

APR 15 1947

986

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

OCTOBER TERM, 1946-47.

1 Div. 554.

Wadiah F. Hawie

v.

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

Appeal from Baldwin Circuit Court.

BRICKEN, PRESIDING JUDGE.

It appears from the Certificate of Appeal, that this cause was tried and determined in the lower court on the 30th day of September 1946, and an appeal was taken from the

E. M. Rutz an Individual,
doing business as Rutz Music
Company Plaintiff.

VS

L. T. Powell
Come the Defendant
and for his answer to the
Complaint in this Cause and
says that he is not guilty

L. T. Powell

986

Ritz muscle
W

Paul

Asen

Find Sept 23 1946
R. H. H. H.
P. H. H. H.

CERTIFICATE OF JUDGMENT

Printed by The Baldwin Times, Bay Minette, Ala.

THE STATE OF ALABAMA, }
Baldwin County }

CIRCUIT COURT, SPECIAL Term, 1947.

E. M. RUTZ

Plaintiff

Vs.

L. T. POWELL

Defendant

I, ALICE J. DUCK, Clerk of the Circuit Court of Baldwin County,

Alabama, do hereby certify that on the 29th day of September, 1947,

a Judgment was rendered by said Court in the above stated cause, wherein

E. M. RUTZ

was Plaintiff and L. T. POWELL

was Defendant, in

favor of the said Plaintiff and against the said Defendant for the sum of

(\$130.00) ONE HUNDRED AND THIRTY DOLLARS

and for the sum of (\$10.15) TEN DOLLARS AND FIFTEEN CENTS DOLLARS,

the costs in said suit, and that T. J. MASHBURN, JR.

are the Attorneys of record for the Plaintiff in said cause.

Witness my hand this 8th day of October, 1947

Alice J. Duck
Clerk, Circuit Court, Baldwin County, Alabama.

STATE OF ALABAMA, 0
COUNTY OF BALDWIN. 0

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

You are hereby commanded to summon L. T. POWELL to appear before the Circuit Court of said County, at the place of holding the same, within thirty days from the service of this writ, then and there to answer the Complaint of E. M. RUTZ, an individual, doing business as RUTZ MUSIC COMPANY, hereto attached.

WITNESS my hand this the 22nd day of August, 1946.

R. S. Luck
CLERK.

E. M. RUTZ, An Individual,
Doing Business as RUTZ
MUSIC COMPANY,
Plaintiff,
VS.
L. T. POWELL.

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

COUNT ONE: Plaintiff claims of the Defendant ONE HUNDRED AND FIVE (\$105.00) DOLLARS, under a contract entered into between Plaintiff and Defendant on January Twenty-sixth (26), 1946, which said contract is attached to the original of this complaint and made a part hereof as fully as if set out herein, which amount is due and unpaid. Plaintiff alleges that it has fully complied with the terms of said contract, and that the defendant has failed and refused to comply with said contract, although often urged to do so. Plaintiff further avers that said contract provides for the payment of a reasonable attorney's fee if one became necessary in order to effect collection under the contract, which Plaintiff now claims in the further sum of THIRTY (\$30.00) DOLLARS. Plaintiff further avers that by the terms of said contract the Defendant waives all right of exemption as to personal property under the Constitution and Laws of the State of Alabama.

COUNT TWO: The Plaintiff claims of the Defendant the following personal property, viz.: One (1) Amplifier and Two (2) Dearman Microphones, with the value of the hire or use thereof during the detention, viz.: from the Twenty-sixth (26) day of February, 1946.

COUNT THREE: The Plaintiff claims of the Defendant the sum of One Hundred and Five (\$105.00) Dollars, under the terms of a contract entered into between Plaintiff and Defendant, which contract is attached to the original of this Complaint and made a part hereof as fully as if set out herein, the terms of which Plaintiff has complied with and the Defendant has refused to comply with, and which amount is due and unpaid.

Plaintiff further avers that under the terms of said contract the Defendant agreed to pay all costs of collection, including a reasonable attorney's fee, and Plaintiff claims Thirty (\$30.00) Dollars as a reasonable attorney's fee thereunder. Plaintiff further avers that by the terms of said contract Defendant waives as to this debts all right of exemption as to personal property under the Constitution and laws of the State of Alabama.

Jelfair J. Madhubury, Jr.
Attorney for Plaintiff.

Defendant's address is
Robertsdale, Alabama.

No. 126 Mobile, Ala. 1946

This agreement certifies, that I, L. J. Powell - Robert Dale, Ala. Bof 157 have this day purchased of RUTZ MUSIC CO., of Mobile, Alabama, the following property, to-wit:

(1) Amplifier Style. No.

