

WADIAH F. HAWIE
Appellant

IN THE SUPREME COURT OF
THE STATE OF ALABAMA

vs

J. H. PONDER, doing business
as the PONDER COMPANY
Appellee

985

Comes the Appellee and shows that no transcript of this case was filed with this Court within 60 days after the expiration of the time for establishing the bill of exceptions, Appellee presents to this Court the Certificate of Appeal and certified copy of the supersedeas bond and

Mofes this Court for affirmance of the judgment appealed from and a judgment against the sureties on the supersedeas bond for the amount of the affirmed judgment, ten percent damages thereon and the costs of this Court, in accordance with Title 70 Sections 770 and 814 of the 1940 Code of Alabama.

Attorneys for Appellee

WADIAH F. HAWIE
Appellant

vs

J. H. PONDER, doing busi-
ness as the PONDER COMPANY
Appellee

CERTIFICATE OF APPEAL

WADIAH F. HAWIE
Appellant

IN THE SUPREME COURT OF
THE STATE OF ALABAMA

vs

J. H. PONDER, doing business
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Appellee

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Attorneys for Appellee

WADIAH F. HAWIE
Appellant

vs

J. H. PONDER, doing busi-
ness as the PONDER COMPANY
Appellee

CERTIFICATE OF APPEAL

State of Alabama
Baldwin County

Know All Men By These Presents That We, Wadiah F. Hawie, as Principal, and T. W. Wilmer and T. J. Klumpp as sureties, are held and firmly bound unto J. H. Ponder, doing business as The Ponder Company, in the sum of Fifteen Hundred (1500) Dollars to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these Presents.

Sealed with our seals and dated this 16th day of November, 1946.

THE CONDITION OF THE ABOVE OBLIGATION ARE SUCH THAT, Whereas the said J. H. Ponder was, on September 30th 1946, awarded a judgment in the amount of Six Hundred Seventy Six and 86/100 (676.86) Dollars and, also, for costs of suit, against the said above bounden Wadiah F. Hawie in the Circuit Court of Baldwin County, Alabama, and

Whereas said Wadiah F. Hawie has filed a notice of appeal to The Supreme Court of Alabama in said suit,

Now, if said Wadiah F. Hawie shall prosecute said appeal to effect, or, if he fails therein, he shall satisfy such judgment as the appellate court may render in the premises, then this obligation shall be void and of no further effect, otherwise to remain in full force and effect.

W. F. Hawie (SEAL)

T. W. Wilmer (SEAL)

T. V. Klumpp (SEAL)

Taken and Approved this 20th day of November 1946.

Alice J. Duck.
Clerk Circuit Court.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, Alabama, do hereby certify that the foregoing is a true and correct copy of the bond in the above styled case and same appears on record in this office.

Clerk Circuit Court,
Baldwin County, Alabama

March 10, 1947

Messrs/ Rickarby & Rickarby
Attorneys at law
Fairhope, Ala.

Re: 1 Div 280
Gentlemen: Wadiah H. Hawie v. J.H.Ponder, etc.

I am in receipt of your letter of the 7th in which you enclose a motion filed on behalf of appellee to affirm the above styled case on certificate, together with a certified copy of the supersedeas bond filed by the appellant and the certificate of the clerk of the circuit court. All motions of this character should be on transcript paper. However I am filing the motion, certified copy of the bond and the certificate as of this date.

I notice that you request that a notice of this motion be served on the appellant. I assume that the appellant has an attorney of record. If so, I see no necessity of issuing a notice out of this Court and sending to the sheriff to serve notice of this motion on the appellant as you may serve notice and copy of the motion upon the appellant's attorney and give them notice of the day you will submit the same to this Court for a hearing. See Supreme Court Rule 16. I notice that this appeal was taken on November 20, 1946, and you will notice that Section 5 of the Acts of 1945, p. 567 and Section 827 (5) of the 1945 Accumulated Pocket Parts to Title 7 of the Code of 1940, provides that the court reporter's certified transcript shall be filed with the clerk (of the circuit court) within ninety days after the taking of the appeal. Of course, the clerk cannot send up the record until the proper time for the filing of the transcript of testimony has expired and the clerk would have sixty days from that date within which to get up the record as I understand the statute. But in any event when the supersedeas and appeal bonds have been filed then it would be the duty of the clerk to make up the record and deliver it to the attorney on the other side or file in this Court (whether the evidence was transcribed and filed or not, unless the other side requested the clerk not to make up the transcript). I think you would have to show in your motion that it was no fault of the Clerk in this delay.

