477

MOBILE CIGAR & TOBACCO COMPANY, a corporation,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA.
W. E. DEES, doing business as Dees Mercantile Company,	)	
Defendant.	)	

Now comes the Plaintiff in the above cause, and shows unto the Court that subsequent to September 30th, 1941, the Clerk of the Circuit Court, through error, entered in Minute Book 9, Page 162, of the Records of the Circuit Court of Baldwin County, Alabama, an order dated April 13th, 1939, in words as follows:

> "Comes the Plaintiff, by his attorney, and by leave of the court enters a non-suit in this cause; and the same having been considered by the Court:
>
> "It is Ordered and Adjudged that the Defendant go hence, without day, and recover of the Plaintiff the costs in this behalf expended for which execution may issue."

WHEREFORE, it moves the Court that the records be corrected so as to show the true date of the entry of said order.

D. R. Lolley Jr.

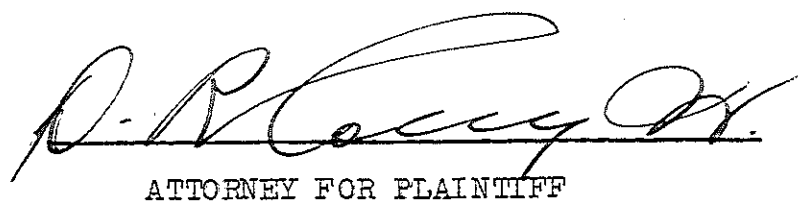
ATTORNEY FOR PLAINTIFF

MOBILE CIGAR & TOBACCO COMPANY, a corporation, Plaintiff, vs. W. E. DEES, doing business as Dees Mercantile Company, Defendant.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.

Now comes the Plaintiff in the above cause, and shows unto the Court that subsequent to September 30th, 1941, the Clerk of the Circuit Court, through error, entered in Minute Book 9, Page 162, of the Records of the Circuit Court of Baldwin County, Alabama, an order dated April 13th, 1939, in words as follows:

> "Comes the Plaintiff, by his attorney, and by leave of the court enters a non-suit in this cause; and the same having been considered by the Court:
>
> "It is Ordered and Adjudged that the Defendant go hence, without day, and recover of the Plaintiff the costs in this behalf expended for which execution may issue."

WHEREFORE, it moves the Court that the records be corrected so as to show the true date of the entry of said order.



ATTORNEY FOR PLAINTIFF

Filed Sept 27 1943

Mobile Cigar & Tobacco Company, a corporation, Plaintiff, vs. W. E. Dees, doing business as Dees Mercantile Company, Defendant, Hartford Fire Insurance Company, a corporation, Garnishee.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. AT LAW.

Personally appeared before me, Kellis Quarnes a Notary Public in and for the County of Mobile, State of Alabama, A. B. Frese, who, on oath, answers to the writ of garnishment issued in this cause against Hartford Fire Insurance Company and served on the agent or agents of the said company, and, on oath, says that he is the legal representative of the Fire Companies Adjustment Bureau and in that capacity duly authorized to make answer on behalf of Hartford Fire Insurance Company, a corporation, to the garnishment served on its agents; that at the time of making this answer the garnishee admits its indebtedness to W. E. Dees in the sum of $1,630.60 less $23.80 due it by the said W. E. Dees as the premium on its policy of fire insurance,- making its indebtedness to the said W. E. Dees $1,606.80; that this sum will be held subject to the order of this Court until this litigation is finally disposed of or until such time as the garnishee is advised by the proper officials of this Court that a satisfactory adjustment has been made.

Hartford Fire Ins. Co. of Conn.
by Fire Companies Adj. Bureau Inc.
Hy A B Frese
Adjuster

Subscribed and sworn to before me
this 1 day of November, 1938.

Kellis Quarnes
Notary Public, Mobile County, Alabama.

RECORDED Book 8-287

Answer of Garnishee

Filed November 2, 1938
R. S. DUCK
clerk, - register
By Sarah's Thompson
Deputy

C-12—Sou.Litho.Co.

Garnishment Bond and Affidavit on Complaint and Summons

The State of Alabama, S. S.
MOBILE COUNTY,

PERSONALLY appeared before me, ~~SAM SMITH, Clerk of the Circuit Court of said County,~~ the undersigned Notary Public in and for said State and County, G. E. STEVENS,

who maketh oath and sayeth, that W. E. Dees, doing business as the Dees Mercantile Company, Robertsdale, Ala., is indebted to the Mobile Cigar & Tobacco Company, a corporation in the sum of Two Hundred Twenty-Five and 18/100----------Dollars, and that Hartford Fire Ins.Co., & the Baldwin County Bldg. & Loan Association of Robertsdale, Alabama, are----------supposed to be indebted to, or have effects of the said W.E.Dees, doing business as the Dees Mercantile Co., in their possession, or under their control, and that he believes process of Garnishment against said Defendant---------- is necessary to obtain satisfaction of said debt.

Sworn to and Subscribed the 18th day of October 193 8 before me,

NOTARY PUBLIC, MOBILE COUNTY, ALABAMA.

