

999

STATE OF ALABAMA,  
BALDWIN COUNTY.

IN THE CIRCUIT COURT-LAW SIDE.

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:-

You are hereby commanded to summon the Bank of Fairhope, a Corporation, to appear within thirty days from the service of this Writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Complaint of Benjamin E. Locklier.

Witness my hand this 3 day of October, 1946.

R. S. Luck  
Clerk.

COMPLAINT

BENJAMIN E. LOCKLIER,

Plaintiff,

-vs-

BANK OF FAIRHOPE,  
a Corporation,

Defendant.

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

COUNT 1:

The Plaintiff claims of the Defendant One Thousand Dollars (\$1,000), due from it by account on, to-wit, the 22nd day of June, 1946, which sum of money, with the interest thereon, is still unpaid.

COUNT 2:

The Plaintiff further claims of the Defendant One ~~thousand~~ Dollars (\$1,000), due from it by account on, to-wit, the 22nd day of June, 1946, which sum of money, with the interest thereon, is still unpaid.

COUNT 3:

The Plaintiff further claims of the Defendant One Thousand Dollars (\$1,000), due from it for money paid by the Plaintiff for the Defendant on, to-wit, the 22nd day of June, 1946, at it's request, which sum of money, with the interest thereon, is still unpaid.

COUNT 4:


The Plaintiff further claims of the Defendant One Thousand Dollars (\$1,000), due from it for money on, to-wit, the 22nd day of June, 1946, received by the Defendant to the use of the Plaintiff, which sum of money, with the interest thereon, is still unpaid.

COUNT 5:

The Plaintiff further claims of the Defendant One Thousand Dollars (\$1,000), due from it for money loaned by the Plaintiff to the Defendant on, to-wit, the 22nd day of June, 1946, which sum of money, with interest thereon, is still unpaid.

  
Attorneys for Plaintiff

Plaintiff demands a trial  
by Jury.

  
Attorneys for Plaintiff.

Executed this Oct. 5-46  
by leaving a copy of  
the within with  
Mr. Bishop, Cashier of  
Bank of Fairhope

B. E. Garrett  
Shirley  
M. D. D.S.

We the Jury  
find for the  
Plaintiff  
and assess to the  
Plaintiff  
One thousand  
Dollars (\$1000.00)  
J. R. Harding  
Foreman

BENJAMIN E. LOCKLIER,  
Plaintiff,  
-vs-

BANK OF FAIRHOPE,  
a Corporation,  
Defendant.

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

Filed October 3, 1946.

R. S. Luck  
Clerk

LAW OFFICES  
HYBART & CHASON  
Bay Minette, Alabama

BENJAMIN E. LOCKLIER  
Plaintiff

LAW #999

VS

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

BANK OF FAIRHOPE,  
A Corporation,  
Defendant

The Defendant for Answer to each count of the Complaint  
says that it is not indebted to Plaintiff in any sum in  
manner and form as alleged.

*Alvin G. Rinsley - Rinsley*  
ATTORNEYS FOR DEFENDANT

Copy of the foregoing mailed to  
Messrs Hybart & Chason

Law No. 999

BENJAMIN E. LOCKLIER  
Plaintiff

vs

BANK OF FAIRHOPE,  
A Corporation,  
Defendant

PLEAS

FILED

NOV 8 1946

R. S. DUCK, *clerk*  
REGISTRAR

RICKARBY & RICKARBY

CIVIL Div. No. 999 CERTIFICATE OF APPEAL (Civil Cases)

No. 999 Baldwin County, Circuit Court.

BENJAMIN E. LOCKLIER  
Plaintiff  
vs.

BANK OF FAIRHOPE  
Defendant

I, ALICE J. DUCK, Clerk of CIRCUIT Court,  
of BALDWIN County, Alabama, hereby certify that in the cause of

BENJAMIN E. LOCKLIER Plaintiff.....  
vs.