This case will be set on the call of the 1st Division on Tuesday, April 8, 1947 at ten o'clock A. M. at which time you could present your motion. However, the motions are usually set down for hearing on Thursday of the call of the docket which would be April 10, 1947, at ten o'clock A. M. So if you give them notice of the time and place to hear your motion I would suggest that you make it Thursday rather than Tuesday.

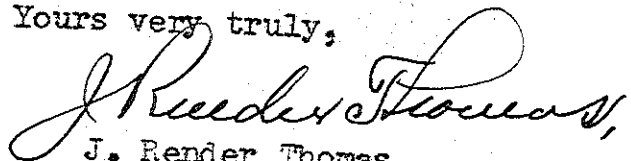
#2
Messrs. R & R
March 10, 1947

As I have written you above I do not think it necessary to serve a copy of your motion out of this office by the sheriff on the appellant and that these notices can all be given by you as attorney. However, if you insist that it be served on the appellant by the sheriff then I can issue a notice and serve it on the appellant as requested. See Section 23, Title 13, Code 1940.

Also as stated above I think your motion should be on transcript paper, in any event, and it may be necessary that you put it on the motion docket if it is resisted, and I also think that you should, if you desire to push the motion, appear at the time you set it and present your argument to the Court why it should be granted.

Any notice that you give the other side a copy thereof should be put on transcript paper and your certificate attached thereto showing how and when and on whom you made the service and filed in this office, and the case will be set on the motion on the day named in your ~~motion~~.

Yours very truly,



J. Render Thomas
Clerk, Supreme Court

CC -

Mrs. Alice J. Duck
Clerk, Circuit Court
Bay Minette, Ala.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term, 19 46

To any Sheriff of the State of Alabama—Greeting:

YOU ARE HEREBY COMMANDED, That of the Goods and Chattels, Lands and Tenements of

Wadiah F. Henrie

and

W. F. Henrie

and

J. W. Wilmer

and

J. J. Klump

in your County, you cause to be made the sum of Seventeen & 21/100 Dollars, by which judgment in said Court of Appeals rendered on the 15 day of April, 1907,

recovered against them for costs in said Court of Appeals, on a certain appeal wherein

Wadiah F. Henrie

Appellant, and

J. J. Klump etc
Appellee, as appears to us of record; and that you have the sum aforesaid, together with this writ, and your endorsement thereon, before said Court of Appeals on the

first Monday in _____ next.

Witness, Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 5

day of May, 1907

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

BILL OF COSTS IN THE COURT OF APPEALS.

Clerk's Fees.

Docketing Cause	\$.30
Entering Attorney	(.30 ea.) .60
Bond	(.50)
Appeal or Writ of Error	.50
Order	.50
Continuance	(.25)
Judgment	1.00
Mandate or Certificate to Court below	2.00
Writ of Scire Facias, or other Writ (1.00)	
Filing same with return	(.20)
Writ of Fieri Facias	1.00
Taxing cost, copy'g and enter'g satisfac'n	.85
Fee in lieu of State Tax	4.00

Other Fees.

Library fee	5.00
Sheriff's fee	1.50
Attorney General's fee	

Total \$ 17 25

985

THE COURT OF APPEALS OF ALABAMA

October Term, 1946

1st Div., No. 554

Wadiah F. Howie
Appellant.
vs.

J. P. Anderson
Appellee.

From Circuit Court

Writ of Fieri Facias

Baldwin County

App. Ct. Ex. D. No. 37, P. 7

Sheriff Ex. D. No., P.

Received in office this

day of, 19

Sheriff.

Executed the within writ this

day of

19,

Sheriff.