Clerk

G. E. Stevens

The State of Alabama,
MOBILE COUNTY,

KNOW ALL MEN BY THESE PRESENTS, That we Mobile Cigar & Tobacco Company, as principal, and the United States Fidelity & Guaranty Company, as Surety, of the County of Mobile, are held and firmly bound unto W. E. Dees, doing business as the Dees Mercantile Company, Robertsdale, Alabama, in the sum of Four Hundred Fifty and 36/100----------Dollars, to be paid to the said W. E. Dees, doing business as the Dees Mercantile Company, his certain Attorney, Executors, Administrators or Assigns; for which payment, well and truly to be made, we bind ourselves and our heirs, executors or administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 18th day of October in the year of our Lord, one thousand nine hundred and Thirty-Eight.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That, whereas, the above bounden Mobile Cigar & Tobacco Company, a corporation, hath the day of the date hereof, prayed a summons of Garnishment at the suit of Mobile Cigar & Tobacco Company, a corporation against the estate of the above named W. E. Dees, doing business as Dees Mercantile Company, in the hands of Hartford Fire Insurance Company and the Baldwin County Bldg. & Loan Ass'n for the sum of Two Hundred Twenty-Five and 18/100Dollars, and hath obtained the same returnable to the Circuit Court of ~~Mobile~~ Baldwin County, to be held on the Monday after the Monday in 1938

Now, if the said Mobile Cigar & Tobacco Co. shall prosecute its suit to effect, and pay to the said W. E. Dees, doing business as Dees Mercantile Co., all such damages as he may sustain by the wrongful or vexatious suing out thereof, then the above obligation to be void, otherwise to remain in full force and effect.

MOBILE CIGAR & TOBACCO CO., a corp.,
By G. E. Stevens (Seal)

~~UNITED STATES FIDELITY & GUARANTY CO.~~ (Seal)

Neville Lyons (Seal)
ATTORNEY-IN-FACT

RECORDED Ducks 8-280

No.

OATH AND BOND

MOBILE CIGAR & TOBACCO COMPANY, a corporation,
Plaintiff,

Vs. } Complaint and Summons

W. E. DEES, doing business as DEES MERCANTILE COMPANY,
Defendant.

FILED October 15 1935

R. S. DUCK
~~clerk, register~~ Clerk

By [illegible] Deputy

MOBILE CIGAR & TOBACCO COMPANY, a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA.
W. E. DEES, doing business as DEES MERCANTILE COMPANY, Defendant.	)	

Now comes the Plaintiff, and demurs to the plea in abatement hereinbefore filed by the Defendant on the following separate and several grounds:

FIRST: Because the said plea neither denies nor confesses and avoids the allegations of the bill of complaint.

SECOND: Because, while said plea attempts to set up matter for abatement of the suit herein, fails to aver facts which would warrant and justify an abatement in said cause.

THIRD: Because the allegations of said plea are not sufficient to establish grounds for the abatement of said cause.

FOURTH: Because for aught that appears from said plea, Defendant had a permanent residence in Baldwin County, Alabama, at the time the cause of action sued upon arose, and at the time the suit was filed in this cause.

FIFTH: Because it does not appear from said plea that the Defendant had a permanent residence in the State of Alabama.

SIXTH: Because the facts alleged in said plea are not sufficient to require the bringing of said suit in Conecuh County, Alabama.

SEVENTH: Because it affirmatively appears from the record in this cause that the suit herein was begun by attachment or garnishment, and the provision of law that said suit must be brought in the County in which the Defendant has a permanent residence does not apply under such circumstances.

D. R. Corey Jr.

ATTORNEY FOR PLAINTIFF

RECORDED

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

MOBILE CIGAR & TOBACCO CO.,
a corporatioh,

Plaintiff,

vs.

W. E. DEES, doing business
as Dees Mercantile Co.,

Defendant.

DEMURRERS

Filed February 1, 1939
R. S. DUCK
clerk, - register

By Vandalie Thompson
Deputy

D. R. COLEY, JR.,
ATTORNEY FOR PLAINTIFF

MOBILE CIGAR & TOBACCO COMPANY, a corporation, Plaintiff, vs. W. E. DEES, doing business as DEES MERCANTILE COMPANY, Defendant.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. AT LAW. No. 477.

We hereby acknowledge ourselves security for costs of appeal to the Supreme Court on the above case, returnable to the present term thereof, and for the payment of the above bond, we hereby waive all right of exemption to personal property under the Statute and Laws of the State of Alabama.

MOBILE CIGAR & TOBACCO COMPANY

By W. P. Rollings (SEAL) Pres

W. P. Rollings (SEAL)

A. L. Rollings (SEAL)

APPROVED:

R. S. Duck, Clerk

By - Dorthice Hargrove
Deputy Clerk

RECORDED

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW. No. 477.

MOBILE CIGAR & TOBACCO CO.,
A CORPORATION,

Plaintiff,

vs.

W. E. DEES, doing business
as DEES MERCANTILE COMPANY,

Defendant.

BOND FOR COSTS ON APPEAL

Filed April 22, 1939
R.S. Duck, Clerk
By Mattice Thompson
Deputy

MOBILE CIGAR & TOBACCO COMPANY, a corporation, Plaintiff, vs. W. E. DEES, doing business as DEES MERCANTILE COMPANY, Defendant.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.

Now comes the Plaintiff, and demurrers to the plea in abatement filed by the Defendant having been sustained, not waiving the same, but insisting thereon, for replication to said plea says:

FIRST: The suit herein was initiated by attachment or garnishment issued out of the Circuit Court of Baldwin County, Alabama, against funds of the Defendant in the hands of the Hartford Fire Insurance Company, a corporation authorized to do business in the State of Alabama, and doing business in Baldwin County, Alabama, and the Baldwin County Building & Loan Association, a corporation doing business in Baldwin County, Alabama.

SECOND: For further replication, Plaintiff says that the suit herein was initiated by suing out a garnishment in the Circuit Court of Baldwin County, Alabama, attaching funds due the Defendant, and that the rule that suits on contracts must be brought in the County in which the Defendants or one of the Defendants resides, if he has a permanent residence in the State of Alabama, does not apply.

R. McCleary Jr.

ATTORNEY FOR PLAINTIFF

RECORDED

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

MOBILE CIGAR & TOBACCO CO.,
a corporation,

Plaintiff,

vs.

W. E. DEES, doing business
as DEES MERCANTILE COMPANY,

Defendant.

