

416

SUMMONS AND COMPLAINT

DR. R. A. HAIL,  
Plaintiff

VS

MITCHELL NAVAL STORES COMPANY,  
A CO-PARTNERSHIP COMPOSED OF  
R. F. MITCHELL, JR., C. B.  
MITCHELL AND J. L. TUCKER, AND  
R. F. MITCHELL, JR., C. B.  
MITCHELL AND J. L. TUCKER,  
INDIVIDUALLY,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Mitchell Naval Stores Com-  
pany, a Co-partnership composed of R. F. Mitchell, Jr., C. B. Mitchell  
and J. L. Tucker, and R. F. Mitchell, Jr., C. B. Mitchell and J. L.  
Tucker, individually, to appear within thirty days from the service of  
this writ in the Circuit Court to be held for the said County at the  
place of holding the same, then and there to answer the complaint of  
DR. R. A. HAIL.

Witness my hand this 31st day of February, 1938.

*R. S. Duck*  
CLERK.

COMPLAINT

DR. R. A. HAIL,  
Plaintiff

VERSUS

MITCHELL NAVAL STORES COM-  
PANY, A CO-PARTNERSHIP COM-  
POSED OF R. F. MITCHELL, JR.,  
C. B. MITCHELL AND J. L. TUCKER  
AND R. F. MITCHELL, JR., C. B.  
MITCHELL AND J. L. TUCKER,  
INDIVIDUALLY,  
Defendants.

The Plaintiff claims of the Defendants ONE HUNDRED TWENTY ONE  
AND 43/100 DOLLARS (\$121.43) due from them by account on the 12th day of  
January, 1937 for medical services rendered at the Defendants's request  
by the Plaintiff which sum of money with interest thereon is still unpaid.

COUNT TWO: Plaintiff claims of the Defendants ONE HUNDRED  
TWENTY ONE AND 43/100 DOLLARS (\$121.43) due from them on the 12th day of  
January, 1937 on account stated between the Plaintiff and the Defendants  
on the 12th day of January, 1937 for merchandise, goods, and chattels  
sold by the Plaintiff to the Defendants on the 12th day of January, 1937  
which sum of money with interest thereon is still unpaid.

COUNT THREE: Plaintiff claims of the Defendants ONE HUNDRED  
TWENTY ONE AND 43/100 DOLLARS (\$121.43) due from them by an account on  
the 12th day of January, 1937 for work and labor done for the Defendants  
by the Plaintiff on the 12th day of January, 1937 at their request which  
sum of money with interest thereon is still unpaid.

NOTE: Sworn statement of account is  
filed together with this complaint.

*Wm. M. Brown*  
ATTORNEY FOR PLAINTIFF.

RECORDED

27

YALASCO SEROTA ALVAM CINCOTIM  
TO DEROSIMO SINGENETIS-00 A  
.E .O .ST .CINCOTIM .T .S  
GMA ,SEED UT .I .I GMA JERO TIM  
.E .O .ST .CINCOTIM .T .S  
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YALASCO SEROTA

• ~~is the best~~

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place of holding the same, then and there to answer the complaint of this writ in the Circuit Court to be held for the said County at the  
 Tokes, individually, to appear within thirty days from the service of  
 and J. M. Tokes, and R. E. Mitchell, Jr., O. B. Mitchell and J. L.  
 Gary, a Co-partnership composed of R. E. Mitchell, Jr., O. B. Mitchell  
 You are hereby commanded to summon Mitchell Naval Stores Com-

.639 [redacted] to us to [redacted] and based upon agreement

*[Handwritten notes:]*

- Executed Dec 1938
- by serving a copy of the within spirit or C.B. Mitchell
- included enclosed members of the Partner members composed of R.F. Mitchell and C.B. Mitchell and J.L. Tucker
- Mitchell & Co.
- By O. Wheeler S.
- R.F. Mitchell and J.L. Tucker

SUMMONS AND COMPLAINT

DR. R. A. HALL,

Plaintiff

VS

MITCHELL NAVAL STORES COMPANY,  
A CO-PARTNERSHIP COMPOSED OF  
R. F. MITCHELL, JR., C. B.  
MITCHELL AND J. L. TUCKER, AND  
R. F. MITCHELL, JR., C. B.  
MITCHELL AND J. L. TUCKER,  
INDIVIDUALLY,

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

Defendants.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Mitchell Naval Stores Com-  
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and J. L. Tucker, and R. F. Mitchell, Jr., C. B. Mitchell and J. L.  
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this writ in the Circuit Court to be held for the said County at the  
place of holding the same, then and there to answer the complaint of  
DR. R. A. HALL.

Witness my hand this 31st day of Feb, 1938.

Ascher  
CLERK.

COMPLAINT

DR. R. A. HALL,

Plaintiff

VERSUS

MITCHELL NAVAL STORES COM-  
PANY, A CO-PARTNERSHIP COM-  
POSED OF R. F. MITCHELL, JR.,  
C. B. MITCHELL AND J. L. TUCKER,  
AND R. F. MITCHELL, JR., C. B.  
MITCHELL AND J. L. TUCKER,  
INDIVIDUALLY,

Defendants.

The Plaintiff claims of the Defendants ONE HUNDRED TWENTY ONE  
AND 43/100 DOLLARS (\$121.43) due from them by account on the 12th day of  
January, 1937 for medical services rendered at the Defendants's request  
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sold by the Plaintiff to the Defendants on the 12th day of January, 1937  
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by the Plaintiff on the 12th day of January, 1937 at their request which  
sum of money with interest thereon is still unpaid.

NOTE: Sworn statement of account is  
filed together with this complaint.

Chris B. Brown  
ATTORNEY FOR PLAINTIFF.

DR. R. A. HALL,

Plaintiff,

-vs-

MITCHELL NAVAL STORES COMPANY,  
A Co-partnership composed of  
R. F. MITCHELL JR., C. B.  
MITCHELL and J. L. TUCKER, and  
R. F. MITCHELL JR., C. B.  
MITCHELL and J. L. TUCKER, In-  
dividually,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

LAW SIDE.

Come the Defendants in the above styled cause, and demur  
to the Complaint heretofore filed in said cause, and to each and  
every count thereof, separately and severally, and as grounds there-  
for, say:-

1st. That said Complaint does not state a cause of  
action.

*By Paul A. Brown*  
Attorneys for Defendants.

DEMANDER.

DR. R. A. HALL,  
Plaintiff,

-VS-

MITCHELL NAVAL STORES COMPANY,  
ET AL,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

LAW SIDE.

Filed April 16, 1938

*R. S. Suet.*

Clerk.

THE STATE OF ALABAMA,  
Baldwin County

No. 416  
CIRCUIT COURT  
September Term, 1941

To Any Sheriff of the State of Alabama, Greeting:

You are hereby commanded, That of the goods and chattels, lands and tenements of  
DR. R. A. HALL Plaintiff in the suit,  
you cause to be made the sum of Fourteen & 50/100 Dollars,  
costs of suit, created by said Plaintiff, for that, whereas, on the 29th day of  
September 1941, the said Plaintiff recovered by the Judgment of the said Circuit Court  
of said County, against Case Dismissed 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 R. S. Duck  
Clerk of said Court, and make return with this Writ and the Execution thereof, according to law.