#985

State of Alabama
Baldwin County

Know All Men By These Presents That We, Wadiah F. Hawie, as Principal, and
T. W. WILMER and T. J. KLUMPP as sureties,
are held and firmly bound unto J. H. Ponder, doing business as The Ponder
Company, in the sum of Fifteen Hundred (1500) Dollars to which payment well
~~and truly to be made~~ we bind ourselves, our heirs, executors and administr-
ators, jointly and severally, by these Presents.

Sealed with our seals and dated this 16th day of November, 1946.

THE CONDITIONS OF THE ABOVE OBLIGATION ARE SUCH THAT, Whereas the said
J. H. Ponder was, on September 30th 1946, awarded a judgment in the amount
of Six Hundred Seventy Six and 66/100 (\$76.66) Dollars and, also, for costs
of suit, against the said above bounden Wadiah F. Hawie in the Circuit Court
of Baldwin County, Alabama, and

Whereas said Wadiah F. Hawie has filed a notice of appeal to The Supreme
Court of Alabama in said suit,

Now, if said Wadiah F. Hawie shall prosecute said appeal to effect, or, if
he fails therein, he shall satisfy such judgment as the appellate court may
render in the premises, then this obligation shall be void and of no further
effect, otherwise to remain in full force and effect.

W. F. Hawie (SEAL)

T. W. Wilmer (SEAL)

T. J. Klumpp (SEAL)

Taken and Approved this 20th day of November 1946.

Alice J. Luck
Clerk Circuit Court.

985

FILED

NOV 20 1946

R. S. DUCK, CLERK

By *Alvin J. Duck*
D.C.

RICKARBY & RICKARBY
FAIRHOPE, ALABAMA

E. G. RICKARBY, JR.

November 4, 1946

Mrs. Robert S. Duck
Clerk, Circuit Court
Bay Minette, Alabama

Dear Mrs. Duck:

In Re PONDER vs HAWIE #985: Regarding the supersedeas *bond* in this cause, this bond comes up before you for approval within the next few days and as this bond supersedes our judgment, we wish to make sure that it is sufficient. It will be noted that the bond is signed by W.F. Hawie as principle and a Mrs. Fisher as surety. Of course, you are checking to see that Mr. Fisher has sufficient property assessed to him to make him qualify as one of the sureties. However, we contend that it is necessary to have two sureties in view of the fact that this bond is made under Section 793 of Title 7 of the 1940 Code of Alabama, which reads as follows: "When the judgment or decree is for the payment of money only, the appeal does not operate as a supersedeas, or to stay or suspend the execution of such judgment or decree (except in such cases as are otherwise provided), unless bond be given by the appellant, or some other person, in double the amount of the judgment or decree, including costs, payable to the appellee, with sufficient sureties, and with condition to prosecute the appeal to effect, or, if he fails therein, to satisfy such judgment as the appellate court may render in the premises."

You will notice that in this code section, the word sureties is plural and while there are some cases where only one surety on a bond is required, they use the word surety. We maintain that this bond is insufficient and should not be approved and if defendant is unable to make sufficient bond within a reasonable time, say five days, and as there is nothing now to supersede our judgment, that process should issue on this claim.

A copy of this letter is being sent to the Defendant's Attorney, so that if any of my contentions are far-fetched, he can call your attention to them.

Respectfully,

RICKARBY & RICKARBY

By: 

State of Alabama
Baldwin County

Know All Men By These Presents That We, Wadiah F. Hawie, as Principal,
and ED FISHER as surety, are held and firmly
bound unto J. H. Ponder, doing business as The Ponder Company, in the
sum of Fifteen Hundred (1500) Dollars, to which payment well and truly
to be made we bind ourselves, our heirs, executors administrators,
jointly and severally, firmly by these presents.

~~Sealed with our seals and dated this 30th day of October, A. D. 1946.~~

THE CONDITIONS OF THE ABOVE OBLIGATION ARE SUCH, That, Whereas the said
J. H. Ponder was awarded a judgment in the amount of Six Hundred Seventy
Six and 86/100 (676.86) Dollars and, also, for costs of suit, against the
said Wadiah F. Hawie in the Circuit Court of Baldwin County, Alabama, on
September 30th 1946, and

Whereas said Wadiah F. Hawie has filed a notice of appeal to The Supreme
Court of the State of Alabama in said suit,

Now, if said Wadiah F. Hawie shall prosecute said appeal to effect, or,
if he fails therein, he shall satisfy such judgment as the appellate court
may render in the premises, then this obligation shall be void and of no
further effect, otherwise, to remain in full force and effect.