REPLICATION

Filed March 2, 1939
R.S. Duck, Clerk
By Nonstice Thompson
Deputy Clerk

D. R. COLEY, JR.,
ATTORNEY FOR PLAINTIFF.

MOBILE CIGAR & TOBACCO COMPANY, a Corporation, Plaintiff, Vs. W. E. DEES, doing business as Dees Mercantile Company, Defendant.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. AT LAW. NO. 477.

DEMURRER TO REPLICATION.

NOW comes the Defendant, and files this his demurrer to replication No. 1 and 2, separately and severally, and for grounds, says:-

1st: That said replication sets forth no answer or reply to said Plea.

2nd: That said replication sets up immaterial matters.

3rd: No reason is shown as to why the defendant should not be permitted to elect to be sued in the County of his residence.

4th: The fact that the Garnishees are residents of Baldwin County, Alabama is no reason as to why the Defendant should not elect to be sued in Conecuh County, Alabama.

5th: The fact that the Hartford Insurance Company is authorized to do business in Baldwin County, Alabama, is no reason why the Defendant is not authorized to elect to be sued in the county of his residence.

6th: The fact that a Garnishment was issued and served upon the Garnishee in this proceeding is no reason why the Defendant should be denied the right to elect to be sued in the county of his residence, viz:- Conecuh County, Alabama.

Hybart & Chason

HYBART & CHASON, Attorneys for Defendant.

SUMMONS AND COMPLAINT

MOORE PRINTING CO., BAY MINETTE, ALA.

THE STATE OF ALABAMA, Baldwin County. } No. _____ CIRCUIT COURT

_____ 193____

To Any Sheriff of the State of Alabama:

You are hereby commanded to summon W. E. DEES, doing business as DEES MERCANTILE COMPANY

to appear and plead, answer or demur, within thirty day from the service hereof, to the Complaint filed in the Circuit Court of Baldwin County, State of Alabama at Bay Minette, Ala., against W.E.DEES, doing business as Dees Mercantile Co. Defendant by MOBILE CIGAR & TOBACCO COMPANY, a corporation Plaintiff

Witness my hand this 18th day of October 1938

R. S. Duck Clerk.

By: Sallie Thompson Deputy

COMPLAINT

_____ Plaintiff versus _____

The Plaintiff claims of the Defendant _____ Dollars, due by

_____

Plaintiff's Attorney.

MOBILE CIGAR & TOBACCO COMPANY, a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA.
W. E. DEES, doing business as DEES MERCANTILE COMPANY, Defendant.	)	

COUNT ONE: Plaintiff claims of the Defendant the sum of $225.18, due from him by account on, to-wit, the 12th day of August, 1938, which sum of money, with the interest thereon, is still due and unpaid.

COUNT TWO: Plaintiff claims of the Defendant the sum of $225.18, due from him by account stated between Plaintiff and Defendant on, to-wit, the 12th day of August, 1938, which sum of money, with the interest thereon, is still due and unpaid.

R. P. Coley Jr.

ATTORNEY FOR PLAINTIFF

The account sued upon is itemized, verified by affidavit, attached hereto and filed herewith.

R. P. Coley Jr.

ATTORNEY FOR PLAINTIFF

Defendant's address:

Robertsdale, Alabama.

IN THE CIRCUIT COURT

OF BALDWIN COUNTY, ALA.

MOBILE CIGAR & TOBACCO COMPANY, a corporation,

Plaintiff,

vs.

W. E. DEES, doing business as DEES MERCANTILE COMPANY,

Defendant.

COMPLAINT

D. R. COLEY, JR.,
ATTORNEY FOR PLAINTIFF

RECORDED

Duck
8-284

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

MOBILE CIGAR & TOBACCO COMPANY,
a corporation,

Plaintiff,

vs.

W. E. DEES, doing business
as DEES MERCANTILE COMPANY,

Defendant.

COMPLAINT

Filed October 18, 1938
R. S. Duck, Clerk.
By: Mustice Thompson,
Deputy -

D. R. COLEY, JR.,
ATTORNEY FOR PLAINTIFF

Executed by serving
copy of the within
summons & complaint
on W. E. Dees
Defendant this
19th day of
Oct 1938
W. A. Moore
Sheriff of Conecuh Co
By J. A. Moore D.S.

CITATION OF APPEAL

Moore Ptg. Co.

The State of Alabama
Baldwin County—Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 2nd Monday in April 1939 in a certain cause in said Court wherein MOBILE CIGAR & TOBACCO COMPANY, a Corporation, was Plaintiff, and W. E. DEES, doing business as Dees Mercantile Company, was Defendant, a judgment was rendered against said MOBILE CIGAR & TOBACCO COMPANY, a Corporation, to reverse which ruling the said MOBILE CIGAR & TOBACCO COMPANY, a Corporation, has on this day applied for and obtained from this office an APPEAL, returnable to the Fall Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the _____ day of _____, 193__ next, and the necessary bond having been given by the said MOBILE CIGAR & TOBACCO COMPANY, a Corporation with W. P. ROLLINGS and A. J. ROLLINGS, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said W. E. DEES, doing business as Dees Mercantile Company, or HYBART & CHASON attorneys, to appear at the Fall Term of our said Supreme Court, to defend against the said Appeal, if they think proper.

WITNESS, ~~T. W. Richerson~~ R. S. Duck, Clerk of the Circuit Court of said County, this 10th day of May, A. D., 1939

Attest:

R. S. Duck Clerk.

By: Nellie Thompson Deputy Clerk.

Executed June 10th 1939
by ~~Serv~~ handing a copy of
this Writ to John Chasson
as attorney for W. E. Dees
doing business as
Dees mercantile Co. -
W. R. Stuart Sheriff
By John R Davis D.S.

(original)

Service on
Myers & Chas

CIRCUIT COURT

BALDWIN COUNTY, ALA.

