Testimony

p 360

CAMPBELL GROCERY COMPANY,
a Corporation,

Plaintiff,

VS.

WALTER W. HOILES,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW. NUMBER 1537.
October 30,1950

1537

Appeared:

For Plaintiff,

Hon. J. B. Blackburn

For Defendant,

Messrs. Chason & Stone

Mr. Thomas J. Farris, being first duly and legally sworn, testified as follows:

ON DIRECT EXAMINATION

By Mr. Blackburn

Q. Are you Mr. Thomas J. Farris?

A. Yes.

Q. Mr. Farris, what connection do you have, if any, with the Plaintiff in this case?

A. Plaintiff? I am secretary-treasurer of the corporation.

MR. BLACKBURN: If the Court please, we offer in evidence, first, the note in the original amount of $3166.47, dated March 26, 1949, made by Walter W. Hoiles and payable to Charles T. & Susie N. Campbell, in installments as provided in the note.

MR. CHASON: We object to the note, what he is attempting to prove ownership, note to be admissible as chattel mortgage might be note would not be admissible in a detinue suit.

MR. BLACKBURN: The Court please, our purpose in the introduction of the note, then the mortgage, then the assignment by the Campbells to Campbell Grocery Company to show that the indebtedness was past due at the time the suit was filed and is still due.

THE COURT: What is the mortgage?

MR. BLACKBURN: Chattel mortgage.

THE COURT: Names these things here?

MR. BLACKBURN: That's right.

THE COURT: Overrule the objection.

MR. CHASON: We except.

MR. BLACKBURN: We will ask that the note be identified as Plaintiff's Exhibit "1".

(Exhibit "1" attached to this transcript.

MR. BLACKBURN: If the Court please, we offer in evidence Chattel Mortgage from W. W. Hoiles to Charles T. and Susie N. Campbell, dated March 26, 1949, which was filed for record in the office of the Judge of Probate of Baldwin County, Alabama, on March 29, 1949, which is recorded in Book 153 of Mortgages at pages 340-42, Baldwin County, Alabama Records, and ask that it be identified as Plaintiff's Exhibit "2".

MR. CHASON: We object to the introduction of this mortgage. It shows on its face that it is a second mortgage.

THE COURT: I believe it does too.

MR. BLACKBURN: It does. Suppose it's a fifth. It's in default and we are entitled to possession of the property.

THE COURT: Don't you have to show what happened to the first mortgage?

MR. BLACKBURN: No sir; that's defensive matter, bringing suit on a particular chattel mortgage, and further it has been proved by subsequent testimony that it was in default at the time suit was filed and is still in default, wouldn't make any difference, we could pay it up and take the property.

MR. CHASON: If the mortgage didn't show on its face that it was a second mortgage , I think would be required to show, where it shows on its face that it is a second mortgage I don't think the duty is on us to show anything. According to your own mortgage itself it is a second mortgage.

THE COURT: Overrule the objection.

MR. CHASON: Except.

MR. BLACKBURN: Mr. Farris, I hand you instrument which purports to be an assignment of the chattel mortgage executed by Charles T. and Susie N. Campbell to Campbell Grocery Company, a corporation, dated July 1, 1949, which has not been recorded (handing witness paper) is your name signed to this as witness?

A. It is.

Q. Was it signed by the Campbells whose names appear therein in your presence?

A. It was.

MR. BLACKBURN: We offer this in evidence and ask that it be identified as Plaintiff's Exhibit "3".

(Attached to this transcript)

Q. Mr. Farris, are you familiar with the indebtedness evidenced by the note and secured by this mortgage?

A. I am.

Q. I will ask you whether or not the Defendant, Mr. Hoiles, was in default on his payments under this mortgage and note today as well as on the 24th of July, 1950?

A. He was.

Q. I will ask you whether or not he is still in default?

A. Yes sir.

Q. Mr. Farris, are you familiar with the value of property such as is described in this chattel mortgage and in the Sheriff's return and I will ask you if you have bought and sold such property and know its value?

A. Yes.

Q. Mr. Campbell, I will ask you what is the value of each of these articles, reading from the Sheriff's return, one Walk-in Cooler twelve by fourteen?

A. Six Hundred Twenty-five Dollars.

Q. One Fairbanks Platform Scale?

A. One Hundred Dollars.

Q. One Fairbanks-Morse hanging scale?

A. Fifty Dollars.

Q. One Thirteen-foot Fredrick display case?

A. Six Hundred Dollars.

Q. One nine-foot Seeger display case?

A. Five Hundred Dollars.

Q. Two Foleda computing scales, is that the proper designation?

A. No sir, Toledo.

Q. What is the value of those?

A. Hundred Dollars each.

Q. Total of Two Hundred Dollars?

A. Right.

Q. One Standard Computing Scale?

A. Seventy-five Dollars.

Q. One thirty-six inch meat block?

A. Twenty-five Dollars.

Q. One cutting table, six foot?

A. Twenty-five Dollars.

Q. One thirty gallon butane hot water heater?

A. Twenty dollars.

Q. One double sink?

A. Fifteen dollars.

Q. One Brunner Compressor?

A. Thirty dollars.

Q. Sixty meat case plates?

A. Thirty-five Dollars for the lot.

Q. One ten foot refrigerated vegetable cooler and compressor?

A. Six Hundred Dollars.

Q. Two Butane heaters?

A. Thirty Dollars.

Q. One Underwood Sunstrand Adding Machine?

A. Twenty Dollars.

Q. One R. C. Allen Adding Machine?

A. Twenty Dollars.

Q. One Dayton Computing Scale?

A. Hundred and Twenty-five Dollars.

Q. One Hanging Scale?

A. Twenty-five Dollars.

Q. One Roll Top Desk?

A. Five Dollars.

Q. Two Ceiling Fans?

A. Thirty Dollars.

Q. For the Two?

A. For the Two.

Q. Twelve Grocery Carts?

A. Twelve Dollars for the twelve.

Q. One Frigidaire Compressor?

A. Thirty-five Dollars.

Q. One Safe Guaw check writer?

A. Fifteen Dollars.

Q. Eight tables?

A. Thirty-two Dollars for the lot.

ON CROSS EXAMINATION

By Mr. Chason

Q. Mr. Campbell, is that mortgaged to you now a first mortgage?

MR. BLACKBURN: We object, irrelevant, incompetent and immaterial.