Witness my hand this 15th day of December 1941

R. S. Duck Clerk

CLERK'S FEES			SHERIFF'S FEES		
	\$	Cts		\$	Cts
For every Summons and complaint...	\$1.25	1 25	For Levying an Attachment.....	\$3.00	
Each copy thereof.....	30	90	Entering and Returning Attachment.....	25	
Entering a Sheriff's Return.....	20	20	Summoning Garnishee.....	1.50	
Docketing.....	25	25	Serving Summons on Writ 2 W.....	1.50	3 00
Entering Apperance.....	20	20	Serving Notice Sci. Fa. Notice, etc.....	65	
Filing.....	10	40	Serving..... Subpoenas.....	65	
Every Order made in Court.....	30	30	Empanelling Jury.....	75	
Copy thereof.....	25		Entering and Returning Execution.....	25	
Every Trial with or without Jury.....	75		Collecting Costs Execution..... 1 S.....	1.50	1 50
Entering up Judgment or copy threof..	30		Executing a Writ of Pessionion.....	2.50	
Issuing Execution.....	50	50	Taking and Approving Bonds.....	1.00	
Docketing Execution.....	25	25	Commissions.....		
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				4 50
Each Summons for Garnishee.....	50		RECAPITULATION		
Each copy.....	50				
Notice to Deft. in Garnishee on Sum-			Clerk's Fees.....	7	00
mons and Copy, per 100 words.....	20		Sheriff's Fees.....	4	50
Commissions to take Depositions or			Justice's Fees.....		
copy.....	75		Witness Fees in Justice of Peace Court		
Order to Execute Writ of Inquiry.....	30		Constable's Fees.....		
Copy of Interrogators, 15c per hundred			Commissioner's Fees.....		
words or.....	50		Printer's Fees.....		
Filing each Deposition and endorsing			Witness Fees in Circuit Court.....		
same.....	20		Former Clerk's Fees.....		
Final Record, per hundred words.....	15	2 00	Stenographer's Fees.....	5.00	
Every Certificate.....	50		Trial Tax.....	3.00	3 00
Taking Bond not otherwise provided					
for.....	75				
Witness Certificate.....	25				
Continuance..... 6	10	60			
Certificate of Judgment.....	50				
Order of Publication.....	1.00				
		7 00			14 50

## Baldwin County.

{ By virtue of the within execution, I have at.....

o'clock, M., this day of 194 levied

Returned this 12th day of March 1942  
No property of the ~~defendant~~ plaintiff found  
in my County  
J. H. H. H. H.

W R Mead, Sheriff

By W. H. Hamilton Deputy Sheriff

Sheriff

## COLLECTION COSTS FROM

**The State of Alabama,**  
**BALDWIN COUNTY**

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

This \_\_\_\_\_ day of \_\_\_\_\_ 194 \_\_\_\_\_

Clerk.

Received in office

194

Sheriff

Sheriff's Execution Docket, Page

Sheriff's Fee Book, ..... Page

Page: No.....416...

Page:

THE STATE OF ALABAMA,  
BALDWIN COUNTY

**CIRCUIT COURT**

Dr. R. A. Hail

Plaintiff...

vs.

Mitchell Naval Stores, et al.

Defendant.

# Civil Execution for Costs Against Plaintiff

Costs	1	2	3	4	5	6
						\$14.50

\$14.50.

Civil Fee Book CDS..... Page:

Page:

Execution Docket.....	Page.....
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Page:

Filed.....December 15th.....1941

1941

Clerk.

James M. Brown  
Whitcomb Plaintiff's Attorney

**Defendant's Attorney**

Received in Sheriff's Office

this day of \_\_\_\_\_, 194

**W. R. STUART, Sheriff**

1116

IN THE CIRCUIT COURT OF BALDWIN COUNTY,

ALABAMA

At law

BALDWIN COUNTY BANK, a  
corporation,

Plaintiff

vs.

COUNTY BOARD OF EDUCATION  
OF BALDWIN COUNTY, ALABAMA,

Defendant

Number 378

Agreed statement of facts.

The parties to this cause agree to a submission of this cause on the pleadings and on the following agreed statement of facts:

It is agreed that each paragraph and each statement of fact in this agreed statement of facts shall be subject to all legal objections on the part of either party for irrelevancy, incompetency, immateriality, and any other ground of objection available and it shall be considered that objections on all legal grounds are duly interposed and all exceptions duly reserved by each of the parties to the consideration of said facts by the court as evidence in this case.

1. On November 11, 1931, Lilla A. Simmons became Treasurer of Public School Funds of Baldwin County, Alabama, for a term expiring September 30, 1934, as successor to W. D. Stapleton as said Treasurer, and made bond for \$25,000.00 with National Surety Company, as surety, copy of which is attached hereto as Exhibit "A" and made a part hereof. Said Stapleton had, during his term of office, also made bond with the same company as surety for \$60,000.00.

2. All public funds that came into the possession or under the control of W. D. Stapleton, as Treasurer of public school



funds of Baldwin County, Alabama, and into the possession or under the control of Lilla A. Simmons, as Treasurer of public school funds of Baldwin County, Alabama, prior to January 27, 1932, were deposited in the Baldwin County Bank, which bank was not a designated depository and no security was given by the said bank to W. D. Stapleton, as such treasurer, to secure the payment of the public funds so deposited by him as such Treasurer and no security was given by the said bank to Lilla A. Simmons, as Treasurer, to secure the public funds so deposited by her as such treasurer until December 1, 1931, as will hereinafter appear.

3. It is here stipulated that W. D. Stapleton, L. T. Rhodes, J. T. Bradley, J. D. Crosby and C. L. White would testify: "that on or about November 11, 1931, while W. D. Stapleton was treasurer of public school funds of Baldwin County, Alabama, representatives of the National Surety Company, the surety on the bond of W. D. Stapleton as such treasurer, including its Mr. Leslie W. Porter, came to Bay Minette and conferred with the said W. D. Stapleton and with the other officials of the Baldwin County Bank and advised them that the National Surety Company could not remain on the bond of W. D. Stapleton, as such treasurer and allow the public funds in his possession and under his control to remain on deposit in the Baldwin County Bank unless securities were deposited in escrow to protect the said account." W. D. Stapleton then resigned as such treasurer on November 11, 1931 and was succeeded by Lilla A. Simmons, whose bond as such officer in the sum of Twenty-five Thousand (\$25,000.00) Dollars was made by the National Surety Company, a copy of which bond was hereinabove referred to as Exhibit "A". When W. D. Stapleton resigned as such treasurer all the public funds that were then deposited in the Baldwin County Bank in his account as said treasurer amounting to \$12,688.83 were transferred by bookkeeping entry ~~to transfer said deposit~~ on the books of said bank to the credit of Lilla A. Simmons, as

*[Handwritten signature]*

such treasurer, and the said Baldwin County Bank remained as the sole depository for the said account until January 27, 1932.

4. On, to-wit, December 1, 1931, to meet the requirements of the National Surety Company, the Baldwin County Bank executed an Escrow Agreement dated December 1, 1931, which agreement was by and between the Baldwin County Bank, Lilla A. Simmons, as Treasurer of Public School Funds of Baldwin County, and the American National Bank and Trust Company, under which the following described securities were deposited with the said American National Bank and Trust Company for the protection of the said Lilla A. Simmons as such treasurer:

One 6% First Consolidated and Refunding Gold Bond of Alabama By-Products Corporation, Serial Number 655 for \$1,000.00, due Jan. 1, 1955, with interest coupons due 1-1-32 et seq. attached.

Two 5% Sinking Fund Debenture Gold Bonds issued by Aluminum Limited of Dominion of Canada, Serial Numbers 5481 and 5613 due July 1, 1948, with interest coupons due Jan. 1, 1932, et seq. attached, for \$1,000.00 each.

One Warrant of the Board of Education of Baldwin County, Alabama, dated July 1, 1931, payable Jan. 1, 1932, to Baldwin County Bank for \$5,338.33, with interest at 6% per annum.

One Warrant of the Board of Education of Baldwin County, Alabama, dated October 13, 1931, and payable June 1, 1932, to the Baldwin County Bank, Bay Minette, Alabama, for the sum of Sixty-eight Hundred Seventy-seven and 57/100 (\$6877.57) Dollars.

One Warrant of the Board of Education of Baldwin County, Alabama, dated October 13, 1931, and payable July 1, 1932, to the Baldwin County Bank, Bay Minette, Alabama, for the sum of \$543.22.

Ten 5% Coupon Bonds First Joint Stock Land Bank of Montgomery, Alabama, due April 1st, 1967, numbered M332110, M332111, M332112, M332113, M332114, M332130, M332131, M332132, M332133 and M332134, each in the principal sum of \$1,000.00.

Under a like agreement dated December 1, 1931, between the Baldwin County Bank, Jesse M. Smith, as Tax Collector of Baldwin County, Alabama, and the American National Bank and Trust Company, the following securities were deposited with the said American National Bank and Trust Company for the protection of the said Jesse M. Smith, as Tax Collector:

Ten State of Alabama  $4\frac{1}{2}\%$  Highway and Bridge Bonds due December 1st, 1952, numbered 16463, 16464, 16465, 16466, 16467, 16468, 16469, 16470, 16651 and 16652, each in the principal sum of \$1,000.00.

