State of Texas
Dallas County

Before me A. O. Teal a Notary Public in and for the county aforesaid, personally appeared John E. Mitchell, who being first duly sworn, deposes and says as follows:

I was the attorney for the defendant in the case of Lewis vs. Robertsdale State Bank, pending in the Circuit Court of Baldwin County, Alabama, until I left Mobile in October, 1918, to enter war service work. At the time I left Mobile there was no motion pending to strike any plea filed by the defendant. The plaintiffs obtained a judgment by default on the ground that pleas were not filed within thirty days after service, but this judgment was set aside by the court, and filing of the pleas referred to allowed. The motion to strike was disposed of at the time that the court set aside the judgment by default. In fact, the motion to strike related solely to the matter disposed of by the order of the court setting aside the judgment by default. Several terms of court passed without this motion being in any manner referred to, it having been previously disposed of; subsequent pleadings on both sides were filed and disposed of, and the case was considered by both sides, in so far as the pleadings were concerned, as ready for trial on the merits. I have not the court file nor my office file before me, and cannot recall the details incident to the action of the court in allowing the pleas of the defendant to be filed subsequent to the expiration of thirty days from service of copy of the complaint, but I am sure that the facts are substantially as above stated and that the motion to strike was passed upon by the court in connection with the order setting aside the judgment by default.

Jno. E. Mitchell

Subscribed and sworn to by the said John E. Mitchell this twenty second day of May, 1919.

A. O. Teal
Notary Public
Dallas County, Texas

NOTARY PUBLIC DALLAS COUNTY TEXAS

X

J. A. Lewis
on
Riverdale
Chain Bank

STATE OF ALABAMA,

BALDWIN COUNTY.

Before me, T. W. Richerson, Clerk of the Circuit Court, Baldwin County, Alabama, personally appeared W. H. Hawkins, Esq., who, being by me first duly sworn doth depose and say:

That he is the attorney who filed the suit of J. A. Lewis and Rosa Lewis against the Robertsdale State Bank, which is now or was pending in the Circuit Court of said County; that he obtained the judgment by default as shown by the docket of said court and immediately after found out that he could not make positive proof of damages sustained and asked that the said judgment be set aside in order that he might take the depositions of the Plaintiffs; that this request was granted and before the next term of said court he employed the firm of Page & Moorer, attorneys, to assist him in this case. That the said depositions or interrogatories were first filed by me, W. H. Hawkins, before employing assistance and when the interrogatories or depositions were returned they were insufficient to establish the Plaintiffs case and the case was continued at the request of the said Plaitiffs in order that they might re-take the testimony and it was at this time that I had assistance in taking the testimony. That a motion to strike a plea has never been heard in this case, nor any proceeding in this case, except as stated above, other than an argument of the attorney for the defendant, Mr. at the May term of the said court, 1918, in which he insisted that the case be brought to trial after taking charge of the testimony and taking it to Foley, Alabama and not returning same until the case was called for trial. At this time Plaintiffs asked for continuance on the ground that Mr. Page had prepared all papers in this case and it was his assistance that Plaintiffs wished. Affiant emphatically states that there has been no subsequest pleas filed with the consent of the Plaintiffs or allowed to be filed by the said court, nor has there been

any disposition of the appearance or pleas filed by Mr. Mitchell as attorney for the defendant, other than the disposition at this term of the said court, nor has there been any disposition of any motion filed by the plaintiffs at any time.

T. J. Hawkins

Sworn and subscribed to before me this 28th day of May, 1919.

Clerk of Circuit Court.

[illegible]

[illegible]

J.A.Lewis and Rosa Lewis, Plaintiff.	:	No. Law.
	:	In the Circuit Court of
vs.	:	Baldwin County, Alabama.
Robertsdale State Bank, Defendant.	:	

Comes the Defendant and moves the court to set aside the judgment by default and subsequent proceedings heretofore rendered on May 20th, and ask for a new trial upon the following grounds:

FIRST: Because the question of default vel non for failure to file pleas within thirty days has heretofore been passed on at the November term 1916, decided in favor of Defendant who was subsequently granted permission to file pleas and said matter is now res judicata as shown by affidavit of John E.Mitchell, Esq., hereto attached.

SECOND: Because the right to default judgment under a strict application of the rule was a personal privilege and the enforcement of said rule has been waived by the action of plaintiff in filing interrogatories, taking testimony and other steps recognizing defendant's right to plead to the merits and is evidenced by repeated continuences of the case taken at the instance of the plaintiff.

THIRD: Because the record shows that the pleas were filed subsequent to the motion for judgement by default, thus affirmatively showing the recognition by the court that Defendant's right to plead to the merits had been considered and passed upon.

FOURTH: The affidavit of Wm.McIntosh herewith filed as well as the record and the oral statement of Defendant's witness made in open court show that due diligence was exerted by Defendant; that Defendant has a meritorious defence to the action thereby authorizing the exercise of the court's discretion in allowing filing of pleas.

Rickarby Frazer & Buck
Attorney for Plaintiff.

Courtesy Mott Hawkins & Payne & Moore

Received copy of within motion and waive further of same.
This May 26, 1919.

Filed 5/28/19
T. W. Reimann
Clerk