

1165

FRANK KELLY

PLAINTIFF

VS

W. F. HAWIE

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

We, W. F. Hawie, as principal and the undersigned as sureties acknowledge ourselves security for the costs of appeal to the Supreme Court of Alabama, of the above styled case, by W. F. Hawie the Defendant against whom a judgment was rendered therein at the July Term 1950 of the Circuit Court of Baldwin County, Alabama.

Signed and sealed this the 31 day of August, 1950.

W. F. Hawie (SEAL)

M. O. Berlin (SEAL)

E. Roberts (SEAL)

Taken and approved this the 1st day of Sept, 1950.

Alice J. Spuck
Clerk

JOHN F. KELLY

PLAINTIFF

VS

J. F. HART

DEFENDANT

Filed 7-1-50
Ruef. Lucke
Clerks.

JUN 28 1951

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

SUPREME COURT OF ALABAMA

SPRING TERM, 1951.

1 Div. 435.

W. F. Hawie

v.

Frank Kelly

Appeal from Baldwin Circuit Court.

LIVINGSTON, CHIEF JUSTICE.

The appeal is from a judgment for plaintiff in the court below.

The complaint consisted of two counts in Code form. Count one claimed of the defendant the sum of \$559.11 due from him on an open account on, towit, August 31, 1947. Count two claimed a like sum due from defendant for monies,

2.

on, towit, the first days of February, March, April, May, June, July and August 1947, received by the defendant to the use of the plaintiff.

To the complaint, and to each count thereof, separately and severally, the defendant interposed a plea of the general issue, a plea of payment, and three special pleas of set-off which, in substance, alleged that the plaintiff was indebted to the defendant in the sum of \$1658.00 on an open account; a like sum for money loaned by defendant to plaintiff, and a like sum due by an account stated between the parties.

To these pleas the plaintiff interposed a general replication and six special replications. Replications two and three were to the effect that the matters relied upon in the special pleas claiming money due from plaintiff to defendant on an open account, and for money loaned by defendant to plaintiff, were barred by the statute of limitations for three years. Replications four, five, six and seven were to the effect that the defendant was estopped from asserting these claims because of certain judgments rendered by the Inferior Criminal Court of Mobile County, civil side, and by the Circuit Court of Mobile County.

The defendant did not demur to these replications but joined issue thereon, and when the evidence was close the trial court gave the affirmative charge for the plaintiff on the pleas of set-off, and the jury returned a verdict for plaintiff on the complaint.

3.

Briefly stated the evidence disclosed the following facts.

In 1945 defendant and plaintiff formed a partnership to operate a business in Mobile known as Kelly's Oyster Bar. Defendant furnished the money for the venture and plaintiff had charge of its operation and management. The business was sold to one Hammond after less than a year's operation, a part of the consideration paid by Hammond was certain promissory notes made payable to defendant, but with the understanding that plaintiff would receive one half of the proceeds of said notes when paid as his share of the purchase price. Some difficulty arose over the financial arrangements and plaintiff brought suit in the Inferior Criminal Court of Mobile, civil side, for his shares of the proceeds of the three notes which had then become due. To that claim defendant interposed a plea of set-off arising out of damages done to his automobile by plaintiff while in his possession. In that suit defendant had judgment. Meanwhile plaintiff filed suit for his share of another one of the Hammond notes which had become due and obtained a judgment in the Inferior Criminal Court of Mobile, civil side, and which judgment was affirmed, on certiorari, by the Circuit Court of Mobile County. Shortly thereafter the instant action was commenced.

Defendant first insists that the trial court was in error in admitting in evidence the notes of Hammond because there was nothing to show that the defendant had received any money from the payment of them. Even if this argument is sound and the rulings erroneous, which we do not decide, it would be error without injury. The defendant himself

4.

admitted in his testimony that he had received money from the notes. Where the trial court erroneously admits evidence which is inadmissible at that time, but the fact which rendered it inadmissible is subsequently established by clear and undisputed evidence, such error is harmless and will not work a reversal of the case. - National Surety Co. v. Boone, 227 Ala. 599 , 151 So. 447; Gay & Bruce v. Citizens National Bank of Lineville, 215 Ala. 114, 110 So. 19; Espalla v. Wilson, 86 Ala. 487, 5 So. 867.

