direct examination as follows:

My name is John William Hadley, the one who signed the bond for Ernest Wainwright. I was present when Mr. Wilton Wainwright gave Mr. Stuart a check for \$300.00. Nothing much was said or done at the time. He just gave Mr. Stuart the check and Mr. Stuart wrote it. He said, "I will fix it." He wrote the check which Wilton signed to O. C. Hall and told Wilton that, "whenever the bond is released he would get his money back. The bond was for Ernest Wainwright. The prosecution is over now, and I understood that when the bond was released he would get his money back. He didn't say who would pay

it back or who he wanted the money deposited with. Wilton Wainwright had his money in the First National Bank at Atmore and Mr. Stuart told him that the money would have to come down here. I don't know what individual it was to come down here to.

On cross examination the witness testified as follows:

I came down here with Mr. Wilton Wainwright. We live in the same community. Some of my brothers were connected with this same transaction and I was down here on this burglary case and went there to the sheriff's office to see Mr. Stuart. I had signed the bond for Ernest Wainwright and I don't think Mr. Wilton Wainwright's name was on the bond with mine. However, I am not certain. I don't remember Mr. Stuart's telling us that the bonds would have to be approved by Mr. Richerson but that any recommendations he might make would be acceptable to Mr. Richerson, but I would say that he didn't say that. We didn't have much conversation about this thing. I have told you all I know. Never think about this thing coming up anymore, there was a good bit that I don't remember. Mr. Stuart told me I was no good on the bond but that if we would get my brother Luke to come down and sign it it would be satisfactory. Mr. Stuart did not say anything about my being good but his not being good to Mr. Wainwright. Something was said about making a cash bond, but I don't know whether Mr. Stuart or Mr. Wainwright mentioned it first. Mr. Wainwright said he had his money in the bank at Atmore. As I remember it, Mr. Wainwright suggested leaving the money up there and making the bond there, but Mr. Stuart said the money would have to come down here. I don't remember Mr. Stuart suggesting getting the Atmore bank to make the bond. I don't know whether Mr. Wainwright said he wanted to get his brother out then and would like to have the bank here make the bond. Mr. Stuart and Mr. Wainwright did not go to the bank then to see Mr. Hall. I don't remember how long we were there after making the bond. I only remember that Mr. Stuart wrote the check which Mr. Wainwright signed and gave back to him and we left then and went out in town. I went about my business and Wainwright went about his. I couldn't swear that Wilton did not go to see Mr. Hall. We may have been here an hour after that or we may have been here only fifteen minutes. I couldn't say as to that.

On re-direct examination the witness testified:

When Wilton Wainwright gave the \$300.00 check we went up and they turned Ernest out of jail and carried him home to see his sick mother. That is the reason we got him out of jail; His mother was sick and wanted him. That is the reason I signed the bond. The bond was not signed by Mr. Hall and when we signed it and deposited the \$300.00 we got him out and took him to see his mother.

On re-cross examination the witness testified:

If I remember right his wife carried the bond up there (to witness' home) and I signed it there, but I would not be positive. I know she carried it there and I signed it but I do not know whether it is the same bond. We fixed up a bond in the sheriff's office but I do not know whether I signed it there or had already signed it but the bond was fixed up in the sheriff's office all right and there was no bond prepared in my presence for O. C. Hall or Mr. Bradley to sign. I did not see Mr. Stuart prepare a bond for Hall and Bradley to sign. The only writing I saw him do was writing out the check.

At this point on examination by the Court the witness stated:

Mr. Stuart fixed up the bond in his office and I signed the bond but I don't remember whether I signed the bond in the office or signed the one his wife carried up. I do not remember whether I signed the one Mr. Stuart was fixing or not. Ernest's wife brought the bond up there for me to sign and the bond Mr. Stuart had may have been the same. It may have been the bond I signed up there but we came on down and fixed it up in Mr. Stuart's office and they turned Ernest out. We went right straight on and got him but I am not certain as to this. I don't think I had a drink that day. I drink but don't think I had any that day but I would not say I did not have a drink.