BANK OF FAIRHOPE Defendant...

which was tried and determined in this Court, on the 3rd day of November 19 47  
in which there was a judgment for \$1000.00 Dollars, in favor of the Plaintiff,  
(or judgment for Defendant), the Defendant on the 5th day of December  
19 47 took an appeal to the Court of Appeals Court of Alabama to be holden of and for said State.

I further certify that KIRBY WHARTON and HENRY BISHOP (for Bank of Fairhope) filed  
security for cost of appeal, to the Court of Appeals, on the 5th day of December  
19 47, and that KIRBY WHARTON and HENRY BISHOP

are sureties on the appeal bond.

I further certify that notice of the said appeal was, on the 5th day of December  
19 47, served on HYBART & CHASON as attorney of record for said  
appellee, and that the amount sued for was \$1000.00 Dollars.  
(or certain lands) (or personal property)

Witness my hand and seal of this Court, this the 10th day of December 19 47

Clerk of the Circuit Court of

Baldwin County, Alabama

I Charge you Gentlemen of  
the Jury that if you believe  
the evidence in this case  
you must find for the  
Plaintiff for \$1000<sup>00</sup>.

~~Geo. W. Pettit~~  
Judge

If the jury believe from the evidence  
that the thousands dollars here  
for was paid to Marguerite and which and  
by their agent turned over to the Bank  
of Fairhope, they must find for the de-  
fendants.

Before the jury can find for the Plaintiff  
they must first reasonably believe that  
Plaintiff paid the thousands dollars  
in question to the Bank of Fairhope as  
a payment by him and not as a pay-  
ment to Marguerite and which.

For Plaintiff to recover he must show  
that a contractual relation existed be-  
tween Plaintiff and Defendant and

refused  
Judge



BENJAMIN E. LOCKLIER,  
Plaintiff

LAW #999

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

vs

BANK OF FAIRHOPE,  
A Corporation,  
Defendant

The Defendant shows to the Court that the Plaintiff is a non-resident of the State of Alabama and here moves that before proceeding in this cause he be required to furnish security for the costs of Court. Defendant reserves the right to plead or demur if and when adequate security for costs is furnished.

*Reisley & Reisley*  
ATTORNEYS FOR DEFENDANT

499

BENJAMIN E. LOCKLIER  
Plaintiff

vs

THE BANK OF FAIRHOPE,  
A Corporation,  
Defendant

MOTION TO REQUIRE SECURITY  
FOR COSTS

FILED  
NOV 2 1946  
R. S. DUCK, CLERK

RICKARBY & RICKARBY  
ATTORNEYS FOR DEFENDANT

STATE OF ALABAMA:

BALDWIN COUNTY:

KNOW ALL MEN BY THESE PRESENTS that we, THE BANK OF FAIRHOPE, as principal, and K I R B Y W H A R T O N and HENRY G. BISHOP as surety are held and firmly bound unto BENJAMIN E. LOCKLIER, his heirs, Executors and administrators in the sum of TWO THOUSAND FIFTY DOLLARS for the payment of which we jointly and severally bind ourselves our heirs, Executors and administrators firmly by these presents.

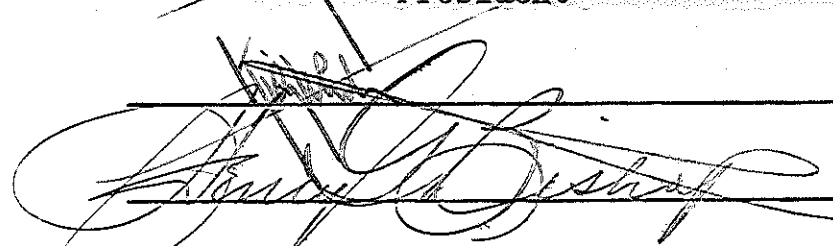
THE CONDITIONS OF THE ABOVE OBLIGATION ARE SUCH, That whereas the above Bank of Fairhope has this day applied for and obtained an appeal returnable to the term 1948 of the Supreme Court of Alabama to supersede and reverse a judgment recovered by the said Benjamin E. Locklier against the said Bank of Fairhope at the November term 1947 of the Circuit Court of Baldwin County, Alabama for ONE THOUSAND DOLLARS besides costs.