Defendant also argues that the trial court erroneously gave the affirmative charge for plaintiff on the three pleas of set-off. In support of this contention he relies on the proposition that the judgments in Mobile did not bar him or estop him from asserting his claims in the present action - in other words, that the replications were defective. But conceding that the replications were insufficient and did not present a legal defense, the defendant cannot complain of their sufficiency in this court. He did not demur to the replications, but chose instead to join issue thereon, and the allegations were conclusively proved. Where issue is taken on an immaterial or defective plea or replication and the allegations are proved, the pleader is entitled to the affirmative charge as to the issues raised thereby.- Austin v. Clark, 247 Ala. 560, 25 So. 2d 415; Rhode Island Ins. Co. v. Walden, 217 Ala. 510, 116 So. 693; Western Union Telegraph Co. v. Albertville Canning Co., 167 Ala. 342, 52 So. 885; Liverpool & London & Globe Ins. Co. v. Tillis, 110 Ala. 201, 17 So. 672.

Affirmed.

Foster, Lawson and Stakely, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 435,

W. F. Hawie, Appellant,

vs.

Frank Kelly, Appellee,

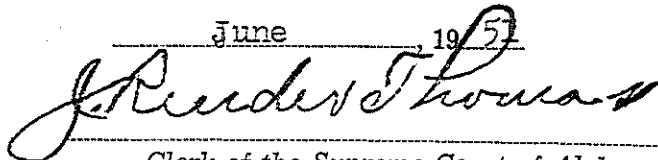
From Baldwin Circuit Court.

The State of Alabama, }
City and County of Montgomery, }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to 4 inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, this the 28th day of

June, 1951



Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 1950-51

1 Div., No. 435

W. F. Hawie

Appellant,

vs.

Frank Kelly

Appellee.

From Baldwin Circuit Court.

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1950

WILLIAM V. McDERMOTT
LAWYER
614 FIRST NATIONAL BANK ANNEX
MOBILE, ALABAMA

20 April 1948

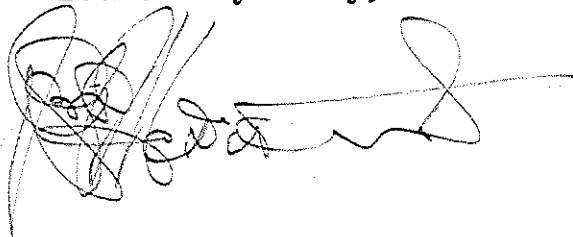
Mrs. Alice Duck, Clerk
Circuit Court
Bay Minette, Alabama.

RE: FRANK KELLY vs. W. F. HAWIE

Dear Mrs. Duck:

Please file the enclosed complaint and advise
me the date you have set this case for trial.

Yours very truly,

A handwritten signature in dark ink, appearing to be 'W. McDermott', written in a cursive style.

M/f-

FRANK KELLY,)	CIRCUIT COURT OF BALDWIN
Plaintiff,)	COUNTY, ALABAMA,
Versus)	AT LAW.
W. F. HAWIE,)	
Defendant.)	NO. 1165

Comes the plaintiff in the above entitled cause and for replication, separately and severally, to pleas A, B, C, and D as filed by defendant herein, pleads separately and severally to each of said pleas as follows:

ONE. For his general replication, the plaintiff joins issue on said plea.

TWO. For special replication to said plea the plaintiff says that the indebtedness claimed due by account on to-wit, during the months of October and November 1945 is barred by the Statute of Limitations of three years.

THREE. For further special replication to said plea, the plaintiff says that the indebtedness claimed for money loaned the plaintiff by the defendant during the months to-wit October and November 1945 is barred by the Statute of Limitations for three years.

FOUR. For further special replication to said plea, plaintiff avers that defendant is estopped to now claim such indebtedness of plaintiff to defendant as an offset against the claim of plaintiff with judgment over for the excess, for this: That the indebtedness here claimed by plaintiff against defendant grew out of an agreement of sale by plaintiff and defendant, as the joint and equal owners thereof, to one G. S. Hammond, of that certain business at 5 North Jackson Street in the City and County of Mobile, Alabama, on to-wit April 4, 1946, for the sum of \$1800.00 and the payment of certain specified indebtednesses, said \$1800.00 being evidenced by a series of twelve promissory notes each in the sum of \$150.00 and payable one note each month beginning September 1, 1946,

