

803

HARRY DUGGER,

Petitioner,

VS.


DR. W. C. HOLMES,

Defendant

IN THE MATTER OF THE PETITION OF HARRY DUGGER
FOR CERTIORARI TO THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA, OF CERTAIN PROCEEDINGS IN THE JUSTICE COURT
OF W. E. COONEY, JUSTICE OF THE PEACE, PRECINCT 14.

Comes Harry Dugger and files in Court the attached and foregoing
Petition and the same having been considered by the Court, it is Ordered
and Decreed that upon Petitioner's entering into bond in the sum of Two
Hundred Dollars (\$200.00) conditioned as prescribed by law, that a writ
of Certiorari issue according to the prayer of the Petition.

Dated this 5 day of May, 1942.


Judge of Probate, Baldwin
County, Alabama.

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Dated this 5 day of May, 1942.


Judge of Probate, Baldwin
County, Alabama.

STATE OF ALABAMA }
COUNTY OF BALDWIN }

TO THE HONORABLE G. W. ROBERTSON, JUDGE OF PROBATE:

Your petitioner, Harry Dugger, by his Attorney Orvis M. Brown, respectfully represents, that on the 6th day of May, 1942, judgment was rendered against him in favor of Dr. W. C. Holmes by W. E. Cooney, Justice of the Peace for said county, for the amount of Ninety-nine Dollars (\$99.00) and court costs which is not disclosed to the petitioner in a suit wherein the said Dr. W. C. Holmes was plaintiff and your petitioner the defendant.

And your petitioner avers that the said judgment was unwarranted by the law and the facts in this:

1. Your petitioner was served with a summons and complaint in said cause to appear on May 6, 1942 at the court of Justice Cooney, Foley, Alabama, and when your defendant appeared on said date the case was continued until a later date as to when the Attorney for the plaintiff, Cecil Chason, and the Attorney for the defendant, Orvis M. Brown, agreed on a mutual date for the hearing of such cause and if the agreement which was stated between the said attorneys was perfected the case was to be dismissed. Your defendant was never notified of any date on which a hearing was to be had until September 12, 1942 when your defendant appeared with his Attorney at the court of Justice Cooney and was advised by Justice Cooney that judgment had been rendered against him on May 6, 1942 without any trial or without his being given opportunity to defend himself in Court.

2. Your petitioner shows further unto this Honorable Court that he had placed in the hands of Justice Cooney a check for collection against one Younce in the amount of One Hundred Dollars, that Justice Cooney collected the said money from said Younce but refused to deliver same to your defendant stating that garnishment had been issued in favor of Dr. W. C. Holmes and writ of garnishment served on Justice W. E. Cooney out of the court of Justice W. E. Cooney and that he was holding the money which he had collected on a separate and distinct suit wherein your defendant was the complainant against Younce and intended to apply the money collected on the suit of Dr. W. C. Holmes. Your defendant in person and by his Attorney Orvis M. Brown, requested on May 6th and September 5th, 1942 to be permitted to see the bond and writ of garnishment which withheld the One Hundred Dollars in question and Justice W. E. Cooney could not present the same but advised the defendant and his Attorney Orvis M. Brown that he would present the papers on Saturday, September 12, 1942, at which time he presented papers which from their appearance were newly prepared and which said papers did not comply with the law in that only one signature

appeared on the bottom and that of the plaintiff by his Attorney, and further that no affidavit was made which is required by law in writ of garnishment, and further that no sheriff's writ was ever made to show that the writ of garnishment was served on the defendant; and your defendant states further that he was never served with the writ of garnishment by which Justice Cooney held the One Hundred Dollars and which Justice Cooney informed your defendant he was going to apply on the judgment of Dr. W. C. Holmes.

3. Your Petitioner shows further that on Saturday, September 12, 1942 your petitioner and his Attorney appeared at the court of Justice Cooney and were then and there advised that judgment had been issued on May 6, 1942 and that there was nothing further that your defendant could do about the same and that he had been holding the money above described for the plaintiff Dr. W. C. Holmes, and that he intended to deliver the same to him at his earliest convenience.

4. Your petitioner shows further unto this Honorable Court that on May 6, 1942 when the Attorney for your defendant requested to see the original summons and complaint and the alleged writ of garnishment and bond, that he was advised and his Attorney was advised by Constable Johnnie Davis that it was none of his business if these papers had been filed or not as long as the Justice of the Peace, W. E. Cooney, was satisfied, that your defendant and his attorney were not entitled to view the same.