MOBILE CIGAR & TOBACCO COMPANY,
A CORPORATION,
PLAINTIFF,

vs. } Citation in Appeal

W. E. DEES, doing business as
DEES MERCANTIDE COMPANY,
DEFENDANT.

Issued _____ day of _____ 1939

Moore Ptg. Co., Bay Minette

Executed June 10th 1939
by ~~Serv~~ handing a copy of
this writ to John Chason
as attorney for W. E. Dees
doing business as
Dees mercantile Co -
W.R. Stuart Sheriff
By John R Davis D.S.

(original)

Serve on
Hybart & Chason

CIRCUIT COURT

BALDWIN COUNTY, ALA.

MOBILE CIGAR & TOBACCO COMPANY,
A CORPORATION,
PLAINTIFF,

vs. } Citation in Appeal

W. E. DEES, doing business as
DEES MERCANTIDE COMPANY,
DEFENDANT.

Issued _____ day of _____ 1939

Moore Ptg. Co., Bay Minette

MOBILE CIGAR & TOBACCO COMPANY, a corporation,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA.
W. E. DEES, doing business as DEES MERCANTILE COMPANY,	)	
Defendant.	)	

Now comes the Plaintiff, and moves the Court to vacate and set aside the order entered herein on the 30th day of September, 1941, denying the motion of the Plaintiff that it be permitted to withdraw the oral motion made for a non-suit because of the adverse rulings on the pleadings and that the cause be restored to the docket of the Court, and as grounds therefor says:

1: That the Plaintiff at any time during the pendency of the cause has the right to amend its pleadings and the motion made by it was in effect only an amendment of the pleadings and could not in anywise prejudice the rights of the Defendant.

2: Because no order having been formally entered by the Court granting the motion for a non-suit, the cause was actually on the docket, and the matter pending before the Court, and as a matter of right the Plaintiff was entitled to the privilege of withdrawing or amending its pleadings.

D. R. Carey Jr.

ATTORNEY FOR PLAINTIFF

Series 477 RECORDED
vs Chason Motion Dec

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

MOBILE CIGAR & TOBACCO COMPANY,
a corporation,

Plaintiff,

vs.

W. E. DEES, doing business
as DEES MERCANTILE COMPANY,

Defendant.

MOTION TO VACATE ORDER
DENYING MOTION TO WITHDRAW
ORAL MOTION FOR NON-SUIT

Filed Oct 30 1941
R S Quick
Clerk

D. R. COLEY, JR.,

ATTORNEY FOR PLAINTIFF

Executed by serving a copy of the within motion
on John Chason, Attorney for the defendant.
This the 30th, day of October 1941.
W. R. Stuart, Sheriff
By [signature]
Deputy Sheriff

MOBILE CIGAR & TOBACCO COMPANY, a Corporation, Plaintiff, vs. W. E. DEES, doing business as DEES MERCANTILE COMPANY, Defendant. HARTFORD FIRE INSURANCE COMPANY, a corp., and BALDWIN COUNTY BUILDING & LOAN ASSOCIATION, Garnishees.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. AT LAW.

NOTICE TO DEFENDANT OF ISSUING GARNISHMENT:

TO----------W. E. DEES, doing business as DEES MERCANTILE CO.

You will take notice that affidavit having been made in the ~~above styled cause, that W. E. DEES is supposed to be indebted to~~ by the Plaintiff, above styled cause, that HARTFORD FIRE INSURANCE COMPANY, and BALDWIN COUNTY BUILDING & LOAN ASSOCIATION is supposed to be indebted to the said W. E. DEES, doing business as DEES MERCANTILE COMPANY, the said Defendant, or have effects of the said W. E. DEES, doing business as DEES MERCANTILE COMPANY, in its possession or under its control, and that he believes that process of granishment is necessary against said HARTFORD FIRE INSURANCE COMPANY, and BALDWIN COUNTY BUILDING & LOAN ASSOCIATION, to obtain satisfaction of said judgment.

That Writ of Garnishment has this day been issued to the said HARTFORD FIRE INSURANCE COMPANY and BALDWIN COUNTY BUILDING & LOAN ASSOCIATION commanding it to appear before the Circuit Court to be holden for Baldwin County, Alabama, and within thirty days after service thereof, then and there to answer on oath what it is indebted to said W. E. DEES, doing business as DEES MERCANTILE COMPANY, at the time of the service of this Writ of Garnishment, or at the time of making its answer, and whether it will not be indebted in the future to him, by a contract then existing, and whether it has not in its possession or under its control personal or real property or things in action belonging to defendant, W. E. DEES, doing business as DEES MERCANTILE COMPANY.

WITNESS my hand this 18th day of October, 1938.

R. S. Duck CLERK.

BY: Nadine Thompson DEPUTY.

RECORDED Duch 8-2 P6

NOTICE TO DEFENDANT OF

ISSUING WRIT OF GARNISHMENT

Executed by serving copy of the within notice on W. E. Mux, Defendant this the 19th day of Oct 1938

W. A. Moore
Sheriff of Comanch. Co.
By J. Moore D.S.

GARNISHMENT ON SUMMONS

Moore Printing Co. :::: Bay Minette, Ala.

The State of Alabama,
Baldwin County

CIRCUIT COURT

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

Whereas MOBILE CIGAR & TOBACCO COMPANY, a Corporation,

has commenced suit by Summons and Complaint returnable to the next term of the Circuit Court of said County, against W. E. DEES, doing business as Dees Mercantile Company

for the sum of TWO HUNDRED TWENTY-FIVE & 18/100 Dollars and whereas, the said

MOBILE CIGAR & TOBACCO COMPANY, a Corporation,

has entered into bond, and made affidavit as required by law that the said

W. E. DEES, doing business as Dees Mercantile Company,

is indebted to them in the sum of TWO HUNDRED TWENTY-FIVE & 18/100

Dollars, and that process of garnishment is believed to be necessary to obtain satisfaction of such judgment as may be recovered by Plaintiff, and that HARTFORD FIRE INSURANCE CO.,

& BALDWIN COUNTY BUILDING & LOAN ASSOCIATION, of Robertsdale, Ala.,

is believed to be chargable as garnishee in the cause.