a true and correct copy of which agreement of sale is attached hereto as Exhibit A and expressly made a part hereof the same as if herein set forth at length; that said series of twelve (12) promissory notes were, with plaintiff's consent, made payable solely to the order of defendant, with the agreement between plaintiff and defendant that as each note was paid by said G. S. Hammond, defendant would promptly pay over to plaintiff the latter's one-half portion thereof. Plaintiff further avers that defendant did not pay to him his said one-half portion of the monies evidenced by and paid to defendant by said G. S. Hammond for the aforesaid notes due on the first days of September, October and November, 1946, and on to-wit November 3, 1946, plaintiff sued defendant therefor on the Civil Side of the Inferior Criminal Court of Mobile County, Alabama under the common counts; that in said suit defendant filed, in addition to the general issue, a plea of set-off and recoupment for the sum of Three Hundred Dollars (\$300.00) for damages to an automobile of defendant caused or suffered while such automobile was being used by plaintiff, and on the trial of said cause on January 30, 1947, under the aforesaid issues, judgment was rendered for defendant. Just prior to said trial and judgment and on to-wit January 23, 1949, plaintiff filed suit against defendant on the Civil Side of said Inferior Criminal Court of Mobile County, Alabama seeking recovery from defendant under the common counts of plaintiff's one-half portion of the monies evidenced by and paid to defendant by said G. S. Hammond for the aforesaid notes due on the first days of December, 1946 and January, 1947, and for the trial thereof on February 13, 1947, defendant was present in person and represented by counsel, on which trial judgment was rendered for plaintiff and against defendant for the sum of \$156.23, besides costs; this said judgment was by defendant taken by certiorari to the law side of the Circuit Court of Mobile County, Alabama, and on the trial thereof in said Court on to-wit February 14, 1948, judgment was

rendered for plaintiff and against defendant for the sum of \$165.50 and costs of court, which said judgment and costs were paid by defendant. And plaintiff avers that his complaint in this cause seeks the recovery from defendant under the common counts of plaintiff's one-half portion of the monies evidenced by and paid to defendant by said G. S. Hammond for the aforesaid notes due on the first days of February, March, April, May, June, July and August, 1947; that the indebtedness now claimed of plaintiff by defendant by way of set-off and recoupment in said plea was, as affirmatively appears therefrom, in existence and available to defendant as a claim against plaintiff on and long prior to November 8, 1946, when plaintiff first sued defendant for monies as hereinabove set out, under the common counts, due from defendant to plaintiff growing out of receipt of payment by defendant of the first three of the series of twelve promissory notes above referred to. That the judgment of said Inferior Court above referred to on January 30, 1947, and the judgment of the Circuit Court of Mobile County, Alabama, At Law, on February 14, 1948, now estop defendant to claim of plaintiff, by way of set off and recoupment, the indebtedness referred to in said plea.

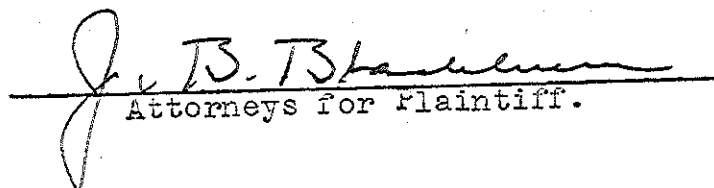
FIVE. For further special replication to said plea, plaintiff adopts all of special replication 4 above, exclusive of the last sentence in said special replication 4, the same as if the allegations of said replication were set forth herein at length. The plaintiff further avers that the judgment of said Inferior Court herein referred to rendered on January 30, 1947, constitutes and was and is res judicata as to the matters and things averred and claimed by defendant of plaintiff in said special plea.

SIX. For further special replication to said plea, plaintiff adopts all of special replication 4 above, exclusive of the last sentence in said special replication 4, the same as if the allegations of said replication were set

forth herein at length. The plaintiff further avers that the judgment of said Circuit Court of Mobile County, Alabama, at Law, on February 14, 1948, constitutes and was and is res judicata as to the matters and things averred and claimed by defendant of plaintiff in said special plea.

SEVEN. For further special replication to said plea, plaintiff adopts all of special replication 4 above, exclusive of the last sentence in said special replication 4, the same as if the allegations of said replication were set forth herein at length. The plaintiff further avers that the judgment of said Inferior Court on January 30, 1947 and the judgment of the Circuit Court of Mobile County, Alabama, at Law on February 14, 1948, constitute and were and are res judicata as to the matters and things averred and claimed by defendant of plaintiff in said special plea.