One Anticipated Tax Warrant General Fund, County of Baldwin, State of Alabama, Number 1, in the principal sum of \$3200.00, dated January 2, 1931, and registered number 4 with Baldwin County Bank, County Depository.

Under a supplemental agreement dated January 9, 1932, and executed by Lilla A. Simmons, as such Treasurer, Jesse M. Smith, as Tax Collector, Baldwin County Bank and American National Bank and Trust Company, it was provided in substance that any of the securities deposited as aforesaid for the protection of Lilla A. Simmons, as Treasurer, which might not be needed for that purpose should operate as security for the said Jesse M. Smith, as Tax Collector, and also that any of the securities deposited as aforesaid for the protection of the said Jesse M. Smith, as Tax Collector which might not be needed for that purpose, should operate for the protection of the said Lilla A. Simmons as such Treasurer.

5. On January 27, 1932, the Baldwin County Bank failed and closed and was taken over for liquidation by the Alabama Superintendent of Banks under the supervision of this Court.

6. The collateral hereinabove referred to in paragraph numbered 4 was sold at the request of the said Lilla A. Simmons and the sum of \$25,611.40 was realized therefrom. Credit for this amount was given by said Board before filing its claim and amendment thereto referred to in paragraph 7 hereof.

7. On June 21, 1932, the Board of Education filed its claim in the said liquidation proceedings in this Court for \$26,236.90, a copy of which is attached hereto as Exhibit "B" and made a part hereof and later on October 8, 1932, filed its amended claim for \$4486.36 additional, a copy of which is attached hereto as Exhibit "C", making a total claim of \$30,723.26, claiming the same as a preferred claim.

8. On October 14, 1932, a decree of this court was rendered in favor of Baldwin County Board of Education against

the Baldwin County Bank for \$30,723.26 and a copy of said decree is hereto attached as Exhibit "D" and made a part hereof. The reorganized bank is the plaintiff in this cause.

9. Payments on said decree were made by the said Plaintiff Bank to the said Board as follows:

November 7, 1932	\$4677.92
October 25, 1933	4681.20
August 9, 1934	7021.80
February 14, 1935	2340.60
May 17, 1935	2340.60
October 24, 1935	2340.60
July 1, 1936	4681.20
August 5, 1936	2639.34

No interest was paid to the school board on the said claim. All of the said payments were made from the general funds of the said bank by checks. The said payments were made from moneys collected from the said liquidation.

10. On August 5, 1933, R. T. Goodwyn was duly appointed by the Circuit Court of Montgomery County as special trustee by said court to administer the \$50,000.00 deposit made by National Surety Company under Section 2642 of the Code of Alabama of 1923 and said appointment is still in effect to the extent shown by the decree dated December 12, 1935, copy of which is attached hereto at Exhibit "E". On September 8, 1934, a claim for \$14,342.48 was filed on behalf of Baldwin County Board of Education in the said receivership and special trustee proceedings in the Montgomery County Circuit Court, a copy of which without exhibits except the affidavits of S. M. Tharp, is attached hereto as Exhibit "F" and made a part hereof. This claim was on the bond of Lilla A. Simmons, as treasurer of public school funds of Baldwin County, Alabama, a copy of which bond is hereto attached as Exhibit "A" and was a claim in connection with the deposit of said official in the Baldwin County Bank as shown in said Exhibit "F". Said claim was allowed by said Court as one which said \$50,000.00 deposit was to protect and was, on

September 9, 1935, paid on a prorata basis with other similar claims, which said amount was 62.23% or \$6012.12 and on said date said R. T. Goodwyn, as such special trustee, acting under order of the Circuit Court of Montgomery County, Alabama, paid over to Baldwin County Board of Education \$6012.12 without giving notice to the Baldwin County Bank of payment of the claim so allowed. The payments made by said bank described in paragraph 9 hereof were all made without notice to said special trustee. All payments made by the said bank as shown in paragraph 9 hereof, and the payment made by the said Goodwyn as special trustee, were deposited by the said School Board in its bank account which is designated as its liquidation account and credited to said account. The amount on deposit in the said account at this time is \$6012.12. At the time of the aforesaid payment by the said Goodwyn as special trustee, the balance due on the said Decree of October 14, 1932 was \$9661.14. Later, without any knowledge or notice that the said payment had been made by the said Goodwyn, as special trustee, the said bank made the further payments on the dates and in the amounts set out in paragraph 9 hereof. When the said bank first learned that the said special trustee had paid the said Board \$6012.12, it made demand upon the said Board for refund of \$6012.12, but no part thereof has ever been refunded. Later after said bank had paid the balance of \$9661.14 as shown in paragraph 9 hereof, the said Goodwyn, as special trustee, learned of said payments and then made demand on the said Board for the refund of the amount paid by him but the said refund was not made.

11. The public school funds entrusted to W. D.

Stapleton were during his term of office and until he ceased to be said treasurer, deposited by him in the ~~State Bank~~ <sup>PLANTERS</sup> bank in his name as "W. D. Stapleton, Treasurer". Prior to November 11, 1931, when said Stapleton ceased to be said treasurer, an employee of the said bank, one Whatley, had stolen \$4,529.26 from said bank, and to cover said theft had, prior to November 11, 1931, reduced the amount to the credit of the said account

85-32

of "W. D. Stapleton, Treasurer" by the said amount of \$4,529.26; that after the aforesaid transfer of \$12,688.83 to the credit of Lilla A. Simmons, as succeeding Treasurer, and before July 22, 1932, (the date of the amended report of said John C. Graham, Jr., hereto attached as Exhibit "G"), said defalcation by Whatley was discovered, and said bank was later reimbursed \$4,529.26 by the surety on the fidelity bond of said Whatley; said bank did not pay over to the said W. D. Stapleton any part of the said amount of \$4,529.26, but placed it in its general funds out of which said payments totaling \$30,723.26 were made by said bank under said decree of October 14, 1932. Said Bank has never paid said Stapleton any part of said amount so received by said Board from said Bank as described in paragraph 9.

12. It is further stipulated that W. D. Stapleton would testify that prior to November 11, 1931, when he ceased to be said treasurer, he had deposited in said bank funds in excess of \$1155.10 which were his own personal funds, and that he had caused said funds to be credited to said account in the name of "W. D. Stapleton, Treasurer", and that said funds had not been withdrawn when said account was transferred over to Lilla A. Simmons, as said Treasurer, nor subsequent thereto.

13. On June 23, 1932, John C. Graham, Jr., Assistant Examiner of Accounts in the Department of Examiners of Accounts of the State of Alabama, filed his report of the examination of the accounts of said W. D. Stapleton, as said Treasurer, and a true copy of said report is hereto attached as Exhibit "G" and made a part hereof.

14. On July 22, 1932, said John C. Graham, Jr., as Assistant Examiner of Accounts as aforesaid, made an amended report, a true copy of which is hereto attached as Exhibit "H" and hereby made a part hereof subject to all legal objections on the part of either party to such parts of said amended report as represent conclusions of the said Graham as distinguished from a statement of accounts.

15. On August 12, 1936, said W. D. Stapleton assigned to Smith, Dukes & Buckalew his claim to the said deposit of \$1155.10 and said assignees brought suit thereon against said Board of Education in this court which resulted in a judgment for the defendant on March 15, 1940, and no appeal was taken from said judgment. No suit for said \$1155.10 was filed by the said bank until it was included in this suit by amendment filed herein on September 18, 1939.

16. Out of the assets of the Baldwin County Bank in said liquidation there was collected by said <sup>Plaintiff</sup> bank enough money to pay the full principal plus interest on all claims which were adjudged to be preferred claims in the decree of October 14, 1932, including the claim of said Board of Education but no interest has been paid to said Board of Education. Sufficient moneys have not been collected from the said liquidation to pay the claims of the depositors and common creditors and the collections from the assets in liquidation will not be sufficient to pay the principal of such claims. Fifty per cent of the amount of each deposit or common claim was charged off at the time of the reorganization of the said bank and Certificates of Deposit were issued for 37 $\frac{1}{2}$ % of the original total of such deposits and common claims as provided in the said Decree of October 14, 1932. The amount of the Certificates of Deposit originally issued totaled \$140,540.31, of which \$112,487.22 is now outstanding and unpaid. A liberal estimate of the remaining assets belonging to the said liquidation, including cash on hand and property owned is \$50,000.00.