YOU ARE THEREFORE, commanded to summon the said

W. E. DEES, doing business as Dees Mercantile Company,

to be and appear at the Spring term of the Circuit Court, to be holden for the County of Baldwin, on February -1939 192..., then and there to answer, upon oath, whether, at the time of the service of this garnishment, or at the time of making your answer, or at any time intervening between the time of serving the garnishment and making the answer, you were indebted to the defendant, and whether, you will not be indebted to him in the future by a contract then existing, and whether by a contract then existing, you are liable to him for the delivery of personal property, or for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property, and whether you have not in your possession or under your control money or effects belonging to the defendant.

Witness my hand this 18th day of October, 1938., ~~192~~#.

R. S. Duck

Clerk.

By: Vaulbie Thompson

Deputy Clerk.

Executed this 18th day of Oct. 1938, by serving a copy of the within writ on Ort H. Ertzinger as ~~president~~ vice president of the Baldwin County Bldg. & loan corp.

M. H. Wilkins, Sheriff

By Layle Wilkins D.S.

RECORDED Deck 8-286

No.

Circuit Court of Baldwin County

MOBILE CIGAR & TOBACCO CO.,

Plaintiff,

vs. } GARNISHMENT ON SUMMONS

W. E. DEES, doing business as Dees Mercantile Co.,

Defendant.

Issued 18 day of Oct. 1938

D. R. COLEY, JR.

Plaintiff's Attorney

Moore Printing Co. :::: Bay Minette, Ala.

Moore Printing Co., Bay Minette, Ala.

CIVIL COST BILL

The State of Alabama,
BALDWIN COUNTY

CIRCUIT COURT. (LAW)

November. Term, 194 4

Mobile Cigar and Tabacco. Co.

No. 477. vs.

W E Dees.

477

BILL OF COSTS

CLERK'S FEES:		AMOUNT
Fees in Circuit Court—		
Docketing Cause, One Fee only of	.25	25
Issuing Summ. and Complt., each	1.25	125
Issuing Alias or Branch Summons & Complaint, each	1.25	
Making Copies Thereof, Minimum, each	.30	30
Making Copies Thereof, over 200 Words, per 100 words	.15	
Entering Sheriff's Returns, each	.20	20
Entering Appearances, each	.20	40
Certifying Affidavits, each	.25	
Issuing Attachments with Bond, each	1.00	
Orders of Publication, each	.50	
Copy of Same, each	.50	
Issuing Summ. to Garnishee, each	.50	
Copy of Same, Per 100 Words	.15	
Swearing Garnishee, Etc., Per 100 words, .15, Minimum	.50	1 00
Release of Garnishee, each	.25	
Issuing Scire Facias or Similar Notice, each	.75	75
Copies of Same, Per 100 Words	.15	45
Making Copy of Interrogatories, Per 100 Words, .15; Minimum	.50	
Commission to Take Depositions, each	.75	
Filing Depositions, Each Pkg.,	.10	
Endorsing Each Package of Depositions Opened	.10	
Issuing Subpoenas, Each	.30	
Issuing Witness Certificates, each	.25	40
Entering Continuances, each	.10	
Filing Papers, each	.10	90
Other Orders of Court, each	.30	90
Trial and Incidents	.75	
Entering Judgment, each	.30	30
Complete Record, Per 100 Words	.15	12 50
Taking Bonds, each	.75	1 50
Certificate of Appeal	.25	25
Transcript to Supreme Court, Per 100 Words	.15	15 00
Additional Copies of Same, Per 100 Words	.05	
Issuing Executions or Copy Thereof, each	.50	
Entering Sheriff's Return, Per 100 Words, .15; Minimum	.20	
Citation of appeal.		50
Total Clerk's Fees		36 85

SHERIFF'S FEES:		
Serving and Returning Summons or Writ, each Writ	1.50	4 50
Levying Attachment, each	3.00	4 50
Entering and Returning Same, each	.25	
Seizing Personal Property Under Writ of Detinue	3.00	
Taking and Approving Bonds, each	1.00	
Summoning Garnishee and Return, each	1.50	
Serving and Returning Sci. Fa. or Notice, Each	1.50	
Serving and Returning Subpoenas, each	.65	
Serving Contempt Attachment, each	1.50	
Impaneling Jury	.75	
Collecting Execution for Costs Only, each	1.50	
Coms. for Collecting Money on Executions		
Executing Writs of Possession, each	5.00	
Making Deed to Real Estate Sold, each.	2.50	
Total Sheriff's Fees		

SUMMARY OF FEES, COSTS, AND JUDGMENT	AMOUNT
Fees and Costs in Circuit Court:	
Clerk's Fees	36 85
Ex-Clerk's Fees	
Sheriff's Fees	4 50
Ex-Sheriff's Fees	4 50
Witness Fees	
Commissioner's Fees	
Garnishee's Fees	
Publisher's Fees	
Court Reporter's Fees, Per Day or fraction thereof .5.00	
Trial Tax .3.00	3 00
Cost in Supreme Court.	20 00
Fees and Costs in Inferior Court:	
Clerk of Inferior Court Fees	
Sheriff's Fees	
Justice of Peace Fees	
Constable's Fees	
Fees and Costs in Inferior Court	
Total Fees and Costs	68 85
Judgment	
10 Per Cent Damages	
Interest	
Total Judgment	
Total Fees, Costs and Judgment	
Total	

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

OCTOBER TERM, 1939-40.

1 Div. 353.

Mobile Cigar & Tobacco Co., A Corp.

v.