On re-direct examination the witness stated:

Neither Mr. Hall nor Mr. Bradley were in the office that morning that I remember and they did not come there before we got Ernest out of jail that I remember.

On re-cross examination the witness stated:

Mr. Wilton, a fellow named White, Mr. Stuart and myself were the only ones in the office there that I remember but I am not certain.

The Court here stated to plaintiff's attorney that if plaintiff had no further evidence showing receipt of the money by defendant it was the Court's opinion that plaintiff's case had not been proved, and that defendant would be entitled to the general charge. Plaintiff replied that his only additional evidence would be that the conditions of the bond had been met, but that this would not affect the point mentioned by the Court, and that if that was the Court's idea it would be a useless consumption of time to actually introduce the evidence, but that in order to make the record clear it would show that the additional evidence was offered.

Plaintiff then re-offered the copy of the record showing the bond. The defendant objected, the Court sustained the objection, and the plaintiff excepted. The document was not allowed in evidence.

The foregoing was all the evidence in the case, and at its conclusion, and before the jury retired, the Court at the defendant's request, gave to the jury a written charge in words and figures as follows:

"The Court charges the jury if you believe the evidence in this case you will find for the defendant."

Given, "F. W. Hare," Judge."

The jury then returned into Court a verdict in words and figures as follows: "We, the jury, find for the defendant. R. W. Chidgey, Foreman", and on this verdict the Court entered a judgment in words and figures as follows:

"9/11/35 Came the parties by their attorneys, came also a jury of good and lawful men, to-wit:- R. W. Chidgey and eleven others, who being impanelled and duly sworn according to law, on their oaths say: "We, the jury, find the issue in favor of the defendant." And the same being considered by the Court:- It is ordered and adjudged that the defendant go hence and recover of the plaintiff the costs in this behalf expended, for which execution may issue."

Wherefore plaintiff tenders this bill of exceptions to the Honorable F. W. Hare, the judge who presided in said cause, on this 26 day of October, 1935, within ninety days from the date on which the judgement was entered.

Sturges
Attorney for Plaintiff.

The foregoing bill of exceptions is this 26 day of October, 1935, within ninety days from the date on which the judgement was entered presented to me and is endorsed by me as part of the bill of exceptions.

F. W. Hare
Judge.

The foregoing bill of exceptions is now signed by me as a true and correct bill of exceptions this 21st day of December 1935, within sixty days from its presentation to me.

F. W. Hare
Judge.

SHEET NO.

A

NAME

O. C. Hall Special

ADDRESS

MADE BY BAKER-VAWTER CO.