THE COURT: Mr. Blackburn, before second mortgagor can step in he's got to satisfy the first mortgage.

MR. BLACKBURN: I can do it before or after foreclosure. Suppose Hubert has a first mortgage on this and Hoyles is current with his payments on that mortgage but gives to us a second mortgage and he is in default on his payments under the second mortgage, then we have got the right to foreclose that mortgage in any way the mortgage provides for foreclosure, and one way to do it is by suit in detinue to recover personal property, keeping in mind this difference, the judgment when secured could have no bearing whatever on the first mortgage if such was in evidence when we acquired title by foreclosure proceedings, we must pay off the first mortgage, couldn't affect the first mortgagee as outstanding mortgage- - -

MR. CHASON: Mr. Blackburn argued defensive matter, now it's immaterial, I think certain it ought to be entitled to possession as first mortgagee.

MR. BLACKBURN: Defend title and possession until it is extinguished.

THE COURT: I almost flew off on a tangent. I believe a second mortgagee is taking it with knowledge of the first mortgage and he is subject to first mortgage. I don't see that it would make any difference, I believe he is still subject to first mortgage if it is still existing. Sustain the objection.

MR. CHASON: Except.

Q. Mr. Campbell, when is the last time you examined this property - - - as to its value? Your name Farris? Excuse me.

A. Approximately six months ago.

Q. Six what?

A. Six months ago.

Q. Subsequent to taking the Campbell mortgage?

A. Yes sir.

Q. Where did you examine it?

A. In his place of business.

Q. Are you testifying what this property was worth six months ago or what it is worth today?

A. I am testifying as to what I would value it today.

Q. You haven't seen it in six months?

A. No sir.

Q. We will take the grocery carts, what is the condition of those twelve grocery carts as of today?

A. As of today, of course I haven't seen them today but I believe Mr. Hoiles has taken care of them as he always did.

Q. You were allowing the amount of One Dollar a piece for the grocery carts?

A. Yes sir.

Q. The kind you push around?

A. Yes sir.

Q. What would that cart sell for when it was new?

A. Approximately four dollars.

Q. So you say these carts are deteriorated seventy-five percent?

A. I would say they are worth about a dollar today, sir.

Q. This roll top desk you valued at Five Dollars, what would that desk have cost you?

A. New sir?

Q. Yes sir?

A. Possibly a hundred and fifty dollars.

Q. What's it's condition today?

A. I don't believe the top would come down, wouldn't when I was there, pigeon holes or places where put money, value as of - couldn't sell it for anything.

Q. Practically valueless?

A. Practically valueless, yes sir.

Q. You allowed Six Hundred and Twenty-five Dollars on Walk-in Cooler, do you think you can turn around and sell that on the present day market with reasonable notice for Six Hundred and Twenty-five Dollars?

A. I believe I can.

Q. You think that's a fair value?

A. I do.

Q. This ten foot refrigerated vegetable cooler, what's its condition?

A. When I saw the cooler last it was in good condition.

Q. What do you think you can re-sell it for on a fair open market?

A. I believe I could get between Five and Six Hundred Dollars.

Q. You valued it at Six Hundred and Twenty-five Dollars so even after you go in and re-sell it you may lose at least a hundred dollars on that cooler on the value you - -

A. Might, I don't think so.

Q. After the cost of re-selling and advertising?

A. Yes sir.

Q. How much do you think you can get for the nine foot Seeger display case? You don't need to compare your list in order to -

A. I believe Five Hundred Dollars.

Q. Without comparing your list how much can you get for the thirty gallon butane hot water heater?

A. I believe I could get thirty dollars.

Q. Think it's worth ten dollars, if you valued it at Twenty Dollars, is it worth ten dollars more?

A. Given time to sell I think I could get thirty dollars.

Q. What about the Standard Computing Scales, what could you get for that on a reasonable market?

A. I believe I could get a hundred dollars.

Q. Then if you didn't allow but Seventy-five Dollars, there is a variation of Twenty-five Dollars of what you say its reasonable market value is, is that true?

A. That is true.

Q. Isn't it a fact, Mr. Witness, Mr. Farris, you just casually looked over these articles and that this total you got afterwards, - - - you are not too certain about what these things would bring on a reasonable market?

A. I cannot be certain but I give what I believe I could get.

Q. In fixing the value of these articles you are attempting to set the value as of today?

A. Yes sir.

Q. How much less today would you have fixed it than you would have six months ago when you saw it?

A. None.

Q. You say these articles are six months older and haven't deteriorated in value?

A. I would say conditions in the grocery business could sell easier than I could six months ago.

Q. This sixty display plates, what's their reasonable market value today?

A. New?

Q. Talking about the case?

A. I would estimate Thirty-five Dollars.

Q. What about that Dayton Computing Scale?

A. The Dayton Computing Scale should be worth A Hundred and Twenty-five Dollars.

Q. How long did you stay in the store at the time you were inspecting these articles?

A. Approximately two hours. I have been in the store many times.

Q. Quite a few other articles of like kind in that same store are they not?

A. Like this equipment?

Q. Like this equipment?

A. No sir.

Q. Isn't it a fact this is rather old equipment being the equipment owned by Mr. Hoiles when he sold out to Mr. Loest and then took back from Mr. Loest and in the meantime isn't it a fact he had bought quite a bit of newer equipment which has never been included in this list?

