

426

THE W. T. RAWLEIGH COMPANY,
A CORPORATION,

Plaintiff,

VS.

J. W. BIGGS, ET AL.

Defendant.

NO. 426

CIRCUIT COURT

BALDWIN COUNTY,

ALABAMA.

Comes the defendant in the above entitled cause and demurs to pleas numbered 3, 4, and 5, separately and severally and for grounds of demurrer assigns the following, separately and severally:

1. Because it appears from the complaint that the contract sued on is an Illinois contract, and governed by the laws of that state.

2. Because it is nowhere alleged or made to appear that the plaintiff engaged in or transacted business in the State of Alabama in its dealings with the defendant.

3. Because it appears from the contract attached as exhibit A to the Complaint, that all goods sold to the defendant, J. W. Biggs, were delivered to him in the State of Tennessee.

4. Said plea is no answer to the Complaint and states the mere conclusions of the pleader.

5. Said plea is vague, indefinite and uncertain.

6. Because there is no allegation that the demand sued on arose in this state or that the contract of sale was made in the State of Alabama.

The plaintiff demurs to pleas numbered 6, 7 and 8, separately and severally, and for grounds thereof, assigns the following, separate and several:

1. Said plea is no answer to the complaint and states no issuable facts.

2. Said plea seeks to vary the terms of a written contract which is complete in itself.

3. Because it appears from the contract sued on that

the plaintiff made direct and outright sales of its products to J. W. Biggs, defendant, as a part of interstate commerce and parted with all title thereto at Memphis, Tennessee.

4. Because said plea does not set out what drugs or medicines or chemicals or poisons were furnished by the plaintiff to the defendant, J. W. Biggs.

5. Because it is not denied that other products than drugs or medicines or chemicals or poisons were sold and delivered to the defendant, J. W. Biggs.

6. Because from aught appearing the said J. W. Biggs was duly authorized to sell such drugs, medicines, chemicals, or poisons as were furnished by the plaintiff.

7. Because from aught appearing the defendant, J. W. Biggs, was duly licensed as an itinerant vendor to sell such products as plaintiff delivered to him.

8. Said plea states the mere conclusions of the pleader.

9. Said plea is vague, indefinite and uncertain and contains merely the legal conclusions of the pleader.

The plaintiff demurs to pleas numbered 9 and 10, separately and severally, and assigns the following separate and several grounds thereto:

1. Said plea is fatally vague, indefinite and uncertain.

2. Said plea states no issuable facts.

3. Said Plea states a mere conclusion of law and no facts are set out in support thereof.

4. From aught appearing the defendant, J. W. Biggs, was duly authorized by law to sell such products as the plaintiff furnished to him.

5. Because it affirmatively appears that the contract

between the plaintiff and the defendant is governed by the laws of the State of Illinois and it is not made to appear by said plea that under the laws of the State of Illinois said contract is rendered void.

The Plaintiff demurs to pleas 11 and 12 separately and severally and assigns thereto the following separate and several grounds.

1. It is not alleged when said merchandise was returned by the defendant, J. W. Biggs.

2. From aught appearing said merchandise was returned for repurchase after the termination of said contract.

3. It is not alleged whether all or only a part of the merchandise was returned.

4. It is not shown or alleged wherein said merchandise was not in accordance with the order for same given by the defendant, J. W. Biggs.

5. From aught appearing such merchandise as was returned by the defendant, J. W. Biggs, was accepted by the plaintiff under the terms of the contract whereby the plaintiff agreed to buy same back at a stipulated price.

6. Said plea is vague, indefinite and uncertain and states the mere conclusion of the pleader.

W. H. HAWKINS
McMILLAN, CAFFEY & McMILLAN,
Attorney for plaintiff.

RECORDED

NO. 426

CIRCUIT COURT

BALDWIN COUNTY, ALABAMA.

THE W. T. RAWLEIGH COMPANY,
A CORPORATION,

Plaintiff,

VS.