W. F. Hawie (SEAL)

Ed Fisher (SEAL)

#985

Subscribed by

James H. Ponder

Ponder
vs
Hawil

PAID
OCT 31 1946

R. S. BUCK, CLERK

M. G. Wood

State of Alabama

Baldwin County

Know All Men By These Presents That We, Wadiah F. Hawie, as Principal

and **ED FISCHER**

and **C. J. GRIFFITH**

as sureties, are held and firmly bound unto J. H. Ponder, doing business as The Ponder Company, in the sum of Fifteen Hundred (1500) Dollars, to which payment well and truly to be made we bind ourselves, our heirs, ex-
ecutors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of November, A. D. 1946.

THE CONDITIONS OF THE ABOVE OBLIGATION ARE SUCH, that, whereas the said J. H. Ponder was awarded a judgment in the amount of Six Hundred Seventy Six and 86/100 (676.86) Dollars and, also, for costs of suit, against the said Wadiah F. Hawie in the Circuit Court of Baldwin County, Alabama, on September 30th 1946, and

Whereas the said Wadiah F. Hawie has filed a notice of appeal to The Supreme Court of the State of Alabama in said suit,

Now, if said Wadiah F. Hawie shall prosecute said appeal to effect, or, if he fails therein, he shall satisfy such judgment as the appellate court may render in the premises, then this obligation shall be void and of no further effect, otherwise, to remain in full force and effect.

W. F. Hawie (Seal)

Ed Fischer (Seal)

C. J. Griffith (Seal)

MR. W. F. HAWIE

FAIRHOPE CASINO

IN ACCOUNT WITH

PONDER COMPANY

June 19, 1946

Repairing Toilet.
Pumping out Septic Tank and hauling.
sewer at top of hill.

1 Ball Cork.	\$ 2.50
2 Copper Floats.	1.00
1 Flush Ball.	.50
1 Lift Wire.	.10
	<u>\$ 4.10</u>
SALES TAX.	.08
	<u>\$ 4.18</u>
LABOR.	54.20

\$ 58.38

Wireing Bowling Alley with 11 outlets
and 2 wire meter service as quoted.
Extra for 3 wire service.

11 Outlets.	@ \$ 5.00 ea.	55.00
6 Fluorescence Fixtures. 24"	@ 13.00 ea.	78.00
3 Fluorescence Fixtures. 48"	@ 10.95 ea.	32.85
32 Feet Wrot Iron Pipe. 1/2"	@ .15 ea.	4.80
4 Aluminum Sockets.	@ 1.00 ea.	4.00
4 Pipe Flanges. 1/2"	@ .35 ea.	1.40
		<u>\$251.05</u>
SALES TAX ON MATERIAL ONLY.		3.72

\$ 254.72

June 18, 1946

Hauling sewerage, truck and driver 6 1/2 hrs.	\$ 15.00	\$ 15.00
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May 1, 1946

Goods bought from McGowin Lyons.
SALES TAX.

\$ 49.18	
<u>.98</u>	\$ 50.16

April 16, 1946

Repairing Septic Tank for temporary use.

450 Feet Drain Tile. 4"	@ .10 ea.	\$ 45.00
50 Feet Terra Cotta Pipe. 4"	@ .20 ea.	10.00
12 Terra Cotta Lees. 4"	@ 1.00 ea.	12.00
3 Terra Cotta Bends. 4"	@ 1.00 ea.	3.00
40 Feet Cast Iron Pipe. 4"	@ .60 ea.	24.00
7 One-fourth Bends. 4"	@ .90 ea.	6.30
1 One-sixteenth Bend. 4"	@ .70	.70
1 Test Lee. 4"	@ 2.50	2.50
35 Pounds Lead.	@ .15 ea.	5.25
10 Pounds Oakum.	@ .20 ea.	2.00
		<u>\$110.75</u>

SALES TAX.