A. The equipment is quite old.

Q. How long have you been familiar with this equipment?

A. I have been familiar with this equipment since the early part of 1949?

Q. Are you familiar with that other equipment had in that store?

A. No sir, have no interest in it.

Q. I will ask you when you were in the store six months ago isn't it a fact he had quite a bit of like equipment in there much newer than this?

A. He had a display case. Other than that I don't believe he had any equipment.

MR. BLACKBURN: I would like to ask you, the original list you testified from and the valuations placed on that, who placed the valuations on that?

A. I did.

Q. They are correct in your opinion?

A. In my opinion they are correct.

MR. BLACKBURN: The Court please, we offer in evidence for the purpose of showing that the defendant has retained possession of the property involved in this suit so far as it applies to the Sheriff's return, waht to introduce the Replewy Bond filed on the 24th of July, 1950.

THE COURT: All right.

MR. BLACKBURN: We ask that it be identified as Plaintiff's Exhibit "4".

(Exhibit "4" attached to this transcript).

MR. BLACKBURN: We rest.

MR. CHASON: No evidence.

THE COURT: Take seven percent off.

I, Ora S. Nelson, Court Reporter, hereby certify that the above and foregoing is a true and correct copy of the evidence taken and transcribed on the trial of the above cause on October 30, 1950.

This 7th day of November, 1950.

Ora S. Nelson
Court Reporter

COPY

PLAINTIFF'S EXHIBIT "1"

March 26th, 1949
Mobile, Alabama

$3166.47

For value received the undersigned jointly and severally promise to pay to Charles T. & Susie N. Campbell or order, the principal sum of Thirty-one Hundred Sixty-six and 47/100 ($3166.47) Dollars with interest thereon from date, at the rate of Six (6%) per cent per annum. The said principal and interest shall be payable Mobile, Alabama, in monthly installments as follows, namely: One (1) instalmentof $66.47 due March 31, 1949 and one (1) installment of $50.00 due each Wednesday thereafter together with interest at 6% on the unpaid balance of the principal due at each installment payment due date until the total principal and interest due is paid in full.

All payments to be made in lawful money of the United States of America.

Each maker and endorser waives the right of exemption under the Constitution and laws of Alabama, and each maker and endorser waives demand, protest, and notice of protest and all requirements necessary to hold them liable as makers and endorsers.

It is further agreed that the undersigned shall pay all costs of collection, including a reasonable attorney's fee on failure to pay any installment of principal and interest of this note on the date due thereof.

This note is to be construed according to the laws of the State of Alabama, and is secured by a Chattel Mortgage on Personal Prop. executed to Charles T. & Susie N. Campbell by the undersigned on the 26th day of March, 1949.

Upon failure to pay any installment of principal and/or interest when due or if any of the conditions and requirements in said mortgage be not complied with, the entire principal sum at the option of the holder, shall become due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

Privilege is given to make additional payments on said principal sum at any interest payment date; such additional payments, however, to be made in multiples of $50.00.

(Signed) WALTER W. HOILES
Walter W. Hoiles

PLAINTIFF'S EXHIBIT "1"

ORA S. NELSON, COURT REPORTER

1537

Form 54 BOOK 153 PAGE 340 CHATTEL MORTGAGE SOLD BY BIDGOOD STATIONERY CO. S-36943

State of Alabama,
Baldwin County

I, Walter W. Hoiles, in consideration of $3166.47 Dollars paid by Charles T. & Susie N. Campbell, do bargain, sell, deliver and convey to said Charels T. & Susie N. Campbell the following personal property now in Baldwin County, Alabama, to-wit:

As itemized on attached schedule and made a part hereof.

I warrant that the said property is free from all encumbrances and that I have a good right to sell the same., except mortgage to Assets Realization Company dated Jan. 20, 1949 recorded Mtg. Bk. 151 page 89-93, Probate Records Baldwin County, Ala.

Upon condition, however, that if I pay my certain promissory note bearing even date herewith, given to the said Charles T. & Susie N. Campbell or order, for the said sum of $3166.47 Dollars, with interest at the rate of 6% per cent, according to the tenor of said note, then this mortgage shall be void; but if default should be made in the payment of the principal or interest above mentioned, or any part thereof, then said Charles T. & Susie N. Campbell is hereby authorized, to take possession of the above described personal property and advertise and sell the same at public sale to the highest bidder for cash, after giving thirty (30) days notice of the time and place of said sale by one notice posted at the court house door of Baldwin County, Alabama, the said sale to take place either in front of the court house door of said Baldwin County, Alabama or where the property is situated at the time of the default. It is agreed that the said Charles T. & Susie N. Campbell has the right to choose one of the above mentioned places as the place of sale of said property, and his choice shall be final and binding upon me. It is further agreed that the said property shall be at the place of sale at the time of the sale, whether sold at the court house door of said Baldwin County, Alabama, or where the property is situated at the time of default. The proceeds of said sale shall be applied, first, to the payment of all costs of said sale, including a reasonable attorney's fee; second, to the amount due upon said note and interest; third, if any surplus remains, to be paid to the undersigned.

It is further agreed that the mortgagor herein shall retain possession of the property as the agent of the mortgagee, until default in the payment of the mortgage debt hereby secured.