Attorneys for Plaintiff.

RECORDED

1165

Please

Filed 3-29-53

*Miss. & Mrs.
Clerke*

FRANK KELLY	§	
PLAINTIFF	§	IN THE CIRCUIT COURT OF
VS	§	BALDWIN COUNTY, ALABAMA
W. F. HAWIE	§	AT LAW
DEFENDANT	§	NO. 1165

Now comes the Defendant and amends his answer heretofore filed in this cause, by adding the following:

A.

That the account sued on was paid in full before the commencement of this action.

B.

That the Plaintiff at the time of the filing of the suit in this cause, was indebted to the Defendant in the sum of SIXTEEN HUNDRED AND FIFTY EIGHT (\$1658.00) DOLLARS, due from the Plaintiff to the Defendant by account on to-wit during the months of October and November, 1945, which sum of money with interest thereon is still due and unpaid, and which the Defendant offeres as a set off against the claim of the Plaintiff and prays judgment for the excess.

C.

That the Plaintiff was indebted to the Defendant, at the time of the commencement of this suit, in the sum of SIXTEEN HUNDRED AND FIFTY EIGHT (\$1658.00) DOLLARS, for money loaned the Plaintiff by the Defendant during the months of to-wit, October and November, 1945, which sum of money with interest thereon is still due and unpaid, and which the Defendant offers as a set off against the claim of the Plaintiff, and prays judgment for the excess.

D.

That the Plaintiff, at the time of the commencement of this suit was indebted to the Defendant in the sum of SIXTEEN HUNDRED AND FIFTY EIGHT (\$1658.00) DOLLARS, on account stated between the Plaintiff and the Defendant on to-wit, the 1st day of January, 1946, which sum of money with the interest thereon is still due and unpaid, and which the Defendant offers as a set off against the claim

of the Plaintiff, and prays judgement for the excess.

J. M. Lee

Attorney for the Defendant

Amended Answer

RECORDED

FILED

NOV 1 1949

ALICE J. DUCK, Clerk

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA, }
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 1165

TERM, 194

TO ANY SHERIFF OF THE STATE OF ALABAMA :

You Are Hereby Commanded to Summon W. 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

W. F. Hawie, Defendant

by

Frank Kelly, Plaintiff

Witness my hand this 21st day of April 1948

Alice J. Luck, Clerk.

FRANK KELLY,

Plaintiff,

versus

W. F. HAWIE,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW


NO. _____

COUNT ONE

Plaintiff claims of the Defendant the sum of Five Hundred Fifty Nine and 11/100 Dollars (\$559.11) due from him by account on towit August 31, 1947, which sum of money together with the interest thereon is still due and unpaid.

COUNT TWO.

Plaintiff claims of the Defendant the sum of Five Hundred Fifty Nine and 11/100 Dollars (\$559.11) for monies on towit the first days of February, March, April, May, June, July and August 1947, received by the Defendant to the use of the Plaintiff, which sum of money together with the interest thereon is still due and unpaid.



Attorney for Plaintiff.

1165-

RECORDED

Frank Kelly

vs.

W. F. Horne

Summons & Complaint

FILED

APR 21st 1948

ALICE J. DUCK, Clerk

Received in Sheriff's Office
this 23 day of April, 1948
TAYLOR WILKINS, Sheriff

Exhibit - 5-8 1948
by serving copy of within Summons and
Complaint on

W. F. Horne

Taylor Wilkins Sheriff

By J. J. Starnes Deputy Sheriff

June 26 1950
3-55 P.M.

We the jury award the plaintiff
judgment of (\$525.00) Five hundred
twenty ^{five} dollars plus interest from date
suit was filed (Interest at 6%)

Frank Starnes Foreman

We the jury find for the plaintiff
and assess his damages at \$593.25.