5. On September 12, 1942 when your defendant attempted to file further papers and requested that he be advised of how much time and the amount of bond required that he was informed that judgment having been rendered May 6, 1942, the time of appeal had expired.

WHEREFORE, your petitioner prays that your honor will order a writ of certiorari to issue in said cause to the said Justice W. E. Cooney of Foley, Alabama returnable to the Circuit Court of Baldwin County, Alabama as required by law, in order that justice may be done in the premises.

Signed: Harry Dugger

Petitioner

STATE OF ALABAMA
COUNTY OF BALDWIN

Before me, Orvis M. Brown, a Notary Public in and for said County and State, personally appeared Harry Dugger who being known to me and who being duly sworn doth depose and say that he is the same Harry Dugger whose name is subscribed to the aforesaid petition, that he has read the aforesaid petition and the same is true of his own personal knowledge except as to matters stated upon information and belief which he verily believes.

Subscribed and sworn to this 11th day of October, 1942 before me, a Notary Public,

Orvis M. Brown
Notary Public, Baldwin County, Alabama
My commission expires April 2, 1943.

Harry Dugger
Affiant

STATE OF ALABAMA)
COUNTY OF BALDWIN)

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Signed: Harry Dugger

Petitioner

STATE OF ALABAMA
COUNTY OF BALDWIN

Before me, Orvis M. Brown, a Notary Public in and for said County and State, personally appeared Harry Dugger who being known to me and who being duly sworn doth depose and say that he is the same Harry Dugger whose name is subscribed to the aforesaid petition, that he has read the aforesaid petition and the same is true of his own personal knowledge except as to matters stated upon information and belief which he verily believes.

Subscribed and sworn to this 18th day of
October, 1942 before me, a Notary Public,

Harry Dugger
Affiant

Orvis M. Brown
Notary Public, Baldwin County, Alabama
My commission expires April 2, 1943.

"BOND"

STATE OF ALABAMA

COUNTY OF BALDWIN

KNOW ALL MEN BY THESE PRESENTS, that we, Harry Dugger, H. W. Jordan, and Amos Garrett, are held and firmly bound unto Dr. W. C. Holmes, in the sum of Two Hundred Dollars, (\$200.00) for the payment fo which well and truly to be made, we bind ourselves and each of us our heirs, executors and administrators, jointly and severally.

Sealed with our seals and dated this the 3rd day of November, 1942.

The condition of the above obligation is such that, whereas the said Dr. W. C. Holmes, is alleged to have obtained a judgment before W. E. Cooney, Justice of the Peace on the 6th day of May, 1942 against the said Harry Dugger for the sum of \$99.00 concerning which said judgment the said Harry Dugger has obtained a writ of certiorari, returnable to the Circuit Court of Baldwin County, Alabama, as required by law.

Now if the said Harry Dugger shall prosecute the said writ of certiorari to effect, or failing therein, shall pay and satisfy the judgment which may be returned against him in said cause by the said Circuit Court then the above obligation is to be void, otherwise to remain in full force and effect.

Harry Dugger Seal.
Amos Garrett Seal.
H. W. Jordan Seal.

STATE OF ALABAMA)

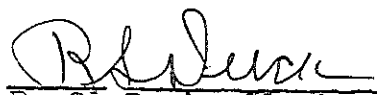
BALDWIN COUNTY)

TO W. E. COONEY, JUSTICE OF THE PEACE----GREETING:

WHEREAS, a judgment was rendered by you on the 6th day of March, 1943, in favor of DR. W. C. HOLMES and against HARRY DUGGER for \$99.00, besides costs of this suit, and we being desirous that the record of the proceedings before you, together with the papers in this cause, should be certified to the Circuit Court of Baldwin County, of said State:

You are therefore commanded to send under your hand and seal the record of said proceedings, together with all papers and things touching same, that the same may be before our next Circuit Court, so that said Court may cause to be done what of right ought to be done.

Given under my hand, this the 6th day of March, 1943.



R. S. Duck, Clerk of the
Circuit Court of Baldwin
County, Alabama.

End

HARRY DUGGER

VS

W. C. HOLMES

Executed Mar 10th 1943
by serving subpoena ~~noted~~

Copy of within notice

W E Cooney

W R Stewart Sheriff

By _____ Deputy Sheriff

Since we W E Cooney