Executed this 26th day of March, 19 49

Witnesses:

Irene Cleveranki

Walter W. Hoiles (Seal)
Walter W. Hoiles

Plaintiff's Exhibit "7"
Ora B. Nelson, Court Reporter

The State of Alabama
Baldwin County

I, the undersigned

in and for the County and State aforesaid, hereby certify that Irene Ahrenrowtice

, a subscribing witness to the foregoing conveyance, known to me, appeared before me on this day, and being sworn, stated that

, the grantor in the conveyance, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date, that he attested the same in the presence of the grantor, and of the other witness, and that such other witness, subscribed his name as a witness in his presence.

Given under my hand this 26th day of March, A. D. 19 49

Grady T. Gichet
Notary Public
My Commn. expires 4/9/52

The State of Alabama
Baldwin County

I, the undersigned

in and for the County and State aforesaid, hereby certify that Walter W. Hoiles

whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the said mortgage he executed the same voluntarily on the day the same bears date.

Given under my hand this 26th day of March, A. D. 1949

Grady T. Gichet
Notary Public Baldwin County, Ala.
My Commn. expires 4/9/52

1 Walkin cooler 12 x 14
1 Fairbanks platform scale
1 Fairbanks Morse hanging scale
1 16 foot Freedrich display case
1 12 foot Seeger display case
2 Toledo computing scales
1 Standard computing scale
1 36 inch meat block
1 American slicing machine
5 6 foot cutting tables
1 30 gallon Butane Water Heater
1 Double sink
1 Brunner compressor
4 Large wash tubs
60 Meat case plates
1 15 foot Refrigerated vegetables cooler and compressor
2 Butane Heaters
1 4 drawer National Cash Register
1 Underwood Sunstrand adding machine
1 R. C. Allen Adding machine
1 Dayton computing scale
1 Hanging scale
1 Roll top desk
3 Ceiling fans
12 Grocers' carts
1 Frigidaire compressor
1 Safe Guard check writer
Miscellaneous racks, tables, shelving and tools, being all of the furniture, fixtures and equipment now located in the building situated on Lots 1 and 2 Block 13, First addition to Robertsdale, Alabama.

STATE OF ALABAMA, BALDWIN COUNTY
Filed 3/29/49 1:30 P.M
Recorded mtge book 153 page 340-2
and I certify that the following Privilege Tax has been paid.

Deed Tax
Mortgage Tax 4.80

M. L. Stewart
Judge of Probate
By G.

29 3-26-49

Walter W. Noiles 65

to

Charles L. Campbell

Susie N. Campbell

153-340-421

Plaintiff's Exhibit "E"

3668
250.00
72.62
3009.30

mv - 4.80
R 1.35
6.15

Call For

Plaintiffs Exhibit "3"

ASSIGNMENT OF CHATTEL MORTGAGE

STATE OF ALABAMA)
COUNTY OF BALDWIN)

KNOW ALL MEN BY THESE PRESENTS, that we, Charles T. Campbell and Susie N. Campbell, for and in consideration of the sum of One and no/100 ($1.00) Dollars and other good and valuable considerations cash to us in hand this day paid by Campbell Grocery Company, a corporation, Mobile, Alabama, the receipt of which is hereby acknowledged, do hereby SELL, CONVEY, TRANSFER, ASSIGN and DELIVER unto the said Campbell Grocery Company, Mobile, Alabama, that certain mortgage made March 26, 1949, by Walter W. Hoiles to us, as security for an indebtedness of Three Thousand One Hundred Sixty-six and 47/100 ($3,166.47) Dollars, as the same appears of record in the Probate Court of Baldwin County, Alabama, in Mortgage Book 153, Page 340-2; and for the same consideration we hereby SELL, TRANSFER and ASSIGN unto the said Campbell Grocery Company, Mobile, Alabama, the note described in and secured by the said mortgage.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 1st day of July, 1949.

Charles T. Campbell (SEAL)
CHARLES T. CAMPBELL

Susie N. Campbell (SEAL)
SUSIE N. CAMPBELL

WITNESSETH:

Thos J Farris

Lunce A. Pauley

Plaintiffs Exhibit "3"
Ora L. Nelson, Court Reporter

Plaintiff's Exhibit "4"

C. C. Law 30—1000—6-48

THE STATE OF ALABAMA, Mobile County

DETINUE BOND AND AFFIDAVIT.

KNOW ALL MEN BY THESE PRESENTS, That We, CAMPBELL GROCERY COMPANY, a corporation and GLENS FALLS INDEMNITY COMPANY, as surety,

are held and firmly bound unto WALTER W. HOILES, his heirs, executors and administrators, in the sum of Two Thousand and no/100 ($2,000.00) Dollars, for the payment of which, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st day of July, A. D. 19 50

The Condition of the above Obligation is such, That whereas the above bounden CAMPBELL GROCERY COMPANY has, on the 21st day of July 19 50, sued out from the office of the Clerk of the Circuit Court of ~~Mobile~~ Baldwin in the State of Alabama, a Writ of Detinue, returnable to the present term of said Circuit Court of ~~Mobile~~ Baldwin against the said WALTER W. HOILES for the recovery of the following property, to-wit:

(See itemized statement attached hereto and made a part hereof.)

NOW, if the said CAMPBELL GROCERY COMPANY shall fail in said suit, and shall pay to the said WALTER W. HOILES the defendant in said writ all such costs and damages as he may sustain by the wrongful suing out of said Writ of Detinue, then this obligation to be void, otherwise to remain in full force and benefit.

CAMPBELL GROCERY COMPANY

BY: Thos. D. Jones (Seal)
as its Secretary & Treasurer.

GLENS FALLS INDEMNITY COMPANY, (Seal)

By A. C. Robertson (Seal)
Attorney.