J.W. BIGGS, ET AL.

Defendant.

PLAINTIFF'S DEMURRERS

TO

DEFENDANT'S PLEAS.

Filed, March 2, 1939.

P. S. Duck
Clerk.

By Paul H. Thompson Deputy Clerk
MCMILLAN, CAFFEY & MCMILLAN
ATTORNEYS AT LAW
BREWTON, ALA.

THE W. T. RAWLEIGH COMPANY,
A CORPORATION,

PLAINTIFF,

VS.

J. W. BIGGS, ET ALS,

DEFENDANTS.

No. 426

CIRCUIT COURT OF

BALDWIN COUNTY,

ALABAMA.

Comes the plaintiff in the above entitled cause and
for answer to each of the pleas by the defendant pleaded,
says:

1. The plaintiff joins issue on said plea.

For special replication to pleas numbered 3, 4 and 5,
separately and severally, the plaintiff says:

2. That at the time of entering into the contract upon
which this suit is based and at the time that it delivered mer-
chandise to the defendant J. W. Biggs it was not engaged in
doing business within the State of Alabama, and that the merchan-
dise shipped to the defendant J. W. Biggs and for the collection of
which this suit is brought was delivered to him f.o.b. Memphis,
Tennessee, upon written orders from said defendant as a part of
interstate commerce.

W. H. HAWKINS,
McMILLAN, CAFFEY & McMILLAN,

Attorneys for Plaintiff.

RECORDED No. 426

CIRCUIT COURT BALDWIN
COUNTY, ALA.

W. T. RAWLEIGH CO. A CORP.
PLAINTIFF,

VS.

J. W. HIGGS, ET ALS,
DEFENDANTS.

PLAINTIFF'S REPLICATIONS
TO DEFENDANTS' PLEAS

Filed March 2, 1939.

R. S. Ruck
Clerk

By: W. S. H. H. H. H. H.
Deputy.

THE W. T. RAWLEIGH COMPANY,
a Corporation,

Plaintiff,

IN THE CIRCUIT COURT OF

BALEWIN COUNTY, ALABAMA,

VS.

J. W. BIGGS, MRS. J. W. BIGGS,
and D. C. HAYES,


Defendants.

And now come the Defendants and demur to the Plaintiff's complaint and to each count thereof, separately and severally, and for grounds of demurrer say:

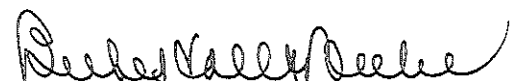
That said count does not state a cause of action.

And for additional grounds of demurr to Count Two of said complaint say:

That there is a misjoinder of parties defendant.


Attorneys for Defendants.

Defendants demand a trial by Jury.


Attorneys for Defendants.

THE W. T. RAWLEIGH COMPANY,
a Corporation,

Plaintiff,

VS.

J. W. BIGGS, MRS. J. W. BIGGS,
and D. C. HAYLES,

Defendants.

IN THE CIRCUIT COURT OF


BALEWIN COUNTY, ALABAMA,

And now come the Defendants and demur to the Plaintiff's complaint and to each count thereof, separately and severally, and for grounds of demurrer say:

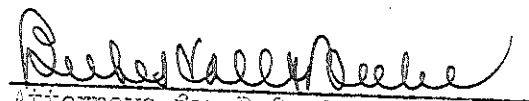
That said count does not state a cause of action.

And for additional grounds of demurr to Count Two of said complaint say:

That there is a misjoinder of parties defendant.


Attorneys for Defendants.

Defendants demand a trial by Jury.


Attorneys for Defendants.

Recd
RECORDED
8-23-16

DEMANDERS

JES W. B. BAYLUM COMPANY,
a corporation,

Plaintiff,

VS.