2 - Debutant makes At the price of \$145.00

Extras \$ Tax \$ 2.90 Total Extras \$ 2.90

for which I agree to pay to the RUTZ MUSIC CO., or its order, at its office in Mobile, Ala., the total sum of

Dollars \$147.90

Initial cash payment \$50.00

Trade In Allowance for \$

Insurance \$ To be paid

Total credits \$50.00

Leaving cash balance \$97.90

Time payment charge \$2.10

Total Unpaid Balance \$100.00

Which is payable as follows. \$21.00 per mo.

\$21.00 per mo. starting Feb. 26, 1946 Together with monthly

accommodation charge of \$ Said installments and monthly charges are both payable on the

day of each thereafter until the purchase price and all monthly charges are

paid in full together with all costs of collection, including a reasonable attorney's fee.

It is expressly agreed that the title to the above described property for which this contract is given is and shall remain in RUTZ MUSIC CO., and under their direction until paid in full. Should the said property be misused, or any attempt to dispose of or sell or remove the same from my present or future address be made by me without the written consent of RUTZ MUSIC CO., first obtained, or should I make default in the payment of any one of said installments or accommodation charge above specified, or taxes, or should the above property be attached or levied upon, or should there be failure on my part to keep any or either of the promises or agreements herein stated, then the whole amount of this contract becomes, at the option of RUTZ MUSIC CO., immediately due and payable, it being elective with the RUTZ MUSIC CO., to enforce payment, or retake the said property. Should RUTZ MUSIC CO. decide to retake the said property it shall be lawful for him, or his assigns or representatives to enter any place where the said property may be found, and take immediate possession thereof, and all damages for said entry are hereby waived, and whatever has been paid shall be retained by RUTZ MUSIC CO. for wear and tear, rent and expenses of taking the same, and for any other damage and expenses they may have have been put to on my account or in making this sale. If for any reason whatsoever the RUTZ MUSIC CO., should elect to enforce payment of this contract in lieu of repossessing the property, I do hereby waive all right of exemption, of property from levy and sale under execution or other process for the collection of any amount due under said contract under the constitution or laws of the State of Alabama, or any other State of the United States. Any waiver, or extension of time of any payment hereunder shall not be construed to be a waiver of any of the original terms or conditions of this contract and all such rights of the RUTZ MUSIC CO. may at their option be enforced notwithstanding any such waiver or extension. I agree to and do hereby assume all responsibility for loss or damage to said instrument by fire or any cause whatsoever during the life of this contract and will keep the said instrument insured for the benefit of RUTZ MUSIC CO., as their interest may appear. Tuning, if any, to be at my expense. Upon payment by me in full of this contract RUTZ MUSIC CO. shall give me a bill of sale of said property. It is further understood and agreed that this contract is not binding on the RUTZ MUSIC CO. until approved by its duly authorized officer, and that the RUTZ MUSIC CO. is not bound by any agreement not contained in this contract Time is the essence of this contract. READ CAREFULLY BEFORE SIGNING.

Witness my hand and seal this 26 day of Jan. 1946

Witness: E. L. Smith, mgt. L. J. Powell L.S.

Accepted By Date

Name.....

Address.....

How Long There..... *7 yrs.*

Previous Address.....

How Long There.....

Employed By..... *self.*

Position..... Length of Service.....

Previous Employer.....

Age..... *34* Colored ☐ Married ☒
White ☒ Single ☐

Number of Dependents..... Monthly Income.....

Name of Bank.....

Savings Account ☐ Checking Account ☐

References..... *Hoffman Furn Co, paid out Sat.*
Robert Zogaby open acct. Sat.
A. Zogaby " " "

Names and Addresses Nearest Relatives.....
A. J. Hoffe - Rofstadale

For Value Received Pay to the Order of.....

RUTZ MUSIC COMPANY

By.....

NO. 986

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

E. M. RUTZ, An Individual
Doing Business as RUTZ
MUSIC COMPANY,
Plaintiff,

vs.

L. T. POWELL,

Defendant.

TELFAIR J. WASHBURN

ATTORNEY AT LAW
Bay Minette, Alabama

SUMMONS AND COMPLAINT.

Filed Aug 22-1946

Washburn

*Executed this 22nd
day of August 1946
By leaving a copy of
this with
L. T. Powell
B. E. Washburn*

986

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term, 19 46.