Plaintiff's Exhibit "4"

Ora L. Nelson, Court Reporter

THE STATE OF ALABAMA
Mobile County

DETINUE AFFIDAVIT

PERSONALLY appeared before me, ~~John E. Mandeville, Clerk of the Circuit Court of~~ A Notary Public in and for Mobile County, Alabama, THOMAS J. FARRIS

who, being duly sworn, deposes and says, that the property sued for in the complaint of CAMPBELL GROCERY COMPANY,

to-wit (See itemized statement attached hereto and made a part hereof.)

belongs to CAMPBELL GROCERY COMPANY, the said Plaintiff.

Sworn to and subscribed the 21st day of July, 1950 before me.

Thomas J. Farris
THOMAS J. FARRIS

M. L. Lockey ~~Clerk~~
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA.

No.

Circuit Court
MOBILE COUNTY

VS. { Detinue Affidavit and Bond

Filed ..... day of 19

Clerk Circuit Court, Mobile County

Attorney

1 Walkin cooler 12 x 14
1 Fairbanks platform scale
1 Fairbanks Morse hanging scale
1 16 foot Freedrich display case
1 12 foot Seeger display case
2 Toledo computing scales
1 Standard Computing scale
1 36 inch meat block
1 American slicing machine
5 6 foot cutting tables
1 30 gallon Butane Water Heater
1 Double sink
1 Brunner compressor
4 Large wash tubs
60 Meat case plates
1 15 foot Refrigerated vegetables cooler and compressor
2 Butane Heaters
1 4 drawer National Cash Register
1 Underwood Sunstrand adding machine
1 R. C. Allen Adding machine
1 Dayton computing scale
1 Hanging scale
1 Roll top desk
3 Ceiling fans
12 Grocers' carts
1 Frigidaire compressor
1 Safe Guard check writer
Miscellaneous racks, tables, shelving and tools, being all of the furniture, fixtures and equipment now located in the building situated on Lots 1 and 2 Block 13, First addition to Robertsdale, Alabama.

Page 2 Exhibit "A"

A STOCK COMPANY

Glens Falls INDEMNITY COMPANY

of Glens Falls, New York

FIDELITY AND SURETY DEPARTMENT

FINANCIAL STATEMENT AS OF DECEMBER 31, 1948

ASSETS

Cash and Bank Deposits	$ 2,312,147.69
Government Bonds	18,071,047.31
Other Bonds	4,322,759.03
Stocks	1,695,276.00
Mortgage Loans	13,006.25
Real Estate	25,859.36
Premiums in Course of Collection (Not over 90 days due)	2,940,212.54
Accrued Interest	77,711.47
Other Assets	523,998.66
TOTAL ADMITTED ASSETS	$29,982,018.31

LIABILITIES

Reserve for Unearned Premiums		$ 7,758,272.55
Reserve for Losses		11,486,606.85
Reserve for Loss Adjustment Expenses		311,996.00
Reserve for Commissions, Expenses, Etc.		1,201,498.06
Reserve for Taxes		544,004.42
Reserve for Unauthorized Reinsurance		96,119.03
Reserve for Contingencies (Voluntary)	$ 264,777.82	
Capital	1,000,000.00	
Surplus	7,318,743.58	
Surplus to Policyholders		8,583,521.40
TOTAL		$29,982,018.31

For December 31, 1948 Market on Bonds add $166,513.66 to Assets and Surplus.

I, S. B. Miller, Secretary of the Glens Falls Indemnity Company, do hereby certify that the foregoing financial statement of the Glens Falls Indemnity Company to the best of my knowledge and belief, is a full, true and correct statement of the financial condition of said company on the 31st day of December, 1948.

Subscribed and sworn to before me

this 21st day of June ~~1949~~ 1950.

Dorothy A. Mack
Notary Public

S. B. Miller
Secretary

Page 3 Exhibit 4

DOROTHY A. MACK, NOTARY PUBLIC FOR THE STATE OF NEW YORK. Residing in Warren County, Warren County Clerk's No. 267. Certificates Filed in New York 1078, Albany, Clinton, Essex, Franklin, Fulton, Rensselaer, St. Lawrence, Saratoga, Schenectady, and Washington County. Commission Expires March 30, 1950.

Form 8214—KB—2-49

DUPLICATE ORIGINAL

Glens Falls

INDEMNITY COMPANY
of Glens Falls, New York

Power of Attorney

Know all men by these Presents:

That the Glens Falls Indemnity Company, a corporation organized and existing under the laws of the State of New York, and having its principal office in the City of Glens Falls, in said State, does hereby make, constitute and appoint W. C. Robertson of Mobile, Alabama its true and lawful attorney for it and in its name, place and stead to execute on its behalf as surety, bonds, undertakings, stipulations, consents and all contracts of suretyship and to attach its corporate seal to such obligations in favor of All obligees provided that the liability of the Company as surety under this authority, in no one instance shall exceed the sum of Fifty ---- thousand dollars, and reserving to itself full power of substitution and revocation.

This Power of Attorney is made and executed in accordance with the Resolution adopted by the Board of Directors of the Glens Falls Indemnity Company at a meeting held on the 15th day of May, 1940.

"RESOLVED, That the President or any Vice-President of this Company, when attested by a Secretary or Assistant Secretary, be and they hereby are authorized to execute Powers of Attorney qualifying the Attorney selected to act under such Power of Attorney to execute on behalf of the Glens Falls Indemnity Company bonds, undertakings, stipulations, consents and all contracts of suretyship, and to attach the Corporate Seal thereto.

PROVIDED, That nothing herein contained shall affect the validity of any act or thing done by any officer named in resolutions heretofore passed and who no longer is authorized to execute Powers of Attorney by reason of resignation or otherwise."