W. E. Dees, Doing Business as
Dees Mercantile Company.

Appeal from Baldwin Circuit Court.

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

PER CURIAM.

The suit was brought by summons and complaint against the defendant, and the common count claimed an amount due on open account and on account stated.

On the same day and in aid of said suit, the plaintiff, acting under authority of Section 8051 of the Code of 1923, et seq., procured the issuance of a writ of garnishment directed to the Hartford Fire Insurance Company and the Baldwin County Building & Loan Association, commanding them to answer as to whether they, or either of them, were indebted to the defendant either at the time of service or at the time of the trial.

The garnishee, The Hartford Fire Ins. Co., acting through its agent, filed answer admitting an indebtedness of $1630.60.

On the trial the defendant filed a plea in abatement as follows:

"That he is a resident citizen of Conecuh County, Alabama, and was such at the time this cause of action was filed, and that said suit should have been filed in Conecuh County, and not in Baldwin County, Alabama."

This plea was properly sworn to.

To this plea the plaintiff interposed demurrer. The demurrer was overruled. Whereupon, plaintiff filed replication setting up that the suit was initiated by attachment or garnishment issued out of the Circuit Court of Baldwin County, Alabama, against funds of the defendant in the hands of the Hartford Fire Insurance Company, a corporation, authorized to do business in the State of Alabama, and doing business in Baldwin County, Alabama, and the Baldwin County Building & Loan Association, a corporation, doing business in Baldwin County, Alabama. To this replication demurrer was filed.

There appears to be a minute entry as follows:

"MINUTE ENTRY.

3/2/39: Demurrer to Plea in Abatement overruled. Plaintiff files replication to plea in abatement. Demurrers to replications 1 & 2 sustained."

Further on in the transcript there appears the following:

"MINUTE ENTRY.

4/13/39: Comes the Plaintiff, by his attorney, and by leave of the Court, enters a non-suit because of adverse ruling of the Court on pleadings."

The record discloses a suit begun by summon and complaint and issuance of a writ of garnishment in aid of a pending suit as is provided by Section 8051 of the Code of 1923. That being the case, it would appear that Section 10467 of the Code of 1923 is applicable to this case, and that the plea in abatement was well taken.

We find, however, no judgment of the Court in the record justifying an appeal under Section 6078 of the Code of 1923, and without a final judgment or a special appeal from certain interlocutory orders, provided for by Section 6079 of the Code of 1923, this Court is without jurisdiction to entertain an appeal. And it is not a matter which can be waived by the parties. Lathrop Lbr. Co. v. Pioneer Lbr. Co., 207 Ala. 522.

The Section of the Code, just about cited, (Section 6078) contemplates a formal entry of the judgment appealed from; and, until so entered, there is no "final judgment" which will sustain an appeal. Edwards v. Davenport, 11 Ala. App. 423. The mere announcement of an opinion by the court, or even the entry by the circuit court or city court on the trial or motion docket of its rulings on demurrers or motions, is not a judgment, but merely a direction of the presiding judge to the clerk. Gore v. State, 58 Ala. 391.

A case directly in point is that of Martin v. Ala. Power Co., 208 Ala. 212, where it is held that a judgment overruling demurrers to a plea in abatement, reciting that because of such ruling plaintiff took a nonsuit, and taxing him with the costs, held not a final judgment under this Section, (Section 6078), since the nonsuit is not granted by the order of the court, and there being no order dismissing the cause, appeal will not lie.

It follows, therefore, that the appeal in this case must be dismissed.

Appeal dismissed.

Note. The foregoing opinion was prepared by the late Judge Samford. Since his untimely death, this court has considered this case en banc. We are clear to the conclusion that said opinion is correct in all things; therefore, it is hereby approved and is made and adopted as the opinion of this court.

Per curiam.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

1st Div., No. 353

Mobile Cigar & Tobacco Co. Appellant,

v.

W. E. Dell, Inc. Appellee,

From Baldwin Circuit Court

The State of Alabama,
City and County of Montgomery.

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

Witness, Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 27 *day of* Feb, 19 40

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

THE COURT OF APPEALS OF ALABAMA

1st Div., No. 353

Melville Cigar & Tobacco Co.

Appellant,

vs.

W. E. Rees et al

Appellee

From Jefferson Circuit Court.

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY, ALA., 1934

MOBILE CIGAR & TOBACCO COMPANY, A Corporation, Plaintiff, vs. W. E. DEES, doing business as DEES MERCANTILE COMPANY, Defendant, HARTFORD FIRE INSURANCE COMPANY, A Corp., and BALDWIN COUNTY BUILDING & LOAN ASSOCIATION, Garnishee.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. AT LAW.

Now comes W. E. Dees and for plea in this cause says that said suit should be abated for in this:

That he is a resident citizen of Conecuh County, Alabama, and was such at the time this cause of action was filed, and that said suit should have been filed in Conecuh County, and not in Baldwin County, Alabama.

Defendant demands a trial by jury.

Hybart & Hybart
Attorneys for Defendant

STATE OF ALABAMA.
Baldwin COUNTY.

Before me, Mary F. Green, a Notary Public, in and for said County, in said State, personally appeared C. L. Hybart, one of the Attorneys for the defendant, who being duly sworn, says that the allegations contained in the foregoing plea of abatement are true and correct.

C. L. Hybart

Sworn to and subscribed before me this 8th day of November, 1938.

Mary F. Green
Notary Public, Baldwin County, Ala.

8-287
Sank

RECORDED

PLEA.

MOBILE CIGAR & TOBACCO COMPANY, a Corporation,

Plaintiff,

-vs-

W. E. DEES, doing business as DEES MERCANTILE COMPANY,

Defendant.

HARTFORD FIRE INSURANCE COMPANY, a Corporation, and BALDWIN COUNTY BUILDING & LOAN ASSOCIATION,

Garnishee.