ORDER BY FORM NO. B 202 A

| OLD BALANCE | DATE | CHECKS IN DETAIL | DATE | DEPOSITS | DATE | NEW BALANCE |
|-------------|------------|-------------------------|------------|----------|------------|-------------|
| | | BALANCE BROUGHT FORWARD | JUN 29 '27 | 1,007.95 | | |
| 1,697.80 | JUN 29 '27 | | JUN 29 '27 | 689.85 | JUN 29 '27 | 1,697.80 |
| 1,872.80 | JUL 15 '27 | | JUL 15 '27 | 175.00 | JUL 15 '27 | 1,872.80 |
| | JUL 27 '27 | | JUL 27 '27 | 300.00 | JUL 27 '27 | |
| | JUL 27 '27 | | JUL 27 '27 | 325.00 | JUL 27 '27 | 2,497.80 |
| 2,497.80 | AUG 2 '27 | | AUG 2 '27 | 220.00 | AUG 2 '27 | 2,717.80 |
| 2,717.80 | AUG 4 '27 | 175.00 - | | | AUG 4 '27 | 2,542.80 |
| 2,542.80 | AUG 12 '27 | 300.00 - 100.00 - | AUG 12 '27 | | AUG 12 '27 | 2,142.80 |
| 2,142.80 | AUG 20 '27 | | AUG 20 '27 | 20.00 | AUG 20 '27 | 2,162.80 |
| 2,162.80 | AUG 31 '27 | | AUG 31 '27 | 233.00 | AUG 31 '27 | 2,395.80 |
| 2,395.80 | SEP 1 '27 | | SEP 1 '27 | 95.00 | SEP 1 '27 | 2,490.80 |
| 2,490.80 | SEP 7 '27 | 175.00 - | | | SEP 7 '27 | 2,315.80 |
| 2,315.80 | SEP 13 '27 | 220.00 - | | | SEP 13 '27 | 2,095.80 |
| 2,095.80 | OCT 3 '27 | 329.60 - | SEP 17 '27 | 329.60 | SEP 17 '27 | 2,425.40 |
| 2,425.40 | OCT 18 '27 | 400.00 - | OCT 18 '27 | | OCT 3 '27 | 2,095.80 |
| 2,095.80 | OCT 19 '27 | 543.00 - | | | OCT 18 '27 | 1,695.80 |
| 1,695.80 | OCT 20 '27 | | OCT 20 '27 | 400.00 | OCT 19 '27 | 1,152.80 |
| 1,152.80 | OCT 24 '27 | | OCT 24 '27 | 150.00 | OCT 20 '27 | 1,552.80 |
| 1,152.80 | NOV 4 '27 | 150.00 - | NOV 4 '27 | | OCT 24 '27 | 1,702.80 |
| 1,552.80 | DEC 19 '27 | | DEC 19 '27 | 10.00 | NOV 4 '27 | 1,552.80 |
| 1,562.80 | DEC 7 '28 | | DEC 7 '28 | 193.74 | DEC 19 '27 | 1,562.80 |
| 1,756.54 | JAN 16 '28 | | JAN 16 '28 | 550.00 | DEC 7 '28 | 1,756.54 |
| 2,306.54 | JAN 23 '28 | 117.25 - | | | JAN 16 '28 | 2,306.54 |
| 2,189.29 | FEB 4 '28 | 92.50 - | | | JAN 23 '28 | 2,189.29 |
| 2,096.79 | FEB 8 '28 | 250.00 - | | | FEB 4 '28 | 2,096.79 |
| 1,846.79 | FEB 23 '28 | 150.00 - 100.00 - | | | FEB 8 '28 | 1,846.79 |
| 1,596.79 | FEB 29 '28 | 1,481.97 LST | | | FEB 23 '28 | 1,596.79 |
| 1,148.2 | MAR 1 '28 | 42.50 - | | | FEB 29 '28 | 1,148.2 |
| 72.32 | MAR 3 '28 | | MAR 3 '28 | 1,481.97 | MAR 1 '28 | 72.32 |
| 1,556.79 | MAR 5 '28 | 300.00 - | MAR 3 '28 | 2.50 | MAR 3 '28 | 1,556.79 |
| 1,256.79 | MAR 7 '28 | 300.00 - | | | MAR 5 '28 | 1,256.79 |
| 956.79 | MAR 6 '28 | 492.65 - | | | MAR 7 '28 | 956.79 |
| 464.14 | MAR 9 '28 | | MAR 9 '28 | 492.65 | MAR 6 '28 | 464.14 |
| 956.79 | MAR 10 '28 | | MAR 10 '28 | 5.00 | MAR 9 '28 | 956.79 |
| 961.79 | MAR 21 '28 | | MAR 21 '28 | 5.00 | MAR 10 '28 | 961.79 |
| 966.79 | MAR 26 '28 | | MAR 26 '28 | 2.50 | MAR 21 '28 | 966.79 |
| | | | MAR 26 '28 | 2.50 | | |
| 971.79 | APR 16 '28 | | APR 16 '28 | 300.00 | MAR 26 '28 | 971.79 |
| 1,271.79 | APR 20 '28 | 350.00 - | | | APR 16 '28 | 1,271.79 |
| 921.79 | MAY 28 '28 | | MAY 28 '28 | 2.00 | APR 20 '28 | 921.79 |
| 925.79 | MAY 30 '28 | 150.00 - | MAY 30 '28 | 300.00 | MAY 28 '28 | 923.79 |
| 1,223.79 | JUN 8 '28 | | | | MAY 30 '28 | 1,223.79 |
| 1,073.72 | JUL 16 '28 | 28.40 - 300.00 - | JUL 16 '28 | 152.13 | JUN 8 '28 | 1,073.79 |
| 1,225.92 | JUL 31 '28 | 836.37 - | | | JUL 16 '28 | 1,225.92 |
| 897.52 | | 38.00 - | | | JUL 19 '28 | 897.52 |
| 611.5 | AUG 2 '28 | | | | JUL 31 '28 | 611.5 |
| 231.5 | AUG 3 '28 | | AUG 3 '28 | 836.37 | AUG 2 '28 | 231.5 |
| 859.52 | AUG 4 '28 | 100.00 - | AUG 4 '28 | 150.00 | AUG 3 '28 | 859.52 |
| 1,009.52 | AUG 11 '28 | 789.43 - | AUG 11 '28 | 300.00 | AUG 4 '28 | 1,009.52 |
| 1,209.52 | AUG 14 '28 | 319.27 - | | | AUG 11 '28 | 1,209.52 |
| 420.09 | AUG 18 '28 | | | | AUG 14 '28 | 420.09 |
| 100.82 | AUG 21 '28 | | AUG 21 '28 | 130.00 | AUG 18 '28 | 100.82 |
| | | | | | AUG 21 '28 | 230.82 |