In Witness Whereof, the Glens Falls Indemnity Company has caused these presents to be signed and its Corporate Seal to be affixed by its proper officers, duly authorized by the above resolution at the City of Glens Falls, New York, this 22nd day of July 19 49

GLENS FALLS INDEMNITY COMPANY

Attest: G Earle Fox
ASSISTANT SECRETARY

By M. M. Simpson
VICE PRESIDENT

STATE OF NEW YORK
COUNTY OF WARREN } SS:

On this 22nd day of July 19 49, before me appeared M. M. SIMPSON and G. EARLE FOX to me personally known, who being by me duly sworn, did depose and say that they are Vice-President and Assistant Secretary respectively of the Glens Falls Indemnity Company, the corporation described in, and on whose behalf they executed the above instrument, that the seal affixed to said instrument is the Corporate Seal of said Corporation and was thereto affixed by order of its Board of Directors and said M. M. SIMPSON and G. EARLE FOX acknowledged said instrument to be the free act and deed of said Corporation. Affiants did further depose and say that they signed the above instrument in accordance with authority granted them by said resolution recited in the instrument proper and that said resolution is a true and correct copy of the original duly passed at a meeting of the Board of Directors held at the office of the Company at Glens Falls, New York, on the 15th day of May, 1940.

Dorothy A. Mack
Notary

I S. B. Miller Secretary of the Glens Falls Indemnity Company do hereby certify that I have compared the power of attorney granted herein and the resolution recited herein with the originals and amendments thereto now on file in the principal office of said Company, and that the same are correct transcripts therefrom and of the whole of the said originals, and amendments thereto, and that said power of attorney has not been revoked but is still in full force and effect.

In Testimony Whereof, I have hereunto subscribed my name as Secretary and affixed the seal of the Glens Falls Indemnity Company this 21st day of July 19 50.

S. B. Miller
Secretary

(This part below to be completed when the person granted power of attorney is required to acknowledge the execution of the bond.)

State of _____
County of _____ } SS:

On this _____ day of _____ 19____, before me personally came _____ to me known, who, being by me duly sworn, did depose and say, that he resides in _____ that he is the _____ of the GLENS FALLS INDEMNITY COMPANY, the Corporation described in and which executed the bond attached; that he knows the seal of said Corporation; that the Seal affixed to said bond is such corporate seal; that it was so affixed by virtue of the power of attorney issued to him as more particularly appears above, and that he signed said bond by reason of the authority granted therein by the Board of Directors of said Corporation; and that said Company has received from the Superintendent of Insurance of the State of New York a certificate of qualification of its sufficiency as surety or guarantor under subparagraph 2, section 327, Article 4, Chapter 28 of the Consolidated Laws of the State of New York and that such certificate has not been revoked.

_____
Notary Public

Page 4 Exhibit 4

Form S107—K—5-49 (Duplicate Original)

CAMPBELL GROCERY COMPANY, a Corporation,	*	
	)	
Plaintiff,	*	IN THE CIRCUIT COURT OF
VS.	)	
	*	BALDWIN COUNTY, ALABAMA
WALTER W. HOILES,	)	
	*	AT LAW
Defendant.	)	

The Plaintiff's motion filed in this cause on this date to amend the judgment rendered in this cause on October 30, 1950 is set for hearing at ten o'clock A. M. on March 28, 1951.

The Clerk of this Court shall give the Defendant or his attorneys ten days notice of the filing of the said motion and of the date set for hearing same.

Done on this the 16th day of March, 1951.

Telfair J. Mobley, Jr.
Judge.

ORDER

CAMPBELL GROCERY COMPANY,
a Corporation,

Plaintiff,

VS.

WALTER W. HOILES,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

FILED

MAR 16 1951

GRACE J. DOCK, Clerk

CAMPBELL GROCERY COMPANY, a corporation, Plaintiff	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. NO. _____
-vs-	)	
WALTER W. HOILES, Defendant	)	

Comes the plaintiff in the above styled cause and shows unto the court that judgment was heretofore had by the plaintiff and against the defendant herein on October 30, 1950, for the property sued for in the complaint.

Plaintiff further alleges that testimony was taken in open court at said time and that evidence was adduced establishing the reasonable market value of each of the items sued for and set out in said complaint.

Plaintiff avers that through error or oversight the judgment order of the court did not contain said alternate value, as aforesaid.

WHEREFORE, plaintiff moves this Honorable Court to cause said judgment order to be amended, nunc pro tunc, to show the alternate value of each of the items sued for and set out in said complaint, in accordance with the evidence presented in open court at the time of judgment.

J. B. Blackburn

Howell & Johnston

ATTORNEYS FOR PLAINTIFF

CAMPBELL GROCERY COMPANY, a Corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
WALTER W. HOILES, Defendant.	)	AT LAW. NO.____

Comes the Defendant in the above styled cause and files this his demurrer to the Complaint filed in said cause and each and every count thereof separately and severally and assigns the following separate and several grounds, viz:

1. That said Complaint does not state a cause of action.

2. For aught that appears from count 2 of said Complaint the Promissory Waive Note referred to therein has been paid in full.

3. For aught that appears from count 2 of said Complaint the Defendant is not indebted to the Plaintiff in any amount.

4. For aught that appears from count 2 of said Complaint the attorneys fee sued on has been paid by the Defendant to the Plaintiff.

5. That said Complaint is not a suit for the collection of any money due by the Defendant to the Plaintiff and it is not alleged in said Complaint that the Defendant is indebted to the Plaintiff in any amount.

6. That the allegation that the Plaintiff claims the benefit of waiver of exemption is but a conclusion of the pleader.

7. That said Complaint is vague and indefinite.

8. That said Complaint seeks to collect an attorney's fee on a suit in detinue without a claim of any right to recovery for the debt on the note referred to in count 2 of said Complaint.