*J. T. S. T. Blackman*  
*Gordon, Lige, Lige & Gordon*  
Attorneys for plaintiff

*Bare & Bare*  
Attorneys for defendant

STATE OF ALABAMA, )  
BALDWIN COUNTY. )

EXHIBIT A.

A

Know all men by these presents that we Lilla A. Simmons as principal, and National Surety Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and authorized to become sole surety on bonds in the State of Alabama, as surety, are held and firmly bound unto State of Alabama in the sum of Twenty-five Thousand Dollars (\$25,000.00) for the payment of which well and truly to be made and done, we bind ourselves, our heirs, executors, administrators, and assigns, firmly by these presents.

Sealed with our seals and dated this 11th day of November, 1931.

The condition of the above obligation is such, that whereas, the above bound, Lilla A. Simmons, was duly elected to the office of Treasurer of Public School Funds of Baldwin County, Alabama, on the 11th day of November, 1931, for a term beginning on the 11th day of November, 1931, and ending on the 30th day of September, 1934. Therefore, if the said Lilla A. Simmons shall faithfully perform and discharge all the duties of said office during her continuance therein, then this obligation to be void.

(Corp. Seal)

LILLA A. SIMMONS

(LS)

APPROVED: A. F. Harman      NATIONAL SURETY COMPANY  
State Superintendent By L. A. Porter, Attorney-in-fact.  
of Education.

Approved by order of a resolution of the County Commission of Baldwin County, Alabama, duly made and entered this the 20th day of November, 1931.

COUNTY COMMISSION OF BALDWIN  
COUNTY, ALABAMA,

(SEAL)

By C. S. Tompkins, Chairman



EXHIBIT B

B

-----  
 In the matter of :  
 :  
 H. H. Montgomery, as Superin- : IN THE CIRCUIT COURT OF BALDWIN  
 tendent of Banks, liquidating : COUNTY, ALABAMA.  
 the Baldwin County Bank of : IN EQUITY.  
 Bay Minette, Alabama. :  
 -----

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

Come the County Board of Education of Baldwin County, Alabama, and also Lilla A. Simmons, as Treasurer of the Public School Funds of Baldwin County, Alabama, and respectfully represent and show unto your Honor as follows:

1. That your petitioner, the County Board of Education of Baldwin County, Alabama, is a public governmental body constituted as is provided by the relevant statutes of the State of Alabama, and holds in trust for public school purposes the title to all of the public school funds and property of the said county as is provided by law; that your petitioner, Lilla A. Simmons, is the treasurer of all of the public school funds of Baldwin County, Alabama, duly selected and acting as such as provided by the statutes of Alabama; that heretofore, to-wit on the 27th day of January, 1932, Baldwin County Bank, a corporation organized and doing a banking business under the laws of the State of Alabama in Bay Minette, Alabama, for many years before said date, was taken over for liquidation of its affairs by H. H. Montgomery, as Superintendent of Banks of the State of Alabama, all as contemplated and provided by the relevant statutes of the said state; that on to-wit the 8th day of February, 1932, the said H. H. Montgomery, as such Superintendent of Banks, liquidating the affairs of the said Baldwin County Bank, filed in this Honorable Court his petition in the nature of a bill of complaint, invoking the jurisdiction of this Honorable Court over the administration of the said trust, and seeking confirmation by the Court of certain of his transactions thereby reported; that on to-wit the 10th day of February, 1932, this Honorable Court granted the specific relief prayed for in the said petition or bill of complaint

and reserved all other questions; that subsequently the said Superintendent of Banks has sought other and further instructions and authority in the premises from this Honorable Court, all as more fully appears from the proceedings in this cause, which are hereby referred to; and that by virtue of the matters and proceedings aforesaid the administration of the affairs of the said bank is now under the jurisdiction of this Honorable Court to be controlled and directed by and through appropriate proceedings in the above stated cause.

2. That the said State Superintendent of Banks has duly appointed A. E. Jackson as liquidating agent for the said Baldwin County Bank, which appointment has been approved and confirmed by this Honorable Court, and the said A. E. Jackson as such liquidating agent is now representing and acting for the said State Superintendent of Banks in liquidating the affairs of the said Baldwin County Bank.

3. That at the time that the said Baldwin County Bank was taken over for liquidation as aforesaid by the said State Superintendent of Banks there was on deposit with it to the credit of the said Lilla A. Simmons, as Treasurer of the Public School Funds of Baldwin County, Alabama, the sum of \$16,846.31 carried by her authority in a checking account; that she as such Treasurer also held a cashier's check on the said bank for \$10,000.00 drawn under date of January 9th, 1932, which was and is an order to the said bank by its cashier to pay said amount; that both of said items consisted of public school funds of Baldwin County, Alabama, deposited by the treasurer of public school funds of Baldwin County, Alabama, in said Baldwin County Bank; that the said bank knew at the time it received each deposit making up said items that the funds so deposited were public school funds; that the said amounts were insufficiently secured by the hypothecation of certain collateral with the American National Bank & Trust Company, as trustee; that the said trustee has foreclosed the said pledge, realizing therefrom the net sum of \$25,611.40,

which has been applied upon or against said cashier's check of \$10,000.00 and said deposit of \$16,846.31; that consequently there still remains of the said deposit the sum of \$1,236.90; that in addition to the above mentioned items the said Lilla A. Simmons as such treasurer on or about January 6th, 1932, placed with the said Baldwin County Bank for collection the State Auditor's warrant on the general school fund for \$25,000.00; that on the next day she advised the said bank that the said warrant was not for general deposit but was for collection and that the proceeds when received should be accounted for accordingly; that the said warrant was collected through the First National Bank in Mobile; that on or about January 11th, 1932, the said Baldwin County Bank, without any authority so to do, transferred the said \$25,000.00 from the said special collection account of the said Lilla A. Simmons as treasurer to her general account, and that by this improper and unauthorized transfer from said special account to said general or checking account the books of the said bank were made to show a credit to the said Lilla A. Simmons as such treasurer of \$51,846.31 at the time that the affairs of the said bank were taken over for liquidation as aforesaid; that the above mentioned items, namely, the \$16,846.31 standing in the checking account of the said Lilla A. Simmons as treasurer by her authority, the said cashier's check of \$10,000.00, and the said above explained item of \$25,000.00, each and all represented and constituted a part of the public school funds of Baldwin County, Alabama; and that this was well known to the said Baldwin County Bank at the time that each deposit making up said items was made.

4. That the said Baldwin County Bank was not a designated depository of public monies, had given no bond as provided by Section 3973 of the Code, and was not authorized or empowered under the laws of this state to receive on general deposit the aforesaid public school funds; that while she was not so advised at the time yet it was in fact unlawful

for the said Lilla A. Simmons as treasurer as aforesaid to deposit any of said public school funds in said Baldwin County Bank; that all of the said public school funds so received by the said bank are a trust fund of such kind and nature that under the laws of Alabama the same constitute a preferred claim against and lien upon the assets of the said Baldwin County Bank and should be paid in preference and priority to all creditors not possessing a like or superior priority; that on or prior to the 23rd day of May, 1932, your petitioners filed with the said agent of the said State Superintendent of Banks a claim that the said public school funds be accorded such priority and be paid accordingly and the said State Superintendent of Banks refuses to affirmatively or expressly reject or allow the said claim.