NAME O.C. Hall Special

ADDRESS Bay Minette, Ala.

MADE BY BAKER-VANWATER CO. 7-77

ORDER BY FORM NO. B 202 A

| OLD BALANCE | DATE | CHECKS IN DETAIL | DATE | DEPOSITS | DATE | NEW BALANCE |
|-------------------------|-------------|------------------|-------------|----------|-------------|-------------|
| | | | AUG 24 1928 | 230.92 | | |
| BALANCE BROUGHT FORWARD | | | | | | |
| 272.82 | AUG 24 1928 | 5.00- | AUG 24 1928 | 42.00 | AUG 24 1928 | 272.82* |
| 267.82 | SEP 24 1928 | 600.00- | SEP 24 1928 | 15.00 | SEP 24 1928 | 267.82* |
| 2.09 | | | SEP 24 1928 | 319.27 | SEP 24 1928 | 2.09* |
| 902.09 | JAN 4 1929 | 900.00- | DEC 31 1928 | 900.00 | SEP 24 1928 | 902.09* |
| 2.09 | JAN 25 1929 | | JAN 25 1929 | 5.06 | JAN 4 1929 | 2.09* |
| 7.15 | JAN 31 1929 | 425.00- | JAN 31 1929 | 420.00 | JAN 25 1929 | 7.15* |
| 215 | MAR 5 1929 | 2.26- | MAR 5 1929 | 11 | JAN 31 1929 | 215* |
| 29.87 | MAY 20 1929 | 4.00- | MAY 20 1929 | 15.00 | MAR 5 1929 | 29.87* |
| 4.87 | JUN 29 1929 | 4.00- | JUN 29 1929 | 87* | MAY 20 1929 | 4.87* |
| .87 | NOV 13 1929 | 507.37- | NOV 13 1929 | 789.43 | JUN 29 1929 | .87* |
| 282.93 | NOV 20 1929 | 225.00- | NOV 20 1929 | 57.93* | NOV 13 1929 | 282.93* |
| 57.93 | NOV 30 1929 | 247.50- | NOV 30 1929 | 331.8* | NOV 20 1929 | 57.93* |
| 331.8 | APR 1 1930 | 275.00- | APR 1 1930 | 56.8* | NOV 30 1929 | 331.8* |
| 56.8 | SEP 24 1930 | | SEP 24 1930 | 3.00 | APR 1 1930 | 56.8* |
| 152.18 | OCT 4 1930 | 24.00- | SEP 24 1930 | 143.50 | SEP 24 1930 | 152.18* |
| 128.18 | DEC 3 1930 | 5.33- | DEC 3 1930 | 122.85* | OCT 4 1930 | 128.18* |
| 122.85 | JAN 6 1931 | 500.00- | DEC 31 1930 | 500.00 | DEC 3 1930 | 122.85* |
| 122.85 | MAR 11 1931 | 500.00- | MAR 11 1931 | 500.00 | JAN 6 1931 | 122.85* |
| 622.85 | FEB 24 1931 | 115.50- | FEB 24 1931 | 507.35* | MAR 11 1931 | 622.85* |
| 507.35 | APR 6 1931 | 500.00- | APR 6 1931 | 7.35* | FEB 24 1931 | 507.35* |
| 7.35 | MAY 26 1931 | | MAY 26 1931 | 300.00 | APR 6 1931 | 7.35* |
| 307.35 | OCT 23 1931 | | OCT 23 1931 | 464.46 | MAY 26 1931 | 307.35* |
| 357.77 | NOV 9 1931 | | NOV 9 1931 | | OCT 23 1931 | 357.77* |
| 771.81 | NOV 16 1931 | 100.00+ | NOV 16 1931 | | NOV 9 1931 | 771.81* |
| 357.77 | NOV 19 1931 | 175.00+ | NOV 19 1931 | | NOV 16 1931 | 357.77* |
| 671.81 | DEC 3 1931 | 232.85+ | DEC 3 1931 | | NOV 19 1931 | 671.81* |
| 496.81 | DEC 5 1931 | 100.00- | DEC 5 1931 | | DEC 3 1931 | 496.81* |
| 263.96 | DEC 16 1931 | 200.00- | DEC 16 1931 | | DEC 5 1931 | 263.96* |
| 163.96 | DEC 24 1931 | | DEC 24 1931 | 232.85 | DEC 16 1931 | 163.96* |
| 296.81 | DEC 30 1931 | | DEC 30 1931 | 175.00 | DEC 24 1931 | 296.81* |
| 471.81 | JAN 7 1932 | 100.00- | JAN 7 1932 | | DEC 30 1931 | 471.81* |
| 371.81 | DEC 9 1932 | 70.00- | DEC 9 1932 | | JAN 7 1932 | 371.81* |
| 301.81 | | | | | DEC 9 1932 | 301.81* |
| 249.2* | | | | | | 249.2* |