Reason & Stone
Attorneys for Defendant.

Defendant demands a trial of this cause by Jury.

Reason & Stone
Attorneys for Defendant.

RECORDED

DEMURRER

CAMPBELL GROCERY COMPANY
A Corporation,

Plaintiff,

vs.

WALTER W. HOILES,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW.

NO. 1537

Filed August 16th, 1950.

Alice J. Deuck
Clerk.

CAMPBELL GROCERY COMPANY, A Corporation, Plaintiff, vs. WALTER W. HOILES, Defendant	))))))	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA LAW SIDE.

Comes the Defendant in the above styled cause and for answer to Count One of the Complaint filed in said cause says:

1. Not guilty.

Pearson & Stone
Attorneys for defendant.

1537 RECORDED

PLEA

CAMPBELL GROCERY COMPANY,
A Corporation,

Plaintiff,

vs.

WALTER HOILES,

Defendant.

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

FILED
OCT 5 1950
ALICE J. DUCK, Clerk

CAMPBELL GROCERY COMPANY, A Corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
WALTER W. HOILES, Defendant.	)	AT LAW

PETITION

TO THE HONORABLE TELFAIR J. MASHBURN, JR., JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, AT LAW:

Now comes the plaintiff, by its attorney, and respectfully represents that it desires to remove from the court file in this case the promissory note which has been offered in evidence in this cause, and substitute a copy therefor, in order that the said original promissory note can be kept and preserved by it.

WHEREFORE, plaintiff prays that the Court will enter a proper order or decree authorizing removal of the said original promissory note from the court file and substitution of the copy therefor.

CAMPBELL GROCERY COMPANY,
A Corporation,

By J. B. Blackburn
As one of its Attorneys.

STATE OF ALABAMA)
*
BALDWIN COUNTY)

The foregoing petition having been presented to me on this date, it is ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff shall and he is hereby authorized and empowered to remove from the court file in this suit the original promissory note that has been introduced as evidence in this cause and substitute therefor copies thereof.

ORDERED, ADJUDGED AND DECREED on this the 1st day of October, 1952.

Telfair J. Mashburn Jr.
Judge.

PETITION

CAMPBELL GROCERY COMPANY,
A Corporation,

Plaintiff,

VS.

WALTER W. HOILES,

Defendant.

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

Filed: October 1, 1952.

Telfair J. Washburn Jr.
Judge.

CAMPBELL GROCERY COMPANY, a Corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
WALTER W. HOILES, Defendant.	)	AT LAW

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to notify Walter W. Hoiles or Chason and Stone, his attorneys, that the motion, a copy of which is hereto attached, was filed in this cause on this date and has been set for hearing at ten o'clock A. M. on March 28, 1951.

Dated this 16th day of March, 1951.

Alice J. Hewett

Clerk of the Circuit Court.

I, Marbury P. Stone, one of the attorneys for the Defendant in the above styled cause do hereby accept service of the above notice this 16th day of March, 1951

Marbury P. Stone

NOTICE

CAMPBELL GROCERY COMPANY, a Corporation,

Plaintiff,

VS.

WALTER W. HOILES,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CAMPBELL GROCERY COMPANY, a corporation, Plaintiff	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. NO. _____
-vs-	)	
WALTER W. HOILES, Defendant	)	

Comes the plaintiff in the above styled cause and shows unto the court that judgment was heretofore had by the plaintiff and against the defendant herein on October 30, 1950, for the property sued for in the complaint.

Plaintiff further alleges that testimony was taken in open court at said time and that evidence was adduced establishing the reasonable market value of each of the items sued for and set out in said complaint.

Plaintiff avers that through error or oversight the judgment order of the court did not contain said alternate value, as aforesaid.

WHEREFORE, plaintiff moves this Honorable Court to cause said judgment order to be amended, nunc pro tunc, to show the alternate value of each of the items sued for and set out in said complaint, in accordance with the evidence presented in open court at the time of judgment.

J. B. Blackburn

Howell & Johnston

ATTORNEYS FOR PLAINTIFF

CAMPBELL GROCERY COMPANY, a corporation,	*	IN THE CIRCUIT COURT
Plaintiff,	*	OF BALDWIN COUNTY,
vs	*	ALABAMA, AT LAW.
WALTER W. HOILES,	*	NO.
Defendant.	*	

COUNT ONE:

Plaintiff claims of the defendant the following described personal property:

1 Walkin cooler 12 x 14
1 Fairbanks platform scale
1 Fairbanks Morse hanging scale
1 16 foot Freedrich display case
1 12 foot Seeger display case
2 Toledo computing scales
1 Standard computing scale
1 36 inch meat block
1 American slicing machine
5 6 foot cutting tables
1 30 gallon Butane Water Heater
1 Double sink
1 Brunner compressor
1 Large wash tubs
60 Meat case plates
1 15 foot Refrigerated vegetables cooler and compressor
2 Butane Heaters
1 4 drawer National Cash Register
1 Underwood Sunstrand adding machine
1 R. C. Allen Adding machine
1 Dayton computing scale
1 Hanging scale
1 Roll top desk
3 Ceiling fans
12 Grocers' carts
1 Frigidaire compressor
1 Safe Guard check writer
Miscellaneous racks, tables, shelving and tools, being all of the furniture, fixtures and equipment now located in the building situated on Lots 1 and 2 Block 13, First addition to Robertsdale, Alabama.

together with the value of the hire or use thereof during its detention, to-wit, from the 5th day of January, 1950.

COUNT TWO:

Plaintiff further claims a reasonable attorneys fee, which defendant agreed to pay in a promissory note dated March 26, 1949, executed by the defendant, and plaintiff avers that the sum of Six Hundred and no/100 ($600.00) Dollars is such a reasonable fee.