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

Filed November 10, 1938,

R. S. Duck
Clerk.

By - Vaultie Thompson,
Deputy

MOBILE CIGAR & TOBACCO COMPANY, a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA.
W. E. DEES, doing business as DEES MERCANTILE COMPANY, Defendant.	)	

Comes the Plaintiff in the above styled cause, and moves the Court to strike the plea in abatement as filed herein by the Defendant on the following separate and several grounds:

1: Because, while said plea attempts to set up matter for abatement of the suit herein, it fails to aver facts which would warrant and justify an abatement in said cause.

2: Because the allegations of said plea are not sufficient to establish grounds for the abatement of said cause.

3: Because the Defendant, subsequent to the filing of the plea of abatement in said cause, filed in this Court a general appearance, thereby waiving said plea in abatement.

4: That the said Defendant did file in the said cause a bond to dissolve the garnishment and discharge the garnishee from any liability in connection with the proceeding, in accordance with Section 8064 of the Code of Alabama for 1923, and that the filing of said bond by the said Defendant amounts to a general appearance, and thereby waives his right to deny the jurisdiction of this Honorable Court.

5: That the Defendant, subsequent to the filing of the plea in abatement in the said cause, filed a bond to discharge the garnishee and dissolve the garnishment, under Section 8064 of the 1923 Code of the State of Alabama, and that by the executing of such bond, the Defendant acknowledged notice of the suit, and invoked the jurisdiction

of the Court, and thereby waived any rights, or privileges that he may have had under the plea in abatement.

6: The Defendant, after having been personally served with the notice of a garnishment on October 19th, 1938, and after filing a plea in abatement thereto, came into this Honorable Court on December 15th, 1938, and filed a bond for the release of the garnishment under Section 8064 of the 1923 Code of the State of Alabama, and the filing of such bond caused the action to become a personal one, and not in rem, and the Defendant became bound to appear and defend the said cause, and thereby waived any rights he may have had under his plea in abatement.

D. Rhoades Jr.

ATTORNEY FOR PLAINTIFF

RECORDED 497

2013

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

MOBILE CIGAR & TOBACCO COMPANY,
a corporation,

Plaintiff,

vs.

W. E. DEES, doing business
as DEES MERCANTILE COMPANY,

Defendant.

MOTION TO STRIKE PLEA IN

ABATEMENT

Filed Sept 30 1941
R. Ingersoll
Clerk

D. R. COLEMAN, JR.,
ATTORNEY FOR PLAINTIFF

RECORDED 497

2813

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

MOBILE CIGAR & TOBACCO COMPANY,
a corporation,

Plaintiff,

vs.

W. E. DEES, doing business
as DEES MERCANTILE COMPANY,

Defendant.

MOTION TO STRIKE PLEA IN

ABATEMENT

Filed Sept 30 1941
R. Ridgeway
Clerk

D. R. COLEMAN, JR.,
ATTORNEY FOR PLAINTIFF

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term, 1939

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

Whereas, the Record and Proceedings of the Circuit Court of said County, in a certain cause lately pending in said Court between Mobile Cigar and Tobacco Company *Appellant*, *and* W. E. Lees, doing business, etc, *Appellee*, *wherein by said Court, at the* ..... *Term, 19*..., *it was considered adversely to said appellant* ..., *were brought before our Court of Appeals, by appeal taken, pursuant to law, on behalf of said appellant* ....

Now, it is hereby certified, That it was thereupon considered by our Court of Appeals on the 27th *day of* February 1940, *that the said appeal be and stand dismissed; and that it was further considered that the appellant, and* W. P. Rollings and A. J. Rollings *sureties on the appeal bond* ..... *pay the costs accruing on said appeal in this Court and in the Court below* .....

Witness Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 27th *day of* February 1940.

Charles Bricken Jr.

Clerk of the Court of Appeals of Alabama.

RECORDED minutes 9 page 104

THE COURT OF APPEALS OF ALABAMA

October Term, 1939

1st *Div. No.* 353

Mobile Cigar and Tobacco Company

Appellant,

v.

W. E. Bea, Doing business, etc

Appellee.

From Baldwin *Circuit Court*

CERTIFICATE OF DISMISSAL

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

this 29th *day of* February 1940

R. S. Disch, Clerk

BROWN PRINTING CO., MONTGOMERY, ALA. 1938

STATE OF ALABAMA.

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS: That W. E. Dees, as Principal, and P. H. Dees & W. R. Carter, as sureties, are held and firmly bound unto Mobile Cigar & Tobacco Company, a Corporation, in the sum of FOUR HUNDRED SIXTY THREE AND 86/100 ($463.86) DOLLARS for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators.

SEALED WITH OUR SEALS and dated this 12th day of December, 1938.

The condition of the above obligation is such that,

WHEREAS, on the 18th day of October, 1938, the Mobile Cigar & Tobacco Company, a Corporation, as Plaintiff, did institute suit against the said W. E. Dees, doing business as Dees' Mercantile Company, as Defendant, in the Circuit Court of Baldwin County, Alabama, and did make affidavit and did enter into bond and did garnishee monies belonging to the defendant in the hands of the Hartford Fire Insurance Company, a Corporation, and did summon said Hartford Fire Insurance Company, a Corporation, as Garnishee; and

WHEREAS, the defendant is desirous of having said garnishment dissolved and the garnishee discharged from any further liability in connection with this proceeding in accordance with Section 8064 of the 1923 Code of Alabama.

NOW, THEREFORE, if the said Plaintiff shall prosecute said suit to judgment against the aforesaid W. E. Dees, doing business as Dees' Mercantile Company, and said defendant shall pay said judgment, together with the cost of this suit, then this bond shall be null and void; otherwise it shall be of full force and effect.

W E Dees (SEAL)
Principal

P H Dees (SEAL)

W R Carter (SEAL)
Sureties

Taken and approved this 15

day of December, 1938.