5. That the said Baldwin County Bank and its officers knew at the time that each deposit of the aforesaid funds was made with it that such deposits were made for the safekeeping of said money until such time as the same should be due to be paid out under the orders of the County Board of Education of Baldwin County, Alabama, for the legal and current expenses of the public school system and public schools of the said county; that all monies so deposited by the treasurer of the public school funds of Baldwin County were in the nature of a special account, and were not to be used for any purpose other than to cover the proper disbursements of the said County Board of Education; that the said monies remained the property of the said Board in trust for the public as a part of the public school funds of Baldwin County; that by virtue of the premises the aforesaid balance of \$1,236.90 and the said \$25,000.00 item of public school funds of Baldwin County, Alabama, so improperly received and held by the said Baldwin County Bank, as is herein averred, constitute a trust fund which is a preferred claim to be paid to the County Board of Education of Baldwin County, Alabama, from the assets of the said Baldwin County Bank in preference and priority to all other obligations

of the said bank not likewise preferred, which claim stands secured by a lien of all of the assets of the said Baldwin County Bank now in the hands of the said State Superintendent of Banks.

6. That your petitioners are informed and believe, and upon such information and belief charge, the facts to be that there are sufficient assets belonging to the said Baldwin County Bank to pay the aforesaid amount due the said County Board of Education of Baldwin County, Alabama, as aforesaid, and all other claims likewise preferred, but that there are not sufficient assets to pay all of the creditors of the said bank in full, and that unless the amount of said public school funds deposited and held as aforesaid is decreed to have a preference and priority of payment over the common creditors of said bank said claim will be in part unpaid.

7. That by the aforesaid unauthorized or unlawful acts of said bank in receiving said deposits of said public school funds there arose a trust relationship between the said bank and the said County Board of Education of Baldwin County, Alabama, representing the public and the public school system of said county, to the extent of the amount of public school funds held as aforesaid by the said bank; that the inability of the County Board of Education of Baldwin County, Alabama, to secure payment of the said fund has seriously crippled and impaired, and is still seriously crippling and impairing, the public school system of Baldwin County, Alabama; that many teachers sorely in need of their money remain unpaid for their services; that the said fund is still further needed for the future carrying on of the public schools of the said county, and consequently the obligations of the said County Board of Education of Baldwin County, Alabama, are of a pressing and urgent nature; that with all proper dispatch the said amounts, aggregating \$26,236.90, of the public school funds of Baldwin County, Alabama, so improperly received and held by the said Baldwin County Bank should be paid from the assets of the said bank in

preference and priority to all other obligations of the said bank not likewise preferred; that a lien therefor upon all of the assets of the said bank now in the hands of the said Superintendent of Banks should be decreed to exist; and that the said State Superintendent of Banks should pay the said claim out of the first funds available therefor, making such payment in installments whenever as much as one thousand dollars is available for that purpose.

Wherefore, the premises considered, your petitioners pray that your Honor will fix an early day for the hearing of this petition; that it be ordered that the testimony on such hearing shall be taken orally in open court; that notice of the said hearing be given to the said Baldwin County Bank, to the said H. H. Montgomery as State Superintendent of Banks, and to the said A. E. Jackson as agent for the said State Superintendent of Banks liquidating Baldwin County Bank; that upon such hearing it be ordered and decreed that with respect to the said \$26,236.90 of the public school funds of Baldwin County there exists a priority which requires that the said amount be paid from the assets of said Baldwin County Bank in preference to all other claims against the said bank, except such as possess an equal or superior priority; that the said amount stands secured by a lien upon all of the assets of said bank in the hands of the said State Superintendent of Banks; and that the said State Superintendent of Banks be ordered to pay to Lilla A. Simmons, as treasurer as aforesaid, from the proceeds of the assets of the said Baldwin County Bank, when and as funds are available therefor, the said sum of \$26,236.90, payment on account to be made whenever as much as \$1,000.00 is available for that purpose.

Your petitioners pray for all such other, further, and general relief as they may be equitably entitled to, the premises considered. And petitioners will ever pray, etc.

Stevens, McCorvey, McLeod, Goode & Turner  
Solicitors for petitioners.

State of Alabama,  
County of Baldwin.

Before me, Vivian Cain, a Notary Public in and for said State and County, personally appeared S. M. Tharp, who being duly sworn deposes and says that he is the County Superintendent of Education for Baldwin County, Alabama; that as such he is the executive officer of the County Board of Education of said county; that he has knowledge of the facts alleged in the foregoing petition and is authorized to make this proof; and that all facts alleged as such in said petition are true, and that as to all allegations there made on information and belief affiant is informed that the same are true, and from such information believes the same to be true, and upon such information and belief states the same to be true.

S. M. Tharp

Sworn to and subscribed before me  
this 21st day of June, 1932.

Vivian Cain

Notary Public, Baldwin County, Alabama.

(Notarial Seal)

Filed June 21st, 1932

T. W. Richerson, Then Clerk

H. A. Stone

Clerk

Aug. 27, 1934

Exhibit D

In the matter of

H. H. Montgomery, as Superintendent  
of Banks of the State of Alabama,  
Liquidating the Baldwin County Bank  
of Bay Minette, Alabama.

IN THE CIRCUIT COURT  
OF BALDWIN COUNTY,  
ALABAMA.

IN EQUITY.

Come the Board of Education of Baldwin County, Alabama,  
and Lilla A. Simmons, as Treasurer of the public school funds  
of Baldwin County, Alabama, and by leave first had and obtained  
amend their petition heretofore filed in this cause in the  
following particulars, namely:

1. By inserting immediately after Paragraph 7 and  
immediately before the prayer of the said petition a paragraph  
numbered and reading as follows:

8. That one W. D. Stapleton was the immediate prede-  
cessor of the said Lilla A. Simmons in the position of  
Treasurer of the public school funds of Baldwin County,  
Alabama; that the said Stapleton retired from said posi-  
tion and the said Lilla A. Simmons was appointed thereto  
in the year 1931; that the said W. D. Stapleton, during  
his tenure in the said position, was the President of Baldwin  
County Bank and kept the public school funds of Baldwin  
County on deposit in the said bank; that at the time  
of his retirement from the said position he undertook  
to pay over to his successor, the said Lilla A. Simmons,  
all of the public school funds in his possession as such  
Treasurer then shown by the books of the said Bank to  
be in the said fund; that since that time and since the  
filing of the aforesaid petition by these petitioners it  
has developed and been discovered that the account of  
said school funds in the said Baldwin County Bank has been  
so manipulated by an employee of the said Bank for the  
purpose of concealing his shortages as to indicate that  
the amount of public school funds held on deposit by the  
said Bank at the time of the retirement of the said Sta-  
pleton as aforesaid was \$4,486.36 less than the amount



actually so held by said bank; that the said Stapleton in paying over the said funds to his said successor assumed the records of the said Bank to be correct and consequently failed to pay over or otherwise account for the aforesaid sum of \$4,486.36; that he had no knowledge of the said manipulation of the Bank's records and thought that he was accounting for and paying over all of the public school funds which had been confided to him as such Treasurer; that your petitioners, because of the facts above alleged discovered since the filing of the said petition, now amend the same by adding to the \$26,236.90 there claimed the aforesaid sum of \$4,486.36, thus increasing the claim of your petitioners against the said Baldwin County Bank for public school funds of Baldwin County, Alabama, to the sum of \$30,723.26; that all allegations contained in the original petition with respect to the notice and knowledge of the said Bank in receiving the deposits there dealt with apply to and are repeated as to the aforesaid sum of \$4,486.36; that the rights of your petitioners against the said Bank with respect to the last named sum are those which are claimed in their said petition with respect to the funds there dealt with; and that your petitioners are entitled to the same relief with respect to said \$4,486.36 as they are entitled to with respect to the other moneys received by the said Bank as alleged in their original petition.

2. By making all such alterations in the amounts and figures presented in and by the aforesaid petition as may be necessary to show that your petitioners claim a total of \$30,723.26 as a preferred or prior claim constituting a preferred charge upon the assets of the said Bank, in all respects as asserted in their said original petition.

3. By so amending the prayer of the said petition as to make the relief there prayed for apply to and cover the afore-

said \$4,436.36 as well as the amount of \$26,236.99 there named and stated.

Stevens, McGorvey, McLeod & Turner  
Solicitors for Petitioners.

State of Alabama,  
County of Baldwin.

Before me, Vivian Cain, a Notary Public in and for said State and County, personally appeared S. M. Sharps, who, being duly sworn, deposes and says that he is the County Superintendent of Education for Baldwin County, Alabama; that as such he is the executive officer of the County Board of Education of said county; that he has knowledge of the facts alleged in the foregoing amendment and is authorized to make this proof and that all facts alleged as such in the said amendment are true and that as to all allegations therein made on information and belief affiant is informed that the same are true, and from such information believes the same to be true, and upon such information and belief states the same to be true.