J. W. BIGGS, MRS. J. W. BIGGS,
and D. C. HAYLES,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Filed this *26* day *May* 19*16*
R. S. Duck
Clerk-Registrar

THE W. T. RANLEIGH COMPANY,
a Corporation,

Plaintiff,

VS.

J. W. BIGGS, MRS. J. W. BIGGS,
and D. C. HAYLES,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

AT LAW,

NO. 426.

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

1. That the facts therein stated are untrue.

2. That there was no consideration for the execution of the agreement by the Defendants.

3. The Plaintiff ought not to recover of the Defendants because at the time the contract was entered into and while in force, the Plaintiff was a corporation not organized under the laws of the State of Alabama and before engaging in or transacting business in this State did not file with the Secretary of State a certified copy of its Articles of Incorporation and an instrument of writing under the seal of the corporation and signed officially by the President and Secretary thereof, designating at least one known place of business in this State.

4. The Plaintiff ought not to recover of the Defendants, because at the time the contract was entered into and while in force, the Plaintiff was a corporation not organized under the laws of the State of Alabama and before engaging in or transacting business in this State did not file with the Secretary of State a certified copy of its Articles of Incorporation and an instrument of writing under the seal of the corporation and signed officially by the President and Secretary thereof, designating at least one known place of business in this State, and an authorized agent or agents residing thereat.

5. The Plaintiff ought not to recover of the Defendants, because at the time the contract was entered into and in force and while the Plaintiff was doing business in this State it was a foreign corporation and had not qualified to do business in this State, as required by law.

6. The Plaintiff ought not to recover of the Defendants, because it was contemplated by the alleged contract that the Plaintiff would and did furnish to the said J. W. Biggs, to be retailed by him, contrary to law, drugs or medicines or chemicals or poison.

7. The Plaintiff ought not to recover of the Defendants, because the Plaintiff, under and by and as a part of the said contract, was to and did furnish to the

said J. W. Biggs an itinerant vendor, to be exposed or offered for sale, at retail, drugs or medicines or chemicals or poisons, contrary to law.

8. The Plaintiff ought not to recover of the Defendants, because under and by the terms thereof, the Plaintiff was to and did furnish the said J. W. Biggs drugs or medicines or chemicals or poisons, to be sold by him at retail, contrary to law.

9. The Plaintiff ought ^{not} to recover of the Defendants, because the contract sued on is absolutely void as against public policy.

10. The Plaintiff ought not to recover of the Defendants, because the contract sued on is void for that under the contracts thereof the Plaintiff was to and did furnish, to be sold at retail, by the said J. W. Biggs, drugs or medicines or chemicals or poisons, contrary to law.

11. That the Defendant ordered certain merchandise from the Plaintiff, and when received, found to be not in accordance with his order, and that he returned the said merchandise to, and it was accepted, by the Plaintiff.

12. That the Defendant, upon receipt of the merchandise, the basis of this cause of action, from the Plaintiff, finding it to not be in accordance with his order, immediately returned it to the Plaintiff, and it was accepted by the said Plaintiff.

13. That the account herein sued on was paid in full before the commencement of this suit.

Richard L. Lee & Co.
Attorneys for Defendants.

RECORDED

FILED

THE W. T. RAWLEIGH CO.,
a Corporation,

Plaintiff,

VS.

J. W. BIGGS, MRS. J. W.
BIGGS and D. C. HAYES,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW,

NO. 426.

Filed March 2, 1934

R. S. Duck, Clerk

*By - Pauline Thompson,
Deputy Clerk*

RECORDED

FILED

THE W. T. RAWLEIGH CO.,
a Corporation,

Plaintiff,

VS.

J. W. BIGGS, MRS. J. W.
BIGGS and D. C. HAYLES,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW,

NO. 426.