LABOR.

2.21	
<u>90.25</u>	\$ 203.21

April 7, 1946

Labor uncrating and installing range.

<u>\$13.50</u>	\$ 13.50
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March 15, 1946

390 Gallons Butane

@ .12 gal.

\$ 46.80

\$ 46.80

March 6, 1946

Repairing busted water pipes and fittings.

1	Lee.	$\frac{1}{2}$ " @	\$.14	
1	Plug.	$\frac{1}{2}$ " @		.05	
1	Union.	$\frac{1}{2}$ " @		.32	
2	One-half by six Nipples.	@ .16 ea.		.20	
1	One-half X four Nipples.	@		.08	
			\$.79	
	SALES TAX.			.02	
	LABOR.			4.00	\$ 4.81

February 28, 1946

59	Gallons Butane.	@ .12 gal.	\$	<u>7.08</u>	\$ 7.08
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February 19, 1946

Changing faucets on lavatories.

Even swop on faucets.

LABOR

\$	<u>3.75</u>	\$	<u>3.75</u>
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February 16, 1946

36	Gallons Butane	@ .12 gal.	\$	<u>4.32</u>	\$ <u>4.32</u>
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February 11, 1946

1	Shower Head				
	Chrome Plated with	4" @	\$	<u>3.25</u>	\$ 3.25
	Ball Joint.				

January 5, 1945

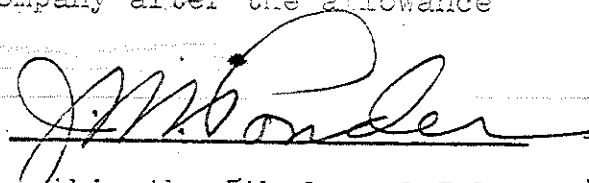
Installing vent pipe, relief valve
and drain cock on water heater.

10	Vent Pipe	3" @	.15 ea.	\$	1.50
1	Vent Ell	3"			.60
1	Flue Stopper	6"			.25
7	Pipe	3/8" @	.07 ea.		.49
1	3/8 by 5 Nipple				.08
1	3/8 by 5 Ell				.12
1	3/4 Drain Cock				1.50
1	Relief Valve	$\frac{1}{2}$ "			2.25
1	3/4 Union				.40
				\$	<u>7.19</u>
	SALES TAX				.14
	LABOR				4.50
	TOTAL				<u>\$ 11.83</u>
					\$676.86

STATE OF ALABAMA:

BALDWIN COUNTY:

Before me the undersigned notary personally appeared this day J. M. PONDER, who being sworn says that he is the owner and operator of The Ponder Company and knows of his personal knowledge that the attached account and all items thereof are true and correct and that the sum of \$676.86/100 dollars is due from Wadiah F. Hawie to the Ponder Company after the allowance of all proper credits and is unpaid.

A handwritten signature in dark ink, appearing to read "J. M. Ponder", written over a horizontal line.

Subscribed and sworn to before me this the 5th day of July, 1946.

A handwritten signature in dark ink, appearing to read "Elliott L. Rinkerly", written above the printed name of the notary.

Notary Public, Baldwin County, Alabama

RECORDED

PONDER COMPANY

vs. .

WADIAH F. HAWIE

ITEMIZED ACCOUNT

Filed Aug 1944
K. H. H. H.

Account of Ponder Company vs. Wadia F. Hawie

Received of Ponder Company
the sum of \$100.00
for account of Ponder Company
vs. Wadia F. Hawie

J. H. PONDER
doing business as The Ponder Company
Plaintiff

LAW

#985

CIRCUIT COURT

BALDWIN COUNTY

ALABAMA

VS

Wadiah F. Hawie

Defendant

Comes Wadiah F. Hawie, Defendant in the above titled cause, and, for
answer to the Bill of Complaint therein, says that he denies each and
every allegation therein contained.

E. A. CRAMER
E. A. Cramer
Attorney for Defendant

Paul
&
Haines
Civil

Paul Sent 1/26/46
Paul
Ryker

Cramer - left -

J. E. PONDER,
doing business as the Ponder Company,

LAW

Plaintiff

CIRCUIT COURT OF

vs.