R. S. Such
Clerk of the Circuit Court,
Baldwin County, Alabama.
By Nadine Thompson, Deputy

STATE OF ALABAMA.

CONECUH COUNTY.

I, W. S. Dreaden, Clerk of the Circuit Court of Conecuh County, Alabama, hereby certify that if this bond was presented to me, as Clerk of said Court, I would approve the same as being good and sufficient for its purposes therein mentioned.

Dated this 14 day of December, 1938.

W. S. Dreaden
Clerk of the Circuit Court,
Conecuh County, Alabama.

477

RECORDED Duck 8-302

W. E. DEES, doing business
as Dees' Mercantile Company

To

MOBIIE CIGAR & TOBACCO CO.,
a Corp.

B O N D.

Filed December 15, 1935
R. S. DUCK
clerk, - register
By Lucille Hanger
Deputy

C. L. HYBART
ATTORNEY AT LAW
MONROEVILLE, ALABAMA

PHONE DEXTER 1224 | STATEMENT | PHONE DEXTER 1225

Mobile Cigar & Tobacco Company

202 GOVERNMENT STREET

MOBILE, ALA.

DEES MERCANTILE CO.

ROBERTSDALE. ALA.

DATE	NET ITEMS	2 PERCENT	TAX	CREDITS	BALANCE
		BALANCE BROUGHT FORWARD			
JUNE 2	36 85	3 05			
9	19 66	3 76	10		
16	3 39				
16	17 96	1 93	10		
24	11 91	1 85			
MAY 18	28 55	5 78	10		134 99
JULY 1	31 88	1 50			
8	5 04	1 10			
15	11 05	80			
22	10 72	3 65	15		
29	5 55	55			
30	1 14				208 12
AUG 5	10 85	3 60			
12	2 61				225 18

Before me, the undersigned authority, personally appeared before me this date, Annabelle Burden, who being by me, first duly sworn, deposes and says that she is the Book-keeper for the Mobile Cigar and Tobacco Co, Inc., that the foregoing statement of account constitutes a true, correct, and itemized statement of account, of the Dees Mercantile Co., with the Mobile Cigar and Tobacco Co., Inc.

Annabelle Burden

Subscribed and sworn to before me this the 18th of October - 1938 -

(Notary Public)

THIS STATEMENT SUBJECT TO _____ DISCOUNT IF PAID ON OR BEFORE THE 10th

POSITIVELY NO DISCOUNT ALLOWED ON STATE TAX

RECEIPT FOR REGISTERED ARTICLE No. 34

1¢ fee paid. 1 class postage paid. 7-2, 1939
(Date)

Declared value, $ _____ (Postage paid)

From Clerk of the Circuit Court of Ba. — Mail Minutes etc.
(Name)

(Street and number) (Post office and State)

Addressed to Clerk of the Supreme Court of Ala. — Montgomery Ala.
(Addressee)

(Street and number) (Post office and State)

Accepting employee will place initials in space below, indicating restricted delivery

Return receipt fee _____ Special delivery fee _____

Delivery restricted to addressee { in person _____ or order _____ Fee paid _____ }

Postmaster, per _____

GPO 5—6869

Baldwin County Court

POSTAGE AND FEES PAID 1939 REGISTERED

December 15, 1938.

Attention: Mr.A.B.Frese,
Adjuster.

Hartford Fire Insurance Company, Inc.,
Mobile, Alabama.

Re: Mobile Cigar & Tobacco Co.,
vs. W. E. Dees, et al.,
Law No. [illegible]

Dear Sir:

This is to notify you that bond has been filed in the above entitled cause, by W. E. Dees, principal, the defendant in the said suit, payable to the Plaintiff, Mobile Cigar and Tobacco Company, a corporation; said bond being in the sum of $468.86.

In compliance with Section 8058 of the 1928 Code of Alabama, the money held in the hands of your company, as garnishee, is hereby discharged from the garnishment issued out of this Court on October 18th, 1938.

This is also to notify you that the suit of The Pace Company, a Corporation, against W. E. Dees, as defendant, and Hartford Fire Insurance Company, as Garnishee, has been dismissed by the Plaintiff, and said Plaintiff taxed with the costs of this proceeding.

Very truly yours,

R. E. COOK, Clerk,

By: Vaulbie Thompson
Deputy-Clerk.

t/

Copy to
Hon. John Chason,
Bay Minette, Alabama.

LAW OFFICES OF
D. R. COLEY, JR.
1010-1011 VAN ANTWERP BUILDING
MOBILE, ALABAMA

August 8, 1939

COPY

J. R. Thomas, Esq.,
Clerk of the Supreme Court,
Montgomery, Alabama.

Re: Mobile Cigar & Tobacco Company
vs. W. E. Dees

Dear Mr. Thomas:

You will recall that I inquired in your office several days ago in an effort to ascertain whether the certificate of appeal and transcript in the case of Mobile Cigar & Tobacco Company vs. Dees coming up from the Circuit Court ofBaldwin County, had been filed.

On returning to my office, I wrote to Mr. Duck at Bay Minette, and today have the letter which I enclose herewith.

Very truly yours,

D. R. Coley, Jr.
Attorney for Mobile Cigar
& Tobacco Company

C/D

C O P Y

August 9, 1939

Hon. D. R. Coley, Jr.
1010 Van Antwerp Building
Mobile, Alabama

Dear Sir:

The certificate of appeal and the transcript of the record in the case of Mobile Cigar & Tobacco Company v. W. E. Dees, doing business as Dees Mercantile Company, were filed in this office July 22nd, 1939.

Yours very truly,

(Signed) Charles Bricken, Jr.
Clerk.

j

Cc to
Hon. R. S. Duck, Clerk
Baldwin Circuit Court
Bay Minette, Alabama