Frank Starnes
Foreman

Kelly v. Hawie

No.	Name	Occupation	Residence
(1.)	JOHN DEAN	Truck Driver	Stapleton, Ala
2.	JOE A. KLUMPP P 8	Merchant	Poit Clear
3.	PAUL :HAUPT, JR P 1	Farmer	Elberta
4.	RUFUS M. ROBINSON P -	Farmer	Bay Minette
(5.)	ANDY McDANIEL	Farmer	Robertsdale
6.	HURLEY V. STREET D ✓	Ice Plant	Fairhope
(7.)	B. N. PATTERSON	Merchant	Bon Secour
8.	CHARLES HEIDELBERG P 7	Farmer	Silverhill
(9.)	JOE STUCKEY	SawMill	Bay Minette
(10.)	HOWARD BLAXINDALE	Forrester	Stapleton
11.	RUDOLPH ERDMAN D S	Plumber	Magnolia Springs
(12.)	WOODROW WILKS	Truck Driver	Robertsdale
13.	JULIO CORTE P S -	Farmer	Belforest
14.	WILLIE R. COOPER D 6	Farmer	Rosinton
(15.)	MAXWELL JEWELL	Merchant	Foley
16.	MAX VINES P 4	State Employee	Bay Minette
(17.)	HARRY DECKER	Electrician	Bon Secour
18.	WARD MAURER P 3	Farmer	Magnolia Springs
19.	EVAN S. HIGBEE D 9	Farmer	Belforest
(20.)	FRANK SMITH	Merchant	Foley
21.	PAT BROCK D 3	Live Stock Dealer	Loxley
22.	RAY SURVANT D 8	Linesman	Foley
23.	GEORGE E. FULLER D 1	Theatre Operator	Fairhope
24.	MARSHALL CROSBY D 4	Turpentine	Magnolia Springs
(25.)	FRANK STURMA	Merchant	Silverhill
26.	FRED COUSINS P 7	Fisherman	Foley
(27.)	JOHN HESSE	Seafood Dealer	Foley
(28.)	JOHN BECK	Defense	Foley
29.	MORTON D. COX P 6	Contractor	Stockton
30.	CLARENCE WALKER D 7	Merchant	Orange Beach

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 day of August, 1950 ~~Monday in~~ 194, in a cer-
tain cause in said Court wherein FRANK KELLY
Plaintiff, and W. F. HAWIE
Defendant, a judgment was rendered against said
W. F. HAWIE
to reverse which, the said W. F. HAWIE
applied for and obtained from this office an APPEAL, returnable to the Next
Term of our Supreme Court of the State of Alabama, to be held at Montgomery,
on the day of, 194 next, and the necessary bond
having been given by the said W. F. HAWIE
with M. O. BERGLIN AND E. J. ROBERTS, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said

W. F. HAWIE, W. F. DEMOTT or J. B. BLACKBURN

....., attorney, to appear at the Next Term of our
said Supreme Court, to defend against the said Appeal, if he think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 2nd
day of September, A. D., 19450.

Attest:

Alice J. Duck, Clerk.

Received in Sheriff's Office
this 2 day of Sept. 1950
TAYLOR WILKINS, Sheriff

EX-101 9-9 1950
a. serving copy of within Summons and
complaint on

J. B. B. Lachman
Attorney

Taylor Wilkins
By W. F. Hall Deputy Sheriff

1165

CIRCUIT COURT
Baldwin County, Alabama

Frank Kelly

Vs. } Citation in Appeal

W. F. Hamie

Issued 2 day of Sept., 19450

Div. No. _____ **CERTIFICATE OF APPEAL (Civil Cases)**

No. 1165 Baldwin County, Circuit Court.

FRANK KELLY
Plaintiff
vs.
W. F. HAWIE
Defendant

I, Alice J. Duck, Clerk of Circuit Court,
of Baldwin County, Alabama, hereby certify that in the cause of
FRANK KELLY Plaintiff, vs.
W. F. HAWIE Defendant,

which was tried and determined in this Court on the 2nd day of August 1950
~~Motion for New Trial Over-ruled~~
in which there was a judgment for _____ Dollars, in favor of the Plaintiff,
~~XXXXXXXXXXXXXXXXXXXX~~ (or judgment for Defendant), the _____ on the _____ day of _____

19____ took an appeal to the _____ Court of Alabama to be holden of and for said State.

I further certify that FRANK KELLY filed
security for cost of appeal, to the Supreme Court, on the 1st day of September
1950, and that M. O. BERGLIN AND E. J. ROBERTS

are sureties on the appeal bond.