*Ernest Wainwright
J. W. Hall
Judge*

4. The court charges the jury that the mere fact defendant's check was made payable to the order of O. C. Hall would not relieve defendant from the obligation to return the money so deposited to plaintiff if the check was made so payable at the defendant's request and on his promise to return the money and there was no agreement that plaintiff would accept O. C. Hall as surety for the return of the money instead of the defendant.

*Ernest Wainwright
J. W. Hall
Judge*

2. The court charges the jury that the fact that the check for \$300.00 was made payable to O. C. Hall would not change the character of the transaction between the plaintiff and defendant if the money was paid at the request of the defendant and the check was made payable to O. C. Hall at the instance of the defendant.

*Ernest Wainwright
J. W. Hall
Judge*

3. The court charges the jury that if you believe from the evidence the defendant requested of the plaintiff that the latter deposit with him \$300.00, when plaintiff delivered a bond for Ernest Wainwright, and pursuant thereto the plaintiff did deposit the said sum with the defendant on the latter's promise to return the money when the conditions of the bond had been met, the defendant would be liable to plaintiff for the return of the money so deposited when the condition of the bond was met.

*Review
Hall
Gardner*

6. The court charges the jury that if you believe from the evidence the defendant demanded of plaintiff the sum of \$300.00 and the plaintiff paid said sum to the defendant on the latter's promise to return it when ~~the~~ conditions of the bond had been met, the plaintiff was entitled to the return of the \$300.00 when the condition of the bond was met.

*Review
Hall
Gardner*

7. The court charges the jury that if they believe ~~from the evidence~~ ^{dence} that the defendant requested or demanded of the plaintiff the sum of \$300.00 and promised to return it when the conditions of the bond were met, and pursuant thereto the plaintiff deposited with defendant the said sum of \$300.00, the defendant is liable for the return of \$300.00 when the conditions of the bond were met and the fact that ~~the~~ check was made payable to the order of O. C. Hall at defendant's request would not relieve the defendant from the duty of paying back the money unless the plaintiff agreed to look to O. C. Hall and not the defendant for the return of the money.

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