S. M. Sharp

Sworn to and subscribed before  
me this 8th day of October, 1932.

Vivian Cain

Notary Public, Baldwin County, Alabama.

(Notarial Seal)

Filed Oct. 8th, 1932, by T. W. Kicherson, then Clerk.

M. A. Stone, present Clerk.

August 27th, 1934.

In the matter of  
H. H. Montgomery, as Superintendent  
of Banks of the State of Alabama,  
liquidating the Baldwin County Bank  
of Bay Minette, Alabama.

*Exhibit D*  
IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY.

This cause is submitted this 14th day of October, 1932, for decree upon the petition of H. H. Montgomery, as Superintendent of Banks of the State of Alabama, for authority to re-open the Baldwin County Bank of Bay Minette, Alabama, as provided by law, and for other relief; the respective answers or responses of the respective parties in interest to the said petition; the respective petitions of Baldwin County, Alabama, and of the County Board of Education of Baldwin County, Alabama, each claiming a preferential or prior right of payment of the public funds held by the said Bank at the time it closed and ceased to do business; and the evidence introduced upon the said hearing as noted by the Register. The several matters and questions so presented being considered and understood, the Court is of the opinion that it is to the interest of all parties concerned that the said Bank be re-opened in substantial accord with the plan presented by the said petition, and it is ordered, adjudged and decreed by the Court as follows:

1. That it is to the best interest of all concerned that the Baldwin County Bank of Bay Minette, Alabama, be re-organized and re-opened, substantially on the plan set forth in the said petition of the said Superintendent of Banks of the State of Alabama, but subject to all of the provisions and terms of this decree.

2. That more than three-fourths in amount or value of all depositors and common creditors have agreed, in writing, to the aforesaid plan to reorganize and re-open the said Bank, and that all other depositors and common creditors be, and they are hereby required to accept the said plan.

3. That the said Bank has no undivided profits or surplus; that its capital stock as shown by appraisals made

under the direction of the said Superintendent of Banks of the State of Alabama, is worthless; and that the said Superintendent of Banks be, and he hereby is, authorized and directed to charge off any and all surplus, undivided profits, and capital stock which may appear upon the books of the said Bank, and to cancel and retire all certificates evidencing the said capital stock, the said certificates heretofore having been surrendered by the holders thereof for such purpose.

4. That all unsecured and unpreferred deposits and claims of every kind against the said Bank be, and the same hereby are, shrunk or reduced to the extent of 43-3% thereof; that each such unsecured or unpreferred depositor and/or creditor be paid 12½% of the amount of his original deposit or claim by the issuance to him of shares of the capital stock of the reorganized Bank of the par value of \$100.00 per share; that 6½% of each such deposit or claim be taken and retained by the reorganized Bank as contributed surplus; that 37½% of each such unsecured or unpreferred deposit or claim be paid to the depositor or creditor owning the same, by the issuance and delivery to him of a certificate of deposit, payable only if and when all of the expenses, preferred claims and capital stock set-up as herein provided for shall have been paid and the financial condition of the reorganized Bank shall be such that in the opinion of its Board of Directors payments may be made on account of the said certificates without impairing in any manner the capital of \$50,000.00 and the surplus of \$25,000.00 which the said reorganized Bank is to have and maintain; that if, when, and as the condition of the said reorganized Bank is such that in the opinion of its Board of Directors the same may be done without impairment of said capital or surplus, payments shall be made on said certificates of deposits in installments of not less than five per cent of the amount of the certificates, which course shall continue until the said certificates be fully paid; that in carrying out said plan the reorganized Bank is author-

ized to make such adjustments, in cash or otherwise, as may be necessary to eliminate fractions of shares and fractions of certificates of deposit too small for it to be practicable to work or carry them, and also such adjustments as may be necessary to establish for the reorganized Bank a capital of \$50,000.00 and a surplus of \$25,000.00.

5. That there is on deposit in the said Bank \$30,723.26 of Public School Funds of Baldwin County, Alabama, belonging to the County Board of Education of Baldwin County, Alabama, in its official capacity; also public funds amounting to \$26,002.25 belonging to Baldwin County; also \$24,231.86 of public funds belonging to the Town of Bay Minette; also \$508.23 of public funds belonging to the State of Alabama; also \$714.41 of public funds for which the Judge of Probate of Baldwin County, Alabama, is accountable; and \$54.10 of Public School Funds for which G. K. Page is accountable; that the total of the said public funds is \$82,234.11, and that the remainder of the deposits in the said Bank are common deposits; that there exists with respect to each of said deposits of public funds a priority or preferential right of payment from the assets of the said Bank, which in equity is a charge upon the said assets superior to any and all other claims except the expenses of administration and such claims as may be preferred by law; that such priority or preferential right of payment and such charge upon the assets of the said Bank is hereby decreed and established in favor of the County Board of Education of Baldwin County, Alabama, pursuant to its amended petition submitted along with the aforesaid petition of the Superintendent of Banks of the State of Alabama; in favor of Baldwin County, Alabama, pursuant to its petition submitted on this hearing; in favor of the Town of Bay Minette, the State of Alabama, the Probate Judge of Baldwin County, Alabama, and G. K. Page, respectively, for the aforesaid respective amounts of their respective claims; and that the said claims be paid in the order and manner hereafter provided.

6. That all of the present officers and directors

of the said bank forthwith do file their respective resignations with the Superintendent of Banks of the State of Alabama, which is now treated and considered as having been done; that more than three-fourths in amount of the depositors and creditors of the said Bank have consented, in writing, to a reorganization of the said Bank as hereby authorized and have selected as a Board of Directors for the said Bank, to serve until the regular annual meeting in January, 1933, the following individuals, namely, J. C. Burns, C. A. Thompson, C. H. Bryars, A. D. Stapleton, C. S. Tompkins, G. W. Robertson, S. F. Holmes and Foster Hamilton, and the said Directors so tentatively selected in turn have selected the following officers for the proposed reorganized Bank to serve until the annual meeting in January, 1933; namely, G. W. Robertson, President; Foster Hamilton, Vice-President, and S. F. Holmes, Vice-President and Cashier; that the said selections so made of a Board of Directors and Officers for the reorganized Bank to serve until the regular annual meeting in January, 1933, are hereby approved, ratified and confirmed; that petitioner, the Superintendent of Banks of the State of Alabama, be, and he is hereby, authorized and directed to turn over and deliver to the officers and Directors so selected for the said reorganized Bank all of the assets of every kind and description, books, accounts and records of the said Bank; and that the said Directors and officers so selected be, and they hereby are, authorized and directed to reopen the said Bank and proceed to conduct the same as a Banking institution under its original charter, but subject, however, to the provisions of this decree.

7. That the said reorganized Bank shall collect and convert into money as fast as the same may be done without undue or unreasonable loss or sacrifice, the existing assets of the said Bank, and from the first monies available from such collections shall pay all proper costs and expenses so far incurred in the administration of the liquidation of the said Bank, and any claims which have a special preference provided by law; it shall next pay the aforesaid claims of the State of Alabama, the

Probate Judge of Baldwin County, Alabama, and G. K. Page; thereafter all funds realized from the existing assets of the said Bank, less any contribution which is to be made therefrom as a part of the expense of operating the said Bank, shall be paid ratably on account of the said claims of the County Board of Education of Baldwin County, and Baldwin County and the Town of Bay Minette, distribution and payment to be made as and when as much as \$6,000.00 is available for such purpose, and to continue until the said preferred claims be fully paid and satisfied, and thereafter retain the amount of the capital stock set-up as herein provided, after which the certificates of deposit shall be paid as herein provided.

8. That the said reorganized Bank shall be operated as economically as is possible, and the expense of such operation shall be borne by and taken from the profits, if any, accruing therefrom, but in the event that such profits be not sufficient to pay such expense, then the deficit may be paid from the proceeds realized from the present assets of the Bank.