NOW if the said Bank of Fairhope shall prosecute to effect its said suit in the Supreme Court of Alabama and shall pay and satisfy such judgment as the Supreme Court shall render in this case, then this obligation to be void otherwise to remain in full force and effect

BANK OF FAIRHOPE

by:-

  
President

  
Taken and approved this the

15th day of December, 1947.

  
Clerk.

BENJAMIN E. LOCKLIER,  
Complainant

-VS-

BANK OF FAIRHOPE,  
Defendant

.....  
APPEAL BOND  
.....

*Filed*

*12-5-47*

*Wm. J. Smith  
Clerk*

The State of Alabama )  
Baldwin County

IN THE CHANCERY COURT OF BALDWIN COUNTY

To Benjamin E. LocklierOr To Hybart and Chason, Solicitors of record.Whereas, on the 5th day of December, 193<sup>47</sup>,Bank Of Fairhopetook an appeal from the decree rendered on the 3rd day of November  
193<sup>47</sup>, by the Circuit Court of said county, in the cause of \_\_\_\_\_BENJAMIN E. LOCKLIER

versus \_\_\_\_\_

BANK OF FAIRHOPE

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 5th day of December, 193<sup>47</sup>

Alice J. [Signature]  
Register in Chancery.

Received in Sheriff's Office  
this 6 day of Nov, 1947  
TAYLOR WILKINS, Sheriff

Executed By serving a  
Copy of Citation of Appeal  
on John Chason atty  
This the 6th Day of Dec.  
1947.

Taylor Wilkins Sheriff  
Jolie B. Griffin D.S.

~~BENJAMIN E. LOCKLIN~~ Complainant

vs.

~~BANK OF FAIRHOPE~~ Respondent

## CITATION OF APPEAL

IN EQUITY

Issued — 5th day of December 1947 —

Moore Ptg. Co., Bay Minette

December 4, 1947

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

Dear Mrs. Duck:

LOCKLIER VS. BANK OF FAIRHOPE: With this you will find a supersedeas bond that supersedes the execution of the judgment in this case which we are now appealing and on which we ask that you issue a citation to plaintiff's counsel, as required by law.

We ask also that you pass on to the official stenographer our request for a certified copy of the testimony in this cause. We would also be glad to know if you located the three charges which the defendant requested and which the Court refused.. These were left on the Judge's desk, after the case was tried.

Very truly yours,

*Elliott G. Rickarby*

for:  
RICKARBY & RICKARBY

EGR:la  
2543.  
encl.

BENJAMIN E. LOCKLIER,  
Plaintiff

-vs-

BANK OF FAIRHOPE,  
Defendant.

IN THE CIRCUIT COURT  
OF BALDWIN COUNTY, ALABAMA  
AT LAW

### OBJECTIONS TO TRANSCRIPT

Comes the Plaintiff, Benjamin E. Locklier, and makes the following objections to the certified transcript heretofore filed with the Clerk on January 26, 1948, said objections being made as provided by Supreme Court Rule 48, and as grounds for said objections would show as follows:

- (1) Said Certified Transcript was not filed within the time provided by Law and Rule of the Supreme Court of Alabama.
- (2) First Page- The name "Frank J. Tipler, Jr., Andalusia, Alabama" should appear as Counsel for Plaintiff rather than "Mr. Prestwood".
- (3) Plaintiff neither admits nor denies the other two corrections which Attorney for Defendant claims are errors in the Transcript.
- (4) On page 9 of the Transcript, Mr. Benjamin E. Locklier, Sr. is shown as Plaintiff in the Cause when it should appear that he is a witness for the plaintiff.
- (5) On page 10 of the transcript where Mr. Chason offered in evidence the Certified Copy of Birth Certificate the Transcript says "that the names of the parties have not been corrected" when it should correctly state "that the names of the parties have been corrected".
- (6) Immediately after the Plaintiff rested his case there appears "Mr. O. C. Wheeler, One of the Defendant, Being Duly Sworn, Testified", when in fact Mr. Wheeler was a witness for the defendant and not a defendant.
- (7) The pages of the Transcript are not numbered.