Plaintiff also claims the benefit of waivers of exemption as to personalty made by defendant in said promissory note.

J. B. Blackburn

Howell & Johnston

ATTORNEYS FOR PLAINTIFF

STATE OF ALABAMA, }
BALDWIN COUNTY. }

TO THE SHERIFF OF SAID COUNTY:

WHEREAS, the Plaintiff in the within stated cause has made affidavit and given bond as required by law you are hereby required to take the property mentioned in Complaint into your possession unless the Defendant gives bond payable to the Plaintiff with sufficient surety in double the amount of the value of the property, with condition that if the Defendant is cast in the suit he will within thirty days, thereafter, deliver the property to the Plaintiff, and pay all damages and costs which may accrue from the detention thereof.

Desie J. Leach

Clerk.

TINUE—REPLEVY BOND OF DEFENDANT

The State of Alabama,
Baldwin County

KNOW ALL MEN BY THESE PRESENTS, That we, Walter W. Hoiles

and

are held and firmly bound unto Campbell Grocery Company, a corporation

in the sum of Five Thousand ($5,000.00) Dollars, for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals and dated this 3rd day of August 1950

The condition of the above obligation is such that whereas the said Campbell Grocery Company, a corporation did, on the 24th day of July 1950 sue out of the Circuit Court of Baldwin a writ of detinue directed to any Sheriff of said State and commanding him to take into his possession the following property, to-wit:

which said writ was placed in the hands of Taylor Wilkins, Sheriff of Baldwin County, Alabama, on the 24th day of July, 19 50, and executed by him on the 31st day of July, 1950, by taking into his possession the following property, to-wit: 1 Walkin cooler 12 x 14, 1 Fairbanks platform scale, 1 Fairbanks Morse hanging scale, 1 13 ft. Freedrich display case, 1 9 ft. Seeger display case, 2 Toleda computing scales, 1 Standard computing scales, 1 36 in. meat block, 1 cutting table, 6 ft; 1 30 gallon butane hot water heater, 1 double sink, 1 Brunner compressor, 60 meat case plates, 1 10 ft. refrigerated veg. cooler & compressor, 2 butane heaters, 1 Underwood Sunstrand adding machine, 1 R.C. Allen adding machine, 1 Dayton computing scale, 1 hanging scale, 1 rool top desk, 2 ceiling fans, 12 Grocery carts, 1 Frigidaire compressor, 1 safe guard check writer, 8 tables.

And whereas the above bound Walter W. Hoiles, Defendant in said suit, has, within five days from the execution of said writ, entered into and executed this bond as required by law and thereby obtained possession of said property seized under this writ.

Now if the said Walter W. Hoiles is cast in said suit and within thirty days after judgment deliver the property aforesaid to the Plaintiff and pay all costs and damages which may accrue from the detention thereof, then this obligation to be void, otherwise to remain in full force and effect.

Walter W. Hoiles (SEAL)

Thos. E. Hall (SEAL)

Simon Garrett (SEAL)

Taken and approved this 3rd day of August 19 50

Taylor Wilkins
Sheriff, Baldwin County, Ala.

RECORDED

THE STATE OF ALABAMA,
BALDWIN COUNTY.

Circuit Court, Baldwin County

REPLEVY BOND
OF DEFENDANT

vs.

Taken and approved this _____

day of _____, 193__

MOORE PRINTING CO., BAY MINETTE, ALA.

651

Executed by serving a copy of the within writ on Walter W. Hoiles this 31st day of July, 1950 and taking into my possession the following property:

1 Walk in Cooler 12X 14
1 Fairbanks platform scale
1 Fairbanks Morse hanging scale
1 13ft. Fredrick display case
1 9 ft. seeger display case
2 Foleda computing scales
1 standard computing scales
1 36 inch meat block
1 cutting table 6 ft.
1 30 gallon butane Hot water heater
1 Double sink
1 Brunner compressor
60 meat case plates
1 10 ft refrigerated veg. cooler & compressor
2 Butane Heaters
1 Underwood Sunstrand adding Machine
1 R. C. Allen adding machine
1 Dayton computing scale
1 hanging scale
1 roll top desk
2 ceiling fans
12 Grocery carts
1 Fridirige compresser
1 safe Guaw check writer
8 tables

Taylor Wilkins, Sheriff

Original SUMMONS and COMPLAINT

CAMPBELL GROCERY COMPANY, A Corporation, Plaintiff

VS.

WALTER W. HOILES, Defendant.

RECORDED

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

FILED JUL 24 1950 ALICE J. BUCK, Clerk

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

Received in Sheriff's Office this 24 day July 1950
TAYLOR WILKINS, Sheriff

1 Walkin cooler 12 x 14
1 Fairbanks platform scale
1 Fairbanks Morse hanging scale
1 16 foot Freedrich display case
1 12 foot Seeger display case,
2 Toledo computing scales
1 Standard computing scale
1 36 inch meat block
1 American slicing machine
5 6 foot cutting tables
1 30 gallon butane water heater
1 double sink
1 Frigidaire compressor
1 safe guard check writer

1 Brunner compressor
4 large wash tubs
60 meat case plates
1 15 foot regrigerated vegetables cooler and compressor.
2 butane heaters
1 4 drawer National cash register
1 Underwood Sunstrand adding machine
1 R.C. Allen adding machine
1 Dayton computing scale
1 Hanging scale
1 roll top desk
3 ceiling fans 2
12 Grocers' carts

Miscellaneous racks, tables, shelving and tools, being all of the furniture, fixtures and equipment now located in the building situated on Lots 1 and 2, Block 13, First Addition to Robertsdale, Alabama