9. The reorganized Bank may borrow money with which to carry on its contemplated business and secure the same by mortgage, pledge or hypothecation of a reasonable amount of the existing assets of the said Bank, but the charge upon said assets hereby decreed and established in favor of the County Board of Education of Baldwin County, Baldwin County, Alabama, the Town of Bay Minette, the State of Alabama, the Probate Judge of Baldwin County, Alabama, and G. K. Page to assure the payment of the said respective items of public funds, shall follow and be fixed upon the cash so borrowed and/or the assets acquired therewith directly or indirectly.

10. The said reorganized Bank shall keep separate, as near as may be, the existing assets of the said Bank and the proceeds of all loans obtained thereon and of all sales and collections thereof, from any additional assets which it may acquire, in such manner that all interested parties, including the Superintendent of Banks of the State of Alabama, may check as accurately as will be possible under the circumstances the result of the operation under the reorganization and also ascertain whether or not there is compliance with the provisions of this decree.

11. That such claims against the said Bank as have been allowed by the Superintendent of Banks of the State of Alabama as being preferred shall be so treated and paid by the Bank as reorganized; that such claims as he has allowed as common or unpreferred claims shall be so treated and adjusted; that any appeals from his rulings rejecting claims shall be heard as provided by statute, and, when the status of each such claim shall have been ascertained, it shall stand subject to the relevant provisions of this decree; that all pending litigation affecting the said Bank or its assets shall be determined without regard to this decree, except that all settlements of any judgments rendered against the said Bank, or the Superintendent of Banks on its account, shall be only under and pursuant to the relevant provisions of this decree; that the Directors and Officers of the said reorganized Bank shall take such action with respect to all such pending litigation as they deem to be to the interest of the said Bank, and also shall do all things necessary or proper to the perfecting and carrying out of the reorganization hereby authorized and conducting the business of the reorganized Bank; that all claims against the said Bank which the law required to be proved to the Superintendent of Banks and were not so proved within the time allowed by law shall be and stand barred as claims against said reorganized Bank; and that the said State Superintendent of Banks shall file herein with all convenient dispatch a full statement and account of all of his receipts and disbursements in the handling of the affairs of said bank and an inventory of the assets delivered by him to the Officers and Directors of the reorganized Bank.

12. That the Court hereby retains jurisdiction of this cause and hereby orders that the same remain upon its docket that any and all orders hereafter appearing to be necessary or proper may be made. All other and further matters and questions are hereby reserved.

F. W. Hare

Judge.



2

Exhibit E

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,  
ALABAMA

E

In Equity.

STATE OF ALABAMA, et al,       )  
                                      :  
                                      )  
                                      :  
                                      )  
NATIONAL SURETY COMPANY       )

The report of R. T. Goodwyn as special trustee of National Surety Company on final distribution having been presented to the court and read and understood and the vouchers of the said special trustee having been under the direction of the court carefully checked and examined and it appearing to the court that the said special trustee has fully accounted for all funds which have come into his hands with the exception of a small balance which is insufficient for a dividend with the exception of a small return bond premium which he may be able to collect, it is ORDERED, ADJUDGED AND DECREED by the court that the said R. T. Goodwyn is by the court authorized to apply the small balance of \$33.51 now on hand as shown by said report, together with whatever return premium he can obtain on his bond upon the cancellation thereof and to apply the same toward miscellaneous small items of expense to which he and his attorney have been put in and about the administration herein and it is by the court ORDERED, ADJUDGED AND DECREED that the said R. T. Goodwyn having fully performed all the duties of his trust as said special trustee in the above styled cause the said Goodwyn as said special trustee and Fidelity & Deposit Company of Maryland are by the court now discharged from all liability on the receiver's or special trustee's bond heretofore given by said Goodwyn with said Company as surety.

The said special trustee will continue to serve as such for the purpose of collecting any items of salvage which may arise and shall report the collection of any such items to the court.

DONE this December 12, 1935.

W.B. JONES

Judge.

STATE OF ALABAMA AND THE  
STATE OF ALABAMA FOR THE  
USE AND BENEFIT OF BALDWIN  
COUNTY,

V.

R. T. GOODWYN AS RECEIVER FOR  
THE NATIONAL SURETY COMPANY,  
A CORPORATION.

*Exhibit E*  
IN RECEIVERSHIP, CIRCUIT  
COURT, MONTGOMERY COUNTY,  
ALABAMA.

IN EQUITY.

Comes now the State of Alabama, in its own behalf,  
and the State of Alabama, for the use and benefit of Baldwin  
County, Alabama, and respectfully shows unto this Receiver  
and unto this Court, as follows:

That on the 11th day of November, 1931, Lilla A. Simmons  
was elected to the office of County Treasurer of school funds  
of Baldwin County, Alabama, Alabama, for the period, November 11,  
1931 through September 30, 1934; that the National Surety  
Company, a corporation, executed the official bond of Lilla A.  
Simmons; that while the said official bond was in full force  
and effect and while the said Lilla A. Simmons was exercising  
the official duties of her office as County Treasurer of school  
funds of Baldwin County, Alabama, the said Lilla A. Simmons came  
into possession of public school funds in the amount of \$14,342.48,  
for which said amount of money neither the said Lilla A. Simmons  
nor the surety on her official bond nor any person whosoever has  
accounted to either the State of Alabama or to Baldwin County.

And the State of Alabama and Baldwin County claim of  
the Receiver of the National Surety Company the \$14,342.48, with  
interest.

And Petitioner attaches hereto, making the same a part  
part hereof affidavit of S. M. Tharp, copy of bill in equity  
of Lilla A. Simmons, amendment to said bill, copy of a decree  
of the Circuit Court of Baldwin County, Alabama, copy of an  
agreement between the National Surety Company and the Board of  
Education of Baldwin County, and copy of the official bond  
executed by the said L. A. Simmons and National Surety Company.

And your Petitioner prays that this be accepted as its claim against the Receiver of the National Surety Company, and prays that this Court direct the Receiver to forthwith pay to the State of Alabama for the use and benefit of Baldwin County, the sum of \$14,342.48, and your Petitioner prays that this amount be paid as a prior, preferred and senior claim, and that this Court decree that this claim is entitled to payment before the Receiver pays any other claim.

Thos. E. Knight, Jr  
Thomas E. Knight, Jr.,  
Attorney General.

A. A. Carmichael  
A. A. Carmichael,  
Assistant Attorney General.

(ATTORNEYS FOR THE STATE OF ALABAMA )  
(AND BALDWIN COUNTY. )

State of Alabama,

Baldwin County.

Before me, Bernice S. Folmar, a Notary Public in and for said state and county, personally appeared S. M. Tharp, to me well known, who being first duly sworn deposes and says that he is the Superintendent of Education of Baldwin County, Alabama, and is the executive officer of the Board of Education of said county; that he is duly authorized to make this proof; that on the 11th day of November, 1931, Lilla A. Simmons, then having been duly elected to the office of Treasurer of Public School Funds of Baldwin County, Alabama, executed an official bond with the National Surety Company as surety conditioned upon the faithful performance and discharge by the said Lilla A. Simmons of all of the duties of the said office during her continuance therein; that the said bond was duly approved on the 20th day of November, 1931; that a duly certified copy of the said bond and the said approval is hereto attached, marked Exhibit A, and made a part of this affidavit; that the said Lilla A. Simmons failed faithfully to discharge and perform the duties of her said office in that on, to-wit, June 21st, 1932, and while the said bond was still in full force, she failed to account for and pay over the sum of \$26,236.90 of the Public School Funds of Baldwin County, Alabama, which she had received as such Treasurer; that such failure was due to the fact that she had unlawfully and without authority in that behalf deposited said funds in the Baldwin County Bank, which bank then had closed its doors and had been taken over for liquidation by the State Superintendent of Banks; that the said State Superintendent of Banks then had instituted a statutory proceeding in equity in the Circuit Court of Baldwin County, Alabama, for the administration of the liquidation of the affairs of the said bank; that thereupon, and on the said 21st day of June, 1932, the County Board of Education of Baldwin County, Alabama, and the said Lilla A. Simmons, as Treasurer of the Public School Funds of Baldwin County, Alabama, filed in said cause their petition