Filed March 2, 1939

P. S. Dues, Clerk

By - Fannie Thompson,

Dputy Clerk

SUMMONS

STATE OF ALABAMA)
BALDWIN COUNTY)

TO ANY LAWFUL OFFICER OF THE STATE OF ALABAMA:

You are hereby commanded to summons J. W. Biggs, Mrs. J. W. Biggs, D. C. Hayles and ~~S. W. Biggs~~ to appear within thirty days from the service of this writ before the Circuit Court to be held for said county at the place of holding the same, then and there to answer the complaint of The W. T. Rawleigh Company, a Corporation.

Witness my hand this 25 day of March, 1938.

R. S. Duck
Clerk Circuit Court.

* * * * *

COMPLAINT

THE W. T. RAWLEIGH COMPANY,
A CORPORATION,

PLAINTIFF,

VS.

J. W. BIGGS, MRS. J. W. BIGGS,
D. C. HAYLES AND ~~S. W. BIGGS~~,

DEFENDANTS.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

COUNT ONE

The plaintiff claims of the defendants the sum of One Hundred and Nineteen and 28/100 (\$119.28) Dollars due from defendants to plaintiff by account, on, to-wit, the 8th day of January, 1936, which sum of money with the interest thereon is now due and unpaid.

COUNT TWO

The plaintiff claims of the defendants the sum of One Hundred and Nineteen and 28/100 (\$119.28) Dollars for that, heretofore, on, to-wit, the 1st day of April, 1935, the plaintiff entered into a written contract with the defendant J. W. Biggs wherein the plaintiff agreed to sell and deliver to the defendant such reasonable quantities of plaintiff's products as the said J. W. Biggs might order, and the said J. W. Biggs agreed therein to pay for said merchandise when said products were sold and delivered, by cash or by installment payments

as per Contract Copy of which is hereto attached as Exhibit "A"
satisfactory to seller, at invoice prices, and the defendants
Mrs. J. W. Biggs, ^{and} D. C. Hayles ~~and [redacted]~~ in consideration
of the plaintiff extending credit to the said J. W. Biggs as
aforesaid did join in said written contract ^{as Services} and unconditionally
promise, guarantee and agree to pay the plaintiff for all
products sold and delivered to the said J. W. Biggs under the
terms of said contract, expressly consenting and agreeing to
all of the terms and conditions thereof, ^{all as will appear from said Exhibit "A"} The plaintiff avers
that under and by virtue of said contract the plaintiff did
sell and deliver to the defendant J. W. Biggs a large amount
of merchandise from time to time, the invoice price of which
was the total sum of, to-wit, Six Hundred and Sixteen and
50/100 (\$616.50) Dollars, but neither the defendant J. W. Biggs
nor any of the other defendants, though requested so to do,
have paid to the plaintiff more than the sum of Four Hundred
Ninety-seven and 22/100 (\$497.22) Dollars, so that there is a
balance due of One Hundred and Nineteen and 28/100 (\$119.28) Doll-
ars, which amount, together with the interest, thereon, is due
and unpaid.

McMILLAN & CAFFEY,

[Signature]
Attorneys for Plaintiff.

The plaintiff files herewith duly itemized, verified
statement of the accountsued on and gives notice that the same
will be offered in evidence upon the trial of said cause.

McMILLAN & CAFFEY,

[Signature]
Attorneys for Plaintiff.

The Plaintiff in this cause being a non-resident we hereby
acknowledge ourselves as security for costs.

McMILLAN & CAFFEY,

By *[Signature]*

CONTRACT

(1) IN CONSIDERATION of the promises of the undersigned Buyer, THE W. T. RAWLEIGH COMPANY, an Illinois Corporation, agrees, upon acceptance of this Contract, to sell and deliver f. o. b. Memphis, Tennessee, or at any other point or in any other manner agreed upon, such reasonable quantities of its Products as the Buyer may order at current wholesale prices, and on time, and if desired will sell Buyer an Auto Body and/or Equipment, or sample cases, for cash or on time; and the Buyer in consideration of the above agreements hereby promises and agrees to pay Seller in full for all such Products so sold and delivered, by cash or by installment payments satisfactory to Seller at Invoice prices and according to the terms and conditions thereof, including any transportation charges incurred, paid or furnished by Seller and subject to such cash discounts as may be shown in current discount sheets.