HYBART & CHASON

BY:   


Attorneys for Plaintiff.

I, John Chason, one of the Attorneys of Record for Plaintiff, hereby certify that I have furnished a copy of the above objections to Hon. Elliott G. Rickarby, Sr., the attorney for Defendant, by



mailing a copy of same to him at his business address in Fairhope,  
Alabama by United States Mail, postage prepaid, and do hereby  
certify that I have, by copy hereof notified him that the above  
objections will be called to the attention of the Hon. Joe M.  
Pelham, Jr., at his office in Chatom,  
Alabama, on the 7th day of February, 1948, at  
11 o'clock, A. M.

Done this 2 day of February, 1948.

  
\_\_\_\_\_  
One of the Attorneys of Record  
for Plaintiff.

OBJECTIONS TO TRANSCRIPT.

67-101015 66-104103-1931

BENJAMIN E. LOCKLIER,  
Benjamin E. Locklier  
Plaintiff,

-VS-

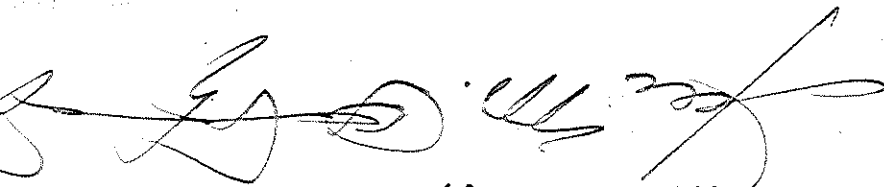
BANK OF FAIRHOPE,  
Bank of Fairhope  
Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA,  
Baldwin LAW SIDE, Alabama,  
Law side.

Filed February 2, 1948.

Alice J. Enck  
Clerk.

JMP:s

  
Yours sincerely,

With regards, I am

action in the matter immediately.  
order striking the transcript as they may wish to take some  
vs. Bank of Fairhope. You may notify the parties of this  
the objections to the transcript in the case of Locklier  
Inclosed herewith you will find my order sustaining

Dear Mrs. Duck:

Mrs. Alice J. Duck  
Bay Minette, Alabama

April 15, 1948

CHATOM, ALABAMA

First Judicial Circuit of Alabama

CIRCUIT COURT

ELIZA  
COT  
H. C. SCOTT  
REPORTER

JOE M. PELHAM, JR.  
JUDGE

BENJAMIN E. LOCKLIER,

Plaintiff.

vs.

BANK OF FAIRHOPE, a corporation,

Defendant.

In Circuit Court,  
Baldwin County, Alabama  
At Law

This case is submitted to the Court on objections filed by the plaintiff to the transcript filed in this Court on January 26, 1948 by the defendant.

The record shows that this case was tried on November 3, 1947 and resulted in a verdict for the plaintiff for \$1,000.00 and judgment was rendered accordingly; that the defendant did not file a motion for a new trial; that the transcript was filed with the Clerk of the Court on January 26, 1948; and that the plaintiff filed his objections to the transcript with the Clerk of the Court on February 2, 1948.

The case of Dewrell vs. Kearley, 32 So. 2d 812, says that the statute designed to abolish bills of exceptions is void as inconsistent and unworkable. It further says that by reason of this invalidity of the 1945 Act that the 1943 Act and the Supreme Court Rules provide that the transcript must be filed within seventy days from the original judgment or ruling on motion for a new trial.

This reverts us to the Rule 48, which provides as follows:

"The party taking the appeal and requesting a transcript of the evidence made and certified by the court reporter, in the exercise of reasonable diligence, to comply therewith within a period of seventy days from the date of trial or the date on which a motion for new trial shall have been acted upon by the Court, and within said period the reporter shall perform the services required by Section One of General Acts."

In this cause it appears that the transcript was not filed until eighty-four days after the date of the

judgment. Since the transcript was not filed within seventy days from the date of the trial, it should be stricken.