seeking to subject the assets of the said bank to the payment of said Public School Funds in priority over the other debts of the said bank not likewise preferred; that the said petition subsequently, and on the 8th day of October, 1932, was amended so as to present also a claim for an additional sum of \$4,486.36 which had been placed in the said bank by W. D. Stapleton, the immediate predecessor of the said Lilla A. Simmons in the office of Treasurer of School Funds of Baldwin County, Alabama; that on the 14th day of October, 1932, there was submitted to the Circuit Court of Baldwin County, Alabama, sitting in equity, a petition by the State Superintendent of Banks for authority to reopen the said Baldwin County Bank and for other relief, and also the above described petition and amendment thereof by the said Board of Education of Baldwin County and Lilla A. Simmons, together with sundry other matters and things looking to the reopening of the said bank and the administration of its affairs; that on the said 14th day of October, 1932, and under the said submission, the Circuit Court of Baldwin County, Alabama, sitting in equity, ordered that the said bank be reopened and established certain priorities with respect to the payment of claims against the said bank; that there is hereto attached, marked Exhibit B and made a part of this affidavit, a duly certified copy of the said petition, of the said amendment thereto, and of the decree of the Court rendered as aforesaid on the 14th day of October, 1932, all of which are prayed to be taken and considered as in explanation and extension of this affidavit with the same effect as would have been produced had everything contained in said petition, amendment, and decree been written at length in this affidavit; that the said National Surety Company, the surety on said bond, stood fully advised of all of said proceedings and with reference thereto executed its written agreement which is hereto attached, marked Exhibit C, and made a part of this affidavit; that in said agreement the said National Surety Company admits the failure of the

said Lilla A. Simmons to pay over to the Board of Education

of Baldwin County the sum of \$26,194.00 of Public School Funds

of said county, consents to and concurs in the arrangement

made as aforesaid looking to the collection of the said sum

from the assets of the said bank, and agrees that any claims

which the said Board of Education may have against the said

National Surety Company as surety on said bond will not be

prejudiced or impaired by the action of the said Board of Edu-

cation or of the said Lilla A. Simmons in agreeing to and enter-

ing into said arrangement for the reopening of said Baldwin

County Bank according to the terms of the said decree, and

further that the said Board of Education shall not be estopped

to prosecute any such claims as it may have against the said

Lilla A. Simmons or National Surety Company as surety on her

said bond by reason of consenting to or concurring in the ar-

rangeement for the reopening of the said bank; that through

and under said arrangement for the reopening of the said bank

the said County Board of Education collected and realized the

entire \$4,486.36 which was owing by the said W. D. Stapleton

as Treasurer as aforesaid and also has collected and realized

from the said reopened bank under the aforesaid arrangement

additional amounts aggregating \$11,894.42, whereby the balance

owing to the said Board of Education of Baldwin County by the

said Lilla A. Simmons as Treasurer as aforesaid has been reduced

to \$14,342.48; that the said Lilla A. Simmons and the said

National Surety Company as surety on her said bond are liable

for and should pay over to the County Board of Education the

last named sum; that the said County Board of Education hereby

claims and demands payment of the same from the assets of

the said National Surety Company now being administered; that

affiant makes this affidavit both for the purpose of asserting

the said claim on behalf of the said Board of Education of

Baldwin County, Alabama, and for the purpose of proving the same.

S. M. Tharp

Sworn to and subscribed be-

fore me this 27th day of August, 1934.

Bernice S. Folmar

Notary Public, Baldwin County, Ala.

(SEAL)

AMENDED REPORT

Montgomery, Alabama

*E. L. H. H.*

*H*

Hon. B. M. Miller, Governor,  
The Capitol,  
Montgomery, Ala.

Sir:

On June 23, 1932 the Chief Examiner of Accounts filed with you report of my examination of the accounts of

Hon. W. D. Stapleton, Treasurer of School Funds, and  
Hon. S. M. Tharp, Superintendent of Education, Baldwin Co.

This report, covering the period from October 1, 1919 to November 30, 1931, charged the sum of \$12,049.11 as being due by Mr. Stapleton to the school funds. After this report was filed with the Governor, Mr. Stapleton employed the firm of Rosson and Smith, of Mobile, to recheck the figures contained in the report. Rosson and Smith have not completed their engagement, which was in the nature of a reconciliation of the balances carried by Mr. Stapleton on the consolidated statements with the bank balances. In the course of this procedure it was disclosed that several items had not been considered in my examination, which reduces the amount as being due by Mr. Stapleton to the school funds to \$4,529.26. By employing the amount of \$1,155.10 which represents a difference in the accounts that neither Rosson and Smith or I have been able to locate, due to the absence of some of the records and the condition in which they have been kept, the amount of \$4,529.26 is determined to be three items of admitted defalcations by a former bank employee.

There are five principal items involved in arriving at the amended amount as found to be due by Mr. Stapleton. These are:

- (1) The omission of district tax fund balances at September 30, 1919, by the previous examiner of accounts, amounting to \$2,977.83;
- (2) An item of \$3,000.00 bonus fund receipt used by the previous examiner but reported by Mr. Stapleton in the period covered by this examination;
- (3) District taxes amounting to \$1,345.45 reported twice on the consolidated statements. The records of the tax collector of Baldwin County were not available at the time this amount was reported;
- (4) The omission of a pay roll of December 1920, \$5,266.75;
- (5) Pay roll of January 20, 1920, credited twice, \$1,493.05.

A schedule detailing the amounts involved in arriving at the corrected amount of \$4,529.26 is given below:

Amount charged treasurer as per report filed	
June 23, 1932,	\$12,049.11

Add:

District tax fund balances at the beginning of the period, omitted by previous examiner,	\$2,977.83	
Nov. 1920 Pay Roll Segregation,	10.00	
May 1921 Transportation: \$815.21 listed as \$851.21	36.00	
February 1923 Pay Roll Segregation,	1.00	
March 1924 Pay Roll Segregation	10.00	
April 1924 \$327.53 listed as \$327.73	.20	
Pay Roll, January 1920, credited twice,	1,493.05	
		4,528.08
		16,577.19

Forward.

\$16,577.19

Deduct:

Checks of April 1931 Pay Roll,	\$1,837.29
Duplicate checks charged in report,	174.00
Bonus fund receipt included in balance of \$14,496.65, reported by previous examination and reported in this period by Treasurer,	3,000.00
District tax fund receipt reported twice by treasurer,	1,345.45
Correction: Refund of 2-17-1919,	56.25
Error in addition of disbursements Nov. 1920,	100.00
June 1922; Item \$790.00 listed at \$7.90	782.10
Pay Roll for \$8,415.25 listed as \$8,414.25,	1.00
Pay Rolls omitted:	

August, 1920	\$154.40	
October, 1920,	219.50	
November, 1920	17.98	
December, 1920	5,236.75	5,658.73

Adjustment to district tax fund account, account balance at beginning of period being used. (See Schedule 1, p. 11 of original report),

Receipts charged	8,096.34		
Actual receipts,	7,848.13	248.21	<u>13,203.03</u>
			\$ 3,374.16

Amount of admitted defalcation by former bank employee, for which the School Treasurer is liable,

4,529.26

Unaccountable difference,

1,155.10

It may be deemed proper to mention a few items contributing to the reason why this amount of \$1,155.10 is shown as an "unaccountable difference". All of the discrepancies shown above occurred during the period between October 1, 1919, and September 30, 1924. This period is covered by Exhibit A in the report filed June 23, 1932. Reference to this report will show that no cancelled checks were retained for this period and credit was given for all pay rolls prepared by the County Superintendent of Education.

The tax records for a large part of this period have likewise been misplaced, or destroyed, therefore, there is no record against which either the receipts or disbursements can be verified. It may also be properly mentioned, not in a spirit of justification of the errors appearing in the examination, but as a matter of enlightenment, that if the books, and vouchers, and papers, of the treasurer's office had been preserved in a decent manner whereby the audit could have progressed in a normal way, it does not seem possible that such errors of omission would have occurred.

Respectfully submitted,

John C. Graham, Jr (Signed)  
John C. Graham, Jr.,  
Assistant Examiner of Accounts.

Sworn to and subscribed before me,  
this 22nd day of July, 1932.

Langdon C. Parker (signed)  
Notary Public.