(2) It is mutually agreed that either party may terminate this Contract by written notice at any time, and when so terminated, all accounts incurred hereunder shall become due and payable immediately. If this Contract is not so terminated it shall expire on the 31st day of December, 1935; it being agreed that a Renewal Contract may be entered into provided business relations are mutually satisfactory and Buyer furnishes an acceptable Renewal Contract.

(3) If the business relations be terminated for any reason, the Seller agrees to purchase from the Buyer at wholesale prices current when received, any merchantable Products Buyer may have on hand (Sample Cases, Auto Bodies and discontinued Products excepted) provided goods are returned promptly by prepaid freight to point designated by Seller, less 5 % to cover cost of receiving, overhauling and inspecting same.

(4) It is mutually understood and agreed that this is a Contract of Buyer and Seller, and not of Agency; and that any Sales Promotion or Service Letters or Bulletins, Advertising matter or other literature that Seller may send Buyer shall not change this relationship, nor be considered as orders, instructions or directions, but only as suggestive, educational and advisory (which the Buyer may or may not follow as he may choose) and shall not alter, change or modify this Contract in any way; it being agreed and understood that if and when this Contract is accepted by the Seller it shall constitute and be the sole, only and entire agreement between all parties hereto, and that it can only be changed or modified by consent of both parties in writing.

(For Company Use Only)

Accepted:
THE W. T. RAWLEIGH COMPANY,

By J. E. Stewart

Manager

Date of Acceptance Apr. 1, 1935

Buyer Sign Here J. W. Biggs (SEAL)

P. O. Address Rt. C., Atmore, Ala.

In consideration of The W. T. Rawleigh Company, the above named Seller extending credit to the above named Buyer, and having read and acquainted ourselves with the nature, terms and conditions of this and the above agreement between the Buyer and Seller, we, the undersigned, do hereby jointly and severally enter ourselves as sureties and not as guarantors and unconditionally promise, guarantee and agree to pay the said Seller for all Products sold and delivered to said Buyer under the terms of the above Contract, hereby expressly consenting and agreeing to all the terms and conditions thereof; hereby binding our heirs, administrators, executors and assigns. We hereby expressly waive notice of the acceptance of this Contract, and of the shipment of goods to the Buyer, and of extension of credit to the Buyer, and of the extension of time in which to pay for the goods so purchased, and waive all notice of any nature whatsoever. We also agree that any statement made by the Buyer as to the amount of indebtedness due at any time shall be binding upon us. We also agree that it shall not be necessary for the Seller to first exhaust its remedies against the Buyer before proceeding to collect from us. This undertaking is to be an open one and shall continue without regard to the residence of the Buyer, or the location or manner of conducting his business, until the account is fully paid. It is mutually agreed that this Contract is conclusive and binding upon the party or parties who sign it, whether it is signed by any other party or parties or not, and that any statement or representations made to any of the undersigned sureties by any persons either as to who or how many parties will sign this surety agreement, or as to any other matters not fully expressed herein, shall not affect the rights of the Seller. It is further understood that there are no conditions or limitations to this undertaking except those written or printed herein at the time of signing hereof, and that after execution no alteration, change or modification shall be made except as provided for in the terms of the foregoing contract between the Buyer and Seller, and that any notice in any way affecting the rights of the Seller must be delivered by registered mail to the Seller at its office at Memphis, Tennessee.

IN WITNESS WHEREOF, we have set our hands and seals in testimony hereof.