It is hereby ordered, adjudged and decreed that the objections filed by the plaintiff in this cause on February 2, 1948 be, and the same are hereby granted and the transcript be, and the same is hereby stricken.

Issued on this the 15th day of April, 1948.

---

Judge.

BENJAMIN E. LOCKLIER,

Plaintiff.

vs.

BANK OF FAIRHOPE, a corporation,

Defendant.

¶

¶

In Circuit Court,  
Baldwin County, Alabama  
At Law

¶

¶

This case is submitted to the Court on objections filed by the plaintiff to the transcript filed in this Court on January 26, 1948 by the defendant.

The record shows that this case was tried on November 3, 1947 and resulted in a verdict for the plaintiff for \$1,000.00 and judgment was rendered accordingly; that the defendant did not file a motion for a new trial; that the transcript was filed with the Clerk of the Court on January 26, 1948; and that the plaintiff filed his objections to the transcript with the Clerk of the Court on February 2, 1948.

The case of Dewrell vs. Kearley, 32 So. 2d 812, says that the statute designed to abolish bills of exceptions is void as inconsistent and unworkable. It further says that by reason of this invalidity of the 1945 Act that the 1943 Act and the Supreme Court Rules provide that the transcript must be filed within seventy days from the original judgment or ruling on motion for a new trial.

This reverts us to the Rule 48, which provides as follows:

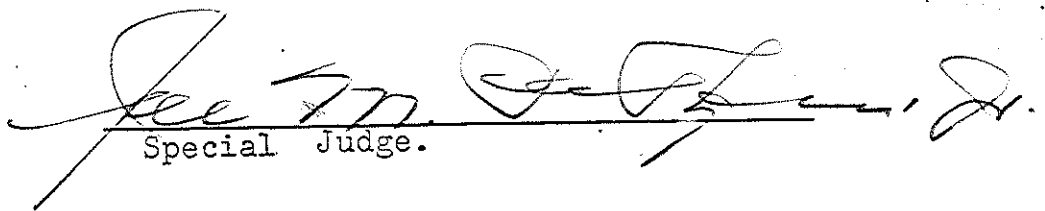
"The party taking the appeal and requesting a transcript of the evidence made and certified by the court reporter, in the exercise of reasonable diligence, to comply therewith within a period of seventy days from the date of trial or the date on which a motion for new trial shall have been acted upon by the Court, and within said period the reporter shall perform the services required by Section One of General Acts."

In this cause it appears that the transcript was not filed until eighty-four days after the date of the

judgment. Since the transcript was not filed within seventy days from the date of the trial, it should be stricken.

It is hereby ordered, adjudged and decreed that the objections filed by the plaintiff in this cause on February 2, 1948 be, and the same are hereby granted and the transcript be, and the same is hereby stricken.

Issued on this the 15th day of April, 1948.

  
Special Judge.

999

Locklier

vs.

Bank of Fairhope, a corp..

Decree Sustaining objections  
to transcript.

4- 15 - 48.

Filed April 17, 1948.

Rene J. Seneck  
Clerk

999



THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term, 1907

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

Bank of Fairhope, Appellant,

and

Benjamin E. Lockier, Appellee,

wherein by said Court, at the regular Term, 1907, 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

22 day of April 1908

, that the said appeal be and <sup>dismissed for want of prosecution</sup> stand dismissed, and that it was further considered that the appellant, and

Kirk Wharton & Henry S. Bishop,

sureties on the appeal bond Pay the Judgment of the Circuit Court ten per cent damages thereon with interest and

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

22 day of April 1908

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

THE COURT OF APPEALS OF ALABAMA

October Term, 1947

1st Div. No. 564

Bense of  
Fairhope

Appellant.....

v.

Benjamin E.  
Laskier

Appellee.....

From Baldwin Circuit Court

CERTIFICATE OF DISMISSAL

No opinion

The State of Alabama,

Baldwin County.

} Filed

this 26 day of April 1948

Alice G. Duck  
clerk