To the Clerk of the Circuit Court

of Salmon County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court
of said county, in a certain cause lately pending in said Court between

Wadiah F. Hawie, Appellant,

and

J. H. Ponder, 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, pursu-
ant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered by our Court of Appeals, on
the 15th day of April, 1947, that said
judgment of said Circuit Court be in all things affirmed,

and that it was further considered that the appellant, and T. W. Wisner
and T. J. Klumpp

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

15th day of April, 1947

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

THE COURT OF APPEALS OF ALABAMA

October Term, 1946

128 Div., No. 554

Wadean F. Harris
Appellant,
vs.

J. H. Ponder, et al.
Appellee.

From Baldwin Circuit Court.

CERTIFICATE OF AFFIRMANCE.

THE STATE OF ALABAMA,
County. }

Filed this.....day of

19.....

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term 19 46.

To the Clerk of the Circuit Court
of Barbour County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court
of said county, in a certain cause lately pending in said Court between
Wadiah F. Hawie, Appellant,

and J. H. Ponder, 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, pursu-
ant to law, on behalf of said appellant_____:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered by our Court of Appeals, on
the 15th day of April, 1947, that said
judgment of said Circuit Court be in all things affirmed,

and that it was further considered that the appellant____, and T. W. Wisner
and T. J. Klemm

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
15th day of April, 1947
Charles Bricken, Jr.
Clerk, Court of Appeals of Alabama.

2.
judgment made and entered on October 31, 1946. The certificate of appeal was inadvertently filed in the Supreme Court on November 29, 1946, and the cause remained in the Supreme Court, without action, until April 10, 1947, upon which date it was transferred to this court under the provisions of Title 13, Section 96, Code of Alabama 1940, which reads as follows:

"When any case is submitted to the supreme court which should have gone to the court of appeals, it must not be dismissed but shall be transferred to the proper court, and when any case is submitted to the court of appeals which should have gone to the supreme court it shall be transferred to the supreme court."

On the date of the transfer of the cause to this court (April 10, 1947) the cause was here submitted on "Motion to affirm on Certificate."

The motion of appellee to affirm on certificate is as follows:

"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

"WHEREFORE APPELLEE MOVES 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 7, Sections 770 and 814 of the 1940 Code of Alabama."

The foregoing motion is in strict compliance with the provisions of Title 7, Section 770, Code of Alabama 1940, and said motion is hereby granted. The judgment appealed from is affirmed, and it is further ordered and adjudged that judgment is also rendered against the sureties on the supersedeas bond for the amount of the affirmed judgment, and ten per cent damages thereon, and all costs of the court, in accordance with Title 7, Section 814 of the 1940 Code of Alabama, for which execution shall issue.

AFFIRMED.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

1st Div., No. 554

Wadiah F. Hamie Appellant

v.

J. H. Ponder, Jr. Appellee

From 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 two 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

15 day of April, 1907

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

THE COURT OF APPEALS OF ALABAMA

1st Div., No. 554

Wadish & Howie
Appellant

vs.

G. H. Ponder
Appellee

From Fredwin C. C. C. Court.

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1916

The State of Alabama {
Baldwin County

IN THE CHANCERY COURT OF BALDWIN COUNTY

To WADIAH F. HAWIEOr To RICKABBY & RICKABBY, Solicitors of record.Whereas, on the 30th day of September, 1936,WADIAH F. HAWIEtook an appeal from the decree rendered on the 30th day of September
1936, by the Circuit Court of said county, in the cause ofJ. H. PONDER, doing business as The Ponder Company

versus

WADIEH F. HAWIE

Now, therefore, you are cited to appear as required by law, before the Supreme Court of
Alabama. to defend on said appeal, if you think proper so to do.

Witness my hand this 20th day of November, 1936

Alice J. Wuck
Register in Chancery.

Executed by serving
copy on the within on
Wadiah F. Hawley
Nov. 27 1946

C. E. Garrett Sheriff
H. F. Hall Deputy Sheriff

J. H. PONDER, doing _____ Complainant
business as The Ponder Company
vs.

Wadiah F. Hawley _____ Respondent

CITATION OF APPEAL

IN EQUITY

Issued 20th day of Nov. 1946

Moore Ptg. Co., Bay Minette

LAW OFFICES
RICKARBY & RICKARBY
FAIRHOPE, ALABAMA

ELLIOTT G. RICKARBY

March 5, 1947

E. G. RICKARBY, JR.

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

Dear Mrs. Duck:

IN RE PONDER COMPANY vs WADIAH F. HAWIE:

Request that you furnish us with certified
copy of supercedeas bond and certificate of
this appeal; certificate to read as enclosed.

These documents are needed under title
7, Sections 775 and 814 of the Code of Alabama.

Yours very truly,

RICKARBY & RICKARBY

By: *E. G. Rickarby, Jr.*

EGRjr:esm
2500

*Please advise costs &
we will send check*

Dir