(Sureties' Names)	(Occupations)	(P. O. Addresses)
<u>J. W. Biggs</u> (Seal)	<u>Farmer</u>	<u>Atmore, Ala. Rt. C</u>
<u>Mrs. J. W. Biggs</u> (Seal)	"	" " "
<u>D. C. Hayles</u> (Seal)	"	" " "
<u>S. F. Jones</u> (Seal)	"	" " "

SURETIES MUST SIGN IN PERSON, GIVING OCCUPATION AND P. O. ADDRESS. PLEASE WRITE PLAINLY.
 The Sureties Are Entitled upon Request at any Time to a Statement of Buyer's Account.

342 COPY

1935 Original Contract

Contract With

Name..... J. W. Biggs, Ala.

Received..... 4-1-35

Investigated..... 4-1-35

Approved by..... Apr. 1, 1935 JES

Copy Mailed..... Apr. 1, 1935

RECORDED & INDEXED

vs.

[illegible]

Pardee.
Clerk.

McMILLAN & CAFFEY
ATTORNEYS AT LAW
BREWTON, ALA.

W. T. Briggs
Mrs. W. T. Briggs
R. C. Hayden

Mr. H. W. Watkins Sheriff
John R. Davis Deputy Sheriff

We the Jury,
Find for the
Defendant.
Not Guilty
/ J. P. Jones,
for me.

STATE OF ILLINOIS }
STEPHENSON COUNTY } SS

Form L-3002

AFFIDAVIT

J. R. Jackson

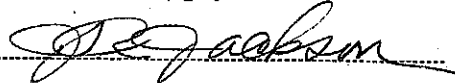
, being duly sworn on oath states

that he is the Secretary and authorized agent
of The W. T. Rawleigh Company, a corporation organized and doing busi-
ness under the laws of the State of Illinois, with legal domicile and princi-
pal office at the City of Freeport, County of Stephenson, and State of Illi-
nois; and that the annexed Itemized Statement of account in favor of the

said The W. T. Rawleigh Company, and against J. W. Biggs

for the sum of Six Hundred Sixteen
and 50/100 (\$ 616.50) Dollars, showing credits aggre-
gating the sum of Four Hundred Ninety-seven and 22/100
(\$497.22) Dollars, and showing a balance due of One

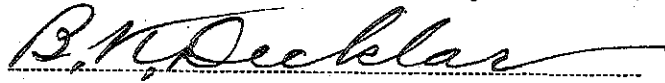
Hundred Nineteen and 28/100 (\$119.28)
Dollars, is within the knowledge of this affiant, just and true; that it is
due and unpaid and that all just and lawful offsets, payments and credits
have been allowed.


Secretary

and Agent
for The W. T. Rawleigh Company.

Subscribed and sworn to before me by J. R. Jackson

Secretary of and Agent for The W. T.
Rawleigh Company at Freeport, Stephenson County, State of Illinois, on
this the Eighteenth day of February

1937
Notary Public in and for Stephenson County, State
of Illinois.

My commission expires

June 23-1938

ITEMIZED STATEMENT

THE W. T. RAWLEIGH COMPANY

2/18/37

J N Biggs

Ala

DEBITS

CREDITS

	35	
APR	3	317.26
	3	55.65
MAY	1	33.40
JUN	5	16.60
	12	4.66
JUL	3	54.65
	24	131.12
	24	23.40
AUG	13	58.11
SEP	11	39.65
		616.50

	35	
APR	24	15.42
MAY	1	15.00
MAY	8	8.00
	13	11.45
	23	15.00
	29	10.00
JUN	5	11.00
	12	17.00
	20	13.50
	27	8.50
JUL	3	20.00
	8	10.00
	17	15.00
	24	14.00
	31	15.00
AUG	7	10.00
	12	14.50
	21	15.00
	28	4.00
SEP	4	12.00
SEP	11	19.00
	18	11.00
	27	14.00
OCT	4	6.00
	9	11.50
	16	8.00

36
JAN 8 gds Ret 173.35

497.22 系
系
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6 1 6.5 0
4 9 7.2 2

119.28 due