BALDWIN COUNTY, ALABAMA

WADIAH F. HAWIE

Defendant

Plaintiff claims of the Defendant a lien for the following property, situated in Fairhope, Baldwin County, Alabama, to-wit:

That lot 80 feet East and West by 125 feet North and South at shore end of Fairhope Whard and on North side and listed on the Fairhope Single Tax Corporation to Thomas H. Bowen, together with such other land to the North as is now covered by the buildings now operated as The Fairhope Casino, all in the Town of Fairhope as per plat of said town on record in the Probate Court at Bay Minette, Alabama. This lien is claimed, separately and severally, as to both the buildings and improvements thereon, and to the lease-hold interest in the land.

Notice of said lien has been filed in the Probate Court of said County to secure payment for materials furnished and labor supplied by Plaintiff for said buildings at Defendant's request at various dates between, to-wit: January 5, 1945 to June 19, 1946, to the value of SIX HUNDRED SEVENTY-SIX and 86/100 DOLLARS, which sum of money with the interest thereon is still due from Defendant to Plaintiff, is unpaid and is now claimed of Defendant.

An itemized and verified statement of said materials and labor is filed herewith.

Reis Carby & Reis Carby
Attorneys for Plaintiff

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA, }
BALDWIN COUNTY

CIRCUIT COURT BALDWIN COUNTY

No. _____

_____ TERM, 194_____

TO ANY SHERIFF OF THE STATE OF ALABAMA :

You are hereby commanded to summon WADIAH F. HAWIE

to appear and plead, answer or demur, within thirty days from the service hereof, to the Complaint filed in
the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against WADIAH F. HAWIE

_____, Defendant_____

by J. H. PONDER, doing business as the Ponder Company

_____, Plaintiff_____

Witness my hand this 19 day of August 1946

Robert Clerk.

No.

985

Page

THE STATE OF ALABAMA

BALDWIN COUNTY

CIRCUIT COURT

THE PONDER COMPANY

Plaintiffs

vs.

WADIAH F. HAWIE

Defendants

SUMMONS AND COMPLAINT

Filed

Aug 19

194

6

Philly

Clerk

RICKARBY & RICKARBY

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED IN OFFICE

194

Sher

I have executed this summons

this

Aug 19

194

by leaving a copy with

Wadiah F. Hawie

C. E. Garrett

Sher

H. F. Hall

Deputy Sher

J. H. Ponder, doing business as
The Ponder Company
Plaintiff

vs

Wedish F. Hawie

Defendant

Circuit Court

Baldwin County

Alabama

No. 985

Notice of Appeal

The defendant in the above titled action hereby appeals to The Supreme
Court of Alabama from the judgment rendered in the Circuit Court of
Baldwin County, Alabama, on September 30th 1946.

E. P. Dramer

Attorney for Defendant.

Notice of Appeal

FILED

OCT 31 1946

R. S. DUCK, CLERK

J. H. PONDER, doing business as
THE PONDER COMPANY
Plaintiff

VS.

WADIAH F. HAWIE
Defendant

IN THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA.

AT LAW

NO. 985

CERTIFICATE OF APPEAL

I, Alice J. Duck, clerk of the Circuit Court of Baldwin County, Alabama,
hereby certify that, WADIAH F. HAWIE, the Defendant, in the cause of, J. H. PONDER,
doing business as THE PONDER COMPANY, VS WADIAH F. HAWIE, in the Circuit Court of
Baldwin County, Alabama, Law side, has taken an appeal to the Supreme Court of the
State of Alabama, from a Judgement rendered in favor of the Plaintiff on the ~~30th~~
day of September 1946.

I, Further certify that said appeal was taken on the ~~31 day of October 1946~~

I, Further certify that ~~W. F. HAWIE, T. W. WILMER, and T. J. KLOPP~~ are
sureties on the security for costs on the appeal and that said security for costs
does not contain a waiver of exemptions.

Given under my hand and seal of Court this 26th day of November, 1946.

Alice J. Duck

Clerk of the Circuit Court of Baldwin
County, Alabama