I further certify that notice of the said appeal was, on the _____ day of _____
19____, served on _____ as attorney of record for said
appellee, and that the amount sued for was _____ Dollars.
(or certain lands) (or personal property)

Witness my hand and seal of this Court, this the 2nd day of September 1950

Clerk of the Circuit Court of

County, Alabama

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 50-51

To the Clerk of the Circuit Court,
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

W. F. Hawie, Appellant,
and
Frank Kelly, Appellee,

wherein by said Court it was considered adversely to said appellant—, were brought before our
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant—:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by
our Supreme Court, on the 28th day of June, 19 51, that said

Judgment of said Circuit Court be in all things
affirmed, and that it was further considered, ordered, and adjudged that the appellant—, ~~and~~
W. F. Hawie, and M. O. Berglin and E. J. Roberts, sureties
on the appeal bond, pay - - - - -

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution
issue.

Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, at the Judicial Department
Building, this the 28th day of

June, 19 51.

J. Render Thomas
Clerk of the Supreme Court of Alabama.

No. 1165

THE SUPREME COURT OF ALABAMA

October Term, 19 50-51

1st Div., No. 435

W. F. Hawie

Appellant,

vs.

Frank Kelly

Appellee.

From Baldwin Circuit Court.

CERTIFICATE OF
AFFIRMANCE

The State of Alabama,

County.

} Filed

this 2nd day of July 1957

Reuben H. Clark

FRANK KELLY,

PLAINTIFF

VS

W. F. HAWIE,

DEFENDANT,

IN THE CIRCUIT COURT


OF BALDWIN COUNTY,

ALABAMA.


AT LAW

Now comes the Defendant and for answer to
the Plaintiff's complaint, and to each count thereof,
separately and severally, says:

The facts therein alleged are untrue.


Attorney for the Defendant.

The Defendant demands a trial
by jury.


Attorney for the Defendant.

RECORDED

#1165

FRANK KELLY,

PLAINTIFF

VS

W. F. HAWIE,

DEFENDANT

ANSWER

filed
6-4-48
A. J. L. much
clerk

FRANK KELLY

PLAINTIFF

VS

W. F. HAWIE

DEFENDANT

IN THE CIRCUIT COURT OF

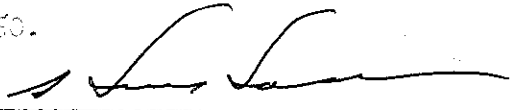
BALDWIN COUNTY, ALABAMA,

AT LAW

TO: Frank Kelly and/or W. F. Demott and/or J. B. Blackburn.

Notice is hereby given that the Defendant has taken an appeal to the Supreme Court of the State of Alabama, from the judgment rendered in the Circuit Court of Baldwin County, Alabama, at the July term 1950 against the Defendant in the above styled cause.

Dated this the 31st day of August, 1950.


Attorney for the Defendant

FRANK KELLY

PLAINTIFF

VS

W. F. HAWIE

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 1165

Now comes the Defendant, W. F. Hawie, and moves the court to set aside the verdict and judgment heretofore rendered in this cause and grant him a new trial and as grounds for said motion sets out the following separately and severally:

1.

That the verdict and judgment is contrary to the law in the case.

2.

That the verdict and judgment is contrary to the facts in the case.

3.

That the verdict and judgment is contrary to the law and evidence in the case.

4.


That the court erred in giving Charge no. one at the request of the Plaintiff as follows: "The Court charges the jury that, if you believe the evidence in this case, you cannot find for defendant under Plea B filed by the defendant."

5.

That the court erred in giving Charge No. two at the request of the Plaintiff as follows: "The Court charges the jury that, if you believe the evidence in this case, you cannot find for defendant under Plea C filed by the Defendant."

6.

That the court erred in giving Charge No. three at the request of the Plaintiff as follows: "The Court charges the jury that, if you believe the evidence in this case, you cannot find for defendant under Plea D filed by the defendant".


Attorney for the Defendant

RECORDED

FRANK KELLY

PLAINTIFF

VS

W. F. HAYTE

DEFENDANT

MOTION FOR NEW TRIAL

FILED

JUL 25 1950

ALICE J. DUCK, Clerk

Continued to and
set for hearing
at 10:00 A.M. on
August 2, 1950.

Done this 25th
day of July, 1950.

Telfair J. Maddox Jr.
Judge.

- 5 Testimony
- 6 Given Charges
- 7 Judgment Entry